Heartland
Credit Union Association

January 21, 2020

Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E);
Docket No. CFPB-2019-0058

Dear Sir or Madam:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule with request for comment1 on international money transfers (the Remittance Rule or the Rule).

General Comments

The Remittance Rule established enhanced requirements for covered international transfers, including a requirement that all fees and exchange rates disclosed to a consumer to be exact. However, the Rule includes a "normal course of business" safe harbor exempting entities that conduct 100 or fewer remittance transfers in each of the prior and the current calendar years. The safe harbor is intended to ease compliance burden on those entities that offer remittance services merely as a convenience. In addition, the Electronic Funds Transfers Act (EFTA) provides two exemptions to the Rule's general disclosure requirement: a "temporary" exemption and a "permanent" exemption. The temporary exemption permits an insured depository institution to *estimate* the exchange rate, back-end fees, taxes, and total funds to be received in certain circumstances. The temporary exemption is statutory and is expected to expire on July 21, 2020.

After conducting its statutory rule assessment, the Bureau has proposed to increase the "normal course of business" safe harbor threshold from 100 to 500 transfers annually. In addition, the Bureau has also proposed the addition of two permanent exemptions, an exchange rate exemption and a third-party fees exemption, for qualifying entities to mitigate the effects of the expiration of the statutory "fee estimates exception" for depository institutions.

HCUA strongly believes the current "normal course of business" threshold is set too low to prevent many credit unions from limiting or ceasing to offer remittance services to their members. As the Bureau's Remittance Rule Assessment Report highlighted, the Rule's compliance costs and challenges have had a measurable impact on the availability of remittances at small financial institutions. We appreciate the Bureau's efforts to listen to and address the concerns of credit unions on this issue. The current proposed rule reflects a good faith attempt to remedy the access problems created by the initial Rule and we support the leadership in its goal to issue right-sized regulations. Credit unions generally support the CFPB's proposal to better balance consumer protections with a tailored regulation that allows consumers' access to desired products and services. However, the Bureau should explore several revisions and additions to the proposed rule:

- Increase the "normal course of business" threshold from 500, as proposed, to 1,000 remittance transfers;
- Increase the thresholds for both the proposed exchange rate exemption and third-party fees exemption to 2,000 or fewer transfers to reflect a "normal course of business" threshold set at 1,000 transfers, as recommended; and
- Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period.

HCUA continues to believe remittances are an important member service and we support *appropriate and tailored* safeguards for consumers initiating remittances. The Remittance Rule, as it stands, must be amended to reduce the overall cost of compliance and ensure consumers have access to remittance services from their local credit union.

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HCUA acknowledges that the Remittance Rule has provided additional protections for consumers, particularly in the context of remittance services provided by non- depository entities. HCUA believes the Rule has also resulted in decreased availability of remittance services at credit unions and increased cost of remittance transfers paid by consumers when the service is available. These price increases are largely due to increased expenditures for in-house compliance resources or to contract with outside vendors to offer these services. In addition, the decrease in the number of providers in the market has influenced the pricing of remittance services.

Raise the Safe Harbor Threshold to at Least 1,000 Remittance Transfers

As member-owned, not-for-profit financial cooperatives, credit unions exist to provide credit at competitive rates, and offer services—including remittance transfers—that assist member-owners in meeting their individual financial needs. However, credit unions offer remittance transfers merely as a convenient member service and do not exist to solely conduct remittance transfers. Thus, credit unions do not charge exorbitant fees or prevent consumers from having reliable information about their transactions.
The current Rule has forced credit unions to make difficult decisions regarding whether to offer remittance services, and should the Bureau increase the "normal course of business" safe harbor, many of those institutions may be able to once again provide these services to their members.
HCUA has called on the Bureau to substantially increase the "normal course of business" threshold and we appreciate the proposed rule would do just that. The Rule's 100-transfer threshold is far too low to provide a meaningful safe harbor for affected financial institutions. However, although we support the Bureau's proposed increase of the safe harbor threshold to 500-transfers, HCUA still recommends the safe harbor be set to at least 1,000 or fewer remittance transfers annually.

