APPLESEED

January 21, 2020

Docket No.: CFPB-2019-0058
Notice of Proposed Rulemaking: Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E) (the "NPRM")

Director Kraninger,

Appleseed thanks the Consumer Financial Protection Bureau (CFPB) for the opportunity to provide comments on the CFPB's Notice of Proposed Rulemaking (NPRM) regarding two parts of its remittance rule (12 CFR Part 1005 Subpart B) ("The Remittance Rule"): the expiration of the temporary exception for banks from providing certain disclosures to customers and the transaction threshold for a person to be considered a "remittance transfer provider."

Appleseed is a nonprofit network of 17 Centers across the U.S. and Mexico, dedicated to advancing justice and equity. We are engines of systemic change working independently and collaboratively for a society where everyone is heard and has the opportunity to lead a healthy, safe and dignified life. Our financial access and asset building program is devoted to promoting fairness, transparency, multiple options, financial education, and safe and secure banking and asset building options for low-income persons, including a particular focus on immigrant communities.

Background

For many years, Appleseed has advocated for greater uniformity and transparency in consumer remittances. Appleseed has been involved with The Remittance Rule since its beginning in 2008 as section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") through the final adoption and effectiveness of the initial set of regulations as Subpart B of the CFPB's Regulation E in 2013. Appleseed has reviewed and commented on all the CFPB reports, commentary and regulatory amendments since then.

Remittances such as those subject to The Remittance Rule are used by families in the United States to send money outside the country, often to relatives who need the funds to survive. With these regulations, consumers have the ability to better compare the cost of sending a remittance. Prior to the promulgation of these regulations, remittance providers would advertise costs in several different ways, often leaving consumers confused as to which remittance provider offered the best deal to the consumer.

Appleseed always has believed that the Remittance Rule addressed a clear need for greater uniformity and transparency in consumer remittances. We believe that the Remittance Rule

works and, as our own research has shown, is an example of how effective consumer protections have concrete benefits for society as a whole.
Our support for transparency concerning the amount sent, cost and delivery date, as well as accountability and clear procedures to resolve complaints is grounded in more than a decade of research focused on the consumer experience:

- In 2005, we released *Creating a Fair Playing Field for Consumers: The Need for Transparency in the U.S.-Mexico Remittance Market*. This study, which examined fee and exchange rate pricing for multiple remittance providers across four states, found that: 1. there was a **complete lack of transparency** making it nearly impossible to choose the most cost-effective money transfer service; 2. there was a **lack of consistent access to correct pricing information**—for example, of the 46 locations of 25 companies surveyed in the study, six refused to provide exchange rate information and two did not know how to access the information; and 3. there were **no standardized pricing disclosure practices**, creating another barrier to knowing the full cost and comparison shopping.[1]

- In 2007, we conducted a series of focus groups with remittance senders across multiple locations to identify their priorities and transparency preferences. **The most important factors for remittance senders were knowing that the money would be available quickly, having a secure and reliable service, the sending fee, and the exchange rate.** We developed a sample disclosure that we then piloted with remittance providers, both banks and non-banks.

- Building on the results of our previous work, in 2008, we released the results of a market-based pilot testing a posted disclosure that included fees, exchange rate, date of arrival, and amount of funds to be received for a specific country in local currency. The goal of the pilot was to test the effectiveness of the disclosure to both the customer and the business. In order to assess customer feedback, we surveyed customers who used the remittance services during the pilot period. **Thirty-seven percent of the survey respondents checked the disclosure; 78% of those who checked it found it helpful; and 86% wanted to see the disclosure at every remittance provider location.** In further analysis, we found that bank customers were most likely to find the disclosure helpful, as well as younger customers (18-34) and those who remit money more frequently. **In addition, bank customers were most likely to prioritize low cost and competitive exchange rates**, as well as customers sending larger amounts of money.[2]

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[1] Appleseed, Creating a Fair Playing Field for Consumers: The Need for Transparency in the U.S.-Mexico Remittance Market. (December 2005)
[2] Appleseed, Remittance Transparency: Strengthening Business, Building Community. (2008)

Based on our robust body of consumer and market research, Appleseed supported the remittance transparency standards in Dodd-Frank that form the legal basis of the current rule. These standards are particularly beneficial because they apply across the market, holding all providers to the same transparency and complaint resolution requirements.

Current evidence points to the rule being successful and effective:

- Our 2015 survey of remittance senders found that people were searching out low cost options in the market, pricing was steady or declining, and receiving the statement of rights on how to correct errors stood out as a top predictor of customer confidence in a remittance service provider.[3]

- The 2019 CFPB rule assessment came to a similar conclusion, finding that the public had benefited from the rule; in addition, implementation of the rule coincided with expanded adoption of new technologies, total increases in remittance, and a slight increase in bank and credit union participation in the consumer remittance market.[4]

- The December 2019 global remittance report by the World Bank shows continued price declines in the U.S. remittance market, averaging 5.43% of the amount sent. The U.S. is the second lowest cost market in the G8 and the third lowest in the G20. All service providers show decreasing pricing trends, though banks remain the highest cost providers and mobile-based transfers are the lowest cost.[5]

Taken in sum, the U.S. remittance market is competitive, low-cost and consumers who use remittances appreciate the transparency and complaint resolution rights in the current rule.

