



June 19, 2018

Via Electronic Delivery

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

Re: **Docket No. CFPB–2018–0011; Request for Information Regarding the Bureau’s Adopted Regulations and New Rulemaking Authorities**

To Whom it May Concern:

The Clearing House Association L.L.C. (“The Clearing House”), the Consumer Bankers Association (“CBA”), and the American Bankers Association (“ABA”)¹, collectively referred to herein as the “Associations,” respectfully submit this comment letter to the Bureau of Consumer Financial Protection (the “Bureau”) in response to the Bureau’s notice and request for information (“RFI”) regarding its planned assessment of the rules it has promulgated since its creation. This comment letter addresses the Associations’ concerns pertaining to consumer remittance transfers under the Electronic Fund Transfer Act (subpart B of Regulation E) (the “Remittance Rule” or the “Rule”).²

The Associations appreciate the opportunity to articulate their concerns and provide recommendations for ensuring that the Remittance Rule achieves its purpose of protecting consumer-senders of remittance transfers while reducing unwarranted regulatory burdens on providers of those services.³ The RFI requests that comments detail suggestions for specific rule changes and identify rules that should not be modified. The Associations previously provided comments in response to the RFI Regarding Remittance Rule Assessment, dated May 23, 2017, and refer to their previously submitted comment letter for additional suggestions for Rule changes, modifications and areas of the Rule that

¹ Please see trade association descriptions at the end of this letter.

² Request for Information Regarding the Bureau’s Adopted Regulations and New Rulemaking Authorities, 83 Fed. Reg. 12286 (March 21, 2018).

³ As the RFI notes, the Bureau has authority under 12 U.S.C. 5511 (b)(3) to identify outdated, unnecessary and unduly burdensome regulations to in order to reduce unwarranted regulatory burdens.

should not be modified.⁴ As such, this letter highlights the aspects of the Rule that are of greatest concern to the Associations and their member institutions.

I. Executive Summary of the Associations' Comments and Recommendations

The Associations provide comments herein with respect to provisions of the Rule that the Associations encourage the Bureau to eliminate or modify. The recommendations of the Associations discussed below include:

- modifying the scope of the Rule by excluding transfers in amounts that are outside the traditional and commonly understood scope of remittances;
- preserving the ability of depository institutions to provide estimates of third party fees and exchange rates (rather than actual fees and rates) in connection with remittance transfers for which obtaining accurate, real-time data is operationally unfeasible;
- modifying disclosure requirements to (i) permit providers more flexibility in offering alternative delivery channels, (ii) eliminate redundant disclosures to senders making concurrent, multiple transfers by phone, and (iii) simplify the disclosures necessary for preauthorized transfers;
- modifying error resolution provisions by
 - limiting remedies to a refund (rather than a resend) when the error results from sender error, involves an amount less than \$15, or does not impact the amount of funds received by the designated recipient;
 - reducing the amount of time given to a sender to report a remittance transfer error from 180 days to a shorter period that would provide the consumer with meaningful error protection while better enabling a provider to perform its required error investigation; and
 - permitting providers, at their discretion, to work directly with a designated recipient's financial institution to correct inaccurate or incomplete transfer instructions that will quickly enable the proper crediting of the recipient's account without the need to cancel the transfer, refund the sender and send a new transfer with new disclosures, as required by the current error resolution provisions.

⁴ Docket No. Bureau-2017-0004; Request for Information Regarding Remittance Rule Assessment, 82 Fed. Reg. 15009 (March 24, 2017).

II. Comments and Recommendations

The Associations appreciate the Bureau's engagement with the financial institution industry during the original rulemaking process. The Associations note, however, that there are key issues adversely affecting the provision of remittance transfer services the Bureau has yet to address, including with regard to scope, disclosure requirements and error resolution.

