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June 6, 2014

Consumer Financial Protection Bureau
Monica Jackson
Office of the Executive Secretary
1500 Pennsylvania Ave. NW
Washington, DC 20220

RE: Docket No. CFPB-2014-0008; Electronic Fund Transfers (Regulation E)

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the Consumer Financial Protection Bureau's (CFPB) proposed rule and request for comment on changes to Regulation E in regards to remittance transfers. *See* 79 FR 23233 (April 25, 2014). The proposed rule revises the CFPB's final rules, released on February 7, 2012, August 20, 2012, and May 22, 2013, (together, the Final Rule), implementing section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

This comment letter is in response to the CFPB's proposed clarification of the Final Rule and extension of the Final Rule's temporary provision that permits insured institutions to estimate certain pricing disclosures until July 21, 2020.

Before addressing the individual provisions of the proposed amendments, NAFCU would like to reiterate its belief that the CFPB should expand the 100-remittance transfers threshold for the safe harbor from the definition of "remittance transfer provider" in order to ensure that a meaningful safe harbor is established.

The regulatory burden that the Final Rule places on credit unions has led to a significant reduction in consumers' access to remittance transfer services. NAFCU has heard from a number of its members that, because of the Final Rule's compliance burden, they have been forced to discontinue, or will be forced to discontinue, their remittance programs. A 2013, NAFCU survey of our members found that over one-quarter of those that offered remittance services before the Final Rule have now stopped offering that service to

members and even more are considering dropping. Those that continue to offer remittances have been forced to significantly increase their members' fees. This demonstrates that the 100-remittance transfers allowance threshold is too low. Further, 26.9 percent of survey respondents, including one credit union that averages 25,000 remittances per year, said they have dropped their remittance program as a result of the Final Rule. NAFCU members have also indicated that the compliance costs associated with the Final R ule have had an impact on their ability to offer other services to their members. Accordingly, NAFCU encourages the CFPB to expand the threshold for the safe harbor from the definition of "remittance transfer provider" in order to ensure that a meaningful safe harbor is established.

I. Introduction

The Dodd-Frank Act amended the Electronic Fund Transfer Act (EFTA) to establish new laws and regulations regarding international remittance transfers. The CFPB issued the Final Rule to implement these amendments, while continuing to consider revisions in response to industry concern. Accordingly, the proposed rule seeks to amend the Final Rule by: (i) clarifying the treatment of transfers from non-consumer accounts by explaining that whether a transfer from an account is for personal, family or household purposes is determined by ascertaining the purpose for which the account was created; (ii) clarifying that faxes are considered "writings" for purposes of the Final Rule; (iii) explaining that, in certain circumstances, a remittance transfer provider may provide oral disclosures after receiving a remittance inquiry from a consumer by mail, email or fax; (iv) specifying what constitutes an error, and (v) clarifying the remedies for certain errors. The proposed rule also seeks to extend the Final Rule's temporary provision that permits insured institutions to estimate certain pricing disclosures from July 21, 2015 to July 21, 2020. Finally, the proposed rule seeks comment on the application of the Remittance Rule to transfers to and from locations on U.S. military installations located abroad. NAFCU strongly supports the Bureau's proposal to extend the temporary exception and generally supports the proposed clarifications to the Final Rule. Additionally, NAFCU and our members strongly recommend that the CFPB clarify that U.S. military installations in foreign countries are considered States for the purposes of the Final Rule.

II. Proposed Extension of the Temporary Exception

Regulation E generally requires that disclosures provided to senders state, among other things, the actual exchange rate and amount to be received by the designated recipient. Section 1005.32, however, provides two exceptions to this requirement, one of which is a temporary exception. Under the temporary exception, the remittance provider may provide estimates instead of actual amounts for certain international remittance transfers. By the terms of Section 1073 of the Dodd-Frank Act, the temporary exception is set to expire on July 21, 2015. However, the Dodd-Frank Act allows the Bureau to extend the temporary exception for up to five additional years if it determines that the termination of the temporary exception on July 21, 2015, would negatively affect the ability of insured

institutions to send remittance transfers. In the preamble to the proposal, the CFPB states that it has reached a "preliminary determination" that the expiration of the temporary exception on July 21, 2015 would negatively affect the ability of insured institutions to send remittance transfers and, thus, proposes to extend the temporary exception by five years to July 21, 2020.

