BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2019–0058]

RIN 3170–AA96

Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Electronic Fund Transfer 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 rule in Regulation E (Remittance Rule or Rule) implements these protections. The Bureau is proposing changes to the Rule to mitigate the effects of the expiration of a statutory exception that allows insured institutions to disclose estimates instead of exact amounts to consumers. That exception expires on July 21, 2020. In addition, the Bureau is proposing to increase a safe harbor threshold in the Rule related to whether a person makes remittance transfers in the normal course of its business, which would have the effect of reducing compliance costs for entities that make a limited number of remittance transfers annually.

DATES: Comments must be received on or before January 21, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2019–0058 or RIN 3170–AA96, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019–NPRM-Remittances@cfpb.gov.* Include Docket No. CFPB–2019–0058 or RIN 3170–AA96 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Remittances, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC 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 *https://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Yaritza Velez, Counsel, or Kristine M. Andreassen, Krista Ayoub, or Jane Raso, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau is proposing several amendments to the Remittance Rule,[1] which implements EFTA section 919 governing international remittance transfers. First, the Bureau is proposing to increase a safe harbor threshold in the Rule which would have the effect of reducing compliance costs for entities that make a limited number of remittance transfers annually. Under both EFTA and the Rule, the term ''remittance transfer provider'' is defined, in part, to mean any person that provides remittance transfers for a consumer in the normal course of its business.[2] The Rule also provides a safe harbor, stating that 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.[3] The Bureau is proposing to adjust the safe harbor threshold from 100 transfers to 500 transfers annually. The Bureau's proposed changes to the safe harbor threshold appear in the definition of remittance transfer provider in § 1005.30(f) and related commentary.

Second, the Bureau is proposing changes to the Rule to mitigate the effects of the expiration of a statutory exception that allows insured institutions to disclose estimates to consumers of the exchange rate and covered third-party fees instead of exact amounts. That exception expires on July 21, 2020. Specifically, with respect to the exchange rate, the Bureau is proposing to adopt a permanent exception that would permit insured institutions to estimate the exchange rate for a remittance transfer to a particular country if, among other things, the designated recipient will receive funds in the country's local currency and the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to that country when the designated recipients received funds in the country's local currency. With respect to covered third-party fees, the Bureau is proposing to adopt a permanent exception that would permit insured institutions to estimate covered third-party fees for a remittance transfer to a particular designated recipient's institution if, among other things, the insured institution made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year. The temporary exception and its statutorily mandated expiration date are in existing § 1005.32(a)(1) and (2); the Bureau's proposed changes to mitigate the expiration of that exception appear in proposed § 1005.32(b)(4) and (5) and related commentary, along with conforming changes in §§ 1005.32(c), 1005.33(a)(1)(iii)(A), and 1005.36(b)(3) and in the commentary accompanying §§ 1005.32, 1005.32(b)(1), (c)(3), and (d), and 1005.36(b).

Finally, the Bureau is also seeking comment on a permanent exception in the Rule (in § 1005.32(b)(1)) permitting providers to use estimates for transfers to certain countries and the process for adding countries to the safe harbor countries list maintained by the Bureau.

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

Due to changes in requirements by the Office of the Federal Register, when amending commentary the Bureau is

[1] 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), 78 FR 49365 (Aug. 14, 2013), 79 FR 55970 (Sept. 18, 2014), 81 FR 70319 (Oct. 12, 2016), and 81 FR 83934 (Nov. 22, 2016) (together, Remittance Rule or Rule).

[2] EFTA section 919(g)(3), codified at 15 U.S.C. 1693*o*-1(g)(3); 12 CFR 1005.30(f)(1).

[3] 12 CFR 1005.30(f)(2)(i).

now required to reprint certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of commentary included in this document show the language of those sections if the Bureau adopts its changes as proposed. The Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is proposing to make to the regulatory text and commentary of the Remittance Rule.[4]

II. Background

A. Market Overview

Consumers in the United States send billions of dollars in remittance transfers to recipients in foreign countries each year. The term ''remittance transfers'' is sometimes used to describe consumer-to-consumer transfers of small amounts of money, often made by immigrants supporting friends and relatives in other countries. The term may also include, however, payments of larger amounts, for instance, to pay bills, tuition, or other expenses.

Money services businesses (MSBs) as well as banks and credit unions send remittance transfers on behalf of consumers. MSBs, however, provide the overwhelming majority of remittance transfers for consumers in the United States. For example, in the Bureau's October 2018 Remittance Rule Assessment Report,[5] which is discussed in greater detail below, the Bureau observed that in 2017, MSBs provided approximately 95.5 percent of all remittance transfers for consumers. The average amount of a remittance transfer sent by MSBs on behalf of consumers was approximately $381.