A. ***Modify Scope of the Remittance Rule by Excluding Transfers in Excess of a Certain Amount, e.g., \$1,000.***

The Remittance Rule creates restrictions and requirements that apply to a much broader range of cross-border transactions than those contemplated by Congress when enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which has a negative impact on both consumer-senders and financial institution providers. Consumers who send high-dollar transfers are not sending "remittances" as the term is commonly used (i.e., a small value payment sent to family members in another country) and, thus, such consumers do not need the special protections mandated by the Rule. In fact, many members of the Associations have reported that their high net worth and wealth management customers frequently complain about cumbersome, often redundant Rule disclosures. Accordingly, the Associations would encourage the Bureau to revise the Rule by modifying the definition of "remittance transfer" to exempt transfers in excess of a certain amount, such as \$1,000.⁵

The Bureau has authority under section 904(c) of the Electronic Fund Transfer Act (the "EFTA") to limit the scope of the rule to traditional remittances. The EFTA provides the Bureau with the authority to make exceptions in its regulations for certain classes of remittance transfers when, among other reasons, those exceptions are necessary or proper to effectuate the purposes of the EFTA.⁶ The purpose of the EFTA is consumer protection.⁷

The Senate Report on the Dodd-Frank Act precursor Senate bill, the Restoring American Financial Stability Act of 2010, (the "Senate Report"), contemplates that immigrants were the consumers intended to be protected by the remittance transfer statute. The Senate Report notes that "[i]mmigrants send substantial portions of their earnings to family members abroad. These senders of remittance transfers are not currently provided with adequate protections under federal or state law."⁸ The Senate Report presents an example of providers posting model transfers for the amounts of \$100 and \$200, likely based on data published in 2009 showing the average remittance transfer is less than

⁵ The Associations propose \$1,000 as a limitation because this amount is high enough to capture traditional remittances while exempting larger value transfers that fall outside of congressional intent. The Associations have previously suggested other limitations to the Bureau, but the \$1,000 limitation proposed in this letter accommodates transfers that may be three times as large as the average size of a remittance transfer based on recent data.

⁶ EFTA § 904(c) states that the regulations the Bureau issues under the EFTA "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the [Bureau] are necessary or proper to effectuate the purposes of [the EFTA]."

⁷ Specifically, section 902(b) of the EFTA states that the EFTA's "primary objective" is "the provision of individual consumer rights."

⁸ S. Rep. 111-176, at 179 (2010).

\$300.⁹ More recent data published in 2014 confirm the average remittance transfer continues to be less than \$300.¹⁰ Thus, legislative history underpinning Section 1073 of the Dodd-Frank Act indicates that Congress was focused on protecting senders of lower-value transfers.

Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential costs, benefits, and impacts of its regulations. Specifically, the Bureau is to consider the potential benefits and costs of regulation to consumers and covered persons. By covering an overly broad range of transactions, the Remittance Rule creates “protections” that are unnecessary and are not helpful or relevant for many transfers that currently fall within the definition of remittance transfer, such as transfers by wealthy, sophisticated individuals for high-value overseas purchases like real estate. The Associations believe that the burden imposed on financial institutions by complying with the requirements of the Rule exceeds the consumer benefits of including transactions greater than \$1,000 within its scope.

Furthermore, the Associations note that modifying the scope of the Remittance Rule would be consistent with the statutory authority given to the Bureau under the Dodd-Frank Act to “conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of [Title X], or from any rule issued under [Title X], as the Bureau considers necessary or appropriate to carry out the purposes and objectives of [Title X]...”¹¹ Precedent exists for relaxing the Rule’s applicability to high-dollar transactions; consider, for example, Regulation Z’s relaxed disclosure requirements for loan transactions in excess of certain dollar thresholds.¹²

B. *Preserve the Ability of Depository Institutions to Provide Estimates of Third Party Fees When Obtaining Accurate Data Is Not Feasible.*

As an initial matter, the Associations recognize that the Bureau has taken several actions to minimize provider compliance obligations without causing harm to consumer-senders. For example, recognizing the difficulties inherent in providing accurate, real-time disclosures in certain remittance transfer scenarios, the Bureau appropriately established temporary exceptions to several of the Rule’s disclosure provisions.

