

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1090

[Docket No. CFPB-2014-0003]

RIN: 3170-AA25

Defining Larger Participants of the International Money Transfer Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) amends the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for international money transfers. The Bureau is issuing this final rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank “larger participant[s]” of markets for other consumer financial products or services, as the Bureau defines by rule. The Bureau has issued rules defining larger participants of markets for consumer reporting, consumer debt collection, and student loan servicing. This final rule identifies a market for international money transfers and defines “larger participants” of this market that are subject to the Bureau’s supervisory authority.

DATES: Effective December 1, 2014.

FOR FURTHER INFORMATION CONTACT: Edna Boateng, Senior Consumer Financial Protection Analyst, Office of Supervision Policy, (202) 435-7697, Amanda Quester, Senior Counsel, Office of Regulations, (202) 365-0702, or Brian Shearer, Attorney, Office of Supervision Policy, (202) 435-7794.

SUPPLEMENTARY INFORMATION: On January 31, 2014, the Bureau published a notice of proposed rulemaking proposing to define larger participants of a market for international money transfers.¹ The Bureau is issuing this final rule to define larger participants of the identified market (Final Rule).

I. Overview

Section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), codified at 12 U.S.C. 5514,² gives the Bureau supervisory authority over all nonbank covered persons³ offering or providing three enumerated types of consumer financial products or services: (1) origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.⁴ The Bureau also has supervisory authority over “larger

¹ 79 FR 5302 (Jan. 31, 2014).

² Public Law 111-203, section 1024, 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C. 5514).

³ The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). “Covered persons” include “(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.” 12 U.S.C. 5481(6).

⁴ 12 U.S.C. 5514(a)(1)(A), (D), (E). The Bureau also has the authority to supervise any nonbank covered person that it “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.” 12 U.S.C. 5514(a)(1)(C); *see also* 12 CFR part 1091 (prescribing procedures for making determinations under 12 U.S.C. 5514(a)(1)(C)). In addition, the Bureau has supervisory authority over very large depository institutions and credit unions and their affiliates. 12 U.S.C. 5515(a). Furthermore, the Bureau has certain authorities relating to the supervision of other depository institutions and credit unions. 12 U.S.C. 5516(c)(1), (e). One of the Bureau’s mandates under the Dodd-Frank Act is to ensure

participant[s] of a market for other consumer financial products or services,” as the Bureau defines by rule.⁵

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 for purposes of: (1) assessing compliance with Federal consumer financial law; (2) obtaining information about such persons’ activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets.⁶ The Bureau conducts examinations, of various scopes, of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.⁷

The Bureau prioritizes supervisory activity among nonbank covered persons on the basis of risk, taking into account, among other factors, the size of each entity, the volume of its transactions involving consumer financial products or services, the size and risk presented by the market in which it is a participant, the extent of relevant State oversight, and any field and market information that the Bureau has on the entity. Such field and market information might include, for example, information from consumer complaints and any other information the Bureau has about risks to consumers.

The specifics of how an examination takes place vary by market and entity. However, the examination process generally proceeds as follows. Bureau examiners contact the entity for

that “Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.” 12 U.S.C. 5511(b)(4).

⁵ 12 U.S.C. 5514(a)(1)(B), (a)(2); *see also* 12 U.S.C. 5481(5) (defining “consumer financial product or service”). The Final Rule describes one market for consumer financial products or services, which the rule labels “international money transfers.” The definition does not encompass all activities that could be considered international money transfers. Any reference herein to “the international money transfer market” means only the particular market for international money transfers identified by the Final Rule.

⁶ 12 U.S.C. 5514(b)(1).

⁷ *See* 12 U.S.C. 5514(b) (authorizing the Bureau both to conduct examinations and to require reports from entities subject to supervision).

an initial conference with management and often request records and other information. Bureau examiners will ordinarily also review the components of the supervised entity's compliance management system. Based on these discussions and a preliminary review of the information received, examiners determine the scope of an on-site examination and then coordinate with the entity to initiate the on-site portion of the examination. While on-site, examiners spend a period of time holding discussions with management about the entity's policies, processes, and procedures; reviewing documents and records; testing transactions and accounts for compliance; and evaluating the entity's compliance management system. Examinations may involve issuing confidential examination reports, supervisory letters, and compliance ratings. In addition to the process described above, the Bureau may also conduct off-site examinations.

The Bureau has published a general examination manual describing the Bureau's supervisory approach and procedures.⁸ As explained in the manual, the Bureau will structure examinations to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. On October 22, 2013, the Bureau released procedures specific to remittance transfers for use in the Bureau's examinations of entities within its supervisory authority.⁹ The Bureau plans to use those examination procedures (or an updated version, as appropriate) in supervising international money transfers. The

⁸ CFPB Supervision and Examination Manual (Oct. 1, 2012), available at <http://www.consumerfinance.gov/guidance/supervision/manual/>.

⁹ CFPB Supervision and Examination Manual, Remittance Transfer Examination Procedures (Oct. 22, 2013), available at <http://www.consumerfinance.gov/guidance/supervision/manual/>. In a joint comment, several large money transmitters encouraged the Bureau to provide additional guidance regarding supervisory expectations, similar to the CFPB Dodd-Frank Mortgage Rules Readiness Guide. A compliance guide for the Remittance Rule, along with a webinar and other helpful materials, may be found at <http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>. The Bureau also periodically publishes *Supervisory Highlights* to share general information about the Bureau's examination findings without identifying specific companies (except for companies subject to enforcement actions already made public).

procedures include instructions on examining for compliance with, among other laws and regulations, new requirements in subpart B of Regulation E relating to remittance transfers (Remittance Rule), which went into effect on October 28, 2013.¹⁰

The States have been active in regulation of money transmission, with forty-seven States and the District of Columbia requiring entities to obtain a license to engage in money transmission, as defined by applicable law. Many States actively examine money transmitters, and State money transmitter regulator associations have indicated that the State regulators look forward to collaborating with the Bureau in supervising international money transfer providers.¹¹ In response to the proposal, industry commenters also emphasized the need to coordinate with the States in this market. The Bureau agrees that this collaboration is important and will coordinate with appropriate State regulatory authorities in examining larger participants of the international money transfer market.

This Final Rule establishes a category of nonbank covered persons that is subject to the Bureau's supervisory authority under 12 U.S.C. 5514 by defining "larger participants" of a

¹⁰ 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30662 (May 22, 2013); 78 FR 49365 (Aug. 14, 2013) (codified at 12 CFR part 1005, subpart B). On August 22, 2014, the Bureau released further amendments to the Remittance Rule, which are available at http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf. For additional information about the Remittance Rule, see <http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>.

¹¹ In commenting on this proposal, the State regulator associations also recommended that the Bureau consider a risk-scoped approach to examining larger participants. Although the Bureau's examination approach is not the subject of this rulemaking, the Bureau prioritizes supervisory activity among nonbank covered persons on the basis of risk; conducts risk-focused examinations to direct resources toward areas with higher degrees of risk to consumers; and focuses on an institution's ability to detect, prevent, and correct practices that present a significant risk of violating the law and causing consumer harm. *See generally* CFPB Supervision and Examination Manual 9, 10, 15, 19-22 (Oct. 1, 2012), available at <http://www.consumerfinance.gov/guidance/supervision/manual/>.

market for international money transfers.¹² The Final Rule pertains only to that purpose and does not impose new substantive consumer protection requirements.¹³ Nonbank covered persons generally are subject to the Bureau’s regulatory and enforcement authority and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau’s supervisory authority.

II. Background

On January 31, 2014, the Bureau published a notice of proposed rulemaking proposing to define larger participants of a market for international money transfers (Proposed Rule).¹⁴ The Bureau requested public comment on the Proposed Rule. The Bureau received 16 comments from consumer advocates, industry participants, trade associations, State regulator associations, and individual consumers. The comments are discussed in more detail below.

The Proposed Rule included a test to assess whether a nonbank covered person is a larger participant of the international money transfer market. Under the proposed test, a nonbank covered person with at least one million aggregate annual international money transfers, as described in the Proposed Rule, would be a larger participant of the international money transfer market.

III. Summary of the Final Rule

¹² The Bureau’s supervisory authority also extends to service providers of those covered persons that are subject to supervision under 12 U.S.C. 5514(a)(1). 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26) (defining “service provider”).

¹³ The Bureau received a comment requesting the Bureau to preempt State regulation of money transmission. As noted, the purpose of this rulemaking is to define larger participants of a market for consumer financial products or services that will be subject to the Bureau’s supervisory authority. Preemption of State regulation of money transmission is not required for that purpose, is not intended by the Bureau, and is beyond the scope of this rulemaking.

¹⁴ 79 FR 5302 (Jan. 31, 2014).

The Bureau’s existing larger-participant rule, 12 CFR part 1090, prescribes various procedures, definitions, standards, and protocols that apply with respect to all markets in which the Bureau has defined larger participants.¹⁵ Those generally applicable provisions, which are codified in subpart A, also are applicable for the international money transfer market described by this Final Rule. The definitions in § 1090.101 should be used, unless otherwise specified, when interpreting terms in this Final Rule.

The Bureau includes relevant market descriptions and larger-participant tests, as it develops them, in subpart B.¹⁶ Accordingly, the Final Rule defining larger participants of the international money transfer market amends Part 1090 by adding § 1090.107 in subpart B.

The Bureau is finalizing the Proposed Rule largely as proposed. The Final Rule defines an international money transfer market that covers certain electronic transfers of funds sent by nonbanks that are international money transfer providers. To be included in this market, transfers must be requested by a sender in a State to be sent to a designated recipient in a foreign country. The Final Rule’s definitions are modeled in part on the definitions of “remittance transfer” and related terms in the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, but are not co-extensive with those definitions.¹⁷ For example, transfers of \$15 or less can be “international money transfers” but not “remittance transfers.”¹⁸

¹⁵ 12 CFR 1090.100-.103.

¹⁶ 12 CFR 1090.104 (consumer reporting); 12 CFR 1090.105 (consumer debt collection); 12 CFR 1090.106 (student loan servicing).

¹⁷ 15 U.S.C. 1693o-1(g); 12 CFR 1005.2, 1005.30.

¹⁸ 12 CFR 1005.30(e)(2)(i).

The definitions in existing § 1090.101 apply for terms that the Final Rule does not define, such as “person” and “consumer.”¹⁹

The Final Rule also sets forth a test to determine whether a nonbank covered person is a larger participant of the international money transfer market. An entity is a larger participant if it has at least one million aggregate annual international money transfers.²⁰ As prescribed by existing § 1090.102, any nonbank covered person that qualifies as a larger participant will remain a larger participant until two years after the first day of the tax year in which the person last met the applicable test.²¹

Pursuant to existing § 1090.103, a person can dispute whether it qualifies as a larger participant in the international money transfer market. The Bureau will notify an entity when the Bureau intends to undertake supervisory activity; the entity will then have an opportunity to submit documentary evidence and written arguments in support of its claim that it is not a larger participant. Section 1090.103(d) provides that the Bureau may require submission of certain records, documents, and other information for purposes of assessing whether a person is a larger participant of a covered market; this authority will be available to the Bureau to facilitate its

¹⁹ As a result, some terms may have different definitions for purposes of the Proposed Rule than they do for purposes of Regulation E. The definition of “consumer” in § 1090.101 is “an individual or an agent, trustee, or representative acting on behalf of an individual,” 12 CFR 1090.101, while the definition of “consumer” in Regulation E is “a natural person,” 12 CFR 1005.2(e). The definition of “person” in § 1090.101 is “an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity,” 12 CFR 1090.101, while the definition of “person” in Regulation E is “a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association,” 12 CFR 1005.2(j).

²⁰ As the Bureau has explained in prior rulemakings, the criterion selected for one market in a larger-participant rulemaking is not necessarily appropriate for any other market that may be the subject of a future rulemaking. Instead, the Bureau tailors each test to the market to which it will be applied. 77 FR 42874, 42876 (consumer reporting) (July 20, 2012); 77 FR 65775, 65778 (consumer debt collection) (Oct. 31, 2012); 78 FR 73383, 73384 n.16 (student loan servicing) (Dec. 6, 2013).

²¹ 12 CFR 1090.102.

identification of larger participants of the international money transfer market, just as in other markets.

IV. Legal Authority and Procedural Matters

A. Rulemaking Authority

The Bureau is issuing this Final Rule pursuant to its authority under: (1) 12 U.S.C. 5514(a)(1)(B) and (a)(2), which authorize the Bureau to supervise larger participants of markets for consumer financial products or services, as defined by rule; (2) 12 U.S.C. 5514(b)(7), which, among other things, authorizes the Bureau to prescribe rules to facilitate the supervision of covered persons under 12 U.S.C. 5514; and (3) 12 U.S.C. 5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law.

B. Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.²² The Bureau proposed that the Final Rule would be effective no earlier than 60 days after publication and received no comments relating to the effective date. The Bureau adopts December 1, 2014 as the effective date for the Final Rule, which is more than 60 days after publication.

V. Section-By-Section Analysis

Section 1090.107—International Money Transfer Market

²² 5 U.S.C. 553(d).

Proposed § 1090.107 defined a market for international money transfers.²³ The Bureau received some comments that supported the proposed market scope and other comments that suggested that the Bureau should expand the scope of the market definition to include domestic money transfers. For the reasons that follow, the Bureau has opted to include only international money transfers in the market definition for this Final Rule.

