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National Association of Federally-Insured Credit Unions

June 28, 2019

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Request for Information Regarding Potential Regulatory Changes to the Remittance Rule
Docket No. CFPB-2019-0018

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Consumer Financial Protection Bureau's (Bureau) request for information (RFI) regarding the Remittance Rule. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. Since the 2012 Remittance Rule took effect, credit unions have incurred significant costs associated with the rule's complex disclosure requirements and error resolution framework, and many have ceased offering remittances as a result. Nevertheless, a substantial contingent of credit unions continue to offer remittances at cost because their membership demands access to this critical service. Many of these same credit unions rely on the exception provided in 12 CFR § 1005.32(a)(1) (the temporary exception); as such, the expiration of this exception could radically alter operational processes, increases costs, and further consolidate remittance services at the largest institutions to the detriment of all consumers.

In general, the temporary exception allows insured depository institutions to provide estimates of exchange rates and fees set by third parties with whom the institution has no correspondent relationship, and provides critical relief in circumstances where the exact amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii) cannot be known in advance. As required under § 919(a)(4) of the *Electronic Fund Transfers Act* (EFTA), the temporary exception will expire on July 21, 2020. Without further action from the Bureau, the unavailability of the temporary exception will have a profound, negative impact on credit unions' ability to continue providing affordable remittance services and could entail significant disruption for members, particularly those who are students, military personnel, or living abroad.

To prevent this outcome, NAFCU urges the Bureau to reconstitute the temporary exception using all available authorities under the EFTA. We also ask that the Bureau increase the Remittance Rule's safe harbor threshold to improve consumer access to affordable remittance services at credit unions, regardless of whether the Bureau determines that the substance of § 1005.32(a)(1) can be saved. To provide additional or alternative relief, the Bureau should also implement a credit union exception, whether under section 904 of the EFTA or section 1022(b) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, to provide necessary relief from the Remittance Rule.

General Comments

The RFI presents three questions related to the remittance transfer rule: (1) how the Bureau can mitigate the expiration of the temporary exception, (2) whether to change the safe harbor threshold in the Rule that determines whether a credit union makes remittance transfers in the normal course of business, and (3) whether an exception for small financial institutions may be appropriate.

As an initial matter, NAFCU believes that the Bureau should approach the first question with an understanding that far more credit unions find it necessary to rely on the temporary exception than is suggested in the agency's Remittance Assessment Report (Assessment). According to the Assessment, only 17 credit unions were able to respond to an "industry survey" administered by the Bureau in Spring 2018 that asked questions about the temporary exception.[1] The Assessment indicates that only one of these surveyed credit unions relied on the temporary exception, implying that the share of total credit unions utilizing the exception is small. However, NAFCU surveys suggest that the fraction of credit unions relying on estimates for prepayment disclosures may be higher—potentially around 15 percent. Although this is a seemingly small proportion, it is nonetheless significant given that the majority of credit unions offering remittances operate below the safe harbor threshold and are exempt from the Remittance Rule's disclosure requirements.

Another factor that the Bureau has not considered is the number of credit unions that may need to rely on the temporary exception in the future as their membership and remittance volume grows. The Assessment found that approximately 75 percent of credit unions that offer remittance transfers are below the 100-transfer threshold in a given year. For these credit unions, many may still need to estimate certain information required in prepayment disclosures, but their current safe harbor exemption has made specific reliance on the temporary exception a latent factor that the Bureau has not formally assessed. Given the resource constraints that generally exist at smaller credit unions operating within the safe harbor, the Bureau should conservatively estimate that most if not all would need to rely on estimates of exchange rate and fee information if they were to exceed the 100-transfer threshold in the future.

For credit unions that rely primarily on their correspondent to provide accurate exchange rate and fee information, expiration of the temporary exception could have indirect effects if correspondents institute costlier processes for ensuring accurate disclosure of amounts received, such as by charging higher lifting fees. If the compliance costs of correspondents are passed on to credit unions, this could further challenge credit unions' ability to offer remittances at reasonable and competitive rates. To address these factors, the Bureau should consider all forms of appropriate relief—including a broader exemption from the Remittance Rule as a whole.

[1] CFPB, Remittance Rule Assessment Report, 25, 140 (October 2018), https://files.consumerfinance.gov/f/documents/bcfp_remittance-rule-assessment_report_corrected_2019-03.pdf

The Bureau should mitigate the expiration of the temporary exception by interpreting § 919(c) of the EFTA to permit continued estimation of fee and exchange rate information.