The Associations believe the last five years of remittance transfer processing shows that greater disclosure accuracy is unlikely to be achieved without significant additional operational cost for

⁹ See, U.S. Department of Treasury, The Dodd-Frank Wall Street Reform and Consumer Protection Act Provides Federal Oversight for Remittance Transfers With the Creation of the Consumer Financial Protection Bureau (Oct. 2010)(citing Sistema Económico Latinoamericano y del Caribe, Migration and remittances in times of recession: Effects on Latin American Economies (May 2009)).

<http://www.treasury.gov/initiatives/wsr/Documents/Fact%20Sheet%20-%20Provides%20Federal%20Oversight%20for%20Remittance%20Transfers,%20Oct%202010%20FINAL.pdf>.

¹⁰ Sistema Económico Latinoamericano y del Caribe, Economic Status and Remittance Transfer Behavior among Latin American and Caribbean Migrants in the Post-Recession Period.

http://www.sela.org/media/265007/t023600005815-0-economic_status_and_remittance_behavior_among_lac_countries.pdf

¹¹ See Dodd-Frank Act §1022(b)(3)(A). The Remittance Rule statutory provisions of the Dodd-Frank Act are located at Dodd-Frank Act Title X, §1073.

¹² See, e.g., 12 CFR §1026.3(b) (credit extensions in excess of annually-determined threshold amounts exempt from regulation, including disclosure requirements).

providers and transaction delays for senders; furthermore, the Associations believe there is insufficient evidence to suggest that the continued reliance on exceptions and use of estimates for certain disclosures will result in consumer harm. We therefore encourage the Bureau to take the following actions:

1. *Preserve the ability of depository institutions to provide estimates of third party fees and exchange rates after the July 21, 2020 “sunset date” of the temporary exception.*¹³ The Associations recognize that there are statutory constraints under the Dodd-Frank Act to extending the temporary exception beyond July 21, 2020. The Associations are hopeful, however, that the Bureau will expand its interpretation of one of the permanent exceptions to the requirement to disclose the amount of currency that will be received by the designated recipient. Specifically, the Associations would like the Bureau to broaden its application of the exception for transfer to certain nations in which the Bureau has determined that the method by which transfers are made do not allow a remittance transfer provider to know the amount that will be received by the recipient (such exception, the “Permanent Exception”).¹⁴ We suggest that the Permanent Exception be applied to transfers sent through open networks to low-volume countries in which a provider is unable to disclose the exact amounts required under the Rule.

Currently, the Bureau limits the use of the Permanent Exception to transactions “sent via international ACH on terms negotiated between the United States government and the recipient country’s government, under which the exchange rate is a rate set by the recipient country’s central bank or other governmental authority after the provider sends the remittance transfer.”¹⁵ The Associations note that only Federal Reserve Banks can offer international ACH services that have terms negotiated between the U.S. government and a foreign central bank. As such, the Bureau limits this exception to transfers made via the Federal Reserve System’s FedGlobal ACH program (“FedGlobal ACH”).

Members of the Associations provide services that are substantially similar to FedGlobal ACH and face similar challenges in determining the exact amounts, but these Association members do not benefit from a permanent exception to provide estimates when such transfers do not leverage FedGlobal ACH. Providers are unable to determine exact amounts for low-volume corridors because the lack of transactions (and corresponding lack of correspondent relationships in such geographies) makes the usual means by which depository institutions gather information to enable exact disclosures cost prohibitive or unfeasible.¹⁶ The Associations are concerned that the Bureau’s current limitation of the

¹³ *Id.* at §1005.32(a)(1).

¹⁴ EFTA §919(c) and 12 CFR §1005.32(b)(1)(i)(B).

¹⁵ *Id.* Bureau Official Interpretation 32(b), comment 3.

