

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**[Docket No.: CFPB-2019-0018]**

**Request for Information Regarding Potential Regulatory Changes to the Remittance Rule**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for information.

**SUMMARY:** The Electronic Fund Transfers Act (EFTA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), establishes certain protections for consumers sending international money transfers, or remittance transfers. The Bureau of Consumer Financial Protection's (Bureau) remittance rules (Remittance Rule or Rule) implement these protections. This notice seeks information and evidence that may inform possible changes to the Rule that would not eliminate, but would mitigate the effects of the expiration of a statutory exception for certain financial institutions. EFTA expressly limits the length of the temporary exception to July 21, 2020 and does not authorize the Bureau to extend this term. Therefore, the exception will expire on July 21, 2020 unless Congress changes the law. In addition, the Bureau seeks information and evidence related to the scope of coverage of the Rule, including whether to change a safe harbor threshold in the Rule that determines whether a person makes remittance transfers in the normal course of its business, and whether an exception for small financial institutions may be appropriate.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** You may submit responsive information and other comments, identified by Docket No. CFPB-2019-0018, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [2019-RFI-RemittanceRule@cfpb.gov](mailto:2019-RFI-RemittanceRule@cfpb.gov). Include Docket No. CFPB-2019-0018 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G St NW, Washington, D.C. 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, D.C. 20552.

*Instructions:* Please note the number associated with any question to which you are responding at the top of each response. You are not required to answer all questions to receive consideration of your comments. The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, D.C. area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G St NW, Washington, D.C. 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Please do not include in your submissions sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, or other information that you would not ordinarily make public, such as trade secrets or confidential commercial information. Submissions will not be edited to remove any

identifying or contact information, or other information that you would not ordinarily make public. If you wish to submit trade secret or confidential commercial information, please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section below. Information submitted to the Bureau will be treated in accordance with the Bureau’s Rule on the Disclosure of Records and Information, 12 CFR part 1070 *et seq.*

**FOR FURTHER INFORMATION CONTACT:** Jane Raso, Senior Counsel; Yaritza Velez, Counsel; Office of Regulations, at (202) 435-7309. If you require this document in alternative electronic format, please contact *CFPB\_Accessibility.cfpb.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### I. Background

Consumers in the United States send “remittance transfers”<sup>1</sup> in the billions of dollars to recipients in foreign countries each year. The funds that consumers send abroad are commonly referred to as remittances, and consumers send remittances (often for a fee) in a variety of ways, including by using banks, credit unions, or money services businesses (MSBs). The term “remittance transfers” is sometimes limited to describing consumer-to-consumer transfers of small amounts of money, often made by immigrants supporting friends and relatives in other countries. But “remittance transfers” may also include payments of larger dollar amounts to pay, for instance, bills, tuition, or other expenses.

Prior to the Dodd-Frank Act, remittance transfers fell largely outside of the scope of Federal consumer protection laws. Section 1073 of the Dodd-Frank Act amended EFTA by adding a new section 919 to EFTA to create a comprehensive system for consumer protection for remittance transfers sent by consumers in the United States to individuals and businesses in

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<sup>1</sup> The definition of “remittance transfer” in the Remittance Rule is described below.

foreign countries.<sup>2</sup> EFTA applies broadly in terms of the types of “remittance transfers” it covers and persons and financial institutions subject to it. EFTA section 919(g)(2) defines “remittance transfer” as the electronic transfer of funds by a sender in any State to designated recipients located in foreign countries that are initiated by a remittance transfer provider; only small dollar transactions are excluded from this definition.<sup>3</sup> EFTA section 919(g)(3) defines “remittance transfer provider” to be a person or financial institution providing remittance transfers in the “normal course of its business.” The Rule provides that whether a person conducts transfers in the “normal course of business” generally depends on the “facts and circumstances.”<sup>4</sup> However, the Rule also contains a safe harbor whereby a person that provides 100 or fewer remittance transfers in the previous and current calendar years would be deemed not to meet the normal course of business definition, and therefore be outside of the Rule’s coverage.<sup>5</sup> As noted above, remittance transfer services may be provided by banks, credit unions, and MSBs. In its recent assessment of the Remittance Rule, the Bureau found that in 2017, MSBs conducted 95.6 percent of all remittance transfers, banks made up 4.2 percent of remittance transfers, and credit unions conducted 0.2 percent of remittance transfers.<sup>6</sup> Note that,

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<sup>2</sup> 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified at 1693o-1.

<sup>3</sup> 15 U.S.C. 1693o-1(g)(2). As adopted in the Remittance Rule, the term “remittance transfer” means:

[The] electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in [subpart A of Regulation E].

The Rule’s definition specifically excludes the following transfers: (1) transfer amounts of \$15 or less; and (2) certain securities and commodities transfers. 12 CFR 1005.30(e).

<sup>4</sup> Comment 30(f)(2)-i.