As a general matter, international money transfers are electronic transfers of funds sent by nonbanks from consumers in the United States to persons or entities abroad.²⁴ Consumers who send money abroad often do so through money transmitter companies that are nonbanks.²⁵ Many money transmitters operate through closed networks, receiving and disbursing funds through their own outlets or through agents such as grocery stores, neighborhood convenience stores, or depository institutions. Some money transmitters may send transfers of any size, while others cap the size of transfers they send.

For an international transfer conducted through a money transmitter, a consumer typically provides basic identifying information about himself and the recipient and often pays cash sufficient to cover the transfer amount and any fees charged by the money transmitter. The consumer may be provided a confirmation code, which the consumer relays to the recipient. The

²³ As noted above, the term “international money transfer” is very similar to the term “remittance transfer” as defined in the Remittance Rule, 12 CFR 1005.30(e), but differs in some substantive respects as specified below. Other definitions in this Final Rule are similarly based on Regulation E. Usage, or omission, of specific language from EFTA or Regulation E in the Final Rule is not an endorsement by the Bureau of any specific interpretation of EFTA or Regulation E.

²⁴ Although this Final Rule applies only to nonbank covered persons, similar services are also provided by depository institutions and credit unions, including those already subject to the Bureau’s supervisory authority.

²⁵ CFPB, Report on Remittance Transfers 6 (July 20, 2011), available at http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110720_RemittanceTransfers.pdf. Federal law requires money transmitters that meet certain criteria to register as a “money services business” with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN). 31 U.S.C. 5330; 31 CFR 1010.100(ff), 1022.380. Most States also have licensing requirements for similar types of entities.

money transmitter sends an instruction to a specified payout location or locations in the recipient's country where the recipient may pick up the transferred funds, often in cash and local currency, upon presentation of the confirmation code and/or other identification on or after a specified date. These transfers generally are referred to as cash-to-cash transfers.

Many money transmitters provide other types of transfers. For example, money transmitters may permit transfers to be initiated using credit cards, debit cards, or bank account debits and may use websites, agent locations, stand-alone kiosks, or telephone lines to do so. Abroad, money transmitters and their partners may allow funds to be deposited into recipients' bank accounts, distributed directly onto prepaid cards, or credited to mobile phone accounts. Funds also can be transferred among consumers' nonbank accounts identified by individuals' email addresses or mobile phone numbers. According to one survey of companies that send funds from the United States to Latin America and the Caribbean, 75 percent permit consumers to send transfers of funds that can be deposited directly into recipients' bank accounts, including transfers initiated through the internet.²⁶

International transfers play a critical role in the lives of many consumers in the United States. U.S. consumers send funds abroad for a number of reasons, including to assist family or friends with their expenses, to pay for purchases of goods, to pay the tuition of children studying abroad, or to purchase real estate. Data from the 2011 Current Population Survey (2011 CPS) show that more than 4 million households nationwide had used nonbanks to transfer funds to

²⁶ Manuel Orozco et al., Inter-American Dialogue, *The Market for Money Transfers: Ranking of Remittance Service Providers in Latin America and the Caribbean* 4 (Oct. 23, 2012), available at http://www.thedialogue.org/uploads/Remittances_and_Development/LatAm_Final_120712.pdf. Like cash-to-cash transfers, some of the transfers to bank accounts rely on closed networks, though others rely on open networks (between an entity and non-agents or non-affiliates) or reflect some characteristics of both open and closed network transactions.

friends and family abroad in the preceding year, and more than 7 million households had used nonbanks to make such transfers at some time in the past.²⁷

Transferring money to international recipients can present unique challenges for consumers and providers, many of which are addressed in the Bureau’s Remittance Rule. Pricing for transfers is complex and may depend not only on fees and taxes, but also on exchange rates. Because wholesale currency markets fluctuate constantly, the exchange rates applied to individual international transfers may change from day to day, or even over the course of the day, depending on how frequently providers update their retail rates. Providers may also vary their exchange rates and fees charged based on a range of other factors, such as the sending and receiving locations, and the size and speed of the transfer. Taxes may vary depending on the type of provider, the laws of the recipient country, and various other factors. As a result, determining how much money will actually be received and which provider offers the lowest price can be challenging for consumers, particularly when not provided with proper disclosures.²⁸ In some cases, language barriers may further complicate consumers’ ability to obtain and understand transaction information from providers and their agents.²⁹

The Bureau believes that compliance with recent legislative and regulatory changes will significantly improve the predictability of remittances and provide consumers with better price information and recourse if they experience a problem with a transfer. Congress amended EFTA

²⁷ Fed. Deposit Ins. Corp., *National Survey of Unbanked and Underbanked Households* 32 (Sept. 2012), available at http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf (2011 CPS Report) (stating that 3.7 percent of households used “nonbank remittances” as defined in the survey in the preceding year); *id.* at 142-43 (providing estimate of 120 million U.S. households in 2011 for purposes of the survey); *id.* at 79 (estimating the number of households that have used “nonbank remittances” as defined in the survey at any time in the past).

²⁸ See CFPB, Report on Remittance Transfers 17-21 (July 20, 2011); see also 77 FR 6194, 6199 (Feb. 7, 2012).

²⁹ See 77 FR 6194, 6199 (Feb. 7, 2012).

in the Dodd-Frank Act.³⁰ The Bureau then implemented the amendments to EFTA by promulgating the Remittance Rule, which went into effect on October 28, 2013.³¹ Amendments to EFTA and the Remittance Rule created a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. First, the Remittance Rule generally requires that information be disclosed prior to and at the time of payment by the sender for the remittance transfer.³² Second, under the Remittance Rule, consumers generally have thirty minutes after making payment to cancel a transfer.³³ Third, the Remittance Rule increases consumer protections when transfers go awry by requiring providers to investigate disputes and remedy certain types of errors.³⁴ The Remittance Rule applies to any institutions that send remittance transfers in the normal course of their business, including banks, credit unions, money transmitters, broker-dealers, and others. The Bureau and prudential regulators can examine depository institutions and credit unions within their supervisory authority for compliance with Regulation E, including the new Remittance Rule.

³⁰ Public Law 111-203, section 1073, 124 Stat. 1376, 2060 (2010).

³¹ 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30662 (May 22, 2013); 78 FR 49365 (Aug. 14, 2013) (codified at 12 CFR part 1005, subpart B). On August 22, 2014, the Bureau released further amendments to the Remittance Rule, which are available at http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf.

³² Public Law 111-203, section 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o-1(a)); 12 CFR 1005.31-.32.

³³ Public Law 111-203, section 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o-1(d)(3)); 12 CFR 1005.34.

³⁴ Public Law 111-203, section 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o-1(d)); 12 CFR 1005.33.

One objective of the Bureau’s proposal was to bring nonbanks that are larger participants of the international money transfer market³⁵ within the Bureau’s supervisory jurisdiction in order to promote the Bureau’s goal of enforcing Federal consumer financial law consistently without regard to whether a person is a depository institution.³⁶ Supervision of larger participants of the international money transfer market will help to ensure that nonbank entities that provide a significant portion of the transactions to which the Remittance Rule applies are complying with these new and important consumer protections, as well as with other applicable requirements of Federal consumer financial law, including the prohibition on unfair, deceptive, or abusive acts or practices.

The Bureau lacks precise data on the international money transfer market and did not receive any comments that provided detailed information about the market. However, available data sources, including public information and confidential State supervisory data provided by three States, enabled the Bureau to conduct three analyses during the proposal stage to gain a general understanding of the basic contours of this nonbank market.³⁷ These analyses produced rough estimates of (1) the overall number of nonbanks that provide international money transfers; (2) the dollar volume and number of international money transfers market-wide; and

³⁵ International money transfers are consumer financial products or services pursuant to the Dodd-Frank Act. *See* 12 U.S.C. 5481(15)(A)(iv) (defining “financial product or service” to include “engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer”); 12 U.S.C. 5481(5)(A) (defining “consumer financial product or service” to include financial products or services that are offered or provided for use by consumers primarily for personal, family, or household purposes); *see also* 12 U.S.C. 5481(15)(A)(v) (defining “financial product or service” to include generally “selling, providing, or issuing stored value or payment instruments,” with specific exclusions); 12 U.S.C. 5481(15)(A)(vii) (defining “financial product or service” to include generally “providing payments or other financial data processing products or services to a consumer by any technological means,” with specific exclusions).

³⁶ 12 U.S.C. 5511(b)(4).

³⁷ For a description of the data sources used by the Bureau in deriving its estimates, see 79 FR 5302, 5305 n.34 (Jan. 31, 2014). The proposal identified several sources of uncertainty, which are discussed at 79 FR 5305-08.

(3) the dollar volume and number of international money transfers provided by nonbanks that provide at least 500,000, one million, or three million transactions per year.³⁸ The Bureau did not receive any comments questioning or criticizing these analyses, which were described in the Bureau’s proposal.

For its first analysis, the Bureau reviewed State licensing information and estimated that approximately 340 nonbanks provide international money transfers.³⁹ The Bureau’s second analysis, an extrapolation of confidential supervisory data from California to generate nationwide estimates, indicates that the nonbank market of international money transfers, as defined here, accounted for roughly \$50 billion transferred and 150 million individual transfers in 2012.⁴⁰

The Bureau’s third analysis developed entity-specific estimates of the number of international money transfers sent in 2012. Estimates were mostly derived using confidential supervisory data obtained from California, New York, and Ohio pursuant to memoranda of understanding. Using this analysis, the Bureau generated the following highly approximated estimates for the year 2012: (1) The highest tier of the market consists of about 10 nonbanks that each sent over 3 million international money transfers and together accounted for about three-fourths of all international money transfers; (2) The second tier of the market consists of about 15 nonbanks that each sent between 1 and 3 million international money transfers, accounting

³⁸ Prior to issuing its proposal, the Bureau conducted entity-level analyses and produced highly approximated entity-by-entity estimates to inform its general understanding of the market and of the likely market coverage associated with potential activity thresholds. These entity-level approximations of dollar volume and number of transfers are not dispositive of whether the Bureau would ever seek to initiate supervisory activity or whether, in the event of a person’s assertion that it is not a larger participant, the person would be found to be a larger participant.

³⁹ The Bureau’s review of State licensing information is described at 79 FR 5302, 5306 n.36 (Jan. 31, 2014). As with its other market estimates for this rulemaking, the Bureau emphasizes that the estimate of 340 international money transfer providers could be either high or low due to limitations in the data utilized.

⁴⁰ For a description of how the Bureau used the California data to generate nationwide estimates and the assumptions made by the Bureau in doing the extrapolation, see 79 FR 5302, 5306-07 n.37 (Jan. 31, 2014).

collectively for about one-sixth of all international money transfers; (3) Very few nonbanks sent between 500,000 and 1 million international money transfers, accounting collectively for about 1.5 percent of all international money transfers; and (4) The limited remaining market share is divided among a few hundred nonbanks that each sent less than 500,000 transfers in 2012.⁴¹ These estimates do not include providers that are not licensed in California, New York, or Ohio, but as explained in the proposal, the Bureau’s market research and review of licensing data suggest that most entities that provide over 500,000 international money transfers per year are licensed in at least one of those three States.⁴²

The Bureau’s proposal defined a nonbank market consisting solely of international money transfers. While a number of commenters expressed support for the Bureau’s proposed definitions and approach to defining the market, several requested that the Bureau expand this larger-participant rule to include domestic transfers.⁴³ Those advocating for inclusion of domestic transfers offered differing reasons, including that (1) domestic and international money transfers are similar and are often treated similarly by State regulators, (2) including domestic transfers in this Final Rule could encourage providers to voluntarily apply the Remittance Rule requirements to domestic transfers even though such application is not required by the Remittance Rule, (3) it would be difficult to determine whether mobile payments are domestic or

⁴¹ For a description of how the Bureau conducted this analysis and potential sources of inaccuracy, see 79 FR 5302, 5307 n.38 (Jan. 31, 2014).

⁴² 79 FR 5302, 5307 n.39 (Jan. 31, 2014).

⁴³ In a joint comment, a group of industry participants also asked the Bureau to clarify that the market definition in this Final Rule has no antitrust implications. The Bureau neither defines markets for purposes of antitrust law, nor intends the market definition in this Final Rule to be used for any purpose other than determining larger-participant status.

international money transfers, and (4) the benefits of supervision should be made available to consumers of domestic transfers as well.⁴⁴

While transfers of money to domestic and international locations have some similar characteristics, several consumer advocacy group commenters recognized that international money transfers present challenges to providers and consumers that distinguish international money transfers from other transactions, such as domestic money transfers. As the Bureau noted in its proposal, these challenges can include, for example, foreign exchange rates, foreign taxes, and legal, administrative, and language complexities related to the fact that the funds are transferred to a foreign country. Many international money transfers are also subject to new protections under the Remittance Rule.⁴⁵ In light of these differences, the Bureau continues to believe it is appropriate to treat the international money transfer market as a separate market for purposes of this larger-participant rule.

The Bureau also does not deem it appropriate to adjust the scope of the larger-participant rule based on the assertion that doing so might encourage entities to apply Remittance Rule standards to transactions that are not subject to the Remittance Rule. The larger-participant rule does not impose any new business conduct obligations. Specifically, it does not change or expand the application of the Remittance Rule. Accordingly, the Bureau has no reason to

⁴⁴ Industry participants cited to the volume of complaints relating to domestic transfers in the Bureau’s consumer complaint database, to support their assertion that the benefits of supervision should be spread to consumers of domestic transfers. In addition to complaints about international money transfers, the Bureau has received consumer complaints about domestic transfers and a variety of other consumer financial products and services. The existence of complaints about other products and services does not, however, change the Bureau’s view that it is appropriate to treat international money transfers as a distinct market for purposes of this larger-participant rule.