NAFCU strongly supports the Bureau's proposal to extend the temporary exception because it believes this exception is critical to ensuring that credit unions who use "open network" systems are able to continue to provide remittance transfer services to their members. Credit unions have invested significant time and energy towards compliance with the Final Rule and generally provide exact disclosures to their members whenever feasible. However, as the Bureau acknowledged in the proposal, it is still difficult for open network systems, as currently configured, to comply with the Final Rule. For remittance transfers sent through open networks, there are instances when credit unions are unable to know the exact amount of third party fees or the exact exchange rates. For such transfers, credit unions currently rely on the temporary exception to provide remittance transfer services to their members in compliance with the Final Rule. Because of the limitations of open network systems, NAFCU believes it is appropriate that the CFPB exercise its statutory authority to extend the exception for a full five years. Accordingly, NAFCU welcomes the proposed extension of the temporary exception to July 21, 2020.

III. Proposed Clarifications

In addition to extending the "temporary exception," the proposed rule would make certain clarifications to the Final Rule. As discussed below, NAFCU generally support the proposed clarifications to the Final Rule, but believes that certain adjustments are necessary to provide the requisite clarity and relief that the CFPB is attempting to achieve through the proposal.

a. Transfers from Non-Consumer Accounts

The proposal would add a new comment to clarify that the Final Rule does not apply to transfers from non-consumer accounts. The Final Rule applies when a transfer is requested by a consumer primarily for personal, family, or household purposes. The proposal would clarify that for remittance transfers from an account, the primary purpose for which the account was established determines whether a transfer from that account is requested for personal, family, or household purposes.

NAFCU appreciates the CFPB's efforts to provide clarity on the scope of the Final Rule and supports this clarification. However, it urges the Bureau to allow credit unions to look to the way in which the account is identified in credit unions' records at the time a transfer is requested, rather than the purpose for which the account was originally established. Credit unions, like most financial institutions, typically identify accounts as consumer or business accounts at the time the account is established. In certain cases,

however, a credit union may determine that an account should be re-characterized because the member is using the account outside the purposes for which it was originally established. For example, a credit union member may open a personal "consumer account," but then subsequently use the account primarily for business purposes. Upon determining that the account is being used primarily for business purposes, a credit union may reclassify the account as a business account to reflect its actual use. Because these circumstances exist, NAFCU believes that credit unions should be able to rely on the characterization of the account in its records at the time the member requests a transfer. Accordingly, NAFCU proposes that the CFPB revise proposed comment 30(g)-2 to clarify that a remittance transfer provider may look to the way in which the account is identified in credit unions' records at the time a transfer is requested from the account for purposes of determining whether the transfer is requested for personal, family or household purposes, and is thus subject to the Final Rule.

b. Clarification regarding Faxes

NAFCU strongly supports the CFPB's proposal to clarify that disclosures made by fax are considered to be provided in writing for purposes of the Final Rule. Currently, the Final Rule generally requires that disclosures be provided in writing but does not specify what qualifies as a "writing." NAFCU and our members appreciate the CFPB's responsiveness to feedback that faxes serve the same proof of delivery as disclosures sent by mail in writing, and often can be delivered to the remittance sender in a more-timely manner. Accordingly, NAFCU welcomes the proposed clarification that remittance disclosures provided by fax are considered to be "in writing," and therefore not be subject to the additional requirements for electronic disclosures.

c. Oral Disclosures in Response to an Inquiry

The Final Rule currently permits remittance providers to make prepayment disclosures orally only if a "transaction is conducted orally *and entirely by telephone*." The proposal would revise the commentary to explain that a provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. Under the proposal, a credit union may then treat that initial communication as an inquiry and subsequently responds to the member's inquiry by calling the member on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer. Such an approach would allow the credit union to conduct the transaction orally and entirely by telephone, thus allowing the credit union to make prepayment disclosures orally in accordance with the Final Rule.