<sup>5</sup> 12 CFR 1005.30(f)(2)(i).

<sup>6</sup> Bureau of Consumer Fin. Prot., *Remittance Rule Assessment Report*, at 4 (2018) (hereinafter Assessment Report), available at [https://www.consumerfinance.gov/documents/6963/bcfp\\_remittance-rule-assessment\\_report.pdf](https://www.consumerfinance.gov/documents/6963/bcfp_remittance-rule-assessment_report.pdf).

Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.

because the average transfer size for banks is much larger than for MSBs, banks share of dollars transferred is greater than their share of number of transfers made.<sup>7</sup>

An important requirement established by EFTA section 919 is that remittance transfer providers generally must disclose (both prior to and at the time the consumer pays for the transfer) the actual exchange rate and the amount to be received by the recipient of a remittance transfer.<sup>8</sup> EFTA provides two exceptions to this general disclosure requirement, a “temporary” exception and a “permanent” exception.<sup>9</sup>

Remittance transfer providers qualify for the temporary exception in EFTA section 919 if: (i) they are an insured depository institution or insured credit union (collectively, “insured institutions”) that makes a transfer from an account that the sender holds with them; and (ii) they are unable to know, for reasons beyond their control, the amount of currency that will be made available to the designated recipient. If these conditions are met, EFTA’s temporary exception provides that these institutions need not disclose the amount of currency that will be received by the recipient but rather may disclose “a reasonably accurate estimate of the foreign currency to be received.”<sup>10</sup> Specifically, under the Rule, insured institutions may disclose estimates<sup>11</sup> of the exchange rate (as applicable),<sup>12</sup> certain third-party fees defined in the Rule as “covered third-party fees,”<sup>13</sup> the total amount that will be transferred to the recipient inclusive of covered third-

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<sup>7</sup> Assessment Report, at 63-64.

<sup>8</sup> 15 U.S.C. 1693o-1(a)(1) and (2).

<sup>9</sup> EFTA section 919(c) permits the Bureau to except remittance transfer providers from having to provide actual amounts for transfers to certain nations if the Bureau determines that a recipient country does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient. 15 U.S.C. 1693o-1(c). Unlike the temporary exception, this exception may be used by any remittance transfer provider sending to a country that meets the relevant conditions, not just insured institutions. Also unlike the temporary exception, this exception has no sunset date and therefore is permanent.

<sup>10</sup> 15 U.S.C. 1693o-1(a)(4).

<sup>11</sup> 12 CFR 1005.32(c).

<sup>12</sup> 12 CFR 1005.31(b)(1)(iv).

<sup>13</sup> 12 CFR 1005.31(b)(1)(vi).

party fees,<sup>14</sup> and the amount that will be received by the recipient (after deducting covered third-party fees).<sup>15</sup> This exception from disclosing actual amounts is temporary because EFTA provides a one-time ability for the Bureau to extend the exception up to five years from the enactment of the Dodd-Frank Act, or until July 21, 2020, if the Bureau determined that the expiration of the exception would negatively affect the ability of insured institutions to send remittances to foreign countries. As EFTA section 919 expressly limits the length of the temporary exception to the term specified therein, and does not provide the Bureau the authority to extend this term beyond July 21, 2020, or make it permanent, the temporary exception will expire on July 21, 2020.

The Bureau implemented EFTA section 919 (including the temporary exception) through its remittance rule issued in 2012 which, as amended, became effective on October 28, 2013.<sup>16</sup> As noted above, the Bureau conducted an assessment of its remittance rules as effective as of November 2014 and in late 2018 published a report of its assessment. As discussed below, the Assessment Report provided insights into the effectiveness of the Rule and its provisions, including the temporary exception. In this RFI, the Bureau is seeking information on the expiration of the temporary exception on July 21, 2020, and potential options to mitigate the impact of the expiration. Based on comments and other feedback from various remittance transfer providers and their trade associations, as well as its own analysis, the Bureau is concerned about the potential negative effects of the expiration of the temporary exception.<sup>17</sup>

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<sup>14</sup> 12 CFR 1005.31(b)(1)(v).

<sup>15</sup> 12 CFR 1005.31(b)(1)(vii).

<sup>16</sup> 77 FR 6194 (Feb. 7, 2012); as amended on 77 FR 40459 (July 10, 2012); 77 FR 50243 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30661 (May 22, 2013); and 78 FR 49365 (Aug. 14, 2013).