Raising the safe harbor threshold to at least 1,000 transfers would satisfy the overall purpose of the Rule by extending its coverage to the largest service providers. Under the current 100 transfer threshold, 96 percent of all credit union remittance transfers are covered by the Rule. According to CUNA's analysis, increasing the threshold to 1,000 transfers would provide regulatory relief to nearly 300 credit unions while still covering 84 percent of all remittance transfers conducted by credit unions. Our recommended 1,000 transfer threshold would result in a rule better tailored to address entities truly offering remittance services in the "normal course of business."

Raise the Threshold to Access to the Proposed Exchange Rate and Third-Party Fees Exemptions

The Dodd-Frank Act, in amended the EFTA, included a provision that temporarily exempted insured depository institutions from the general requirement to disclose exact amounts of fees, taxes, and exchange rates. The temporary exemption was extended by the CFPB to July 21, 2020 because the Bureau determined the exemption's expiration would have a negative effect on the availability of remittances for consumers. HCUA believes the same potential for disruption in consumers' access to remittance services still exists today.

In an effect to mitigate the effects of the expiration, the Bureau has proposed the addition of two permanent exemptions: an exchange rate exemption and a third-party fees exemption. Regarding the exchange rate exemption, the Bureau's proposal would permit insured institutions to estimate the exchange rate for a remittance transfer to a particular country if 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 that country* when the designated recipients received funds in the country's local currency. Regarding the third-party fees exemption, the Bureau's proposal would permit insured institutions to estimate covered third-party fees for a remittance transfer to a particular designated recipient's institution if the insured institution *made 500 or fewer remittance transfers to that designated recipient's institution* in the prior calendar year.

The Bureau's Assessment Report highlighted the importance and continued relevance of the temporary safe harbor. While the percentage of banks using the temporary exception has declined since the Rule took effect, the Bureau found "11.6 percent of banks still report using the temporary exception and do so for 10.2 percent of their remittance transfers."4 Unfortunately, the CFPB's report did not conduct a full study or survey of affected credit unions so it is possible the number of credit unions using the temporary exemption could be higher. In fact, based on feedback received by our members, credit unions report that the temporary safe harbor continues to be a critical component of limiting the overall compliance impact of the Rule. HCUA would be concerned if the temporary safe harbor expired without an adequate, permanent replacement in place as the addition of yet another compliance obstacle in providing remittance services could result in more credit unions ceasing to offer these services to their members.

For that reason, HCUA supports the Bureau's attempt to address the looming lapse of the temporary fee estimates safe harbor. However, to align the two permanent exemptions with our recommendation the Bureau raise the "normal course of business" safe harbor to 1,000 transfers, we recommend the CFPB correspondingly increase both the thresholds required to take advantage of the new permanent exemptions to 2,000 or fewer transfers. In the case of the third-party fees exemption, credit unions are concerned the 500 transfer threshold is too low to properly account for repetitive requests by members to the same institution. Increasing the threshold to 2,000 or fewer transfers would allow credit unions to access the third-party fees exemption and reduce the overall costs of providing remittance services to members.

Eliminate the 30-Minute Cancellation Requirement or Allow a Consumer to Opt-Out

While not included in the Bureau's proposal, HCUA has received feedback from members that the 30-minute cancellation period requirement is unreasonable and creates friction in the transfer process. The Remittance Rule currently contains a provision that generally provides the consumer a 30-minute window to cancel a remittance transfer orally or in writing and receive a refund for the total amount of the transfer within 3 business days. While consumers may not be required to physically wait at the branch during the cancellation window, the 30-minute delay often inconveniences consumers due to time-delayed processing by the entity conducting the transfer. In addition, the mandated cancellation period not only creates delays, but has created increased programming costs as providers are required to program systems to hold the transaction to account for the regulatory requirement. Also, the Bureau should consider whether the cancellation period is appropriate given the relatively few instances in which consumers exercise this protection which is extremely rare.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Brad Douglas
President/CEO