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Via electronic submission

January 21, 2020

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

RE: Docket Number CFPB-2019-0058, Notice of Proposed Rulemaking Regarding the Remittance Transfers under the Electronic Fund Transfer Act (Regulation E)

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) Notice of Proposed Rulemaking and request for information (“NPRM”) pertaining to the Remittance Transfers Rule. The CFPB requests comments on its proposal to: 1) increase the normal course of business safe harbor threshold from 100 remittance transfers to 500 remittance transfers annually; and, 2) to create two new exceptions that would allow insured institutions to use estimates in required disclosures if certain conditions are met.

Background

On January 20, 2012, the CFPB amended Regulation E, which implements the Electronic Fund Transfers Act (“EFTA”) to establish new rules governing remittance transfer providers (the “Rule” or “Remittance Rule”), and to implement section 1073 of the Dodd-Frank Wall Street

¹ *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$5 trillion in assets, nearly \$4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.*

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Reform and Consumer Protection Act (“Dodd-Frank Act”).² The EFTA, as amended by the Dodd-Frank Act, establishes certain protections for consumers sending international money transfers or remittance transfers. Specifically, a remittance transfer provider must disclose (both prior to and at the time the consumer pays for the transfer) the exact fees and exchange rate associated with the transaction.

The implementing provisions of Regulation E provide a temporary exception for remittance transfer disclosures if the sender makes the transfer from an account held at a community bank or other insured depository institution, and the institution is unable to know, for reasons beyond its control, the amount of the currency made available to the designated recipient. Additionally, this exception affords the insured depository institution the flexibility to disclose a “a reasonable estimate of the foreign currency received.” The EFTA limits the length of this temporary exception to July 21, 2020 and does not authorize the Bureau to extend it beyond that time.

Through this notice, the CFPB is requesting comments on whether to increase the safe harbor threshold from 100 to 500. The CFPB notes its concerns about the Rule’s impact on certain providers that initiate a small number of remittance transfers but fall within the scope of coverage because the number of remittance transfers conducted exceed 100 and therefore do not qualify for the safe harbor’s protections.³ In addition, CFPB requests comments on its two proposals to address the expiration of the temporary exception.

The Bureau’s interest in amending the Remittance Rule derives from the RFI concerning the 2017 Remittance Assessment Report, the Call for Evidence Series in 2018, and the 2019 RFI regarding potential regulatory changes to the remittance rule, and ongoing market monitoring outreach.

ICBA Comments

Executive Summary

Community banks are in the business of serving their customers. As locally owned and operated institutions with strong ties to the communities they serve, those offering remittance services to their customers do so as an accommodation.

Transaction volume is generally low for these services, as community banks do not aggressively market consumer-initiated international funds transfers. Typically, community banks offering

² Regulation E implements the Electronic Fund Transfers Act (“EFTA”), 15 U.S.C. § 1693 et seq. Rulemaking authority with respect to Regulation E (other than EFTA § 920) was transferred from the Board of Governors of the Federal Reserve System to the CFPB pursuant to the Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). As defined by the Dodd-Frank Act, the term “remittance transfer” covers most electronic transfers of funds sent by consumers in the United States to recipients in other countries.

³ Bureau of Consumer Financial Protection [Docket No. CFPB-2019-0018] Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, page 7.

this service use open networks such as wire transfer and ACH to provide customers the ability to transfer international funds for a variety of purposes, including emergency transfers to friends and family traveling or living abroad, bill payments, purchases, investments, and wealth management.

Community banks typically price consumer international fund transfers with a single, flat fee and a very competitive exchange rate, regardless of destination. Offering a single flat rate for all international fund transfers is less onerous for consumers as well as community banks. Maintaining a simple, one size-fits-all approach ensures that consumers are able to easily identify the applicable fees and compare pricing as they deem appropriate. Additionally, a single flat rate facilitates community banks complying with the disclosure requirements.

The Bureau has sought prior public comment on its Remittance Rule on numerous occasions. Each time, ICBA provided the Bureau with detailed feedback, most recently in June 2019,⁴ on how the Bureau could improve the Rule. While we have appreciated the Bureau's past efforts, ICBA remains concerned that the Rule discourages community banks from offering this service and thereby hampers product growth, disrupts the marketplace, and reduces a safe, reliable, and convenient option for customers. The timing of this NPRM is welcomed; it allows ICBA to once again advocate for community bank's ability to continue in the remittance transfers marketplace and their ability to maintain this safe and reasonably-priced option for consumers. To that end, we once again strongly urge the CFPB to adopt the following recommendations:

- Increase the "normal course of business" safe harbor threshold from 100 to 1,200 remittances annually and/or exempt small financial institutions from the rule altogether;
- Abandon any threshold and utilize its Section 904(c) authority to exempt insured depository institutions from providing exact rates and fees, and allow them to continue relying on estimates in their disclosures when unable to determine accurate information; and
- Exercise its authority and issue a "small financial institution exemption" for banks with assets of \$10 billion or less in either of the preceding two calendar years.