<sup>17</sup> The Bureau received approximately 40 comments on the Remittance Rule in response to a RFI it issued in 2017 in connection with the Assessment Report. Assessment Report, at 149. The Bureau also received approximately 34 comments on the Remittance Rule from two RFIs it issued in 2018. One of the 2018 RFIs concerns whether the Bureau should amend any rules it has issued since its creation or exercise new rulemaking authorities provided for by the Dodd-Frank Act. See Bureau of Consumer Fin. Prot., *Request for Information Regarding the Bureau's*

The Bureau is also seeking information on possible changes to the current safe harbor threshold in the Rule’s “normal course of business” definition<sup>18</sup> and whether an exception for “small financial institutions” in the Rule may be appropriate. The Bureau is concerned about the Rule’s effects on certain remittance transfer providers that account for a small number of remittance transfers overall but nonetheless fall within the Rule’s coverage because the number of remittance transfers they provide exceed 100 transfers a year, and thus, are not able to use the current safe harbor for “normal course of business.”

The Bureau has received a number of other suggestions for changes to the Remittance Rule to improve its effectiveness in helping consumers or reduce the burden it may impose. However, in light of the time sensitivity of the expiration of the temporary exception, this RFI is limited to seeking information on the two issues described above.

## II. Expiration of the Temporary Exception

### A. Potential Challenges in Disclosing Actual Amounts

There are a variety of methods used to send remittance transfers. Generally, these methods involve either a closed network payment system or an open network payment system, although hybrids between open and closed payment systems also exist. In a “closed network” payment system, the remittance transfer provider exerts a high degree of end-to-end control over a transfer. Although there are many ways a closed network payment system might be structured,

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*Adopted Regulations and New Rulemaking Authorities* (2018), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_rfi\\_adopted-regulations\\_032018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_rfi_adopted-regulations_032018.pdf). The other 2018 RFI concerns whether the Bureau should amend rules or exercise the rulemaking authorities that it inherited from other Federal government agencies. See Bureau of Consumer Fin. Prot., *Request for Information Regarding the Bureau’s Inherited Regulations and Inherited Rulemaking Authorities* (2018), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_rfi\\_inherited-regulations\\_032018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_rfi_inherited-regulations_032018.pdf).

<sup>18</sup> As discussed above, the phrase “normal course of business” in the definition of “remittance transfer provider” determines whether a person providing remittance transfers is covered by the Rule. Also as discussed, the Rule contains a safe harbor that clarifies that certain persons do not provide transfers in the “normal course of business” because the number of transfers they provide is below 100 transfers a year in the previous and current calendar years.

the level of control such a system affords the remittance transfer provider means, among other things, that the provider could disclose precise and reliable information about the terms and costs of transfers (*e.g.*, fees and exchange rate) before the sender pays for the transfer. Closed network payment systems are relied on by most MSBs that provide remittance transfer services.

The other major type of system, typically referred to as an “open network” payment system, is one in which no one entity necessarily exerts end-to-end control over a remittance transfer. Open network payment systems are primarily utilized by banks and credit unions, and include the system by which consumers send wire transfers<sup>19</sup> or other transfers from their deposit accounts to overseas recipients. The predominant open network payment system model is the correspondent banking network.<sup>20</sup> The correspondent banking system lacks a single, central operator, which distinguishes it from closed network payment systems. Instead, the correspondent banking network is a decentralized network of banking relationships between the world’s tens of thousands of banks and credit unions. Most institutions only maintain relationships with a relatively small number of correspondent banks, but could nonetheless reach a wide number of recipient financial institutions worldwide even if the institution does not have control over, or a relationship with, all of the participants in transmitting a remittance transfer.

Because a sending institution does not necessarily have a relationship with, or control over, all the participants in transmitting a remittance transfer in an open network payment system, a sending institution using an open network payment system may face greater difficulty in determining and disclosing the exact amounts required by the Rule, compared to remittance

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<sup>19</sup> 79 FR 55970, 55971 (Sept. 18, 2014) (“The most common form of an open payment network remittance transfer is a wire transfer, an electronically transmitted order that directs a receiving institution to deposit funds into an identified beneficiary’s account.”).

<sup>20</sup> Generally speaking, a correspondent banking network is made up of individual correspondent banking relationships, which describe arrangements under which one bank (correspondent) holds deposits owned by other banks (respondents) and provides payment and other services to those respondent banks. See, *e.g.*, Bank for International Settlements, *Correspondent Banking*, at 9 (2016), available at <https://www.bis.org/cpmi/publ/d147.pdf>.

transfer providers operating within a closed network payment system. For example, with respect to fees charged by intermediary institutions, absent a correspondent banking relationship or other arrangement with an intermediary institution in the transmittal chain, a sending institution may not know with certainty the amount of fees that institution may impose on the remittance transfer. Likewise, if the sending institution does not conduct any necessary currency exchange, any institution through which the funds pass could potentially perform the currency exchange before the recipient's institution deposits the funds into the recipient's account. Again, absent a correspondent banking or other arrangement with the institution that performs the currency exchange, the sending institution may not know the applicable exchange rate with certainty.

