

April 5, 2019

VIA FEDERAL EXPRESS

Kathleen Kraninger, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20052

**RE: July 2020 Expiration of Temporary Depository Institution Exception / Regulation E
Remittance Transfer Rule**

Dear Director Kraninger:

The Clearing House Association L.L.C. (“The Clearing House”), the American Bankers Association (“ABA”), the Bankers Association for Finance and Trade (“BAFT”), the Consumer Bankers Association (“CBA”), the Independent Community Bankers of America (“ICBA”) and the U.S. Chamber of Commerce, collectively referred to herein as the “Associations,”¹ are concerned about the expiration of a provision in the remittance transfer rule that could disrupt services to consumers. To that end, the Associations respectfully request a meeting with you to discuss the significant consequences likely to arise from the impending July 21, 2020 expiration of the exception, set forth in § 919(a)(4) of the Electronic Funds Transfer Act and implemented in §1005.32(a)(1) of Regulation E, that allows insured institutions to provide estimates of third party fees and exchange rates for remittance transfer disclosures where the exact amounts cannot reasonably be determined. Insured institutions have worked diligently to find ways to provide exact disclosures for many of their transfers and there are ongoing efforts to continue to improve the ability of institutions to obtain exact amounts. However, due to factors outside the industry’s control, that is not always possible. Absent action taken by the Consumer Financial Protection Bureau (“Bureau”) to maintain the ability to estimate, the Associations are concerned that the existing market for bank-provided remittance transfers will be significantly disrupted and that many consumers will lose the ability that they enjoy today to make remittance transfers safely, reliably and conveniently through their insured institutions directly from their deposit accounts.

Subpart B of Regulation E incorporates the Bureau’s rules effectuating the provisions of Title X, §1073 of the Dodd Frank Act requiring remittance transfer providers to supply certain disclosures to consumers regarding fees and exchange rates. The Bureau in 12 C.F.R. § 1005.32(a) provided a temporary exception to permit insured institutions to provide estimates to consumers for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii) if the insured institution could not determine the exact amounts for reasons beyond its control and the remittance transfer was sent from the sender’s account with the institution. The temporary exception is currently set to expire July 21, 2020.

In its recent *Remittance Rule Assessment Report*, the Bureau acknowledged two important points: (1) the unique nature of “open networks” and how they operate, and (2) the importance of the exception for insured institutions that send remittances through open networks. These two points critically underscore the need to address the exception’s expiration.

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

Insured institutions typically conduct their remittance transfer business through open networks, i.e. “those in which no one institution exerts end-to-end control over a cross-border transaction.”² Open networks are by their nature decentralized and, thus, the nature of the networks limits “the information that providers can give consumers when sending remittances.”³ The report further notes that even the largest remittance transfer provider banks, which may have extensive branches overseas, “differ critically” from nonbank money services businesses (MSBs) because banks facilitate remittance transfers as “only one part of a larger and more diverse suite of offerings” and, thus, banks “employ very different business models” than MSBs that have comparable international transfer volumes to banks but that “focus primarily on relatively small consumer transactions.”⁴ Open networks are also the only ubiquitous cross-border account-based payment solution and are the only way that consumers can ensure that a transfer is deposited directly into the recipient’s bank account.⁵

Given the unique limitations on information associated with open networks, it should not be surprising that the Bureau also noted in the Report its finding that a core group of banks that are subject to the Remittance Transfer Rule continue to rely on the temporary exception (i.e. for a certain number of remittances, these banks could not determine exact amounts for reasons beyond their control). Specifically, the Bureau notes that 12% of depository institutions (685 institutions) were subject to the rule, 11.8% of depository institutions subject to the rule use the exception, and 6.4% of all depository institution remittance transfers used estimates pursuant to the exception.⁶

The information reported by the Bureau is consistent with information collected by The Clearing House from its member banks. Although Clearing House members are among the largest banks in the world, and many have a global reach, the sunset of the exception would significantly challenge almost all of them to continue to offer the same breadth of remittance transfer services that they offer today. This will not only impact their customers, who may no longer be able to send remittances to certain geographic areas, but it will also have a waterfall effect on smaller depository institutions that use the large banks as their correspondents for international payments. Thus, we fear that market disruption will be significant unless the Bureau maintains the ability to estimate.