Additionally, ICBA strongly encourages the Bureau to proceed with an expeditious rulemaking to minimize the associated compliance uncertainty.

Increase the Normal Course of Business Safe Harbor Threshold

The Remittance Rule defines a "remittance transfer provider" as any person that provides remittance transfers for a consumer in the "normal course of its business," regardless of

⁴ ICBA's response to the Request for Information Regarding Potential Regulatory Changes to the Remittance Rule Docket No. CFPB-2019-0018.

whether the consumer holds an account with such person. The normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider.

Currently, under the Rule, the normal course of business does not apply to persons or institutions executing 100 or fewer remittance transfers in the previous calendar or the current calendar year. Through this NPRM, the Bureau proposes to increase the safe harbor threshold to 500 remittance transfers so that a person would not be considered a remittance transfer provider under the Rule if the person conducts 500 or fewer remittance transfers in the previous or current calendar year. The CFPB notes that it is concerned about the Rule's impact on certain providers that initiate a small number of remittance transfers but fall within the scope of coverage because the number of remittance transfers conducted exceed 100 a year and therefore do not qualify for the safe harbor's protections.⁵

The compliance burden associated with the Remittance Rule has resulted in a significant number of community banks either abandoning this service or refusing to offer it. The lack of community banks' presence in the remittance market leaves their customers to the mercy of larger banks, or more likely forces them to use non-bank remittance providers that traditionally have high fees and poor exchange rates – thereby creating an unlevel playing field.

The proposal to increase the threshold to 500 is a start. However, ICBA urges an increase to 1,200. Fortunately, the Bureau notes that it is “preliminarily persuaded” that a threshold increase to 500 is appropriate.⁶ Therefore, ICBA strongly believes that the driving factors that should *ultimately* persuade the Bureau to raise the threshold to 1,200 are: (1) the need to ensure customers have access to reliable and less risky remittance services through their depository institutions, and (2) ensuring community banks are able to compete in the market.

Expiration of the Temporary Exception

The Remittance Rule places disclosure requirements on financial institutions that send remittance transfers on behalf of consumers. The Rule requires that the exact exchange rate, expected amount to be received, and amounts of certain fees be disclosed to the customer before and after the transaction is complete. Currently, insured depository institutions qualify for a temporary exception which allows them to provide estimates on required disclosures if certain criteria are met.⁷ This exception is set to expire on July 21, 2020.

⁵ Bureau of Consumer Financial Protection [Docket No. CFPB-2019-0018] Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, page 7.

⁶ Notice of Proposed Rulemaking Regarding the Remittance Transfers under the Electronic Fund Transfer Act (Regulation E), Docket No. CFPB-2019-0058, Page 20.

⁷ 12 CFR § 1005.32

To address the expiration, the Bureau is seeking comments on two proposals.

- 1) A permanent exception allowing insured institutions to estimate the exchange rate for transfers to a particular country if, among other things, the insured institution made 1,000 or fewer transfers in the prior calendar year to the particular country for which the designated recipients of such transfers received funds in that country's local currency.
- 2) A permanent exception that would allow insured institutions to estimate such fees for a transfer to a particular designated recipient's institution if, among other things, the insured institution made 500 or fewer transfers to the designated recipient's institution in the prior calendar year.

ICBA welcomes the Bureau's attempt to address the expiration of the temporary exemption, but our concerns are not eliminated by attaching thresholds to a permanent fix. As we noted in our comment letter in response to the RFI,⁸ the expiration of the temporary exception will have a detrimental impact on community banks, particularly the smaller ones. In our RFI response, we highlighted CFPB's recognition that a large number of community banks operate in small towns and serve elderly clientele, which places them on the front lines in preventing fraud against this vulnerable population.⁹ ICBA members report instances in which they are able to stop their elderly customers from falling prey to sweetheart scams involving remittance transfer services. The protection provided by community banks is a testament to their relationship-centered business model, which transcends regulatory requirements and expectations. The likelihood of non-banks stepping in to protect their customers is low because their business model is dictated by profit and not relationship. Allowing the temporary exception to expire without intervening Regulation E amendment(s) will increase the likelihood of elder financial abuse and other consumer harms, through remittance transfers, as some community banks will exit the business. Frankly, all community bank customers using the service will be negatively impacted, as the marketplace for safe and reliable remittance transfers services will be significantly reduced – resulting in potentially less secure and more costly methods of transmissions.