⁴⁵ In light of the close similarity between the Remittance Rule’s definition of “remittance transfer” and the international money transfer market, the Bureau expects that most transfers in the international money transfer market would be subject to the Remittance Rule. However, some transfers that are in the international money transfer market under the Final Rule are not “remittance transfers,” as discussed in the section-by-section discussion of § 1090.107(a)’s “international money transfer” definition below.

believe that expanding the scope of this rule beyond what the Bureau has proposed would cause entities to apply Remittance Rule standards to their domestic transfers.

Another commenter expressed concern that mobile payment providers may not be able to determine whether their mobile payments are international money transfers or domestic transfers. Whether a transfer, including a mobile payment, is an international money transfer depends, in part, on whether it is sent by a “sender” to a “designated recipient” as those terms are defined in § 1090.107(a). As explained in the section-by-section discussion below, the Bureau intends that “designated recipient” and “sender” in the Final Rule will be interpreted in a manner consistent with the way the same terms in the Remittance Rule are interpreted. The commentary to the Remittance Rule interpreting “designated recipient” and “sender” provides relevant guidance and examples to help covered entities distinguish which transfers originate from a consumer in a State and which are to be received at a location physically outside of any State. This commentary should assist money transfer providers in determining whether their mobile payments are international money transfers for purposes of this larger-participant rule.⁴⁶

In light of the distinguishing characteristics of international money transfers and the other reasons set forth above, the Bureau declines to include domestic transfers in the market for which this Final Rule defines larger participants.⁴⁷ As the Bureau has explained, this larger-participant rulemaking is only one in a series. Nothing in this Final Rule precludes the Bureau from

⁴⁶ See Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(c)(2)-1 to -3 and comment 30(g). Providers should already be applying this commentary to determine whether their mobile payments comply with the Remittance Rule.

⁴⁷ The Bureau’s decision to define a market consisting solely of international money transfers will not prevent it from examining other consumer financial products or services offered by entities that qualify as larger participants of that market. If a larger participant of the international money transfer market offers domestic money transfer services to consumers, the Bureau can examine those transfers as part of its mission to assess compliance with Federal consumer financial law and to detect risks to consumers or to markets for consumer financial products and services. 12 U.S.C. 5514(b); 77 FR 42874, 42880 (July 20, 2012).

considering in future larger-participant rulemakings other markets for consumer financial products or services that might include domestic money transfers or other money services.

Section 1090.107(a)—Market-Related Definitions

Unless otherwise specified, the definitions in § 1090.101 should be used when interpreting terms in the Final Rule. Proposed § 1090.107(a) defined additional terms relevant to the international money transfer market. These terms include “international money transfer,” which delineates the scope of the identified market; “designated recipient,” “international money transfer provider,” “sender,” and “State,” which help to clarify the meaning of “international money transfer”; and “aggregate annual international money transfers,” which is the criterion for assessing larger-participant status. The Bureau is adopting the definitions as proposed with the exception that it is streamlining the definition of “aggregate annual international money transfer” to facilitate application of the larger-participant test.

In the proposal, the Bureau noted that it had used the definition of “remittance transfer” and related definitions from Regulation E as a model in drafting the definitions applicable in this larger-participant rulemaking because remittance transfers make up a very substantial portion of the market activity in the international money transfer market that the Bureau sought to define. Additionally, the Remittance Rule definitions are familiar to industry and the Bureau. As explained in the proposal and below, the Bureau believes it is appropriate to deviate from the Remittance Rule definitions in specific ways to reflect the distinct needs of this larger-participant rulemaking.

Several industry commenters expressed support for the Bureau’s general approach in developing definitions, while State regulator associations and one industry commenter suggested that greater conformity to the Remittance Rule would be preferable. The deviations that the

Bureau proposed to make from the Remittance Rule definitions stem in part from the fact that the Remittance Rule imposes substantive consumer protection requirements, while the larger-participant rule differentiates larger participants from other participants in the international money transfer market in order to establish a supervisory program. To account for the different regulatory purposes and the specific needs of this rulemaking, the Bureau continues to believe that the proposed differences between the definitions in the Proposed Rule and the Regulation E definitions are necessary, as discussed below.⁴⁸

Aggregate annual international money transfers

The Bureau proposed aggregate annual international money transfers as the criterion that would be used in assessing whether an entity is a larger participant of the international money transfer market. The proposed definition of “aggregate annual international money transfers” was informed by the method of calculating “annual receipts” used by the Bureau in prior larger-participant rulemakings, which in turn is modeled in part on the method used by the U.S. Small Business Administration (SBA) in calculating “annual receipts” to determine whether an entity is a small business.⁴⁹ Proposed § 1090.107(a) defined the term “aggregate annual international money transfers” as the “annual international money transfers” of a nonbank covered person,

⁴⁸As noted above and in the Bureau’s proposal, some terms may have different definitions for purposes of the Final Rule than they do for purposes of Regulation E due to the larger-participant rule definitions in 12 CFR 1090.101. The definition of “consumer” in § 1090.101 is “an individual or an agent, trustee, or representative acting on behalf of an individual,” 12 CFR 1090.101, while the definition of “consumer” in Regulation E is “a natural person,” 12 CFR 1005.2(e). The definition of “person” in § 1090.101 is “an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity,” 12 CFR 1090.101, while the definition of “person” in Regulation E is “a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association,” 12 CFR 1005.2(j). One commenter asserted that using different definitions than are used in Regulation E could cause confusion. The Bureau believes that having multiple definitions for the same term within 12 CFR part 1090 would cause more confusion than having different definitions for the same term in Regulation E and 12 CFR part 1090.

⁴⁹ 12 CFR 1090.104(a) (Consumer Reporting Rule); 12 CFR 1090.105(a) (Debt Collection Rule); 13 CFR 121.104 (SBA).

aggregated with the “annual international money transfers” of its affiliated companies. Commenters generally expressed support for the substance of this definition, but some commenters expressed concern that the definition was confusing. For the reasons described below, the Bureau is streamlining the definition by counting transfers from the preceding year as opposed to using an average over up to three years, making corresponding technical changes, and otherwise adopting the definition as proposed.

Calculating annual international money transfers. The Bureau proposed that “annual international money transfers” of a nonbank covered person would be calculated in one of two ways depending on how long a person had been in business. The proposed definition annualized the number of transfers over the shorter of three years or the period an entity had been in business. One commenter stated that it seemed logical to use an average over several years but questioned whether the complexity of the proposed calculations was necessary. The commenter noted that the more complex the calculations, the greater the chance for error.

The Bureau agrees that a simpler approach is preferable for calculating annual international money transfers. The proposed approach would have smoothed out year-to-year fluctuations in an entity’s transaction volume but would have resulted in more involved calculations, especially for affiliated companies. Because affiliated companies may be in business for varying lengths of time, the annual international money transfers of affiliated companies in some instances would have been calculated over different time periods using different calculation methods.⁵⁰

⁵⁰ The Proposed Rule provided that the annual international money transfers of each affiliated company of a nonbank covered person would be calculated separately prior to the aggregation, treating the affiliated company as if

The Bureau has weighed the benefits of the proposed multi-year approach against the additional complexity it entails and concludes that it is preferable to calculate annual international money transfers in the Final Rule based on international money transfers sent in the preceding year. Because the criterion directly measures the number of transfers in the market, it should not be subject to temporary fluctuations that are unrelated to an entity’s market participation.⁵¹ The Bureau believes that the single-year approach will make the Final Rule’s definitions easier to apply, which should facilitate application of the detailed agent and affiliate-aggregation principles described below and alleviate the concern expressed by some commenters about the overall complexity of the definition of “aggregate annual international money transfers.” The Final Rule therefore provides that annual international money transfers of a nonbank covered person means the international money transfers provided by the nonbank covered person during the preceding calendar year.

Transfers involving agents. The proposed definition specified how to count transfers provided with the assistance of an agent. Under the proposal, the annual international money transfers of a nonbank covered person included international money transfers in which an agent acts on that person’s behalf. The annual international money transfers of a nonbank covered person did not include international money transfers in which another person provided the international money transfers and the nonbank covered person performed activities as an agent

it were an independent nonbank covered person for purposes of the calculation. The Bureau is finalizing this aspect of the rule as proposed, as discussed below.

⁵¹ Additionally, existing § 1090.102 provides that a person qualifying as a larger participant under this rule will remain a larger participant for at least two years after the beginning of the tax year in which it last met the larger-participant test. This provision will ensure that the Bureau has sufficient time to undertake and complete supervisory activities relating to a larger participant, even if the participant’s market activity declines unexpectedly.

on behalf of that other person.⁵² For purposes of this part of the definition, the Bureau proposed to define an “agent” to include an agent or authorized delegate, as defined under State or other applicable law, or an affiliated company of a person that provides international money transfers when such agent, authorized delegate, or affiliated company acts for that person.⁵³ Comments from industry and a consumer advocacy group generally supported this approach. For the reasons that follow, the Bureau is finalizing the approach to agents as proposed.

Including transactions conducted by an agent in calculating a provider’s annual international money transfers is consistent with the Remittance Rule, which places liability on the remittance transfer provider for violations by an agent when the agent is acting for the provider.⁵⁴ Not counting transactions conducted solely as an agent for a provider in assessing the agent’s annual international money transfers is also consistent with the Bureau’s determination that, for purposes of the Remittance Rule, agents acting on behalf of a remittance transfer provider are not, in doing so, themselves acting as remittance transfer providers.⁵⁵ Although entities that act solely as agents are not normally larger participants of the market under the Final Rule, the Bureau has the authority to supervise service providers to larger

⁵² In other words, an international money transfer provided by an international money transfer provider with the help of an agent acting on the provider’s behalf would count towards the annual international money transfers of the provider but not the agent. However, a nonbank covered person’s *aggregate* annual international money transfers may include transfers in which the nonbank covered person acted as an agent on behalf of an affiliated company that provided the transfer. This is because such transfers are included in the annual international money transfers of the affiliated company and a nonbank covered person’s aggregate annual international money transfers include the annual international money transfers of each of its affiliated companies due to the affiliate-aggregation requirement discussed below.

⁵³ The definition of “affiliated company” is found in 12 CFR 1090.101.

⁵⁴ 12 CFR 1005.35. This is also consistent with the data analyzed by the Bureau prior to issuing the proposal, which generally include transactions conducted by agents on behalf of a provider in the transaction total for the provider.

⁵⁵ See Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f)-1.

participants.⁵⁶ Accordingly, where an agent acts as a service provider to a larger participant, the Bureau has the authority to supervise the agent’s performance of services for the larger participant.⁵⁷ In light of these considerations, the Bureau believes it is appropriate to count transactions in which an agent acts on behalf of a provider towards the annual international money transfers of that provider, and not towards the annual international money transfers of the agent itself.

Several commenters expressed support for this approach to handling transactions provided with the assistance of agents. One commenter stated that it agreed with including transfers by an agent when determining whether a provider is covered and agreed that transfers that an agent conducts for other providers should not be included in determining coverage. This commenter nevertheless urged the Bureau to simplify the specification of which transfers by agents are included in the calculation, without providing a specific suggestion. The Bureau is concerned that any such simplification could alter how transactions involving agents are handled, which the Bureau believes the commenter did not intend. In light of the important role that agents play in the international money transfer market, the Bureau has not changed this aspect of the definition but believes that streamlining the definition in the manner described above will simplify application of the agent provision as well.

One commenter supported the Bureau’s approach to defining “agent,” noting that it is consistent with the approach taken in other applications, such as the Remittance Rule. Another

⁵⁶ 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26)(A) (defining service provider).

⁵⁷ The Bureau also has the authority to supervise any nonbank covered person that it “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.” 12 U.S.C. 5514(a)(1)(C).

commenter stated that, to the extent agency relationships are not already well-defined, the Bureau should offer a definition of “agent” that takes modern methods of money transmission into account. Rather than creating a self-contained definition of “agent,” the Bureau believes it is appropriate to define the term “agent” for purposes of this larger-participant rule by reference to the law of agency from the States and other applicable sources, which will continue to develop and evolve as the market changes. The Bureau is thus finalizing the proposed definition of “agent” and the approach to handling transfers provided with the assistance of an agent as proposed.

Affiliate aggregation. Under the Dodd-Frank Act, the activities of affiliated companies are to be aggregated for purposes of computing activity levels for rules under 12 U.S.C. 5514(a)(1).⁵⁸ The Proposed Rule laid out an approach for affiliate aggregation that was consistent with the dual methods proposed for calculating annual international money transfers described above. Several commenters expressed support for affiliate aggregation, though some requested clarification regarding the aggregation method in the Proposed Rule.

In light of the adjustments described above regarding the method of calculating annual international money transfers, the Bureau is making some corresponding modifications to the method for affiliate aggregation in the Final Rule. Consistent with the Proposed Rule, the Final Rule provides that the annual international money transfers of each affiliated company of a nonbank covered person are calculated separately in accordance with paragraphs (i) and (ii) of the definition, treating the affiliated company as if it were an independent nonbank covered person for purposes of the calculation. As explained above, paragraphs (i) and (ii) of the

⁵⁸ 12 U.S.C. 5514(a)(3)(B).

definition in the Final Rule provide that annual international money transfers are the international money transfers provided in the preceding year. To aggregate the annual international money transfers of affiliated companies, the Final Rule provides that the annual international money transfers of a nonbank covered person must be aggregated with the annual international money transfers of any person that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The Final Rule further provides that the annual international money transfers of the nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year. Because annual international money transfers will in all cases be calculated over the preceding year, the Bureau is finalizing the rule without the provisions in the Proposed Rule that explained how to aggregate affiliated companies' annual international money transfers if calculations were done over different time periods. These adjustments further clarify and streamline the "aggregate annual international money transfer" definition, while accomplishing the statutory requirement of affiliate aggregation.

