



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS.

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January 21, 2020

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

***Re: Remittance Transfers Under the Electronic Fund Transfer Act
(Regulation E)***

Dear Sir or Madam:

The U.S. Chamber of Commerce’s (“the Chamber”) Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to comment on the proposed rule (“Proposal”) issued by the Consumer Financial Protection Bureau (the “Bureau”) regarding remittance transfers under the Electronic Fund Transfer Act.¹ As we explained in response to the Bureau’s recent request for information,² there is enormous consumer demand for remittance transfers. It consequently is extremely important that the Bureau continue to work to enable this market to operate efficiently and safely—and prevent regulations from unduly disrupting the marketplace.

We appreciate that the Bureau has issued its Proposal with this goal in mind, and particularly that it is working to ensure that insured institutions are able to continue to provide remittance transfers to their customers. To that end, the Proposal attempts to prevent disruption by the July 2020 expiration of the “temporary exception,” which currently allows insured institutions to estimate exchange rates and third-party fees in some circumstances. The Proposal contemplates employing volume-based exceptions to accomplish this goal. Specifically, insured institutions that made less than 1,000 remittance transfers to a particular country or less than 500

¹ See Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E), 84 Fed. Reg. 67132 (Dec. 6, 2019).

² See Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, 84 Fed. Reg. 17971 (Apr. 29, 2019).

remittance transfers to a particular foreign institution in the past calendar year would be able to rely on new permanent exceptions to estimate exchange rates and fees, respectively.

We welcome the Bureau's proposed solution but believe that it can be further refined to better preserve consumer access to remittance transfer services. As the Bureau recognizes, insured institutions need to estimate exchange rates and fees in some cases because of uncertainty and unpredictability built into the structure of remittance transfer transactions. That uncertainty may persist regardless how many remittance transfers that the insured institution performs. It also may not be possible or feasible for an insured institution to solve this problem by entering into new agreements with foreign institutions or by relying upon service providers. The Bureau consequently should revise the Proposal so that volume-based limitations are not the exclusive bases on which insured institutions may rely upon the contemplated permanent exceptions.

We accordingly write to emphasize two points:

- The Bureau should preserve consumers' access to remittance transfer services provided by insured institutions.
- The Bureau should revise its Proposal to allow insured institutions to continue to serve consumers even if they pass identified volume thresholds.

Discussion

I. The Bureau should preserve consumers' access to remittance transfer services provided by insured institutions.

Banks and other financial institutions play an important role in the remittance transfer market. Although they do not complete as many remittances as money service businesses, they provide consumers with a valued—and often preferred—option, particularly for higher value transfers. Moreover, insured institutions' participation in the remittance transfer market provides systemic benefits, both because of the competition they bring to the marketplace and because of their commitment to compliance with a broad range of regulatory schemes, including those that guard against fraud and money laundering.

The Bureau's recent assessment of the Remittance Rule (the "Assessment") confirms the important role that banks play in the remittance transfer market. As explained by the Bureau:

- Banks conducted 13.9 million transfers in 2017, which accounted for 4.2% of total transfers.³
- The average transfer size using a money service business was \$381 in 2017.⁴ In the same time frame, the average transfer size using a bank was approximately \$6,800.⁵
- Because of the much-higher average dollar value of remittances conducted by banks, banks accounted for 43.2% of the dollar volume of remittances – or \$95 billion.⁶
- 3,538 banks offered remittances in 2017.⁷ However, "[r]emittance transfer volumes are highly concentrated among banks."⁸ "The top 10 providers accounted for 90% of remittance transfers [by banks] in 2017."⁹
- Bank remittance services are typically offered as wire transfers. In 2017, 3,576 banks reported using international wires, 516 reported using international ACH, 73 reported using other proprietary services by institution, and 119 reported using proprietary services by another party (banks were able to select more than one method in answering this question).¹⁰
- While we believe that this is an under-estimation, bank call report data indicates that 6.4% of all bank transfers relied upon the "temporary exception" provided by the Dodd-Frank Act; equivalent to

³ Consumer Financial Protection Bureau, Remittance Rule Assessment Report 64, 73 (rev. April 2019).

⁴ *Id.* at 68.

⁵ *Id.* at 63-64, 73 (43.2% of \$220B total volume across 13.9 million remittances).

⁶ *Id.* at 63-64. The Bureau describes a total of \$220B in remittance transfers in 2017.

⁷ *Id.* at 70.

⁸ *Id.* at 77.