New market entrants may employ business models that make it easier for them to determine actual amounts. In recent years, new types of remittance transfer providers, and other businesses that are not traditional MSBs or financial institutions, have entered the market. Their business models and product offerings may eventually provide greater transparency and certainty over the terms and cost of a remittance transfer. For example, new remittance transfer providers that have entered the market have adopted variations of the closed payment network system, and therefore, they can disclose precise and reliable information about the terms and costs of transfers before the sender pays for the transfer.<sup>21</sup>

Existing market participants may also be engaged in creating new ways of facilitating cross-border transfers with enhanced transparency and certainty over certain terms and costs of remittance transfers. The Society for Worldwide Interbank Financial Telecommunication (SWIFT)'s “global payments innovation” (gpi) tracking product is one such example. SWIFT provides messaging services that support a large share of all cross-border interbank payments

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<sup>21</sup> In addition to making it easier to determine actual amounts, these new business models may increase consumer choice by providing them with alternatives to traditional MSBs and financial institutions, such as higher limits on a transfer's transaction size to compete with transfers provided by financial institutions.

conducted via open network payment systems. The gpi tracking product could potentially bring greater transparency and certainty over payment terms to open network payment transfers because it allows financial institutions to track the fees charged and the exchange rates applied to a payment along its transmittal route. The product, however, has not been adopted by all SWIFT members. But in October 2018, SWIFT released a version of gpi that provides all banks on the SWIFT network the ability to see and track their payments, intending to expand gpi adoption.<sup>22</sup>

#### B. Bureau Action Related to the Temporary Exception

As discussed above, EFTA section 919 provides that the temporary exception shall expire five years after the enactment of the Dodd-Frank Act (*i.e.*, July 21, 2015). It authorizes the Bureau to extend the exception—but for *no more than an additional five years*—if the Bureau determined that the expiration “would negatively affect the ability of [covered insured institutions] . . . to send remittances to locations in foreign countries.”<sup>23</sup> In 2014, following a notice-and-comment rulemaking process, the Bureau made that determination and extended the temporary exception to July 21, 2020.<sup>24</sup> The temporary exception will expire on July 21, 2020. EFTA section 919 expressly limits the length of the temporary exception to the term specified therein and does not provide the Bureau authority to extend this term beyond July 21, 2020. The Bureau, therefore, will not be extending the exception or making it permanent unless Congress changes the law.

#### C. Assessment Findings and Additional Analysis

Based on 2017 bank call report data, it appears that approximately 886,000 remittance transfers (just over six percent of total bank transfers sent in 2017 and 0.27 percent of all

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<sup>22</sup> See Press Release, SWIFT, *SWIFT rolls out gpi tracker for all as usage soars* (Oct. 23, 2018), <https://www.swift.com/news-events/press-releases/swift-rolls-out-gpi-tracker-for-all-as-usage-soars>.

<sup>23</sup> 15 U.S.C. 1693o-1(a)(4)(B).

<sup>24</sup> 79 FR 55970 (Sept. 18, 2014).

remittance transfers sent in 2017) relied on the temporary exception.<sup>25</sup> Credit unions are not required to report reliance on the temporary exception on credit union call reports, even though they may use the exception. The Bureau conducted an analysis in which it assumed that all of the approximately 760,000 remittance transfers sent by credit unions relied on the temporary exception,<sup>26</sup> and determined that it would have meant that approximately an additional 0.22 percent of all remittance transfers sent in 2017 relied on the temporary exception, making the total percentage of transfers that rely on the temporary exception approximately 0.5 percent.

The Assessment Report also found that fewer banks relied on the temporary exception in 2017 than in 2014, the year banks began reporting remittance transfer activities on their call reports.<sup>27</sup> The decline appears to be the result of both fewer banks relying on the exception for any transfers, and a reduction in the reported percentage of transfers for which the temporary exception is used among the banks that continue to rely on the exception. Based on its analysis of 2017 call report data, the Bureau found that only 80 banks used the temporary exception. Among these 80 banks, there appears to be considerable variance in the rate of reliance. For

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<sup>25</sup> Assessment Report, at 139. Bank call reports provide data on bank reliance on the temporary exception. Under the Rule, for purposes of determining whether a bank or credit union may rely on the temporary exception, an “insured institution” means “insured depository institutions … as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and insured credit unions as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752). 12 CFR 1005.32(a)(3). But there is no similar information for credit union reliance, as credit unions are not required to report reliance on the temporary exception on credit union call reports. Further, broker-dealers may rely on the temporary exception pursuant to a SEC no-action letter. However, the Bureau does not have data on broker-dealers’ use of the exception, but expects that to the extent they are associated with banks, their reliance should mirror that of the banks with whom they are associated. Assessment Report, at 141.