¹⁶ For example, some global banks survey their correspondents on an annual basis to gather information about lifting fees and local charging practices and use this information to provide disclosures. Global banks may also track the cost of transfers sent to certain countries. For low-volume corridors, the cost of gathering and tracking these data may greatly exceed the revenue a bank makes from sending transfers to the region.

Permanent Exception to transfers that leverage FedACH Global has the unintended consequence of favoring one service provider over others.

If the temporary depository institution exception sunsets, transfers to low-volume corridors could be jeopardized as depository institutions retreat from providing such remittance transfers because their ability to adequately manage the risks associated with the transfers will be compromised. This would result in fewer provider options for consumers and, ultimately, consumer-senders could be compelled to send such transfers via more expensive, less secure or less reliable means.

Members of the Associations desire to continue offering their customers remittance transfer services following the expiration of the temporary exception, but many have articulated concerns regarding their ability to do so if the temporary exception expires.¹⁷ Financial institutions continue to rely on estimates to provide remittance transfer services, particularly for lifting fees, because intermediary banks may refuse to provide fee information for competitive reasons. In fact, based on a survey conducted by The Clearing House, several member institutions rely on estimates for more than 25% of their remittance transfers.¹⁸ If the temporary exception were to expire without an alternative allowing for fee estimates, a significant number of Clearing House member institutions noted that they would likely be unable to continue providing services in certain countries, or would have to significantly limit the correspondent banks to which they send remittance transfers to those banks that can guarantee fees. Based on The Clearing House's survey, more than 50 countries and more than 10,000 remittances sent in 2017 could be adversely affected if the temporary exception were to sunset without a replacement accommodation.¹⁹

As noted above, the Associations recognize that there are statutory restraints to extending the temporary exception beyond July 21, 2020. If the Bureau does not expand its interpretation of the Permanent Exception to include open-network transfers made to low-volume countries, the Associations believe an amendment to the Dodd-Frank Act to make the temporary exception permanent would be necessary to prevent the negative impact to bank services. The Bureau has previously acknowledged the challenges remittance transfer providers face in an open network system.²⁰ In such a system, "no single provider has control over or relationships with all of the participants that may collect funds in the United States or disburse funds abroad. A number of principal providers may access the system. National laws, individual contracts, and the rules of various messaging, settlement, or payment systems may constrain certain parts of transfers sent through an open network system."²¹

¹⁷ Based on a review of surveys from respondent Clearing House member banks in 2018.

¹⁸ Id.

¹⁹ Id.

²⁰ 77 Fed. Reg. 25 (February 7, 2012).

²¹ Id.

Open network transfers often involve intermediary institutions, which may impose fees or set the exchange rate for a transfer, with which the remittance transfer provider may have no direct relationship. Because of this, in many instances a remittance transfer provider in an open network is not able to determine the exact amount of third party fees or the exchange rate applicable to the transfer. The Associations believe that eliminating the temporary exception could, in effect, eliminate the ability of customers of several insured institutions to send transfers to accountholders in many countries (and less “popular” destination countries in particular). It is imperative that the financial services industry, consumer groups and the Bureau work together to ensure that after 2020, financial institutions are able to continue to send remittance transfers for consumers to all of the locations to which they are currently able to send funds today.

2. *Retain and expand the list of “safe harbor” countries that have laws or local practices impacting exchange rates.*²² As a companion to the above request, the Associations urge the Bureau to expand the list of those countries for which the provision of exchange rate estimates (rather than actuals) would be permitted on Rule-required disclosures to include those countries where local practices do not permit the determination of actual costs.

C. *Modify the Remittance Rule Disclosure Requirements*

Providers face numerous operational challenges when complying with the Rule’s disclosure obligations. The disclosure obligations the Associations would like the Bureau to address also greatly inconvenience consumers. These requirements, as described below, limit the method by which consumers can receive disclosures and extend the amount of time the consumer is required to listen to a redundant disclosure. By addressing these concerns, the Bureau will both alleviate operational challenges for financial institutions and provide more convenience to consumers.

