Via electronic submission

June 28, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Docket Number CFPB-2019-0018, Request for Information Regarding Potential Regulatory Changes to the Remittance Rule

Dear Director Kraninger:

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") notice and request for information ("RFI") regarding potential regulatory changes to the remittance rule. Specifically, the RFI seeks information on 1) how it should address the July 21, 2020 expiration of the temporary exception, and 2) whether to change a safe harbor threshold, and whether an exception for small financial institutions may be appropriate.

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 Reform and

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $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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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 rates 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 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. Therefore, without Congressional action, the temporary exception expires on July 21, 2020.

Through this notice, the CFPB is seeking information that may be useful in determining possible changes to the Rule which could potentially mitigate the effects that the expiration of the temporary exception will have on certain financial institutions. The Bureau's interest in addressing the impending expiration comes from comments and feedback received in response to its RFI concerning the 2017 Remittance Assessment Report, and the Call for Evidence series in 2018.

In addition, the Bureau seeks information on whether to change the safe harbor threshold in the Rule's "normal course of business" definition and whether an exception for small financial institutions is warranted. 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 and therefore do not qualify for the safe harbor's protections.[3]

ICBA Comments

<u>Executive Summary</u>

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.

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[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.

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Transaction volume is generally low for these services, as community banks do not aggressively market consumer-initiated international funds transfers. Typically, community banks offering 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 sought prior public comment on its Remittance Rule on numerous occasions. Each time, ICBA provided the Bureau with detailed feedback, most recently in June 2018[4], on how the Bureau could improve the Rule. While we appreciate the Bureau's outreach 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.

ICBA's concerns are more heightened by the impending expiration of the temporary exception which allows some form of relief notwithstanding the impact of the overall Rule. The timing of this RFI is welcomed to ensure that banks are able to continue in the remittance transfers marketplace and able to maintain this safe and reasonably-priced option for consumers. Accordingly, ICBA strongly urges the Bureau to adopt at least one of the recommendations noted below:

- utilize its Section 904(c) authority to exempt 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;
- change the definition of the "normal course of business" to entail banks executing fewer than 1,200 remittances annually and/or exempt small financial institutions from the rule altogether; OR
- 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.

[4] ICBA's response to the Call for Evidence series Docket No. CFPB-2018-0011 and CFPB 2018-0012.

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Expiration of the Temporary Exception

The Remittance Rule places 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. [5] This exception is set to expire on July 21, 2020.

The expiration of the temporary exception will have a detrimental impact on community banks, particularly, the smaller ones. For example, 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.[6] 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 protections 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 the 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[7] to execute remittance transfers as part of an open network payment system. 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"[8] since there are no end-to-end controls. While benefitting from the temporary exception, community banks 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. If the temporary exception is allowed to expire, community banks will face a choice to either

[5] 12 CFR § 1005.32.

[6] "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/.

[7] 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.

[8] The Remittance Rule Assessment Report, p.52.

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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.

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.

In the alternative, ICBA strongly encourages the CFPB to change the definition of the “normal course of business” to entail banks executing fewer than 1,200 remittances annually or exempt small financial institutions from the Rule altogether.

<u>Normal Course of Business</u>

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 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. The Bureau seeks information on whether to change the safe harbor threshold in the Rule’s normal course of business definition and whether an exception for small financial institutions is warranted. 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

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number of remittance transfers conducted exceed 100 a year and therefore do not qualify for the safe harbor's protections.[9]

The compliance burden associated with the Rule has resulted in a significant number community banks on the verge of, or abandoning these services, leaving their customers at the mercy of larger banks' services, or more likely, forcing them to use non-bank remittance providers that traditionally have high service fees and poor exchange rates. This creates an unlevel playing field where community banks cannot offer services such as remittance transfers that larger banks offer. A safe harbor of fewer than 1,200 remittance transfers annually would provide relief to community banks. Once the threshold of 1,200 transfers annually is exceeded, community banks will be in a better position to comply with the Rule, and less likely to terminate the service.

The Bureau should ensure customers have access to reliable and less risky remittance services through their depository institutions. As such, we strongly recommend that the Bureau raise the safe harbor threshold to 1,200 remittance transfers annually as one solution for addressing expiration of the temporary exception.

Small Financial Institution Exemption

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 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 statute precludes the Bureau from extending the temporary exception and from making it permanent. As such, the most viable solution is to exempt financial institutions offering consumer-initiated remittances transfers with assets under $10 billion from the Remittance Rule altogether. While community banks offer the service, many offer it to established customers and as an accommodation. Because of the accommodation nature of the provided service, fees are typically flat, and profits are never truly realized.

The CFPB has acknowledged that community banks are small players in the remittances marketplace. 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. This would be an alternative solution to ICBA's recommendations regarding the

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

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exemption of all insured depository institutions or an increase in the normal-course-of-business threshold.

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-Whitely (Rhonda.Thomas-Whitley@icba.org) or Cary Whaley, ICBA first vice president, payments and technology policy (Cary.Whaley@icba.org) at 202-659-8111.

Sincerely,

/s/

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