<sup>26</sup> The Bureau has information that suggests that 100 percent reliance on the temporary exception by credit unions is unlikely. An industry survey the Bureau conducted to support the assessment also asked whether providers are relying on the exception, and if so, whether they use it to estimate fees, exchange rates, or both. Of the 41 banks and credit unions that answered the question, six respondents replied that they used the temporary exception, similar to the proportion in the bank call reports. Only one of the 17 credit unions that answered the question reported using the temporary exception. That credit union reported using it for fees only. However, as the Assessment Report cautioned, the survey is not statistically representative of the market, even though the Bureau sent the survey to a representative sample of approximately 200 banks and credit unions, as well as every remittance-sending MSB for which the Bureau could find contact information.

<sup>27</sup> Bank call report data from 2014 suggest that around nine percent of transfers sent by banks relied on the temporary exception. Assessment Report, at 139.

example, while four of the five top remitting banks use the exception, that reliance ranges from approximately 0.4 percent to 27 percent of the total number of remittance transfers they sent.

While a substantial majority of remittance transfers may not involve the use of the temporary exception, the Bureau also recognizes that a large number of remittance transfers, specifically, 886,000 of them in 2017, could be affected by the expiration of the exception, and these effects could be particularly significant in some countries or corridors. In these instances, the Bureau recognizes the value to consumers of being able to send remittance transfers directly from their checking account to the account of a recipient in a foreign country through their bank or credit union. While new types of remittance transfer providers and new product offerings may be emerging that offer greater transparency about certain terms and costs of a remittance transfer, they may not be able to bring such transparency to certain corridors or specific financial institutions, even if they become more widely adopted in the near future.

However, the Bureau does not have specific information as to why certain insured institutions are able to provide remittance transfers without relying on the temporary exception while others are not. The Bureau likewise does not have specific information as to why, among those using the temporary exception, the rate of usage varies widely. Lastly, although the Bureau generally believes that institutions rely more often on the temporary exception to estimate fees than exchange rates, the Bureau does not have information related to the specific extent to which institutions that rely on the temporary exception are doing so to estimate fees, exchange rates, or both.

### III. Coverage of Certain Remittance Transfer Providers

#### A. Persons that Do Not Provide Remittance Transfers in the Normal Course of Business

EFTA section 919(g)(3) defines “remittance transfer provider” to mean a “person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution.”<sup>28</sup> In its first remittance rulemaking, finalized in February 2012, the Bureau explained that whether a person conducts transfers in the “normal course of business” depends on the facts and circumstances.<sup>29</sup>

To develop clearer and more appropriately tailored standards for determining whether providers of remittance transfer services are excluded from compliance with the Rule’s requirements because they do not provide remittance transfers in the “normal course of business,” the Bureau issued a concurrent proposal in February 2012 that would have established a safe harbor wherein a person that provided fewer than 25 remittance transfers in the previous and current calendar years would be deemed not to meet the normal course of business definition and therefore, not be covered by the Rule and be excluded from having to comply with the Rule’s requirements.

The Bureau adopted the safe harbor in August 2012, with changes. In reviewing the information provided by commenters, including industry participants, and other sources in response to the proposal, the Bureau determined in 2012 that the appropriate safe harbor under which a person is deemed not to be providing remittance transfers for a consumer in the “normal course of its business”—thus falling outside of the Rule’s coverage and being exempt from its requirements—is 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.<sup>30</sup> In setting this threshold at 100, the Bureau believed that the number was high enough that persons

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<sup>28</sup> 15 U.S.C. 1693o-1(g)(3).

<sup>29</sup> 77 FR 6194, 6213 (Feb. 7, 2012).

<sup>30</sup> 12 CFR 1005.30(f)(2)(i).

will not risk exceeding the safe harbor based on the needs of just two or three customers seeking monthly transfers while low enough to serve as a reasonable basis for identifying persons who occasionally provide remittance transfers, but not in the normal course of their business.<sup>31</sup> At the same time, the Bureau acknowledged that it did not receive data on the overall distribution and frequency of remittance transfers across providers “to support treating any particular number of transactions as outside the normal course of business.”<sup>32</sup> When the Bureau adopted the normal course of business safe harbor, it also stated that the Bureau intended to monitor the threshold over time to better understand business structures and potential consumer protection concerns.<sup>33</sup>

Additionally, although the Remittance Rule does not have a small entity exception, the Bureau notes that EFTA section 904(c) contains a “small financial institution” exception, which permits the Bureau to modify EFTA’s statutory requirements for such institutions if the Bureau determines that “such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of [EFTA].”<sup>34</sup> Over the years and in comment letters responding to the RFIs discussed above, a number of industry commenters have suggested compliance costs associated with the Rule caused an increase in prices, an exodus of credit unions from the market, and a reduction in services offered to consumers in order to stay within the safe harbor threshold.<sup>35</sup> Given this, the Bureau is considering whether the threshold in the normal course of business safe harbor should be raised and whether an exception for small financial institutions may be appropriate.

## B. Assessment Findings

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<sup>31</sup> 77 FR 50243, 50251 (Aug. 20, 2012).