NAFCU supports the CFPB's proposal to permit credit unions to give disclosures orally under such circumstances. However, it urges the CFPB to issue appropriate guidance on the requirement that a credit union only treat an initial communication as an inquiry when it "would be impractical" to treat it as a request. As discussed above, the proposal limits treating the initial communication as an inquiry to instances where it would be

"impractical" to treat it as a request. NAFCU's members would like additional guidance on what situations or instances the Bureau would consider impractical. This guidance is necessary to ensure that credit unions can effectively comply with the Final Rule.

d. Disclosure of Bureau Website on Receipts

The proposal would clarify the website address that may be disclosed on the receipt given to a sender. Under the Final Rule, remittance providers are required to disclose contact information for the CFPB, including the CFPB's website address, on receipts. The proposal would clarify that a provider may satisfy this requirement by disclosing the general website address for the CFPB (www.consumerfinance.gov), or an address of a page on the CFPB's Web site that provides information for consumers about remittance transfers (currently, www.consumerfinance.gov/sending-money). In addition, a provider making disclosures in a language other than English would be permitted, but not required, to disclose a CFPB website address that provides information for consumers about remittance transfers that is in the relevant language, if such website exists (such as the CFPB's website that provides information about remittance transfers in Spanish, currently www.consumerfinance.gov/enviar-dinero).

NAFCU believes that the optional nature of this change is critical, and our members would like additional assurances that this clarification, if adopted, would not require them adjust their receipts to refer to these other Web sites. In the alternative, NAFCU proposes that the Bureau consider adding a notice to the front page of its general website that directs consumers to sites that provide resources and information about remittance transfers. A majority of NAFCU's members rely on the existing model forms developed by the Bureau and have dedicated significant resources to designing and building compliance systems to produce the disclosures required by the Final Rule. A mandatory change, therefore, to the content of receipt disclosure requirements would impose a significant and unnecessary burden on credit unions.

e. Delays Resulting from Fraud, BSA, OFAC and Related Screening

The Final Rule defines "error" to include, among other things, the failure to make funds available to a designated recipient by the date of availability stated in the receipt provided to the sender (a "delay error"), unless the failure occurs due to certain specified reasons, including for delays related to the remittance transfer provider's fraud screening procedures or in accordance with the BSA, OFAC requirements, or similar laws or requirements. The proposal would revise the exception to state that it applies to delays related to individualized investigation or other special action by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 et seq., Office of Foreign Assets Control requirements, or similar laws or requirements. The proposal would also add commentary stating that the exception applies to a delay related to the provider's or any third party's necessary investigation or other special action necessary to address

potentially suspicious, blocked or prohibited activity in accordance with the BSA, OFAC requirements, or similar laws or requirements.

While NAFCU appreciates the Bureau's intention to clarify the error exception, it believes that the CFPB should further explain that this exception is not limited to instances in which the specific action or investigation is itself required by the BSA, OFAC requirements, or similar laws or requirements. Instead, NAFCU urges that the Bureau extend this error exception to instances where a delay occurs due to a credit union's established fraud screening procedures, risk management procedures or compliance program. NAFCU members have indicated that they often have the legal requirements of the BSA, OFAC requirements or similar law built into their screening procedures, risk management procedures or compliance programs. Because these legal requirements are already incorporated into a credit union's ordinary fraud screening process, it is unclear that they would qualify for the exception under the proposal. Accordingly, NAFCU urges the CFPB to extend this error exception to instances where delays occur because of a screening pursuant to a credit union's established risk management or compliance program. NAFCU believes that this error exception should not be limited to just instances where an investigation or special action is itself required under such laws.

f. Error Resolution Procedures and Remedies

The Final Rule currently provides that there is an error if a remittance transfer is delayed and is not available to the recipient on the date disclosed. As part of the error resolution remedies available in such circumstance, the credit union is required to investigate the cause for the delay and refund applicable fees charged to the sender. The proposal seeks to clarify which fees must be reimbursed to a sender when the cause of an error or the delay in receipt of an international remittance is due to the sender providing incorrect or insufficient information. Specifically, the proposal seeks to require that when a "delay error" occurs, for any reason, but the funds are ultimately delivered to the designated recipient before the remedy is determined, a remittance provider must refund its own fees and any taxes collected on the transfer, but would have no further obligations to the sender in connection with the error.