⁹ *Id.*

¹⁰ *Id.* at 71 n.190.

approximately \$6 billion in remittances.¹¹ Moreover, “[t]he largest banks tend to be the ones using the temporary exception.”¹²

In short, banks play an important role in the remittance market. It is vitally important for the Bureau to allow banks to continue to play this role and to serve their customers. As the Bureau itself has recognized, some of the largest banks currently rely upon the temporary exception and they are likely to substantially reduce the number of remittances provided to consumers absent meaningful action by the Bureau. Failure to act thus could have very harmful consequences for consumers who would be forced to work with suppliers with whom they are not familiar or comfortable, particular for sending large amounts of their money abroad. The reduction in banks providing remittance transfers also could hurt competition in the market over the long term and reduce the benefits associated with banks’ anti-fraud practices and their close supervision by the Bureau and other regulatory agencies.

II. The Bureau should revise its Proposal to allow an insured institution to continue to serve consumers even if it passes identified volume thresholds.

Insured institutions work hard to identify precise exchange rates and fees before making a remittance transfer. Sometimes, however, it is impossible—for reasons beyond its control—for an insured institution to precisely determine the applicable exchange rate and all third-party fees prior to making a transfer. Exchange rates may fluctuate, for example, between the time that the transfer is initiated and the time that it is completed. Likewise, a foreign, third-party institution in the transfer chain may impose an unanticipated fee. As a result, financial institutions have had to rely upon the “temporary exception,” which has allowed them to estimate exchange rates and third-party fees when necessary to do so.

The temporary exception is poised to expire in six months and the Bureau has correctly recognized that financial institutions will be unable to continue making certain remittance transfers unless it takes action. In response, the Bureau has proposed to create two permanent exceptions to the general requirement that exchange rates and third-party fees be precisely disclosed at the time of the transaction. The Bureau’s proposal includes various facets, but is primarily built around volume-based limitations:

¹¹ *Id.* at 6. This figure is not provided in the Assessment, but is calculated on the assumption that the relevant 6.4% of transactions had approximately the same average dollar value as the average transaction across the full 13.9 million transfers.

¹² *Id.* at 139.

- *Exchange Rate:* The Bureau is proposing to adopt a permanent exception that would permit insured institutions to estimate the exchange rate for a remittance transfer to a particular country if, among other things, the designated recipient will receive funds in the country's local currency and the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the country where the designated recipients received funds in the country's local currency.
- *Third-Party Fees:* The Bureau is proposing to adopt a permanent exception that would permit insured institutions to estimate covered third-party fees for a remittance transfer to a particular designated institution if, among other things, the insured institution made 500 or fewer remittance transfers to that designated institution in the prior calendar year.

We welcome the Bureau's efforts to lessen the impacts of the expiration of the temporary exception. The Bureau's approach will bring appropriate relief in many cases. The Proposal's reliance on volume thresholds has limitations, however, both with respect to third-party fees and exchange rates.

- *Exchange Rates:* Performing 1,000 or more remittance transfers to a country may make it easier for an institution to estimate likely exchange rates. However, it does not eliminate the uncertainty that is a result of the structure of the correspondent banking system. Exchange rates still may fluctuate during a remittance transfer transaction, for example, regardless how many transfers an insured institution sent to a country in the prior calendar year.
- *Third-Party Fees:* Likewise, performing 500 remittance transfers to an individual institution may make it easier for an institution to estimate likely third-party fees. Still, the possibility will remain that institutions in the payment chain will charge unexpected fees.

As a result, an insured institution will not be able to confidently disclose exact third-party fees or exchange rates in some circumstances, regardless how many transfers it made in the prior calendar year. This in turn will mean that an institution that triggers either threshold will become subject to disclosure requirements that it cannot satisfy.

The Bureau is correct to suggest that an insured institution *may* be able to gain additional certainty with respect to third-party fees by putting in place additional agreements with foreign institutions. But there are also good reasons why an insured institution *may not* be able to do so in practice.

- *First*, there may be very good reasons for an insured institution not to enter into an agreement with a particular foreign institution. The insured institution may have declined to enter such a relationship because of anti-money laundering risk, for example, or because of data security issues associated with that foreign institution. Alternatively, the foreign institution itself may have declined to enter into such a relationship.
- *Second*, it may be impractical to establish an agreement with such a foreign institution. It can take multiple years to finalize such an agreement, for example, making it very difficult for institutions to quickly update agreements based on remittance transfer destinations. In addition, associated costs may make it commercially infeasible to enter such agreements.
- *Third*, the foreign institutions to which customers will seek to send remittance transfers fluctuate over time. There is no guarantee that, even if a bank entered into an agreement with a foreign institution based on the prior year's activity, the next year's activity would follow the same path. This risk would further disincentivize insured institutions from establishing agreements with every foreign institution that triggered the threshold in an individual year.