The current market for remittances is largely dependent on an open network where no single institution exerts end-to-end control over a cross-border transaction.[2] The Bureau's Assessment acknowledges that open networks "include the system by which consumers send 'wires' or other transfers from their deposit accounts to overseas recipients." In such a system, most credit unions will not have complete knowledge of all the fees imposed in the course of a remittance transaction because correspondent relationships are decentralized. In other words, a chain of institutions is necessary to conduct remittance transfers and intermediary institutions will not always have contractual relationships with credit unions. The Assessment acknowledges that this type of decentralization "provides benefits to providers and end users but also imposes limits on the network, such as limitations on the information that providers can give consumers when sending remittances."[3]

Given the structural limitations of open networks, the Bureau should interpret § 919(c) of the EFTA to permit continued estimation of fee and exchange rate information required in disclosures. Section 919(c) allows the Bureau to modify its regulations if it determines that "a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient." The prevailing *method* used to conduct remittances (i.e., an open network) exists in nearly all countries and satisfies the conditions described in § 919(c) because decentralization places inherent limits on the ability to obtain accurate fee and exchange rate information in advance. The Assessment partially acknowledges this limitation with the following statement:

> "[T]he manner by which the payment is routed and the correspondent relationships needed to reach the beneficiary bank, rather than the country in which the beneficiary bank is located, could also play a role in the use of the temporary exception to estimate fees, such that a bank could provide actual fee information for certain transfers, but only estimated fee information for other transfers, even though the transfers are sent to the same country."[4]

Given these structural limitations and the inherent uncertainty of relying on intermediaries in an open-network, NAFCU urges the Bureau to propose new regulations that would allow credit unions to continue to rely on estimates when providing fee and exchange rate information that cannot be reasonably determined in advance. Alternatively, the Bureau should work with Congress to restore the temporary exception as quickly as possible. The Bureau should also clarify that a credit union may rely on a correspondent's disclosure of fee and exchange rate information when complying with disclosure requirements to minimize legal risks if the temporary exception expires without any substitute.

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[2] *Id*. at 51.
[3] *Id*. at 52.
[4] *Id*. at 140

Should the Bureau fail to provide an alternative mechanism for estimating fees, expiration of the temporary exception would have a disproportionate effect on credit unions that have limited resources available to reconfigure remittance processing systems and negotiate new contracts with individual correspondents or processors. Although some credit unions do not rely on the temporary exception, they incur additional costs in the form of lifting fees paid to intermediaries and other third parties to guarantee accurate disclosures. The Assessment does not quantify these costs or reach any conclusion as to what their impact would be on entities that process a relatively small number of remittances; however, many credit unions are not prepared to absorb additional burdens.

Credit unions already struggle to offer affordable remittance transfers and the expiration of the temporary exception could prompt some to discontinue their remittance services. Burdens such as knowing when IBANs are required, identifying proper international addresses or country-specific formatting, and supplying OFAC information present extraneous challenges that leave little margin for additional cost pressure. To preserve a healthy and competitive market for remittances, the Bureau must provide a mechanism for credit unions to comply with the Remittance Rule's disclosure requirements or offer some form of equivalent relief.

The Bureau should increase the Remittance Rule safe harbor threshold to at least 1000 transfers.

Regardless of the Bureau's ability to mitigate the expiration of the temporary exception, NAFCU asks that the agency increase the Remittance Rule's safe harbor threshold from its current level of 100 transfers in the current and previous calendar year to at least 1000. Such an increase would be appropriate given that 56 percent of credit unions surveyed by NAFCU in May 2019 said that the Bureau's regulations had made remittance transfer services more expensive to offer. In addition, a higher threshold would provide critical relief to credit unions who are not providing remittance services at a profit, but rather as a key service for their membership. As explained in the 2012 Remittance Rule, whether an institution provides remittances in the normal course of business depends on the facts and circumstances—a complex consideration that ultimately drove adoption of a simplified safe harbor threshold.[5] Yet for those credit unions earning little or no income on remittance transfers, or providing only 1000 transfers a year, it remains unreasonable to characterize remittance services as part of the normal course of business.

An adjustment to the safe harbor threshold might also encourage certain credit unions to reintroduce remittance services that were discontinued due to regulatory burden. Shortly after the 2012 rule took effect, a NAFCU survey revealed that over a quarter of credit unions had ceased to offer remittance services due to elevated compliance costs. In a NAFCU member survey conducted in 2014, 26 percent of respondents indicated that they would either reenter the market or process more remittances if the safe harbor threshold were raised.

More recently, 11 percent of NAFCU members indicated that the principle reason they are not offering remittance services right now is because of the expiration of the temporary exception. In

[5] CFPB, Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194, 6213 (Feb. 7, 2012).

other words, a small number of credit unions have already stopped providing remittances because they are dependent on the ability to estimate fee and exchange rate information. For those credit unions that are committed to providing remittances despite a potentially onerous shift in regulatory expectations, compliance after July 2020 will likely entail adoption of more complex disclosure processes and higher fees, which will ultimately hurt the member-owners of the credit union. Such an outcome is likely based on NAFCU surveys conducted two years after the Remittance Rule took effect, which revealed that 28 percent of credit unions had increased fees to accommodate Bureau regulations, and 40 percent reported that rules for estimates contributed to their increased costs.