For these reasons, the Associations encourage the Bureau to permit disclosure delivery channels determined by sender preference and not limited to the medium by which a sender interacts with a provider (i.e., in-person, by phone, on-line, or via mobile device (which term could encompass a broad range of wireless devices (e.g., tablets) which may or may not have telephone capabilities or Internet access)). Accordingly, the Associations urge the Bureau to consider the following actions:

1. *Permit providers greater, alternative disclosure delivery options when consumers desire greater flexibility in determining how they would like to receive Rule-required disclosures.* For example, remittance transfers requested by phone could be greatly expedited if providers had the option of offering senders the ability to receive required disclosures in writing rather than being required to listen to an oral disclosure. This is particularly true for existing customers who send routine remittance transfers, are familiar with the nature of the remittance disclosures, and would likely prefer to receive transaction-specific disclosures by e-mail or text message. This flexibility would also be beneficial to traveling customers, who are remote and unable to properly consent at the moment they make their request, but who are in need of making a funds transfer. In this scenario, the provider institution may call the customer to facilitate the transfer by phone, but the customer may

²² 12 CFR §1005.32(b)(1)(ii).

- be in a different time zone and receive disclosures by phone during an inconvenient time, such as in the middle of the night.²³ The Associations are *not* advocating that optional delivery channels be mandated by the provider, but rather that the provider have the ability, if it chooses, to offer its consumers the ability to elect alternative delivery channels.
2. *Eliminate duplicative disclosure requirements to senders making multiple, concurrent transactions by phone.* This is a frequent complaint from customers of members of the Associations who are required under the Rule to listen to lengthy, redundant disclosures during a single telephone call. The Associations believe there is no benefit to requiring a sender to listen to duplicative oral disclosures during the same telephone session during which multiple transfers may be requested, and that the sender in such situation should have the option of being provided with an abbreviated version of the subsequent disclosures.
 3. *Simplify disclosure requirements for preauthorized transfers.* Many remittance transfer providers have discontinued or chosen not to offer preauthorized transfers because the disclosure requirements are too complex and too costly to implement. This has the unintended consequence of reducing consumer access to preauthorized transfers. The Associations acknowledge and appreciate the Bureau's recognition that financial institutions are unable to provide accurate disclosures for subsequent preauthorized transfers at the time those transfers are authorized. However, the disclosure requirements specifically applicable to preauthorized remittance transfers remain too complex for many institutions to implement and do not meet the Bureau's objective to facilitate compliance.²⁴ The Associations suggest limiting the obligation of providers to the delivery of the transaction receipt provided for in § 1005.31(b)(2). Consumers using preauthorized remittance transfer products have already received standard remittance transfer disclosures. The incremental benefit to consumers of receiving additional disclosures for subsequent scheduled transfers is outweighed by the burden on providers to deliver such additional accurate disclosures, which has resulted in the discontinuation of preauthorized transfer products for many financial institutions and fewer provider options for consumers. The Associations encourage the Bureau to streamline and simplify the disclosure requirements for preauthorized transfers to make offering them viable for financial institutions.

D. *Modify the Remittance Rule Error Resolution Rights.*

The Associations suggest allowing providers to limit error resolution to refund (rather than resend) when (i) an error results from sender error; (ii) the amount in error for any reason is less than \$15; and/or (iii) the error, whether provider error or sender error, has no impact on the amount of funds

²³ 12 C.F.R. § 1005.31, Supp. I, comments 32(a)(2), 32(a)(3).