In their joint comment, two State regulator associations requested clarification regarding the operation of the proposed "aggregate annual international money transfer" definition. They noted that many banks utilize nonbank providers for remittance transfers and suggested that issues could arise if international transfers are aggregated between affiliates and agents without regard to the source of the transfers. They also expressed concern that there may be an issue with double counting or artificially inflating the size of measured entities, if business customers, consumers, bank-to-bank account transactions, and authorization agents are all counted together.

The Bureau has crafted the Final Rule's definitions to ensure that the term "aggregate annual international money transfers" only includes certain transfers. Transactions for business

customers are not part of the criterion because the rule only counts transactions initiated by a consumer primarily for personal, family, or household purposes.⁵⁹ With respect to bank transactions, the rule as proposed and finalized operates as follows: First, only nonbank covered persons can be larger participants under the test in § 1090.107(b).⁶⁰ Second, if a larger participant has an affiliate that is an insured depository institution or insured credit union, that affiliate is not subject to the affiliate-aggregation requirements of part (iii) of the definition of “aggregate annual international money transfers.”⁶¹ Third, if a bank is operating as an agent on behalf of an international money transfer provider for some international money transfers, those transfers would be included in the provider’s count pursuant to the agent provisions in part (ii) of the definition. The Bureau expects that the Final Rule’s streamlined definition of “aggregate annual international money transfers” will make these aspects of the rule easier to understand and apply.

The Bureau also received a joint comment from a group of money services providers requesting guidance on how the Bureau plans to conduct examinations of smaller affiliated companies that would not be larger participants but for their affiliation with larger companies. The Bureau may supervise these smaller affiliated companies as part of an examination of the

⁵⁹ As discussed below, “sender” is defined to mean “a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient.” The Bureau recently provided further guidance in the Remittance Rule commentary relating to when senders are considered to be requesting a transfer primarily for personal, family, or household purposes, which may help to clarify the meaning of the same terms in § 1090.107(a). 12 CFR part 1005, Supp. I, comment 30(g)-2 and 30(g)-3, available at http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf.

⁶⁰ Pursuant to the definition in § 1090.101, a nonbank covered person does not include any persons described in 12 U.S.C. 5515(a) and 5516(a).

⁶¹ This is because the affiliate-aggregation requirement only applies to “affiliated companies,” and the definition of “affiliated company” in 12 CFR 1090.101 specifically excludes insured depository institutions and insured credit unions.

larger affiliated company or independently. Although the Bureau’s approach to examinations is not the subject of this rulemaking, the Bureau will exercise its supervisory authority with respect to affiliated companies using a risk-based approach and will coordinate with appropriate State regulators, just as it does with respect to other supervised nonbank entities.

In light of the considerations described above, the Bureau is finalizing the definition of “aggregate annual international money transfers” largely as proposed. As noted, the Final Rule includes a revised calculation method based on the preceding year’s transfers with corresponding changes in the affiliate-aggregation approach.

Designated recipient

The Bureau proposed to define “designated recipient” in § 1090.107(a) as any person specified by the sender as the authorized recipient of an international money transfer to be received at a location in a foreign country. This proposed definition was based on the definition of “designated recipient” in the Remittance Rule,⁶² but replaced “remittance transfer” with “international money transfer” and incorporated the larger-participant definition of “person” from § 1090.101. The Bureau intends the term “designated recipient” to be interpreted based on the interpretation of the term in the Remittance Rule, including its commentary,⁶³ to the extent appropriate given the different regulatory contexts of the definitions. The Bureau did not receive

⁶² 12 CFR 1005.30(c).

⁶³ See Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(c). The Bureau recently added to comment 30(c) in the Remittance Rule commentary, which is available at http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf. The Bureau intends that this additional commentary and any future amendments to the Remittance Rule commentary will be used when interpreting the definition of “designated recipient” in this Final Rule, to the extent appropriate given the different regulatory contexts.

any comments that specifically addressed the definition of “designated recipient” and is adopting the definition of “designated recipient” as proposed.

International money transfer

Proposed § 1090.107(a) defined the term “international money transfer” to mean the electronic transfer of funds requested by a sender that is sent by an international money transfer provider to a designated recipient. As proposed, the term applied regardless of whether the sender holds an account with the international money transfer provider, and regardless of whether the transaction also is an “electronic fund transfer,” as defined in Regulation E, 12 CFR 1005.3(b). The proposed definition did not include certain transfers related to the purchase or sale of a security or commodity that are excluded from the definition of “electronic fund transfer” under 12 CFR 1005.3(c)(4). The Bureau received several comments discussing the relationship of the term “international money transfer” to the term “remittance transfer” in the Remittance Rule, as well as one comment that requested clarification about the Proposed Rule’s impact on broker-dealers. For the reasons set forth below, the Bureau is finalizing the definition of “international money transfer” as proposed.

The proposed definition of “international money transfer” tracked the Remittance Rule’s definition of “remittance transfer,”⁶⁴ except in two respects. First, the proposed definition substituted “international money transfer provider” in each place where the term “remittance transfer provider” appears in 12 CFR 1005.30(e). Second, the Proposed Rule defined “international money transfer” without regard to the amount of the transfer, unlike the

⁶⁴ 12 CFR 1005.30(e).

Remittance Rule, which excludes transfers of \$15 or less from the definition of “remittance transfer.”⁶⁵

The Bureau received several comments on the proposed definition of “international money transfer.” These commenters generally agreed with the approach of basing the definition of “international money transfer” on the definition of “remittance transfer” in the Remittance Rule, and some expressed support for the specific changes in the Proposed Rule. One commenter encouraged the Bureau to use the definition of “remittance transfer” in the Remittance Rule without any changes, on the ground that the proposed changes would needlessly invite confusion and disparate interpretations by courts and other officials. Another commenter recommended that the Bureau exclude transfers of \$15 or less in order to be consistent with the Remittance Rule, expressing concern that not doing so would cause confusion and inconsistent application of standards in examinations because examiners will be examining for compliance with the Remittance Rule.

The Bureau does not agree that the differences between the Proposed Rule’s definition of “international money transfer” and the definition of “remittance transfer” are needless or that it would be clearer to use the term “remittance transfer” in this rule. The Remittance Rule includes an exclusion for transfers of \$15 or less⁶⁶ because the Dodd-Frank Act’s definition of “remittance transfer” does not include transfers “in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements

⁶⁵ 12 CFR 1005.30(e)(2)(i).

⁶⁶ *Id.*

under section 906(a) [of EFTA].”⁶⁷ While the Dodd-Frank Act’s definition of “remittance transfer” is applicable to the Remittance Rule, it is not applicable to the Bureau’s authority to supervise larger participants in markets for consumer financial products or services. The Bureau proposed to include small-value transactions as “international money transfers” on the ground that small-value transactions comprise part of the same market as larger transactions and the number of international money transfers provided by an international money transfer provider reflects the extent of a provider’s market participation. The comments did not provide new information to the contrary. Because the scope of transfers covered by the term “international money transfer” differs from the scope of the term “remittance transfer,”⁶⁸ the Bureau believes it is appropriate to use a different name than “remittance transfer.”

The Bureau does not believe that different definitions in the Remittance Rule and this rule will create significant confusion or result in inconsistent application of standards in the examination process because the two rules serve different purposes. The definition of “international money transfer” will be used to identify the transfers to be counted when assessing whether an entity is large enough to be subject to Bureau supervision as a larger participant. It does not determine the scope of any substantive consumer protection requirement, nor does it determine the limits of the Bureau’s examination authority over entities that are larger participants. If an entity is determined to be a larger participant, the Bureau may examine the

⁶⁷ 15 U.S.C. 1693o-1(g)(2)(B). The Board of Governors of the Federal Reserve System previously determined by rule that financial institutions are not subject to the EFTA section 906(a) requirement to provide electronic terminal receipts for small-value transfers of \$15 or less. 12 CFR 1005.9(e).

⁶⁸ For example, as noted above transfers of \$15 or less may be international money transfers but are not remittance transfers. Additionally, transfers that are sent by depository institutions may be remittance transfers but cannot be international money transfers because, as explained below, an international money transfer provider must be a nonbank covered person.

entire entity for compliance with all Federal consumer financial law and assess and detect risks to consumers or to markets for consumer financial products and services posed by any activity of the entity, not just the activities that initially rendered the entity subject to Bureau supervision.⁶⁹

By contrast, the definition of “remittance transfer” in the Remittance Rule determines which transfers are subject to the substantive requirements of the Remittance Rule. In light of the different functions of these two definitions, the Bureau believes that the differences in the definitions are warranted and unlikely to result in significant confusion.⁷⁰

The Bureau also does not expect the difference in definitions between “remittance transfer” and “international money transfer” to cause courts or others to misinterpret the term “international money transfer.” As the Bureau stated in its proposal, the Bureau intends the term “international money transfer” to be interpreted in the same manner as the term “remittance transfer,” with the terms “electronic transfer of funds” and “sent by an international money transfer provider” interpreted based on the interpretation of parallel terms in Regulation E,⁷¹ to the extent appropriate given the definitions’ different regulatory contexts. Of course, where the definitions differ (as, for example, with the small-value transaction exclusion), differing interpretations would be appropriate. The Bureau therefore declines to make any changes based on the comments received.

In addition to the comments that specifically addressed the definition of “international money transfers,” the Bureau also received a comment from a trade association working group

⁶⁹ 12 U.S.C. 5514(b); 77 FR 42874, 42880 (July 20, 2012).

⁷⁰ The commenters did not identify any significant administrative challenges that would make it difficult to include small-value transactions when counting the total number of international money transfers provided by a nonbank covered person. Indeed, as the Bureau mentioned in the Proposed Rule, the State supervisory data obtained by the Bureau for this rulemaking include transfers of \$15 or less.

⁷¹ See Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(e).

made up of broker-dealers that provide remittance transfer services. The group noted that the Bureau’s Proposed Rule does not specifically discuss broker-dealers regulated by the Securities and Exchange Commission (SEC). The group cited Dodd-Frank Act section 1027(i)(1), which provides that “[t]he Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.”⁷² It asked the Bureau to acknowledge this statutory exclusion in the Final Rule itself on the ground that this would alleviate any potential confusion or misinterpretation among broker-dealers. The commenter did not suggest how the Proposed Rule might contravene the limitations on the Bureau’s authority to exercise its power to enforce title X with respect to persons regulated by the Commission, and the Bureau does not believe that the Proposed Rule is inconsistent with these limitations. Moreover, the Final Rule does not require persons to take any action except in response to the initiation of supervisory activity by the Bureau, and the Bureau does not initiate supervisory activity if it believes that doing so would exceed its authority under the Dodd-Frank Act, or any other

⁷² 12 U.S.C. 5481(21) defines “person regulated by the Commission” as a person who is:

- (A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;
- (B) an investment adviser that is registered under the Investment Advisers Act of 1940;
- (C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;
- (D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;
- (E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;
- (F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;
- (G) any self-regulatory organization that is required to be registered with the Commission;
- (H) any nationally recognized statistical rating organization that is required to be registered with the Commission;
- (I) any securities information processor that is required to be registered with the Commission;
- (J) any municipal securities dealer that is required to be registered with the Commission;
- (K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and
- (L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

applicable law. Accordingly, the Bureau does not believe that it is necessary to recite the section 1027(i) exclusion or any other statutory exclusion in the Final Rule.

The Bureau notes that like the Remittance Rule and Regulation E generally, the proposed definition of “international money transfer” already excludes a transfer of funds if the primary purpose of the transfer was the purchase or sale of a security or commodity regulated by the Commission, or purchased or sold through a broker-dealer regulated by the Commission.⁷³ The broker-dealer trade association working group did not address this proposed exclusion in its comment, and the Bureau did not receive any other comments relating to this particular exception.

The Bureau has limited information about the volume of broker-dealers’ transactions that are international money transfers under the Proposed Rule because the primary data sources used by the Bureau in this rulemaking do not include any broker-dealers registered with the Commission and the trade group commenter and other commenters did not provide any data. However, the Bureau is not aware of any broker-dealer registered with the Commission that would meet the threshold of one million aggregate annual international money transfers under the definitions as proposed, and no commenter identified any.⁷⁴ The Proposed Rule incorporates

⁷³ This is because the proposed definition excludes any transfer that is excluded from the definition of “electronic fund transfer” under 12 CFR 1005.3(c)(4).

⁷⁴ In a letter sent outside this rulemaking, one industry trade association working group indicated that its broker-dealer members send an average of approximately 43,000 wires annually per firm. Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to David Blass, Chief Counsel, SEC Division of Trading and Markets (Dec. 12, 2012), available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf>. While this figure reflects only wires sent by the group’s members, the low average suggests that most broker-dealers do not send anywhere near the proposed threshold of one million aggregate annual international money transfers per year. Further, the average could include some transfers that would not be annual international money transfers as that term is defined in the Proposed Rule. For example, a primary purpose of a portion of broker-dealers’ transfers could be the purchase or sale of a security or commodity regulated by the SEC, or purchased or sold through a broker-dealer regulated by the SEC. Still other broker-dealer

an exclusion from Regulation E that encompasses those broker-dealer transactions that the Bureau believes should be excluded from the international money transfer market. Accordingly, the Bureau is finalizing the definition of “international money transfer” as proposed.