<sup>32</sup> 77 FR 50243, 50251-52 (Aug. 20, 2012).

<sup>33</sup> 77 FR 50243, 50252 (Aug. 20, 2012).

<sup>34</sup> 15 U.S.C. 1963b(c).

<sup>35</sup> See e.g., Assessment Report, at 154.

The Assessment Report found that of the banks and credit unions that offer remittance transfers, approximately 80 percent of banks and 75 percent of credit unions provide 100 or fewer remittance transfers in any given year, and accordingly are not covered by the Rule.<sup>36</sup> <sup>37</sup> With respect to market exit, the Assessment Report found that data from the call reports were inconsistent with the assertion that there has been a notable decrease in credit unions offering remittance transfers since the Rule took effect. There is no comparable available evidence with respect to the number of banks offering remittance transfers since the Rule took effect.<sup>38</sup> Lastly, with respect to reducing the number of transfers they make to stay within the safe harbor threshold, the available evidence from the Assessment Report does not indicate that banks or credit unions are putting a ceiling on the number of remittance transfers they provide to avoid making more than 100 transfers and thereby not be subject to the Rule.

Nonetheless, the Assessment Report also found that the Rule covers a large number of bank and credit union providers whose number of remittance transfers provided exceed the safe harbor threshold, but still account for a relatively small number of remittance transfers overall. Of the roughly 700 banks within the scope of the Rule, around 400 sent fewer than 500 remittance transfers a year and some 100 sent between 500 and 1,000 remittance transfers per year from 2014 to 2017.<sup>39</sup> Similarly, of approximately 300 credit unions that are remittance transfer providers under the Rule, around 200 sent fewer than 500 remittance transfers per year from 2014 to 2017 and some 50 sent between 500 and 1,000 remittance transfers per year over

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<sup>36</sup> Assessment Report, at 134.

<sup>37</sup> While the Bureau does not have sufficiently complete evidence to make a conclusive determination, available evidence strongly suggests that very few, if any, MSBs send 100 or fewer remittances in any given year. *See also* 77 FR 50243, 50252 (Aug. 20, 2012) (“[The data sets available] regarding state-licensed money transmitters did not show that any licensees that recorded some transaction volume also recorded 100 or fewer transfers per year nationally.”).

<sup>38</sup> Note that since the Rule took effect the share of credit unions offering remittance transfers has increased while the share of banks initially declined but has been increasing.

<sup>39</sup> Assessment Report, at 75-76.

the same time period.<sup>40</sup> Further, the Assessment Report noted the following relationship between the asset size of a bank or credit union and the number of remittance transfers it provides: the smaller the asset size of a financial institution, the fewer total number of remittance transfers it offers on average.<sup>41</sup>

Overall, remittance transfer providers that provide relatively small numbers of remittance transfers have fewer transactions to produce revenues through which to recover the fixed compliance costs associated with the Rule. Additionally, a number of credit unions and banks have described how the cost of providing remittance transfers has gone up since the Rule took effect. For example, a number of them have reported that they have contracted with a corporate credit union or a large bank to handle their wire transfers.<sup>42</sup> According to these institutions, the amounts charged by these larger corporate entities for transfers are higher than their costs for wire transfers before the Rule took effect. Accordingly, the Bureau believes it is appropriate to seek information and evidence regarding whether the Rule’s current definition of “normal course of business” is appropriate and whether creating a “small financial institution” exception in the Rule is appropriate.

#### IV. Request for Information

The Bureau seeks information from the general public, including but not necessarily limited to consumer groups, individual consumers, banks and credit unions, broker-dealers, MSBs, and other businesses that offer remittance transfer services.

##### A. Questions Related to the Expiration of the Temporary Exception

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<sup>40</sup> Assessment Report, at 82-83.

<sup>41</sup> For example, banks that make more than 100 remittance transfers per year have substantially larger asset sizes than banks that transfer 100 or fewer. A similar relationship exists for credit unions. Assessment Report, at 74 and 81.

<sup>42</sup> The Bureau also understands that service providers can include nonbanks that offer specialized international fund transfer services, which in turn may rely on other entities to generate the information required on the disclosures, such as lifting fees and exchange rates.

Based on comments responding to the Bureau’s RFIs on the Assessment Report and its adopted and inherited regulations, outreach the Bureau has done, and the Bureau’s internal analysis, the Bureau recognizes that the expiration of the temporary exception could have negative consequences if insured institutions that rely on the exception respond to its expiration by reducing or curtailing services to certain destinations. The Bureau believes that any disruption will be small in terms of the overall remittance transfer market, but recognizes that a large number of transfers are currently made using the exception and that to the extent that the temporary exception’s expiration causes disruption, it may impact open network transfers, particularly wire transfers, which could restrict consumer choices. Additionally, consumers may not have readily-available substitutes should insured institutions that rely on the temporary exception decide to respond by reducing or curtailing service.