It is important that the Bureau address this issue before market disruption becomes a reality. Section 919(c) of the Electronic Funds Transfer Act authorizes the Bureau to permit a “reasonably accurate estimate of the foreign currency to be received” in a remittance transfer where the “method by which transactions are made in the recipient country do[es] not allow[] a remittance transfer

² Remittance Rule Assessment Report (October 2018) (hereinafter the Report), p.51.

³ Report, p.52.

⁴ Report, p.54.

⁵ “Currently, correspondent banking remains the only ubiquitous cross-border payment solution. It can reach any country or currency and can be used by anyone with a bank account.” Cross Border Interbank Payments and Settlements (Bank of Canada, Bank of England, Monetary Authority of Singapore, November 2018), p 6.

⁶ Report, pp.69 & 139. There has been some confusion as to the number of banks that use the exception and how the Report should be interpreted. We believe use of the exception is greater than suggested in call report data. If the Report is correct, however, this would mean that roughly 80 banks continue to have a need to rely on the exception. That may not be surprising given that remittances to many of the countries where the exception is used is a highly specialized service provided by a small number of banks. As the report notes, the bank market is highly concentrated (with the top 10 providers accounting for roughly 90% of bank volume). Report, p.77. Based on research conducted by The Clearing House of its members, impact of the exception’s sunset will most certainly impact this top 10 group and beyond.

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provider to know the amount of currency that will be received by the designated recipient”⁷ Those circumstances are present here. The “method” by which the remittance transfer is effectuated—i.e., the use of an open network by correspondent banks—does not allow the insured institution sending the remittance to know the exact amount of currency that the recipient will receive. Pursuant to the authority provided by this section, we urge the Bureau to permit insured institutions that use an open network with correspondent banks to provide estimates of third party fees and exchange rates for remittance transfer disclosures where the exact amounts cannot reasonably be determined.

The Associations urge the Bureau to act expeditiously to preserve the existing market for remittance transfers and the ability of consumers at insured institutions to continue to send remittances safely, reliably and conveniently from their depository institution accounts. We appreciate your consideration of this important matter and look forward to meeting with you soon.

Yours very truly,

/S/ Robert C. Hunter

Robert C. Hunter
Executive Managing Director & Deputy
General Counsel
The Clearing House Association L.L.C.
Rob.Hunter@theclearinghouse.org

/S/ Robert G. Rowe, III

Robert G. Rowe, III
Vice President & Associate Chief Counsel,
Regulatory Compliance
American Bankers Association
rrowe@aba.com

/S/ Samantha J. Pelosi

Samantha J. Pelosi
Senior Vice President, Payments and
Innovation
Bankers Association for Trade and Finance
spelosi@baft.org

/S/ David R. Pommerehn

David R. Pommerehn
Senior Vice President, Associate General Counsel
Consumer Bankers Association
dpommerehn@consumerbankers.com

/S/ Viveca Y. Ware

Viveca Y. Ware
Group Executive Vice President,
Regulatory Policy
Independent Community Bankers of
America
viveca.ware@icba.org

/S/ Kate (Larson) Prochaska

Kate (Larson) Prochaska
Vice President and Regulatory Counsel
U.S. Chamber of Commerce, Center for Capital
Markets Competitiveness
KProchaska@USchamber.com

⁷ 15 U.S.C. § 1693o-1(c) (2018).

Trade Associations

The Clearing House is a banking association and payments company. Since its founding in 1853, The Clearing House has delivered safe and reliable payments systems, facilitated bank-led payments innovation, and provided thought leadership on strategic payments issues. Today, The Clearing House 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. It continues to leverage its unique capabilities to support bank-led innovation, including launching the RTP® network. As the country's oldest banking trade association, The Clearing House also provides informed advocacy and thought leadership on critical payments-related issues facing financial institutions today. The Clearing House is owned by 25 financial institutions and supports hundreds of banks and credit unions through its core systems and related services.

The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10 trillion in loans.

The Bankers Association for Finance and Trade is a financial services industry association whose membership consists of large global and regional banks, non-banks, fintech companies, and service providers headquartered around the world. BAFT provides advocacy, thought leadership, education, and a global forum for its members in transaction banking, including international trade finance, cross-border payments, and compliance. For nearly a century, BAFT has expanded markets, shaped policy, developed business solutions, and preserved the safety and soundness of the global financial system.
<http://www.baft.org>

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.

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

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (CCMC) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.