International money transfer provider

Proposed § 1090.107(a) defined the term “international money transfer provider” to mean any nonbank covered person that provides international money transfers for a consumer, regardless of whether the consumer holds an account with such person. Consistent with the Proposed Rule’s definition of “international money transfer,” the proposed definition of “international money transfer provider” tracked the definition of “remittance transfer provider” in the Remittance Rule closely,⁷⁵ with the following exceptions. First, the proposed definition replaced “remittance transfer” with “international money transfer.” Second, for consistency with the rest of the larger-participant rule, the proposed definition replaced the first reference to “person” with “nonbank covered person”⁷⁶ and incorporated the larger-participant rule’s definition of “consumer” rather than the Regulation E definition. Third, the Bureau did not incorporate the “remittance transfer provider” definition’s requirement that transfers be provided “in the normal course of business.”⁷⁷ The Bureau explained that such a limitation is unnecessary in the definition of “international money transfer provider” because the Proposed Rule would not impose any new business conduct obligations and would require that an international money

transfers could be transfers that are not sent primarily for personal, family, or household purposes. Further, it is possible that the figure includes some domestic wire transfers.

⁷⁵ 12 CFR 1005.30(f).

⁷⁶ “Nonbank covered person” includes (1) any person that engages in offering or providing a consumer financial product or service; and (2) any affiliate of a person that engages in offering or providing a consumer product or service if such affiliate acts as a service provider to such person, but does not include any persons described in 12 U.S.C. 5515(a) and 5516(a). 12 CFR 1090.101.

⁷⁷ 12 CFR 1005.30(f).

transfer provider have at least one million aggregate annual international money transfers to be a larger participant.

The Bureau received several comments expressing support and no comments raising concerns regarding this proposed definition and adopts the definition as proposed. As the Bureau explained in the proposal, the Bureau intends the commentary to the Remittance Rule⁷⁸ to be used to guide in interpreting the term “international money transfer provider” in § 1090.107(a), to the extent appropriate given the definitions’ different regulatory contexts.

Sender

Proposed § 1090.107(a) defined the term “sender” to mean a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient. This proposed definition largely tracked the definition of “sender” in the Remittance Rule, but replaced “remittance transfer” with “international money transfer” and “remittance transfer provider” with “international money transfer provider.”⁷⁹ The Proposed Rule also incorporated the definition of “consumer” from the larger-participant rule rather than the definition from Regulation E, and the Bureau has decided to finalize this aspect of the proposal to minimize confusion and maintain consistency with the rest of the larger-participant rule. The Bureau did not receive any comments that specifically addressed the proposed definition of “sender” and adopts the definition as proposed. The Bureau intends the term “sender” to be interpreted in the same

⁷⁸ Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f).

⁷⁹ 12 CFR 1005.30(g).

manner as the term “sender” in the Remittance Rule,⁸⁰ to the extent appropriate given the definitions’ different regulatory contexts.

State

Proposed § 1090.107(a) defined the term “State” to mean any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision thereof. This proposed definition was drawn from the definition of “State” in Regulation E subpart A,⁸¹ and the Bureau intends for it to be interpreted accordingly. The Bureau did not receive any comments that specifically addressed the proposed definition of “State” and adopts the definition as proposed.

1090.107(b)—Test to Define Larger Participants

Criterion

The Bureau noted in its proposal that it was considering a number of possible criteria that could be used alone or in combination to assess whether a nonbank covered person is a larger participant of the market for international money transfers, including aggregate annual international money transfers, annual receipts, and annual transmitted dollar volume. The Bureau proposed to use aggregate annual international money transfers as the criterion and invited comment on the proposed criterion, the alternatives identified in the proposal, and any other possible criteria that commenters believed might be superior. In addition to the comments discussed above regarding whether the market should include domestic transfers and how

⁸⁰ Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(g).

⁸¹ The Bureau proposed adopting the definition in Regulation E with minor stylistic changes to the last clause of the definition. Cf. 12 CFR 1005.2(l) (“‘State’ means any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the thereof in this paragraph (l).”) (emphasis added).

“aggregate annual international money transfer” should be defined,⁸² the Bureau received some comments supporting its proposed criterion and one comment advocating the use of two criteria rather than a single criterion. For the reasons that follow, the Bureau has decided to adopt “aggregate annual international money transfers” as the sole criterion in the Final Rule, with the definitional modifications described above.

Several commenters expressed support for the Bureau’s proposed criterion. A consumer advocacy group indicated that it was pleased that the proposed criterion counts all transfers, regardless of amount. This commenter noted that as mobile technologies advance and other market innovations take place, more consumers may choose to send smaller, more frequent payments abroad.

Another commenter expressed concern that using aggregate annual international money transfers could prompt providers to encourage consumers to restructure their transactions in order to avoid supervision. The commenter speculated, for example, that it would not be surprising if some money transfer providers offered discounts to consumers who send fewer transfers in order to stay below the threshold. To avoid this, the commenter suggested that the Bureau should use two criteria—dollar volume and aggregate annual international money transfers—and treat an entity as a larger participant if it meets the threshold set for either of two criteria.

⁸² As noted above, some commenters suggested that the Bureau should expand the market to include domestic transfers, an issue discussed in the section-by-section discussion of § 1090.107 above. Other commenters discussed the proposed definitions of “aggregate annual international money transfer” and related terms such as “international money transfer.” Those comments and the changes the Bureau has made to those definitions are discussed in the section-by-section analysis of § 1090.107(a) above.

The Bureau does not believe that a second criterion is necessary in this market and is not inclined to add one due to the complexity it would entail for the Bureau and any industry participants who seek to assess whether they are larger participants. The Bureau believes that market conditions and consumer preferences are more likely to drive how transactions are structured than a desire to evade supervision. Moreover, the Bureau has an array of tools available if it learns that entities are in fact restructuring their transactions in an effort to evade supervision as larger participants.⁸³

As the Bureau explained in the Proposed Rule, the Bureau believes that aggregate annual international money transfers is an appropriate criterion by itself because it measures, in several meaningful ways, the nonbank provider's level of participation in the market and impact on consumers. First, the number of transfers reflects the extent of interactions an international money transfer provider has with consumers because each transfer represents a single interaction with at least one consumer. Second, the number of transfers is a relatively durable metric in the face of changing market conditions such as fluctuating exchange rates or inflation. Third, because international money transfer providers often are paid, in part, on a per-transfer basis, the number of transfers is related to the revenue received, another indicator of market participation.

The Bureau anticipates that the streamlined definition of "aggregate annual international money transfers" described above will be relatively straightforward and objective for an

⁸³ For example, the Bureau could revisit the criterion decision for this larger-participant rule or could establish supervisory authority over particular entities that pose risks to consumers based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091. It could also use non-supervisory approaches, including initiating enforcement investigations where appropriate.

international money transfer provider to calculate, should the occasion to do so arise.⁸⁴ Adding an alternative criterion of dollars transmitted would significantly increase the complexity of the rule, by requiring additional definitions, data, and calculations. The Bureau declines to complicate the test for defining larger participants in this market by adding a second criterion with its own threshold. In light of all of the considerations described above, the Bureau has adopted “aggregate annual international money transfers” as the sole criterion, as proposed.

Threshold

Under the Proposed Rule, a nonbank covered person would be a larger participant of the international money transfer market if the nonbank covered person has at least one million aggregate annual international money transfers. The Bureau proposed to apply a single threshold regardless of where the provider operates in the United States or where the recipient is located outside of the United States. The Bureau received comments supporting the Bureau’s proposed approach, as well as comments advocating a higher or lower threshold or suggesting that the Bureau should add regional or localized alternative tests. For the reasons that follow, the Bureau has decided to finalize the single threshold of one million aggregate annual international money transfers as proposed.

⁸⁴ The Bureau expects that many market participants already assemble data generally related to the number of international transactions that they provide for internal business purposes, particularly because many providers are compensated on a per-transfer basis. Moreover, many providers are required to report transaction data to State regulators. The Bureau believes that these existing practices will help providers to estimate their aggregate annual international money transfers, and no commenters suggested otherwise. The Bureau expects that some market participants may choose to track the number of remittance transfers they provide each year, which could provide another source for estimates of aggregate annual international money transfers because the definition of the criterion roughly tracks the definition of “remittance transfer” used in the Remittance Rule. Accordingly, the Bureau believes that many market participants interested in doing so already have sufficient data to estimate whether their aggregate annual international money transfers exceed a given transaction threshold.

The Bureau's estimates described above indicate that a threshold of one million aggregate annual international money transfers will bring within the Bureau's supervisory authority approximately 25 international money transfer providers that collectively provided about 140 million transfers in 2012, with a total volume of about \$40 billion.⁸⁵ These nonbanks consist of both entities that send money to most of the countries in the world and entities that focus on sending money to particular recipient countries or regions.

Some commenters expressed support for the proposed threshold.⁸⁶ One noted that it agreed with the Bureau that the threshold would further the Bureau's goal of supervising market participants that represent a substantial portion of the market and have a significant impact on consumers.

Other commenters encouraged the Bureau to lower the threshold to 500,000 aggregate annual international money transfers. In a joint comment, five large money transmitters suggested that lowering the threshold would extend the benefits of supervision to more entities. Relying on Bureau estimates, these commenters also noted that even with this lower threshold there would be more larger participants in the consumer debt collection market than there would be in the international money transfer market. A comment from a consumer advocacy group asserted that there may be a natural dividing line at 500,000 transfers because the Bureau's data suggest that there are a small number of entities that have between 500,000 and 1,000,000

⁸⁵ 79 FR 5302, 5307 n.38, 5311 & n.67 (Jan. 31, 2014) (explaining methodology used and its potential limitations). According to the Bureau's estimates, these 25 providers constitute less than 10 percent of all participants in this nonbank market. *Id.* at 5306 n.36, 5307 n.38, 5311 n.69.

⁸⁶ While agreeing with the proposed threshold, one of these commenters encouraged the Bureau to monitor smaller nonbank market participants and to use its authority under 12 U.S.C. 5514(a)(1)(c), which authorizes the Bureau to supervise entities that pose risks to consumers based on a reasonable-cause determination.

aggregate annual international money transfers and a much larger number of entities with less than 500,000 aggregate annual international money transfers.

A trade association representing banks urged the Bureau to adopt an even lower threshold of 100,000 transfers. It argued that this would further the Bureau’s goal of parity between banks and nonbanks and be more consistent with the 100-transfer safe harbor that the Bureau established in the Remittance Rule definition of “remittance transfer provider” for purposes of determining whether an entity provides transfers in the “normal course of business.”⁸⁷

The Bureau does not agree that 500,000 or 100,000 aggregate annual international money transfers would be a more appropriate or natural threshold than one million in this market at this time. According to the Bureau’s estimates, over 90 percent of market activity is conducted by entities with over one million aggregate international money transfers, and cutting the proposed threshold in half or reducing it by an even larger factor would only marginally increase the proportion of market activity covered by the rule, while extending coverage to companies that are substantially smaller in size.⁸⁸

The Bureau also does not agree with one commenter’s suggestion that the number of larger participants in this market should align with the number in the consumer debt collection

⁸⁷ 12 CFR 1005.30(f)(2)(i) creates a safe harbor with respect to the phrase “normal course of business” in the definition of “remittance transfer provider,” which determines whether a person is required to comply with the Remittance Rule. Pursuant to § 1005.30(f)(2)(i), a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year. A person that sends more than 100 remittance transfers in a calendar year does not necessarily provide remittance transfers for consumers in the normal course of business. Rather, whether such a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. See Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f)-2.

⁸⁸ 79 FR 5302, 5307 n.38, 5311 & n.68 (Jan. 31, 2014) (explaining methodology used and its potential limitations). The Bureau estimates that the nonbanks that send between 500,000 and 1 million international money transfers per year account collectively for only about 1.5 percent of all international money transfers. *Id.* at 5307 & n.38.

market. There is no reason to expect that the number of larger participants in this market would be the same as the number in any other market because the Bureau tailors the criterion and threshold to the specific characteristics of each distinct market.

Similarly, there is no reason to think that the threshold for this larger-participant rule should in any way resemble the number of transfers that disqualifies an entity from claiming a safe harbor when assessing whether the entity is providing transfers in the “normal course of business” for purposes of the Remittance Rule’s definition of “remittance transfer provider.”⁸⁹ The two provisions serve different purposes: One determines which entities are larger participants in the international money transfer market, while the other helps to determine which entities are exempt from the substantive requirements of the Remittance Rule because they do not provide remittance transfers in the normal course of their business. The commenter that cited the Remittance Rule’s “normal course of business” safe harbor as a basis for lowering the larger-participant threshold also implied that the safe harbor applies only to banks. In fact, the Remittance Rule and its “normal course of business” safe harbor apply to both banks and nonbanks.

Although it is true that a lower threshold could bring more entities under the Bureau’s supervisory authority, that is not a reason by itself to lower the threshold. The Bureau has a variety of tools that it can use should concerns emerge regarding nonbank market participants that have less than one million aggregate annual international money transfers. The Bureau could, for example, establish supervisory authority over a particular company that poses risks to

⁸⁹ Like the proposal, the Final Rule’s definition of “international money transfer provider” does not incorporate the “normal course of business” language from the Remittance Rule’s definition of “remittance transfer provider,” for the reasons explained in the section-by-section analysis of the definition of “international money transfer provider” above.

consumers based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091. It could also use non-supervisory approaches where appropriate, such as initiating enforcement investigations, coordinating with State regulators, State attorneys general, and the Federal Trade Commission, and engaging in research and monitoring. In light of all of the considerations described above, the Bureau declines to lower the threshold.