In general, credit unions have struggled with the Remittance Rule because its disclosure requirements add more administrative duties for specialized staff and increase the time it takes to process individual wire transfers. The disclosures also extend the time required for the entire remittance process affecting both the credit union and the consumer. NAFCU has heard that credit union members are often dissatisfied with the remittance process because of these disclosure requirements and will frequently request an explanation of the disclosures and associated delays to their remittance request. Often times, members would rather not wait at a branch for the duration of the verification or review process required by the disclosures. When this happens, many credit unions must rely on the temporary exception to provide estimates instead of verifying fee and exchange rate information with the member in real time.

In addition to disclosure requirements, the Remittance Rule's error resolution framework has also introduced significant costs, particularly in situations where a credit union must communicate with a foreign correspondent to resolve problems or delays with the transfer request. The time spent investigating, communicating, and preparing documentation to resolve international wire issues can last months, according to some credit unions, and this time has a cost impact that greatly exceeds the fee charged for a single remittance transfer.

Given the substantial burdens experienced by credit unions under the Remittance Rule, NAFCU urges the Bureau to adopt a more appropriate safe harbor of 1000 transfers in the prior and current year. As the Bureau itself acknowledges, institutions that provide "relatively small numbers of remittance transfers have fewer transactions to produce revenues through which to recover the fixed compliance costs associated with the Rule."[6] For the vast majority of credit unions, offering fewer than 1000 transfers in a given year will not be sufficient to generate meaningful income, and fixed costs will continue to exert pressure on those that are reluctant to pass compliance and fee expenses on to members. For smaller credit unions, these costs can be significant, and some have indicated to the Bureau that if they were to exceed the current safe harbor threshold, they would cease offering remittances altogether. For these reasons, a higher threshold is needed.

The Bureau should consider adopting a credit union exception as an alternative or additional form of relief.

[6] CFPB, Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, 84 Fed. Reg. 17971, 17975 (April 29, 2019).

Proposing a small entity exception under the EFTA could provide another form of relief that complements adjustments to the safe harbor threshold and provides the Bureau with additional flexibility to tailor the Remittance Rule based on the unique characteristics of smaller institutions. While this would be a welcome improvement, NAFCU also asks that the Bureau consider exempting all credit unions from the requirements of the Remittance Rule given its dubious benefits and measurable burdens in an industry that accounts for only 0.2 percent of total remittance volume.[7]

The Assessment indicates that the Remittance Rule has not directly improved the affordability of remittances, that transfer-related errors are rarely asserted by consumers, and complaints regarding international wires account for only 0.4 percent of all complaints received by the Bureau to date.[8] Based on this evidence, the rule does not appear to have meaningfully enhanced competition and consumer choice. Instead, it has driven consolidation—or at least flattening[9]—of remittance transfer providers while increasing costs for credit unions and their member-owners. Accordingly, NAFCU believes that it would be appropriate for the Bureau to exempt credit unions pursuant to section 1022(b) of the Dodd-Frank Act in order to preserve access to safe and affordable remittance services for credit union members.

In 2018, a NAFCU survey found that more than 18 percent of respondents that offered remittance services before the Remittance Rule was promulgated had stopped offering that service, and over 58 percent saw remittances decline after the rule went into effect. NAFCU members have reported similar developments with relative consistency: in January 2013, 27 percent of respondents indicated that they would cease offering remittances due to new Bureau rules, and in July 2014, 35 percent reported they had limited or eliminated remittances for the same reason.

Based on these findings, NAFCU believes that lack of relief will result in a noncompetitive market where only the largest and most technologically sophisticated institutions can afford to comply with complex and ineffectual rules for remittances. It is worth noting in this context that the temporary exception's sunset was premised on the faulty assumption that advancements in technology would reduce compliance burdens; however, as the Bureau has observed in other instances, technology is not a panacea and is not always equally accessible. To maintain credit unions' ability to provide transparent and affordable remittances to their members, we ask that the Bureau explore all options for relief, including an industry-wide exemption from the rule.

Conclusion

NAFCU appreciates the Bureau's desire to mitigate the expiration of the temporary exception along with its broader reassessment of the Remittance Rule. We urge the Bureau to preserve credit unions' ability to provide remittance services by reinstating the temporary exception under

[7] *Id*. at 80.
[8] *See id*. at 4, 6, 114. The Assessment includes the observation that the "average price of remittances was declining before the Rule took effect and has continued to do so" and "[t]he available evidence cannot rule out the possibility that prices would have fallen even faster in the absence of the Rule."
[9] *Id*. at 86.

equivalent, statutory authority or alternative mechanisms, and to provide additional relief, whether through an industry exception, an increase to the safe harbor transfer threshold, or both. If you have any questions or concerns, please do not hesitate to contact me at amorris@nafcu.org or 703-842-2266.

Sincerely,

Andrew Morris

Andrew Morris
Senior Counsel for Research and Policy