It is also important to note that the technology underlying remittances, including both open and closed-loop systems, is changing quickly and solving many of the challenges financial institutions have had historically with regard to disclosing certain transaction costs. Applicable exchange rates are readily available for open and closed-loop transactions. Progress towards real-time transactions, SWIFT gti, and other fast-moving changes, mean that disclosures for open-loop transactions that may have previously been impossible to provide are fast becoming more available.

This dynamic is reflected in CFPB's own analysis, indicating that just .5% of remittance transactions are currently using the financial institution exemption.[6]

The Proposed Rule

[3] Appleseed, Sending Money: The Path Forward, at 3 (May 2016).
[4] Consumer Financial Protection Bureau, Remittance Rule Assessment, at 4 (corrected version, April 2019).
[5] The World Bank, Remittance Prices World Wide, Issue 32 (Dec. 2019).
[6] CFPB, Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, (June 2019) at 11.

You have asked for comment on two proposed amendments to the rule:

(1) Specific changes to The Remittance Rule to make permanent the exception for banking organizations from providing certain disclosures to customers, provided certain conditions are met (the "banking exception") and

(2) Raising the transaction threshold from more than 100 remittances per year to 500 remittances per year in determining whether a business is providing remittances "in the normal course of business" and thus subject to The Remittance Rule for purposes of The Remittance Rule (the "transaction threshold").

The proposed rule changes appear to jump the gun, making sweeping changes without key data on the need for the changes or the impacts they will have on consumers. In the RFI, the CPFB noted that it "does not have specific information as to why certain insured institutions are able to provide remittance transfers without relying on the temporary exception while others are not. The Bureau likewise does not have specific information as to why, among those using the temporary exception, the rate of usage varies widely."[7] These basic questions should be answered through meticulous CPFB research prior to any expansive rulemaking, particularly one that weakens existing transparency and other consumer protections. In addition to the lack of appropriate analysis and data supporting the proposed changes, the rule provisions that establish a permanent financial institution exemption violate existing law.[8]

For the reasons noted in the background section, as well as those noted in this section, Appleseed wishes to express its opposition to the proposed amendments, citing three primary concerns:

- Market data, including data related to financial institution remittance transactions, do not support the need for the rule changes;

- There is insufficient legal justification for the broad changes proposed in the NPRM, and

- The CFPB has not sufficiently studied the impact of the proposed amendments on consumers to assess the need for the amendment and any possible negative impacts.

Transparency works when there is consistency. It works when all market players follow the same rules. Creating exceptions, and particularly exceptions that are not grounded in thorough market research, goes against both the letter and the spirit of the law and gives undue advantage to less transparent market players.

[7] Id. at 12.
[8] 15 U.S.C. 1693o-1(a)(4)(B) establishes that the financial institution exemption from the required disclosures expires a maximum of 10 years after July 21, 2010.

In the end, The Remittance Rule is about giving information to families, so that they can make the best decisions for their circumstances, and creating accountability, so that businesses deliver what they promised. For many families, saving $10-$20 on fees for a remittance transaction is truly meaningful. For other families, guaranteed quick delivery or the security of a wire transfer may be worth extra charges. The Remittance Rule gives families the information they need to make the best choice for their circumstances and priorities.

Data show that across all types of service providers, pricing is coming down—the decrease in pricing has paralleled increased transparency coupled with improved technology and competition. The consumer protections in The Remittance Rule are working. Why disrupt them?

By allowing the exemption for financial institutions to expire, Congress was clear in its intent to apply the transparency and other provisions across all market products. Ten years have passed since July 21, 2010, with ample time for any necessary changes for compliance. The general authority of the CFPB to prescribe regulations regarding "the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems" or containing "any 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 Electronic Funds Transfer Act, does not clearly allow the CFPB to resurrect an exemption Congress specifically terminated as of a certain date.

The Expiration of the Temporary Exception

The statutory basis for the Remittance Rule is section 1073 of Dodd-Frank (Pub. L. 111-203, July 21, 2010, codified at 15 U.S.C. 1693o-1). The statute requires that specific disclosures be provided to consumers in a standardized format to enable consumers to effectively compare costs of various remittance transaction providers. One of those disclosures is the amount of money that will be received by the recipient and costs associated with the transfer at the recipient end. When funds are sent in a closed-loop system, the remittance transfer provider controls the entire chain of the transfer and can readily disclose the amount the recipient will receive and any costs that will be paid at the recipient end. When funds are sent in an open-loop system, such as those used by banks, the banks have not always been able to offer such certainty in the amount that the recipient will receive.

The statute gave banks (defined in the statutes and regulations as "insured institutions") a five-year exception from providing those disclosures and gave the CFPB the power to grant one additional five-year extension, which was granted in 2014.[9] The statutory exception now will expire July 21, 2020 and cannot be renewed unless Congress acts.