²⁴ Financial institutions would, in practice, have to monitor third party fees assessed by multiple intermediaries and systems for transfers on a daily basis in order to provide the subsequent preauthorized remittance transfer receipt, which is costly and impractical for most institutions. Further, if a change occurred, the financial institution would have to generate a new receipt that is out of sequence with the regular remittance transfer receipts provided under the Rule. As such, the additional disclosure requirements are too difficult to automate.

actually received by the designated recipient of the transfer.²⁵ This suggested approach would avoid the provider being forced to incur unnecessary additional expense likely to result from multiple “resend” requests in situations where the provider reasonably believes that the resend attempt will similarly fail. Similarly, providers should not be forced to incur costs for resending funds related to small amount errors when the sender can be made whole through a refund. Allowing the provider to simply refund the appropriate amount under the situations identified above would accelerate error resolution for both providers and consumers.

E. *Modify the Remittance Rule Error Resolution Procedures.*

1. *Support statutory amendment to the Dodd-Frank Act to shorten the length of time within which a sender must assert error (currently 180 days) and to a timeframe (e.g., 60 days) that would be equally protective of consumer rights, but increase the ability of the provider to correct the error.*²⁶ It is unlikely that a sender would require six months to discover an error, and such time period is three times the 60-day period that a consumer has to assert an error under Subpart A of Regulation E.²⁷ A 180-day time period within which to report an alleged error rewards senders who are dilatory in pursuing their rights and makes it more difficult for providers to seek recourse for the out-of-pocket losses they have to bear. The Associations understand that the elongated timeframe is set forth in the Dodd-Frank Act and request that the Bureau support an amendment to Section 1073 of the act to shorten the timeframe to be consistent with the error resolution time period set forth in Subpart A of Regulation E.
2. *Permit providers, at their discretion, to work directly with a designated recipient’s bank to correct inaccurate/incomplete transfer instructions to facilitate completion of the transfer without triggering the Rule’s error resolution requirements.* Members of the Associations have reported instances in which the sender makes a status request, with no indication of error, and the designated recipient’s bank informs the provider that funds have not been applied due to a name mismatch or need for more information. The Associations would like the Bureau to confirm that, in such instances, the provider can amend the remittance transfer instruction by providing the required information to the receiving bank so that funds can quickly be credited to the recipient’s account without having to treat the amendment as a new remittance transfer requiring new disclosures. The Associations believe this would be more efficient than the provider instructing the recipient’s bank to return the funds, and then sending a new transfer with the corrected information and providing the sender with new disclosures. Further, the Associations believe that allowing such amendments is consistent with the Bureau’s authority under the Dodd-Frank Act to

²⁵ For example, if a sender is incorrectly charged \$110 for a \$100 transfer but the disclosures and amount received by the recipient were correct, the provider should be permitted to correct the error by crediting the sender \$10 and not offer the ability to send a second transfer for \$10.

²⁶ 12 CFR §1005.33(b)(1).

²⁷ *Id.* at §1005.6(b)(3).

allow for “other remed[ies]” as determined appropriate by rule of the Bureau for the protection of senders.²⁸

III. Conclusion

The Associations are hopeful the Bureau’s assessment process will result in a modified Remittance Rule that promotes expeditious remittance transfers while preserving necessary consumer protections, and that the Bureau will provide greater clarity on provider obligations under the Rule, whether as part of the assessment report itself or through subsequent revisions to the Rule and its official commentary.

Thank you for your consideration and review of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact any of the Associations using the contact information provided below.

Yours very truly,

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²⁸ 15 U.S.C. §1693o-1(d)(1)(B).

Trade Associations

The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently implementing a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. The Payments Company's affiliate, The Clearing House Association L.L.C., is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

The **American Bankers Association** is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

BAFT is an international financial services trade association whose membership includes banks headquartered in roughly 50 countries around the world, financial services providers, as well as a growing number of non-bank and financial technology companies. BAFT provides advocacy, thought leadership, education and training, and a global forum for its members in the areas of transaction banking including trade finance, cash management, payments, liquidity, and compliance. For nearly a century, BAFT has played a unique role in expanding markets, shaping legislative and regulatory policy, developing business solutions, and preserving the safety and soundness of the global financial system.

The **Consumer Bankers Association** is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.