NAFCU believes that the CFPB should not require credit unions to refund fees due to the sender providing incorrect or insufficient information. Particularly, NAFCU contends that these fees should not be refunded in a situation where a remittance provider must pay a partner or third party to send transfers for members and that partner or third party does not refund the fee. NAFCU members have indicated that, in most cases, they must pay a partner or third party, such as a correspondent bank, Western Union, or MoneyGram to send transfers for members. Often, these fees are not returned to the credit union when the sender provides incorrect information. Likewise, credit unions incur operational costs when providing remittance transfers, and if funds availability is delayed due to incorrect information, the credit union must expend resources to investigate the delay. By requiring a remittance provider to refund fees that were collected to provide a service, the

provider is essentially being penalized for the sender's error. Holding a remittance provider responsible for the expenses it incurs due to a sender's error will unjustly penalize remittance providers and could potentially lead to fewer providers, higher fees, and greater difficulty for consumers wishing to remit transfers internationally. Accordingly, NAFCU strongly recommends that the CFPB not require credit unions to refund fees due to the sender providing incorrect or insufficient information. In the alternative, NAFCU urges that the Bureau afford remittance providers the flexibility to determine whether or not to refund fees paid to a partner or third party to send transfers for consumers.

IV. Application of the Final Rule to U.S. Military Installations

NAFCU believes that the CFPB should clarify the application of the Final Rule to transfers to and from accounts of individuals who are located on U.S. military installations abroad. Currently, the Final Rule applies when a sender located "in a State" sends funds to a designated recipient at a location in a "foreign country." For transfers from accounts, the location of the sender's account whether it is in a State. Similarly, for transfers to accounts, the location of the designated recipient's account determines the location of the designated recipient.

NAFCU believes it would be appropriate to designate U.S. military installations in foreign countries as States under the Final Rule. U.S. military installations overseas have traditionally been treated as "U.S. soil." For example, the U.S. Postal System treats mail sent from the U.S. to U.S. military installations overseas as domestic mail. Also, businesses that operate on U.S. military bases do so as U.S. businesses. Additionally, under Financial Management Regulations, the U.S. Department of Defense only allows one U.S. bank and one U.S. credit union on each military base, including overseas U.S. military installations. Accordingly, any transfers sent to an account held by a financial institution on a U.S. military installation would be sent to an account that is held and maintained by a bank or credit union chartered and located in the United States, and therefore would be considered a domestic transfers and not covered by the Final Rule.

NAFCU and our members strongly recommend that the CFPB specify that U.S. military installations in foreign countries as States under the Final Rule, and thus clarify that they are not subject to the purview of the Final Rule because there is no international transfer. This designation would more accurately reflect the status of U.S. military installations in foreign countries as "U.S. soil" located abroad.

V. Conclusion

NAFCU has engaged with the CFPB throughout the remittance transfer rulemaking process and continues to ask that the Bureau provide regulatory relief with respect to this matter. NAFCU appreciates the CFPB's responsiveness to feedback and input from credit unions regarding the Final Rule and urges the Bureau to continue to reduce future

compliance costs and regulatory difficulties faced by credits unions by addressing the additional issues with Final Rule raised in this letter.

NAFCU appreciated the opportunity to share its thoughts on remittance transfer requirements and would like to discuss this matter further. Should you have any questions or concerns, please feel free to contact me at anealon@nafcu.org or (703)-842-2266.

Sincerely,

Alicia Nealon
Regulatory Affairs Counsel