The fact that an insured institution made 500 or more remittance transfers to that institution in the prior calendar year would not remove these legitimate barriers to establishing an agreement with a foreign recipient institution. As a result, passing the volume threshold on transfers to an individual foreign institution effectively may serve as a bar on remittance transfers to that institution.

The Bureau also is correct that an insured institution *may* be able to reduce uncertainty—whether with respect to third-party fees or exchange rates—by expanding its reliance on service providers. Again, however, it is unclear whether such reliance upon service providers will provide meaningful relief for many institutions in practice.

- *First*, the correspondent banking system has proven remarkably durable and resilient over time. Insured institutions consequently may be able to provide safer, lower cost, more reliable, and more compliant services directly than when relying upon a service provider. There may be significant drawbacks if insured institutions move away from this robust system in favor of newer service providers. In the absence of a clear cost-benefit analysis pointing in favor of a particular approach, the Bureau should enable insured institutions to make considered choices on how best to serve their customers.

- *Second*, even if it would make sense to move to a service provider in theory, the low volume of transfers may make it infeasible for insured institutions to use a service provider to make select transfers to particular jurisdictions or particular institutions.

As a result, the Bureau should not expect insured institutions to partner with service providers to reduce uncertainty in exchange rates and third-party fees. Rather, the Bureau should anticipate that insured institutions may choose to discontinue services rather than enter vendor agreements that they would not otherwise consider.

In short, once triggered, the Bureau's numerical thresholds are likely to prevent some institutions from providing remittance transfers to certain countries or to individual foreign institutions for a year.¹³ This outcome will not benefit consumers, as they will lose access to services in the year(s) that the institution refrains from making transfers. It also may not serve any clear purpose, as the institution may continue—for good reason—to be unable to provide precise fees and exchange rates once it recommences services.

We consequently would urge the Bureau to provide an alternative basis under which an insured institution can rely upon the contemplated permanent exceptions for estimates of third-party fees and exchange rates even if it exceeds one of the volume thresholds. Such a solution should allow insured institutions to continue to provide remittance transfer services to their customers while maintaining appropriate consumer protections. For example, the Bureau could require additional record keeping by insured institutions in the event that they rely upon either of the contemplated permanent exceptions after exceeding the threshold in the prior year. Alternatively, the Bureau could establish specific additional criteria that would permit reliance upon either permanent exception – such as whether a recipient institution that exceeds the 500 transfer threshold had declined an institution's request to enter into an agreement with the sending institution. In doing so, the Bureau should focus on providing practical relief for institutions that is meaningful in light of the realities of the marketplace.

Regardless of the approach that it pursues, the Bureau should ensure that any final rule is as clear and workable as possible. For example, we would ask the Bureau to consider including the following elements in any rule it issues:

¹³ We understand the Proposal to permit an insured institution to recommence transfers to the relevant countries or foreign institutions after the next calendar year has passed, once again relying upon the relevant permanent exception.

- *First*, the Bureau should provide for a one-year phase-in period for any permanent exceptions established under the final rule—i.e., by allowing all institutions to rely upon the exception in the first year prior to volume limitations being triggered after the end of the first year. This would allow insured institutions to develop a clear understanding of where they stand regarding reliance upon the exceptions provided by the final rule.
- *Second*, we would ask the Bureau to provide a defined assessment period between the end of a calendar year and the imposition of any compliance obligations. Insured institutions will not be able to determine immediately whether they made remittance transfers that exceed the contemplated permanent exception amounts. As a result, the Bureau should expressly provide a period in which insured institutions can assess the past year’s activities. We would recommend a six-month assessment period that would apply for purposes of both contemplated permanent exceptions.
- *Third*, we would encourage the Bureau to clarify how it intends to count remittance transfers for purposes of the two contemplated permanent exceptions. Specifically, we would urge the Bureau:
 - To exclude remittance transfers delivered in U.S. dollars from the relevant counts, regardless whether money is converted into local currency before final delivery in U.S. dollars;
 - To explain how to count institutions for purposes of the third-party fee exception, and specifically to explain that insured institutions should use BIC8 codes to count institutions for purposes of that exception; and
 - To exclude correspondent remittance transfers serviced by a financial institution from the counts.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

To whom it may concern
January 21, 2020
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Sincerely,

A handwritten signature in cursive script that reads "Julie Stitzel". The signature is written in black ink and is positioned centrally on the page.

Julie Stitzel