In contrast to the comments received from industry and consumer groups, two State regulator associations suggested raising the threshold to three million aggregate annual international money transfers due to the States' supervisory activity in the market. The State regulator associations suggested that three million transfers would be more in line with the larger-participant thresholds that the Bureau has set in other markets.

As noted above, the Bureau tailors the threshold in each market to the specific characteristics of the particular market. According to the Bureau's estimates, raising the threshold from one to three million aggregate annual international money transfers in this market would remove from the rule's coverage more than half of the nonbanks covered by the proposal (approximately 15 out of 25 entities) and would significantly decrease the proportion of market activity covered by the rule.⁹⁰ The Bureau recognizes the important role that State regulators play in this market. As indicated in the Proposed Rule, the Bureau will coordinate with appropriate State regulatory authorities and will consider the extent of State supervisory activity when prioritizing individual examinations. The Bureau does not, however, believe it is

⁹⁰ According to the Bureau's estimates, the entities that would be removed from coverage if this shift were made are collectively responsible for roughly one-sixth of all international money transfers. 79 FR 5302, 5307 & n.38 (Jan. 31, 2014).

appropriate to remove entities with between one and three million aggregate annual international money transfers categorically from supervision as larger participants, given the significant role that these entities play in the market.

One commenter suggested that the Bureau should supervise all providers, regardless of size, while others suggested that the Bureau should include all publicly-traded providers in its larger-participant definition. The Bureau does not believe that including a category of providers regardless of size would be consistent with 12 U.S.C. 5514(a)(1)(B), which authorizes the Bureau to define “larger participants” of other markets for consumer financial products or services.⁹¹ The Bureau therefore declines to make the changes suggested by these commenters.

The Bureau proposed a single threshold regardless of the destination of a provider’s transfers but also indicated that it was considering, as an alternative, establishing different thresholds based on destination region. In their joint comment five large money transmitters encouraged the Bureau to supplement the Bureau’s proposed test with an alternative test that focuses on providers that send transfers to key geographic corridors. In support, they explained that providers focusing on specific destination regions can have a large impact on particular consumer segments. Another banking industry commenter took the opposite view, arguing that using different thresholds would add too much complexity.

The Bureau agrees that using different thresholds would further complicate the rule and would make it much more difficult to administer. The Bureau is not aware of, and commenters did not identify, any existing data compilation that would provide the information necessary to

⁹¹ As noted above, nonbank covered persons generally are subject to the Bureau’s regulatory and enforcement authority and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau’s supervisory authority.

establish corridor-specific thresholds.⁹² Furthermore, even if data could be collected to support corridor segmentation, it would be extremely difficult and time-consuming to define all of the corridors, assess corresponding volumes, and set and maintain corridor-specific thresholds over time, as corridors could be defined in a wide variety of ways and corridor volumes could shift in response to any number of factors. While using different thresholds for different destination corridors might increase the number of larger participants that focus on specific destination regions, the Bureau’s analysis and market research indicates that the threshold of one million aggregate annual international money transfers already defines a number of entities that focus on specific destination regions as larger participants. The Bureau is therefore finalizing the rule without adding any corridor-specific thresholds.

The Bureau also received comments from three consumer groups requesting that the Bureau supervise major regional or local money transmitters that dominate certain submarkets within the United States even if such transmitters do not have a nationwide presence. These commenters suggested that the Bureau could consider a company’s market share (*e.g.*, revenues or volume of transactions) relative to the population density of the area of the United States in which it operates. They suggested that a money transfer company located in a highly urbanized area doing 300,000 transactions annually would not be considered a major participant in that market, but that a money transfer company in a more rural area doing the same volume of transactions could be the predominant transmitter in the community.

⁹² The Bureau noted in its proposal that it was not aware of data sources that would support regional segmentation of this nature. In addressing this issue, the large money transmitter commenters suggested that the Bureau might be able to request transactional data from individual companies and/or from State regulators, but indicated that they did not themselves have such information available.

The challenges associated with assessing regional or local dominance in the United States are similar to those posed by setting multiple thresholds for different destination regions. In addition to volume information for market participants, the Bureau would need to gather data on each market participant's area(s) of operation and population information for each identified area. Each of these factors could change over time, making it very difficult to assess which entities would be larger participants. The Bureau believes that such an approach would be burdensome and that it is reasonable instead to identify larger participants in this market by considering the overall number of international money transfers that each international money transfer provider sends from the entire United States.⁹³ The Bureau is therefore adopting a single threshold of one million aggregate annual international money transfers, as proposed.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act

A. Overview

The Bureau considered potential benefits, costs, and impacts of the Final Rule.⁹⁴ The Proposed Rule set forth a preliminary analysis of these effects, and the Bureau requested and received comments on the topic. In addition, the Bureau has consulted with or offered to consult

⁹³ As noted above, the Bureau has other tools that it could use to address these entities, should they raise concerns, including 1) establishing supervision authority over a particular company based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091; 2) enforcement investigations where warranted; 3) coordination with State regulators, State attorneys general, and the Federal Trade Commission; and 4) research and monitoring.

⁹⁴ Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a rulemaking of this kind that does not establish standards of conduct are unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

with the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Securities and Exchange Commission regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

The Final Rule defines a category of nonbanks that would be subject to the Bureau’s nonbank supervision program pursuant to 12 U.S.C. 5514(a)(1)(B). The category includes “larger participants” of a market for “international money transfers” described in the Final Rule. Whether an entity is a larger participant in this market will be measured on the basis of aggregate annual international money transfers. If a nonbank covered person’s aggregate annual international money transfers equal or exceed one million, it will be a larger participant.

B. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the Final Rule against a baseline that includes the Bureau’s existing rules defining larger participants in certain markets.⁹⁵ Many States have supervisory programs relating to money transfers, which may consider aspects of Federal consumer financial law. However, at present, there is no Federal program for supervision of nonbanks that are international money transfer providers with respect to Federal consumer financial law. The Final Rule extends the Bureau’s supervisory authority over international money transfer providers that are larger participants of the

⁹⁵ The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to inform the rulemaking more fully.

international money transfer market. This includes the authority to supervise for compliance with EFTA and the Remittance Rule.

As the Bureau noted in the Proposed Rule, limited data are available with which to quantify the potential benefits, costs, and impacts of the Final Rule. For example, although the Bureau has confidential supervisory data from California, New York, and Ohio from which it can estimate the number and size of international money transfer providers, the Bureau lacks detailed or comprehensive information about their rates of compliance or noncompliance with Federal consumer financial law and about the range of, and costs of, compliance mechanisms used by market participants.

In light of these data limitations, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the Final Rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and data as well as on its experience of undertaking supervision in other markets.

The discussion below describes three categories of potential benefits and costs. First, the Final Rule authorizes the Bureau's supervision of larger participants of the international money transfer market. Larger participants of the proposed market might respond to the possibility of supervision by changing their systems and conduct, and those changes might result in costs, benefits, or other impacts. Second, if the Bureau undertakes supervisory activity at specific larger participants, those entities would incur costs from responding to supervisory activity, and the results of these individual supervisory activities might also produce benefits and costs. Third, the Bureau analyzes the costs that might be associated with entities' efforts to assess whether they qualify as larger participants under the rule.

1. Benefits and Costs of Responses to the Possibility of Supervision

The Final Rule will subject larger participants of the international money transfer market to the possibility of Bureau supervision. That the Bureau will be authorized to undertake supervisory activities with respect to a nonbank covered person that qualifies as a larger participant does not necessarily mean the Bureau will in fact undertake such activities regarding that covered person in the near future. Rather, supervision of any particular larger participant as a result of this rulemaking is probabilistic in nature. For example, the Bureau will examine certain larger participants on a periodic or occasional basis. The Bureau's decisions about supervision will be informed, as applicable, by the factors set forth in 12 U.S.C. 5514(b)(2), relating to the size and transaction volume of individual participants, the risks their consumer financial products and services pose to consumers, the extent of State consumer protection oversight, and other factors the Bureau may determine are relevant. Each entity that believes it qualifies as a larger participant will know that it may be supervised and may gauge, given its circumstances, the likelihood that the Bureau will initiate an examination or other supervisory activity.

The prospect of potential supervisory activity could create an incentive for larger participants to allocate additional resources and attention to compliance with Federal consumer financial law, potentially leading to an increase in the level of compliance. They might anticipate that by doing so (and thereby decreasing risk to consumers), they could decrease the likelihood of their actually being subject to supervisory activities as the Bureau evaluates the factors outlined above. In addition, an actual examination will be likely to reveal any past or present noncompliance, which the Bureau could seek to correct through supervisory activity or, in some cases, enforcement actions. Larger participants might therefore judge that the prospect

of supervision increases the potential consequences of noncompliance with Federal consumer financial law, and they might seek to decrease that risk by taking steps to identify and cure or mitigate any noncompliance.

The Bureau believes it is likely that many market participants will increase compliance in response to the Bureau's supervisory activity authorized by the Final Rule. However, because the Final Rule itself does not require any larger participant to alter its performance of international money transfers, any estimate of the amount of increased compliance would be both an estimate of current compliance levels and a prediction of market participants' behavior in response to the Final Rule. The data that the Bureau currently has do not support a specific quantitative estimate or prediction. But, to the extent larger participants allocate resources to increasing their compliance in response to the Final Rule, that response would result in both benefits and costs.⁹⁶

a. Benefits from Increased Compliance

Increased compliance with Federal consumer financial laws by larger participants in the international money transfer market will be beneficial to consumers who send international money transfers. The number of American consumers who could potentially be affected is significant. As noted above, data from the 2011 CPS show that more than 4 million U.S. households had used nonbanks to send money abroad to friends and family in the preceding year.⁹⁷ Increasing the rate of compliance with Federal consumer financial laws will benefit

⁹⁶ Another approach to considering the benefits, costs, and impacts of the Final Rule would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to inform the rulemaking more fully.

⁹⁷ 2011 CPS Report 32, 142-43.

consumers and the consumer financial market by providing more of the protections mandated by those laws.

EFTA and the Remittance Rule offer substantial consumer protections for consumers sending remittance transfers. Together, EFTA and the Remittance Rule clarify the remittance process for consumers by, among other things, requiring the provision of standardized disclosures about pricing and increasing consumer protections when transfers do not go as planned. For consumers, this should increase the transparency of remittance prices and facilitate dispute resolution when errors occur.

More broadly, the Bureau will be examining for compliance with other Federal consumer financial laws, including whether larger participants of the international money transfer market engage in unfair, deceptive, or abusive acts or practices (UDAAPs).⁹⁸ Conduct that does not violate an express prohibition of another Federal consumer financial law may nonetheless constitute a UDAAP.⁹⁹ To the extent that any larger participant is currently engaged in any UDAAPs, the cessation of the unlawful act or practice would benefit consumers. Larger participants might improve policies and procedures in response to possible supervision in order to avoid engaging in UDAAPs.

The possibility of supervision also may help make incentives to comply with Federal consumer financial laws more consistent between the likely larger participants and banks and credit unions, which are already subject to Federal supervision with respect to Federal consumer financial laws. Although some nonbanks are already subject to State supervision, introducing

⁹⁸ 12 U.S.C. 5531.

⁹⁹ The CFPB Supervision and Examination Manual provides further guidance on how the UDAAP prohibition applies to supervised entities and is available at <http://www.consumerfinance.gov/guidance/supervision/manual>.

the possibility of Federal supervision could encourage nonbanks that are likely larger participants to devote additional resources to compliance. It could also help ensure that the benefits of Federal oversight reach consumers who do not have ready access to bank- or credit union-provided international transfers. In 2011, approximately one-sixth of individuals who sent money abroad to friends and family through a nonbank did not have a bank or credit union account.¹⁰⁰

b. Costs of Increased Compliance

To the extent that nonbank larger participants decide to increase resources dedicated to compliance in response to the possibility of increased supervision, the entities will bear any direct cost of any changes to their systems, protocols, or personnel. Any such increase in costs could be passed on in part to consumers. Whether and to what extent entities increase resources dedicated to compliance and/or pass those costs to consumers will depend not only on the entities' current practices and the changes they decide to make, but also on market conditions. The Bureau lacks detailed information with which to predict what portion of any cost of any increased compliance will be borne by larger participants or passed on to consumers. When or if such a cost were borne by consumers, consumers might respond by changing the frequency or amount of international money transfers sent.

In considering any potential price effect of the Final Rule, it is important to take into account the fact that nonbanks below the larger-participant threshold will not be subject to supervision as a result of this rule. In the Proposed Rule, the Bureau stated that because the costs

¹⁰⁰ Bureau estimate based on 2011 CPS data, which are available at http://thedataweb.rm.census.gov/ftp/cps_ftp.html and described at <http://www.census.gov/prod/techdoc/cps/cpsjun11.pdf>.

incurred by nonbanks below the larger-participant threshold would be unaffected by the rule, their pricing should also not be affected. The Bureau stated that the competition from these smaller entities could reduce the likelihood that larger participants would choose to increase their prices in response to the rule.