In particular, the Bureau is interested in whether reliance on the temporary exception is necessary for certain countries or destinations in certain countries (collectively, “specific destinations”) due to some characteristic or characteristics specific to that destination. For example, the Bureau has been told that there are currencies for which a fixed exchange rate applicable to a remittance transfer cannot be provided at the time a consumer requests the transfer because foreign laws may bar the purchase of that currency in the United States.<sup>43</sup> The Bureau is interested in learning more information about which currencies fall into this category. Such information may point to a challenge for remittance transfer providers regardless of whether they are insured institutions. On the other hand, if the reason for the inability to provide accurate information for transfers to a specific destination is due to an insured institution’s lack of correspondent banking or other contractual relationships, this may be because it is an inherent characteristic of an open network payment system or because there are specific reasons that the

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<sup>43</sup> 79 FR 55970, 55982 (Sept. 18, 2014).

establishment of correspondent banking or contractual relationships to such destinations infeasible. Lastly, the Bureau is interested in learning more about the specific impacts of the expiration of the temporary exception on smaller financial institutions.

The information requested will enable the Bureau to evaluate possible changes to the Rule to mitigate (but not eliminate) the effects of the temporary exception's expiration on July 21, 2020. The questions are as follows and are grouped into six categories:

*General questions*

1. As applicable, please describe or list:
  - a. The characteristics of transactions for which insured institutions are relying on the temporary exception. For example, does the dollar value of the transfer relate to whether or not the temporary exception will be used? Does the type of transaction relate to whether or not the temporary exception will be used (*e.g.*, wire transfer versus some other type of open network transfer; USD wire versus foreign currency wire)?
  - b. Circumstances under which insured institutions are consistently able to provide exact amounts. For example, are there certain corridors for which at least some insured institutions can always provide exact amounts in disclosures? Why are these institutions able to provide exact amounts while other remittance transfer providers cannot?
  - c. Currencies for which a specific exchange rate applicable to a remittance transfer cannot be provided at the time a consumer requests a remittance transfer because foreign laws or other obstacles bar the purchase of that currency in the United States. What factors preclude the purchase of such currency?

- d. Specific destinations for which insured institutions cannot disclose fees charged by third parties because of a lack of correspondent banking or other contractual relationships with financial institutions in those destinations. What factors preclude the development of such relationships in those specific destinations?
  - e. Foreign financial institutions to which remittance transfers are directed for which insured institutions have found it necessary to rely on the temporary exception because these foreign financial institutions cannot, or will not, provide information about the fees they impose on a remittance transfer. In what corridors are these institutions found? What factors contribute to their inability or unwillingness to provide such information?
  - f. Challenges to the further reduction or elimination of need to provide estimates rather than actual amounts in disclosures.
2. Some insured institutions report minimal or no reliance on the temporary exception. Please describe the characteristics and business practices of these institutions that do not rely on the temporary exception at all or rely on it to a minimal extent. For example, are these institutions generally able to send most types of transactions to most corridors without the need to estimate? Are they restricting or limiting their services in certain ways in order to avoid relying on estimates? Do some such institutions have few or no customers who send transactions that tend to entail the need to estimate?
3. For insured institutions that rely on estimates, how do such institutions obtain the information on which they base estimates? How accurate do they believe these estimates to be? Please describe whether there are any differences between the error rate of remittance transfers for which the temporary exception is not relied upon and remittance

transfers for which the exception is relied upon. How large are differences in absolute terms between the estimates provided to consumers and the actual amounts (*e.g.*, for an estimated fee of \$3.00 is the actual fee consumers incur \$2.75, 3.05 or \$3.50)?

*Remaining reliance*

4. To the extent that reliance on the temporary exception can be eliminated or further reduced by July 21, 2020:
  - a. What methods (products, services, or innovations) could insured institutions put in place to avoid relying on estimates by the time that the temporary exception expires on July 21, 2020?
  - b. What would be the cost (one-time and ongoing) of putting those methods in place?
5. Are there specific types of transactions for which elimination of reliance on the temporary exception is not feasible for the foreseeable future? If so, for which categories of transaction and why (*e.g.*, cost-prohibitive, lack of alternative methods of transmission)?

*Corridors and other destination issues*

6. Are there certain market “niches” served only by insured institutions? For example, are there types of remittance transfer services offered by insured institutions that are not offered by MSBs (*e.g.*, transactions over a certain transfer amount)? Are there specific destinations that insured institutions can service that MSBs do not or cannot? Are these destinations also niches where the ability to estimate is necessary to continue services? If so, why?

7. What specific destinations or other factors that impact the ability of insured institutions to provide precise disclosures when sending remittance transfers also impact MSBs that provide remittance transfer services?