[9] 12 CFR § 1005.32(a)(2).

In the RFI, the CFPB asked for information on how the expiration of the exception could be mitigated, despite the statutory deadline. The CFPB noted that, from the information that it possessed at the time, the expiration of the temporary exception would not appear to have a material adverse effect on the availability of remittances, as most remittances are conducted by nonbank money services businesses, i.e., money transmitters.

The NPRM proposes a permanent exception for banks to allow them to continue to estimate both the exchange rate and the funds to be paid to the recipient provided the following conditions were met:

(A) The remittance transfer provider qualifies as an insured institution for purposes of the exception (i.e., a banking organization that carries federal deposit insurance);

(B) At the time the insured institution must provide the required disclosures on fees, the insured institution cannot determine the exact covered third party fees required to be disclosed;

(C) The insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution; and

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, that for purposes of this exception, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.[10]

As noted in the RFI itself, the market is changing for banks and fewer banks need the exception. Data is not offered to support a permanent exception nor is there appropriate legal grounding for such a change. According to data in the RFI, just .5% of all remittance transfers are sent using the exception and the rate of bank usage of the exception has declined. Of the just 80 banks still using the exception, they use it for only between .4% and 27% of all transfers.

In addition to data presented in the RFI, available remittance data from the World Bank offer strong evidence that the U.S. remittance market is low-cost and competitive. The United States is the second cheapest G8 market from which to send remittances, and U.S. average fees are two percentage points below the global average cost. Less than 6% of the money sent is charged as a fee for the remittance in the United States, compared to a global average of approximately 8%.[11] In addition, the United States saw one of the largest decreases in the average cost of remittances among G8 nations, from the fourth quarter of 2018 to the first quarter of 2019, a decrease in cost from 5.98% of the dollar amount sent to 5.74%.[12] From the

[10] There also is a proposed permanent exception for estimating the exchange rate to be charged under similar conditions, except instead of the requirement that the insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution, with respect to the exchange rate disclosure, it would be that the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency.

[11] The World Bank, Remittance Prices Worldwide, at 6 (March 29, 2019).

[12] Id.

first quarter of 2019 to the fourth quarter, costs decreased even further, to 5.43%.[13] For comparison, in the first quarter of 2010, the average cost to send a remittance from the U.S. was 7.57% of the dollar amount sent.[14]

These cost trends amount to over $1 billion in savings for remittance senders compared to 2010 prices. The decrease in pricing, coupled with technology innovations, such as the SWIFT gpi, reflect a healthy market under the rule and a high likelihood that eliminating the exception will not lead to less service, but rather improved and lower cost services.

A number of commenters to the RFI spoke of the difficulties that smaller institutions face in complying with the disclosure, but such institutions did not thoroughly assess existing options to offer the service outside of a legacy open-loop transfer in their comments. In addition, many of those same institutions served customers at transaction levels below the 100-transaction threshold, such that the expiring exemption would have no impact on their business.

In conclusion, market data coupled with the clear language in the law offer no support for this radical proposal to establish a broad permanent exemption to the rule.

The "transaction threshold"

Section 1073 of Dodd-Frank defined a "remittance transfer provider" as "any person or financial institution that provides remittance transfers for a consumer in the normal course of its business." 15 USC 1693o-1(g)(3). Under the current Remittance Rule's definition of "normal course of its business," a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if it provided 100 or fewer remittance transfers in the previous calendar year or the current calendar year. 12 CFR 1005.30(f)(2).

Under the NPRM, the CFPB proposes to raise that threshold to 500 or fewer remittance transfers in the previous calendar and the same amount in the current calendar year. Transition provisions were built into the proposal as well. The commentary to the NPRM stated that there was consideration of a lower, 200-transfer threshold and requested comment on that as well.

In reviewing the comments to the RFI and the information provided in the RFI, data support a finding that most small banks and credit unions that send consumer remittances would still fall outside the current 100-remittance threshold. With no further analysis or study, including study of the impacts of such a change on consumers of the service, sufficient grounding does not exist to fully double the threshold nor take an even more excessive position of increasing it by 5 times the current threshold, as is presented in the NPRM.

The Remittance Rule, in its current form, provides the most basic standard of consumer protection in support of a competitive and fair market. It requires transparency and

[13] *Supra* note 5.
[14] World Bank, Remittance Prices Worldwide, at 4 (Nov. 2010).

accountability for error resolution. This NPRM established broad exceptions to these standards, going counter to the law and basic principles of fair market practices. The Remittance Rule is working, and the Bureau presents no data or other research-based justification for such a harmful rollback of a successful consumer protection.

Again, Appleseed appreciates the opportunity to comment on this NPRM and would be happy to discuss these issues further at your convenience, as well as continued research and views on these issues in the consumer remittances area.

Very truly yours,

Appleseed Foundation

Chicago Appleseed

Hawaii Appleseed Center for Law and Economic Justice

Kansas Appleseed

Louisiana Appleseed

Nebraska Appleseed

New Jersey Appleseed Public Interest Law Center

South Carolina Appleseed Legal Justice Center

Texas Appleseed