One commenter disagreed, stating that (1) costs incurred by a larger participant could be passed down to a smaller provider if there is a relationship between the larger participant and the smaller provider, (2) smaller providers might increase fees to take advantage of market factors including an increase in prices charged by larger participants, and (3) other factors including compliance obligations imposed by laws and regulations other than this larger-participant rule could result in increasing prices. The commenter did not specify what it meant by a relationship between the larger and smaller provider, or how exactly costs would be passed between providers. The Bureau's market research suggests that there are hundreds of international money transfer providers that will not be subject to supervision under the Final Rule. In noting that smaller entities will not be subject to supervision as larger participants under this rule, the Bureau merely identified one factor that may make it less likely that larger participants will increase their prices. Even if some smaller entities are indirectly affected by the rule (together with larger participants), the Bureau believes that competition from unaffected smaller entities could still reduce the likelihood that any market participants would choose to increase their prices in response to the rule. To the extent other laws and regulations, or any other factors, affect prices, those are beyond the scope of this analysis under section 1022 of the Dodd-Frank Act, which is focused on the costs and benefits of this individual rule.

2. Benefits and Costs of Individual Supervisory Activities

In addition to the responses of market participants anticipating supervision, the possible consequences of the Final Rule include the responses to and effects of individual examinations or other supervisory activities that the Bureau might conduct in the international money transfer market.

a. Benefits of Supervisory Activities

Supervisory activity could provide several types of benefits. For example, as a result of supervisory activity, the Bureau and an entity might uncover deficiencies in the entity's policies and procedures. The Bureau's examination manual calls for the Bureau generally to prepare a report of each examination, to assess the strength of the entity's compliance mechanisms, and to assess the risks the entity poses to consumers, among other things. The Bureau shares examination findings with the examined entity because one purpose of supervision is to inform the entity of problems detected by examiners. Thus, for example, an examination might find evidence of widespread noncompliance with Federal consumer financial law, or it might identify specific areas where an entity has inadvertently failed to comply. These examples are only illustrative of the kinds of information an examination might uncover.

Detecting and informing entities about such problems should be beneficial to consumers. When the Bureau notifies an entity about risks associated with an aspect of its activities, the entity is expected to adjust its practices to reduce those risks. That response may result in increased compliance with Federal consumer financial law, with benefits like those described above. Or it may avert a violation that would have occurred had Bureau supervision not detected the risk promptly. The Bureau may also inform entities about risks posed to consumers that fall short of violating the law. Action to reduce those risks would also be a benefit to consumers.

Given the obligations international money transfer providers have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision also may benefit larger participants by detecting compliance problems early. When an entity's noncompliance results in litigation or an enforcement action, the entity must face both the costs of defending its actions and the penalties for noncompliance, including potential liability for damages to private plaintiffs. The entity must also adjust its systems to ensure future compliance. Changing practices that have been in place for long periods of time can be expected to be relatively difficult because the practices may be severe enough to represent a serious failing of an entity's systems. Supervision may detect flaws at a point when correcting them would be relatively inexpensive. Catching problems early can, in some situations, forestall costly litigation. To the extent early correction limits the amount of consumer harm caused by a violation, it can help limit the cost of redress. In short, supervision might benefit larger participants by, in the aggregate, reducing the need for other more expensive activities to achieve compliance.¹⁰¹

b. Costs of Supervisory Activities

The potential costs of actual supervisory activities arise in two categories. The first involves any costs to individual larger participants of increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs are similar

¹⁰¹ Further potential benefits to consumers, covered persons, or both might arise from the Bureau's gathering of information during supervisory activities. The goals of supervision include informing the Bureau about activities of market participants and assessing risks to consumers and to markets for consumer financial products and services. The Bureau may use this information to improve regulation of consumer financial products and services and to improve enforcement of Federal consumer financial law, in order to better serve its mission of ensuring consumers' access to fair, transparent, and competitive markets for such products and services. Benefits of this type will depend on what the Bureau learns during supervision and how it uses that knowledge. For example, because the Bureau will examine a number of covered persons in the international money transfer market, the Bureau will build an understanding of how effective compliance systems and processes function in that market.

in nature to the possible compliance costs, described above, that larger participants in general might incur in anticipation of possible supervisory actions. This analysis will not repeat that discussion. The second category is the cost of supporting supervisory activity.

Supervisory activity may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. For example, in an on-site examination, Bureau examiners generally contact the entity for an initial conference with management. That initial contact is often accompanied by a request for information or records. Based on the discussion with management and an initial review of the information received, examiners determine the scope of the on-site exam. While on-site, examiners spend some time in further conversation with management about the entity's policies, procedures, and processes. The examiners also review documents, records, and accounts to assess the entity's compliance and evaluate the entity's compliance management system. As with the Bureau's other examinations, examinations of nonbank larger participants in the international money transfer market could involve issuing confidential examination reports and compliance ratings. The Bureau's examination manual describes the supervision process and indicates what materials and information an entity could expect examiners to request and review, both before they arrive and during their time on-site.

The primary cost an entity will face in connection with an examination is the cost of employees' time to collect and provide the necessary information. The frequency and duration of examinations of any particular entity would depend on a number of factors, including the size of the entity, the compliance or other risks identified, whether the entity has been examined previously, and the demands on the Bureau's supervisory resources imposed by other entities and

markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that entities might incur.

The cost of supporting supervisory activity may be calibrated using prior Bureau experience in supervision. The Bureau considers its nonbank payday lender examinations as a reasonable proxy for the duration and labor intensity of future international money transfer provider examinations. Although there are many differences, the nonbank payday lending market is more like the nonbank market for international money transfers than other nonbank markets the Bureau currently supervises because both markets involve point-of-sale transactions involving similar dollar amounts.

The average duration of the on-site portion of Bureau nonbank payday exams is approximately 8 weeks.¹⁰² Assuming that each exam requires 2 weeks of preparation time by international money transfer provider staff prior to the exam as well as on-site assistance by staff throughout the duration of the exam, the Bureau assumes that the typical examination in this nonbank market would require 10 weeks of staff time. The Bureau has not suggested that counsel or any particular staffing level is required during an examination. However, for purposes of this analysis, the Bureau assumes, conservatively, that an entity might dedicate the equivalent of one full-time compliance officer and one-tenth of a full-time attorney to the exam. The average hourly wage of a compliance officer in a nonbank entity that operates in activities related to credit intermediation is \$30.66, and the average hourly wage of a lawyer in the same

¹⁰² This estimate was derived using confidential supervisory Bureau data on the duration of on-site payday loan examinations at nonbanks. For purposes of this calculation, the Bureau counted its payday loan examinations for which the on-site portion had been completed. The Bureau counted only the on-site portion of an examination, which included time during the on-site period of the examination that examiners spent while off-site for travel or holidays. However, the Bureau did not count time spent scoping an examination before the on-site portion of the examination or summarizing findings or preparing reports of examination afterwards.

industry is \$80.95.¹⁰³ Assuming that wages account for 67.5 percent of total compensation,¹⁰⁴ the total labor cost of an examination would be about \$23,000.¹⁰⁵ The Bureau estimates that the cost for an entity that sends 1 million transfers per year, with an average transfer amount of \$200, would be approximately 0.18 percent of total revenue from such transfers for that year.¹⁰⁶ Note that this is a conservative estimate in several respects because it reflects revenue only from this line of business and uses a relatively small average international money transfer size as well as the minimum number of transactions that a larger participant would provide.¹⁰⁷

One banking industry association commenter stated that it suspects that this estimate grossly understates the time and effort that a covered entity will need to prepare for an examination. That commenter identified the employee time needed to provide data and information to examiners, as well as the time needed to support the Bureau's examination teams,

¹⁰³ Bureau of Labor Statistics Occupational Employment Statistics (OES) Survey, May 2013 estimates for NAICS code 522300, available at http://www.bls.gov/oes/current/naics4_522300.htm.

¹⁰⁴ Bureau of Labor Statistics series CMU2025220000000D, Quarter 2 2013, available at http://data.bls.gov/timeseries/CMU2025220000000D?data_tool=XGtable.

¹⁰⁵ Assuming that individuals are compensated for 40 hour work weeks, this is calculated as follows:
[(0.1*80.95+30.66)/0.675]*40*10.

¹⁰⁶ This assumption is based on research on remittances suggesting that the average price of sending money abroad from the United States is roughly 6.42 percent of the total amount sent. World Bank, Remittance Prices Worldwide, An Analysis of Trends in the Average Total Cost of Migrant Remittance Services (Sept. 2013), 11 (percentage is average price of \$200 transfers in Q3 2013), available at https://remittanceprices.worldbank.org/sites/default/files/RPW_Report_Sep2013.pdf. The Bureau measured proportion of revenues using the following equation: Proportion of revenues={[(0.1*80.95+30.66)/0.675]*40*10}/{1,000,000*200*0.0642}.

¹⁰⁷ A \$200 average transfer size is a conservative estimate. Review of the CA *Extrapolation* figures (\$49 billion total market dollar volume and 152 million total market transfers) suggests that the average transaction size is just over \$300. For entities reporting to California, New York, and Ohio that sent over 500,000 transfers, the *Analysis of State Supervisory Data* suggests that the average transfer size is about \$300. Using a \$300 average transfer size, the cost of supervision would be approximately 0.12 percent of total revenues for an entity that sends 1 million transfers per year. Other sources from 2005 and 2008 also suggest a higher average transfer size. Ole E. Andreassen, Remittance Service Providers in the United States: How Remittance Firms Operate and How They Perceive Their Business Environment 15-16 (June 2006), available at <http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/BusinessmodelsFSEseries.pdf> (\$550); Bendixen & Amundi, Survey of Latin American Immigrants in the United States 23 (Apr. 30, 2008), available at idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35063818 (\$325).

as sources of costs. The commenter did not offer an alternative estimate on the amount of staff time an examination would require. Based on its experience with similar exams, the Bureau has estimated the total cost for international money transfer providers, including the staff time necessary to prepare for an examination as well as the staff time necessary to support the Bureau's examination team once examiners arrive on site. Depending on the circumstances, the amount may be an underestimate or overestimate for some supervisory activities. But even if an examination required twice as much compliance officer time as the Bureau estimated, based on the assumptions mentioned above, the cost would still only be approximately 0.3 percent of annual revenue from one million transfers.

The overall costs of supervision in the international money transfer market will depend on the frequency and extent of Bureau examinations. Industry commenters suggested that it would be helpful if the Bureau provided some expectations or guidance as to frequency and timing of examinations and recommended that no covered institution be examined more frequently than once every two years.¹⁰⁸ Neither the Dodd-Frank Act nor the Final Rule specifies a particular level or frequency of examinations.¹⁰⁹ The frequency of examinations will depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations; and the demands that other markets make on the Bureau's supervisory

¹⁰⁸ Industry commenters also requested guidance as to scope of examinations. As noted above, the Bureau typically determines the scope of each examination based on initial review of the information received and discussions with management.

¹⁰⁹ The Bureau declines to predict at this time precisely how many examinations it would undertake at each larger participant. However, if the Bureau were to examine each larger participant of the international money transfer market once every two years, the expected annual labor cost of supervision per larger participant would be approximately \$11,500 (the cost of one examination, divided by two). This would account for 0.09 percent of the international money transfer revenue of an entity that sends one million transfers in a year, assuming an average transaction amount of \$200.

resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means. The Bureau therefore declines to predict, at this point, precisely how many examinations in the international money transfer market it will undertake in a given year or how often it will examine any particular entity.

3. Costs of Assessing Larger-Participant Status

The Final Rule does not require nonbanks to assess whether they are larger participants. However, the Bureau acknowledges that in some cases international money transfer providers might decide to incur costs to assess whether they qualify as larger participants or potentially dispute their status.

One banking industry commenter stated that the Bureau's proposed analysis of costs did not include costs for determining whether an entity is a larger participant under the rule. This commenter stated that nonbanks will be likely to make this determination because it will be an important element of the nonbank's strategic plan and budget. In the proposal, the Bureau acknowledged that some nonbanks may choose to incur the cost of assessing whether they are larger participants even though the rule does not require them to do so. The Bureau discussed this cost qualitatively rather than quantitatively, because the data that the Bureau had did not support a detailed estimate of how many international money transfer providers would choose to incur this cost or how much they would spend. The commenter did not provide any additional data that the Bureau could use for a quantitative analysis, and the Bureau has not acquired additional data from other sources. Therefore, in this final analysis as in the proposed analysis, the Bureau has chosen to address this possible cost qualitatively. No commenters objected to the other elements of the qualitative analysis presented in the Proposed Rule, and repeated below,

including the Bureau’s assumption that international money transfer providers are unlikely to incur substantially greater costs to determine their larger-participant status than they expect to incur from Bureau supervision.

Larger-participant status depends on a nonbank’s aggregate annual international money transfers. As noted above, the Bureau expects that many market participants already assemble general data related to the number of international transactions that they provide for internal business purposes. Moreover, many providers are required to report transaction data to State regulators. Further, the definition of the criterion in this rule roughly tracks the definition of “remittance transfer” used in the Remittance Rule, and the Bureau expects that some market participants may choose to track the number of remittance transfers they provide each year. These preexisting activities could assist entities in estimating whether they are larger participants.

To the extent that some international money transfer providers do not already know whether their transactions exceed the threshold, such nonbanks might, in response to the Final Rule, develop new systems to count their transactions in accordance with the definition of “international money transfer.” The data that the Bureau currently has do not support a detailed estimate of how many international money transfer providers will engage in such development or how much they would spend. Regardless, international money transfer providers are unlikely to spend significantly more on specialized systems to count transactions than their expected cost of being supervised by the Bureau as larger participants. It bears emphasizing that even if expenditures on a counting system successfully proved that an international money transfer provider was not a larger participant, it would not necessarily follow that the entity could not be supervised. The Bureau can supervise specific international money transfer providers whose

conduct the Bureau determines, pursuant to 12 U.S.C. 5514(a)(1)(C), poses risks to consumers. Thus, an international money transfer provider choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it would not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes very few if any international money transfer providers would undertake such expenditures.