*Correspondent banking and market structure*

8. To the extent that small-to-midsize insured institutions often rely on large correspondent banks in the United States to execute remittance transfers, how and why do efforts made by those large correspondent banks that reduce their own reliance on the temporary exception also allow smaller institutions that use their correspondent services to provide actual cost information?
9. To the extent an insured institution maintains correspondent banking, or other contractual or informal, arrangements that reduce their reliance on the temporary exception, what are the possibilities (including the costs) for that insured institution to facilitate remittance transfers being sent by other banks whose own arrangements do not overlap with its arrangement?
10. Do insured institutions generally use the same methods, systems, partners, and vendors to execute international commercial payments as they use for remittance transfers? If so, do they rely on estimation more, less, or about the same for such commercial transfers as they do for remittance transfers? Do other aspects of the patterns of reliance on estimation differ between commercial and remittance transfers? Do new business arrangements, practices, or technologies that impact one generally impact the other?

*Countries list*

11. In connection with the Remittance Rule, the Bureau has published a safe harbor countries list containing five countries (Aruba, Brazil, China, Ethiopia, and Libya) where the laws

of those countries do not permit the determination of exact amounts at the time the pre-payment disclosure must be provided. What other countries, if any, should be added to this list because their laws do not permit the determination of exact amounts at the time the pre-payment disclosure must be provided? Please describe how the relevant laws prevent such determination. Are these countries for which remittance transfer services are not currently being provided, or where providers are relying on estimates?

*Miscellaneous*

12. Is there any other information that will help inform the Bureau as it considers whether to mitigate the impact of the expiration of the temporary exception on July 21, 2020?

B. Questions Related to Coverage of Certain Remittance Transfer Providers

As discussed above, the Bureau is interested in obtaining information and evidence to determine whether to address coverage of certain remittance transfer providers that provide remittance transfers “in the normal course of business” even though they account for a relatively small number of transfers overall. Also as discussed above, the Bureau found that the smaller the asset size of a financial institution, the fewer total number of remittance transfers it provides on average. Accordingly, the Bureau seeks information on the following:

13. For remittance transfer providers that provide more than 100 remittance transfers per year but account for a relatively small number of remittance transfers overall,<sup>44</sup> what are the economics of offering remittance transfers? For example:

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<sup>44</sup> For example, in 2017, banks that provided more than 100 but fewer than 1,001 remittance transfers accounted for less than 0.063 percent of the total remittance transfers that year. In the same year, credit unions that provided more than 100 but fewer than 1,001 remittance transfers accounted for less than 0.03 percent of total remittance transfers.

- a. What are the fixed costs and variable costs (*e.g.*, how costly is it to send the 201st transfer compared to the 200th?) of offering remittance transfers in compliance with the Rule?
  - b. Has it become necessary for these remittance transfer providers to contract with a service provider to provide or support all or a portion of their remittance transfers covered by the Rule? If so, what aspects of the Rule require contracting with a service provider?
  - c. For these remittance transfer providers that contract with a service provider to provide remittance transfers, what are the per-transfer costs charged by the service provider?
  - d. How does anticipated volume factor into the decision to provide remittance transfer services?
  - e. Please describe whether and how the Rule's costs are being passed on to consumers (directly, indirectly, or both).
  - f. Please describe costs not related to compliance with the Remittance Rule (*e.g.*, compliance with the requirements under the Bank Secrecy Act, with applicable State laws) that remittance transfer providers incur in sending transfers. Approximately how much are these costs? How are they structured (*e.g.*, what portion of the cost is attributable to fixed cost, variable cost)?
14. With respect to remittance transfer providers that provide more than 100 remittance transfers per year but account for a relatively small number of transfers overall, many times per year does the typical remittance customer send a remittance transfer? How often does the typical remittance customer cancel or assert an error?

15. For how many remittance transfers per year is it necessary to have the equivalent of one full-time staff member supporting a remittance transfer provider's remittance transfer services? How many transfers necessitate two "full time equivalent" staff?
16. In addition to the total number and frequency of remittance transfers provided, what other factors should the Bureau consider in determining whether a person is providing remittance transfers "in the normal course of its business"?
17. Please describe the asset size of financial institutions that provide more than 100 remittance transfers per year but account for a relatively small number of remittance transfers overall.
18. Is there any other information that could help inform the Bureau as it considers the burden of the Rule on providers that provide more than 100 remittance transfers per year but account for a relatively small number of remittance transfers overall?

**[THIS SIGNATURE PAGE PERTAINS TO THE DOCUMENT TITLED "REQUEST  
FOR INFORMATION REGARDING POTENTIAL REGULATORY CHANGES TO  
THE REMITTANCE RULE."]**

Dated: April 23, 2019.

A handwritten signature in blue ink that reads "Kathleen L. Kraninger". The signature is fluid and cursive, with "Kathleen" on top and "L. Kraninger" below it, all written in one continuous stroke.

**Kathleen L. Kraninger,**

*Director, Bureau of Consumer Financial Protection.*