Community banks use correspondent banks to execute remittance transfers as part of an open network payment system.¹⁰ Correspondent banks afford community banks the resources and ability to execute remittance transfers; however, the nature of these open networks, limits "the information that providers can give consumers when sending remittances"¹¹ since there are no end-to-end controls. While benefitting from the temporary exception, community banks have

⁸ ICBA's response to the Request for Information Regarding Potential Regulatory Changes to the Remittance Rule Docket No. CFPB-2019-0018.

⁹ "Financial institutions play a vital role in preventing and responding to this type of elder abuse. Banks and credit unions are uniquely positioned to detect that an elder account holder has been targeted or victimized, and to take action." <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-advisory-and-report-for-financial-institutions-on-preventing-elder-financial-abuse/>.

¹⁰ Open network systems are those in which no one institution exerts end-to-end control over a cross border transaction. The Remittance Rule Assessment Report p 51.

¹¹ The Remittance Rule Assessment Report, p.52.

worked to find ways to provide exact fee and exchange rate information to comply with the disclosure requirements, but to no avail. ICBA strongly believes that because of the fee and exchange rate disclosure provisions in the Rule, compliance is virtually impossible within open networks, which are used by almost all community banks that offer consumer-initiated international funds transfers. Requiring adherence to thresholds, in either of the two proposals, is not adequate and does not address the matter of open network systems.

If the temporary exception is allowed to expire without an adequate fix, community banks will face a choice to either establish, through partnering with a closed-end network, a separate consumer international funds transfer product, or discontinue offering international funds transfer services to consumers altogether.

The temporary exception provides a safe harbor in instances in which banks are not able to obtain exact fee or exchange rate information for reasons beyond their control. The ability to estimate fees allows community banks to provide foreign remittances with a degree of regulatory certainty. Disclosing accurate exchange rates and fees for every remittance transfer would be next to impossible because banks cannot foresee every possible circumstance that would impact rate and fees for particular countries. Further, the Bureau offers no significant evidence of consumer complaints derived from the use of estimated fees and exchange rates; nonetheless, a decrease in the number of bank-offered remittances after the temporary exception expires will more than likely result in consumer complaints as customers will be left with less secure and more costly options. Tying a threshold requirement to activate the exception does not eliminate the impossibility of disclosing accurate exchange rates and fees, will not address the likelihood of increased consumer complaints.

Section 904(a) of the EFTA authorizes the Bureau to propose regulations necessary to facilitate the purposes of the title. Section 904(c) provides that "regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance."

Accordingly, ICBA strongly urges the Bureau to utilize its Section 904(c) authority by exempting insured depository institutions from providing exact estimates and allowing them to continue relying on estimates in their disclosures when they are unable to determine accurate information, without attaching a threshold to the exemption.

Small Financial Institution Exemption

ICBA strongly encourages the CFPB to exempt small financial institutions from the Rule. The Bureau correctly points out that the EFTA Section 904(c) contains a "small financial institution" exemption which permits the Bureau to modify the EFTA's statutory requirements by regulation

if it determines that “such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objectives of the [EFTA].” The NPRM acknowledges the undue compliance burden associated with the Rule. As such, ICBA recommends the Bureau exercise its authority and issue a “small financial institution exemption” for banks with assets of \$10 billion or less in either of the preceding two calendar years.

Conclusion

In closing, ICBA encourages the Bureau to undertake a thoughtful analysis when determining potential regulatory changes to the Remittance Rule. ICBA urges the Bureau to carefully consider ICBA’s comments and remain mindful that any action taken should enhance community banks’ ability to continue in the remittance transfers marketplace, thereby preserving this safe, convenient, secure and reasonably-priced option for consumers.

ICBA appreciates the opportunity to provide recommendations for addressing the impending expiration of the temporary exception, and strongly encourages the CFPB to proceed with an expeditious rulemaking to minimize the associated compliance uncertainty. If you have any questions or would like additional information, please contact Rhonda Thomas-Whitley (Rhonda.Thomas-Whitley@icba.org) or Cary Whaley (Cary.Whaley@icba.org), ICBA First Vice President, Payments and Technology Policy, at (202) 659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President & Regulatory Counsel