4. Consideration of Alternatives

The Bureau considered two major alternatives: using a measure other than number of international money transfers to define the market and choosing a different threshold to define larger participants.

First, the Bureau considered various other criteria for assessing larger-participant status, including annual receipts from international money transfers and annual transmitted dollar volume. Calculating either of those metrics could be more involved than calculating the number of international money transfers. If so, a given nonbank might face greater costs for evaluating or disputing whether it qualified as a larger participant should the occasion to do so arise. The Bureau expects that for both annual receipts and annual transmitted dollar volume it could choose a suitable threshold for which the number of larger participants, among those nonbanks participating in the market today, would be the same as the number of nonbanks expected to qualify under the Final Rule. Consequently, the costs, benefits, and impacts of supervisory activities should not depend on which criterion the Bureau uses.

The second possible alternative the Bureau considered is selecting a different threshold. One alternative would be to set the threshold substantially higher—for example at three million aggregate annual international money transfers as two commenters suggested—and cover only the very largest nonbanks in the market. Under such an alternative, the benefits of supervision to

both consumers and covered persons would likely be reduced because entities impacting a substantial number of consumers and/or consumers in particular market segments might be omitted. Conversely, lowering the threshold as other commenters suggested would subject more entities to the Bureau's supervisory authority. Raising or lowering the threshold could decrease or increase, respectively, some potential costs to covered persons if fewer or more entities were defined as larger participants and thus were subject to the Bureau's supervisory authority on that basis. However, the total direct costs for actual supervisory activity might not change substantially because the Bureau conducts exams on a risk basis and would not necessarily examine more or fewer entities if the rule's coverage were broader or narrower.¹¹⁰

C. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions with \$10 Billion or Less in Total Assets, As Described in Dodd-Frank Act Section 1026

The Final Rule does not apply to depository institutions or credit unions of any size. However, it might have some impact on depository institutions or credit unions that provide international transfers. For example, if the relative price of nonbanks' international money transfers were to increase due to increased costs related to supervision, then depository institutions or credit unions of any size might benefit by the relative change in costs. The Bureau believes these effects, if any, would likely be small.

¹¹⁰ Another alternative under consideration is setting different thresholds for each global region in which transfers are received. As alluded to earlier, international money transfer submarkets tend to be segmented by corridor: Individuals wishing to send remittances to El Salvador, for example, cannot easily substitute transfers to Moldova. The Bureau could define a larger-participant threshold for different geographic regions so that the entities that provide the most transfers to a given region could be supervised. Given the paucity of data on region-specific transactions, however, any definition of these thresholds might be more difficult to establish and to administer over time. The Bureau also considered a similar suggestion by commenters that the Bureau consider a company's market share relative to the population density of the area of the United States in which it operates. The Bureau declined to use this approach, again due to concerns about data availability and ease of administration over time.

2. Impact of the Provisions on Consumers in Rural Areas

Because the Final Rule applies uniformly to international money transfers of both rural and non-rural consumers, the rule should not have a unique impact on rural consumers. The Bureau did not receive and is not aware of any evidence suggesting that rural consumers have been disproportionately harmed by international money transfer providers' failure to comply with Federal consumer financial law.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.¹¹¹ The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.¹¹²

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) of any proposed rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.¹¹³ The Bureau also is subject to certain additional

¹¹¹ 5 U.S.C. 601 *et seq.* The term "'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment]." *Id.* at 601(4). The term "'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]." *Id.* at 601(5). The Bureau is not aware of any small governmental units or small not-for-profit organizations to which the Final Rule will apply.

¹¹² 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with SBA and an opportunity for public comment.

¹¹³ 5 U.S.C. 605(b).

procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.¹¹⁴

The undersigned certified that the Proposed Rule, if adopted, would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Bureau did not receive any comments objecting to the Bureau's certification. The Final Rule adopts the Proposed Rule, with some modifications that do not lead to a different conclusion. Therefore, a final regulatory flexibility analysis is not required.

The Final Rule defines a class of international money transfer providers as larger participants of the international money transfer market and thereby authorizes the Bureau to undertake supervisory activities with respect to those nonbanks. The rule adopts a threshold for larger-participant status of one million aggregate annual international money transfers. Under what the Bureau believes was the most relevant SBA size standard at the time the Proposed Rule was issued, an international money transfer provider qualified as a small business only if its annual receipts were below \$19 million.¹¹⁵ Of the approximately 25 potential larger participants identified by the Bureau among the California, New York, and Ohio licensees, the Bureau

¹¹⁴ 5 U.S.C. 609.

¹¹⁵ 78 FR 37409, 37416 (June 20, 2013) (NAICS code 522390), *later amended by* 79 FR 33647 (June 12, 2014). The Bureau believes that larger participants in the proposed international money transfer market are likely to be classified in North American Industry Classification System (NAICS) code 522390, "Other Activities Related to Credit Intermediation." NAICS lists "[m]oney transmission services" as an index entry corresponding to this code. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=522390&search=2012%20NAICS%20Search>. The Bureau requested comment on whether this or any other NAICS code is most appropriate for this market and did not receive any comments. The Bureau is aware that a nonbank larger participant of the proposed international money transfer market might be classified in a NAICS code other than the one that includes money transmission services. For example, some larger participants may be classified under NAICS code 522320 for financial transactions processing, reserve, and clearing house activities. NAICS lists "[e]lectronic funds transfer services" as an index entry corresponding to code 522320. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=522320&search=2012>.

estimated there were approximately 10 providers with annual receipts under \$19 million.¹¹⁶

Since the Proposed Rule was issued, the SBA increased this size standard from \$19 million to \$20.5 million, but this adjustment would not change the Bureau’s estimate of the number of potential larger participants that qualify as small businesses.¹¹⁷

According to the 2007 Economic Census, there are more than 5,000 small firms in the North American Industry Classification System (NAICS) industry the Bureau believes is applicable to most international money transfer providers.¹¹⁸ Therefore, according to the Bureau’s analysis, this rule impacts less than one percent of the small businesses in the industry.¹¹⁹ For these reasons, the Final Rule will not have a significant impact on a substantial number of small entities.¹²⁰

Additionally, and in any event, the Bureau believes that the Final Rule will not result in a “significant impact” on any small entities that could be affected. The rule does not itself impose any business conduct obligations. As previously noted, when and how often the Bureau would

¹¹⁶ 79 FR 5302, 5316 n.93 (Jan. 31, 2014).

¹¹⁷ The SBA issued an Interim Final Rule increasing many of its small business standards to account for inflation, which became effective on July 14, 2014. 79 FR 33647 (June 12, 2014). The size standard for NAICS code 522390 increased from \$19 million to \$20.5 million. This does not, however, affect the Bureau’s analysis because according to the Bureau’s estimates, the same number of potential larger participants have under \$20.5 million as have under \$19 million in annual receipts. Likewise, even if the relevant NAICS code were instead 522320, the same number of potential larger participants would qualify under that code’s new size standard of \$38.5 million as under the prior standard of \$35.5 million that the Bureau considered in the proposal.

¹¹⁸ U.S. Census Bureau, 2007 Economic Census, American FactFinder, Finance and Insurance: Subject Series – Estab. and Firm Size: Summary Statistics by Revenue Size of Firms for the United States, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_52SSSZ4&prodType=table (NAICS code 522390).

¹¹⁹ 79 FR 5302, 5316 n.95 (Jan. 31, 2014).

¹²⁰ Because the Bureau has not assessed the affiliations of potential larger participants, the Bureau’s estimate of small entity larger participants may include some larger participants that are not in fact small entities due to the receipts of their affiliates, which are counted towards an entity’s annual receipts for purposes of assessing whether an entity is a small business concern under the SBA’s definition. 13 CFR 121.104(d). Conversely, it is possible there are additional small firms that have less than one million annual international money transfers on their own, but that would meet the proposed threshold of one million aggregate annual international money transfers when their transfers are aggregated with their affiliated companies’ transfers. However, the Bureau anticipates no more than a very few such cases, if any, in the international money transfer market.

in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the extent of such activity) will depend on a number of considerations, including the Bureau's allocation of resources and the application of the statutory factors set forth in 12 U.S.C. 5514(b)(2). Given the Bureau's finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, when and how often a given larger participant will be supervised is uncertain. Moreover, when supervisory activity occurred, the costs that result from such activity are expected to be minimal in relation to the overall activities of a larger participant.¹²¹

Finally, 12 U.S.C. 5514(e) authorizes the Bureau to supervise service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. Because the Final Rule does not address service providers, effects on service providers need not be discussed for purposes of this RFA analysis. Even were such effects relevant, the Bureau believes that it would be very unlikely that any supervisory activities with respect to the service providers to the approximately 25 larger participants of the nonbank market for international money transfers would result in a significant economic impact on a substantial number of small entities.¹²²

¹²¹ As discussed above, the Bureau estimates that the cost of participating in an examination would be approximately 0.18 percent of annual revenue from international money transfers for an entity at the threshold of 1 million aggregate annual international money transfers. If an examination required double the compliance officer time estimated by the Bureau, the Bureau's estimates suggest that it would still only require about 0.3 percent of annual revenue from international money transfers for an entity at the threshold of 1 million aggregate annual international money transfers.

¹²² The Bureau is aware that there are likely thousands of service providers to larger participants of the international money transfer market. Many of these service providers might be considered to be in the industry with NAICS code 522390 for other activities related to credit intermediation. As discussed above, according to the 2007 Economics Census, there are more than 5,000 small firms in the industry. Other service providers may be classified in NAICS code 522320 for financial transactions processing, reserve, and clearing house activities, which includes at least 1,800 small firms. Still other service providers, including many retail agents, are likely to be considered in other

Accordingly, the Bureau adheres to the certification, in the Proposed Rule, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau determined that the Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres. The Bureau concludes that the Final Rule, which adopts the Proposed Rule in relevant respects, also imposes no new information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1090

Consumer protection, Credit.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR Part 1090, subpart B, to read as follows:

PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER

NAICS codes corresponding to the service provider's primary business activities. As noted above with respect to larger participants themselves, the frequency and duration of examinations that would be conducted at any particular service provider would depend on a variety of factors. However, it is implausible that in any given year the Bureau would conduct examinations of a substantial number of the more than 5,000 small firms in NAICS code 522390, the more than 1,800 small firms in NAICS code 522320, or the small firm service providers that happen to be in any other NAICS code. Moreover, the impact of supervisory activities, including examinations, at such small firm service providers can be expected to be less, given the Bureau's exercise of its discretion in supervision, than at the larger participants themselves.

FINANCIAL PRODUCT AND SERVICE MARKETS

1. The authority citation for part 1090 continues to read as follows:

Authority: 12 U.S.C. 5514(a)(1)(B); 12 U.S.C. 5514(a)(2); 12 U.S.C. 5514(b)(7)(A); and 12 U.S.C. 5512(b)(1).

2. Add a new § 1090.107 to subpart B to read as follows:

§ 1090.107 International Money Transfer Market.

- (a) Market-related definitions. As used in this subpart:

Aggregate annual international money transfers means the sum of the annual international money transfers of a nonbank covered person and the annual international money transfers of each of the nonbank covered person's affiliated companies.

(i) Annual international money transfers. Annual international money transfers of a nonbank covered person means the international money transfers provided by the nonbank covered person during the preceding calendar year.

- (ii) Agents.

(A) Annual international money transfers of a nonbank covered person include international money transfers in which another person acts as an agent on behalf of the nonbank covered person.

(B) Annual international money transfers of a nonbank covered person do not include international money transfers in which another person provided the international money transfers and the nonbank covered person performed activities as an agent on behalf of that other person.

(C) For purposes of this paragraph (ii), agent means an agent or authorized delegate, as defined under State or other applicable law, or affiliated company of a person that provides

international money transfers when such agent, authorized delegate, or affiliated company acts for that person.

(iii) Aggregating the annual international money transfers of affiliated companies.

(A) The annual international money transfers of each affiliated company of a nonbank covered person are calculated separately in accordance with paragraphs (i) and (ii) of this definition, treating the affiliated company as if it were an independent nonbank covered person for purposes of the calculation.

(B) The annual international money transfers of a nonbank covered person must be aggregated with the annual international money transfers of any person that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The annual international money transfers of the nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year.

Designated recipient means any person specified by the sender as the authorized recipient of an international money transfer to be received at a location in a foreign country.

International money transfer means the electronic transfer of funds requested by a sender to a designated recipient that is sent by an international money transfer provider. The term applies regardless of whether the sender holds an account with the international money transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in § 1005.3(b) of this Title. The term does not include any transfer that is excluded from the definition of “electronic fund transfer” under § 1005.3(c)(4) of this Title.

International money transfer provider means any nonbank covered person that provides international money transfers for a consumer, regardless of whether the consumer holds an account with such person.

Sender means a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient.

State means any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision thereof.

(b) Test to define larger participants. A nonbank covered person is a larger participant of the international money transfer market if the nonbank covered person has at least one million aggregate annual international money transfers.

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE ENTITLED
“DEFINING LARGER PARTICIPANTS OF THE INTERNATIONAL MONEY
TRANSFER MARKET”]

Dated: September 9, 2014.

Richard Cordray
Richard Cordray,

Director, Bureau of Consumer Financial Protection.