Banks and credit unions generally send fewer remittance transfers on behalf of consumers than MSBs. The Bureau found that in 2017, banks and credit unions conducted 4.2 and 0.2 percent of all remittance transfers, respectively. However, the average amount that banks and credit unions transferred was much greater than the average amount transferred by MSBs. For example, based on the Bureau's analysis, the average transfer size of a bank-sent remittance transfer was more than $6,500.[6] As such, based on information it received as part of its assessment of the Remittance Rule in connection with the Assessment Report, while banks and credit unions provide a small percentage of the overall number of remittance transfers, because the average amount of the transfers they send is higher than MSBs, banks and credit unions collectively sent approximately 45 percent of the dollar volume of all remittance transfers sent for consumers in the United States (43 percent attributed to banks and 2 percent attributed to credit unions).

In addition, MSBs differ from banks and credit unions in the means by which they provide remittance transfers. Traditionally, MSBs sending remittance transfers have predominantly relied on a storefront model and a network of the MSBs' employees and agents (such as grocery stores and neighborhood convenience stores).[7] Because MSBs receive and disburse funds either through their own employees or agents, the payment system by which MSBs facilitate remittance transfers is typically referred to as a ''closed network'' payment system. A single entity in this system—the MSB—exerts a high degree of end-to-end control over a transaction. Such level of control means, among other things, that an entity that uses a closed network payment system to send remittance transfers can disclose to its customers precise and reliable information about the terms and costs of a remittance transfer before the entity sends the remittance transfer on its customer's behalf.

In contrast to MSBs, banks and credit unions have predominantly utilized an ''open network'' payment system made up of the correspondent banking network [8] to send remittance transfers on behalf of consumers.[9] The open network payment system based on the correspondent banking network lacks a single, central operator. This feature distinguishes it from closed network payment systems. The correspondent banking network is a decentralized network of bilateral 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 can nonetheless ensure that their customers' remittance transfers are able to 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 involved in the transmission of a remittance transfer. As discussed in greater detail in the section-by-section analysis of § 1005.32(a) below, the decentralized nature of the correspondent banking system has presented certain challenges to the ability of banks and credit unions to disclose precise and reliable information about the terms and costs of remittance transfers to its customers before these institutions send remittance transfers on their customers' behalf.

B. Remittance Rulemaking Under Section 1073 of the Dodd-Frank Act

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, which created a comprehensive system for protecting consumers in the United States who send remittance transfers to individuals and businesses in foreign countries.[10] EFTA applies broadly in terms of the types of remittance transfers it covers. 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

[4] This redline can be found on the Bureau's regulatory implementation page for the Remittance Rule, at *https://www.consumerfinance.gov/policy-compliance/guidance/remittance-transfer-rule/.* If any conflicts exist between the redline and the text of the Remittance Rule or this proposed rule, the rules themselves, as published in the **Federal Register**, are the controlling documents.

[5] Bureau of Consumer Fin. Prot., *Remittance Rule Assessment Report* (Oct. 2018, rev. Apr. 2019) (Assessment Report), *https://www.consumerfinance.gov/documents/7561/bcfp_remittance-rule-assessment_report_corrected_2019–03.pdf.* The Bureau's initial rule and certain amendments took effect in October 2013. As explained in the Assessment Report, the Assessment Report considers all rules that took effect through November 2014 and refers to them collectively as the Remittance Rule. *See* Assessment Report at 115.

[6] *Id.* at 73.

[7] *Id.* at 54. As noted in the Assessment Report, increased access to digital devices has impacted the traditional MSB model by enabling more MSB-facilitated transfers to be conducted via the internet. *See also id.* at 102.

[8] Generally speaking, a correspondent banking network is made up of individual correspondent banking relationships, which consist of bilateral 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 Int'l Settlements, *Correspondent Banking,* at 9 (2016) (2016 BIS Report), *https://www.bis.org/cpmi/publ/d147.pdf.*

[9] The Bureau notes that some methods of sending cross-border money transfers, including remittance transfers, include elements of closed and open payment networks and some providers may also rely on both types of systems to facilitate different transfers. For example, the Bureau understands that banks may offer low-cost international fund transfers to its commercial clients through the use of the automated clearing house (ACH) system, and a minority of banks also offer international ACH to their consumer clients. *See* Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on the Use of the ACH System and Other Payment Mechanisms for Remittance Transfers to Foreign Countries,* at 7 (May 2019), *https://www.federalreserve.gov/publications/2019-may-ach-report-other-payment-mechanisms.htm.*

[10] 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified at 15 U.S.C. 1693*o*-1.

that are initiated by a remittance transfer provider; only small dollar transactions are excluded from this definition.[11] EFTA also applies broadly in terms of the providers subject to it, including MSBs, banks, and credit unions.

The Bureau adopted subpart B of Regulation E to implement EFTA section 919 through a series of rulemakings that were finalized in 2012 and 2013, and which became effective on October 28, 2013.[12] The Bureau subsequently amended subpart B several times.[13] The Rule provides three significant consumer protections: It specifies the information that must be disclosed to consumers who send remittance transfers, including information related to the exact cost of a remittance transfer; it provides consumers with cancellation and refund rights; and it specifies procedures and other requirements for providers to follow in resolving errors.

III. Assessment Report, Requests for Information, and Other Outreach

The Bureau has received feedback regarding the Remittance Rule over time through both formal and informal channels. The following is a brief summary of some of the Bureau's requests for information regarding the Rule and recent informal feedback received by the Bureau outside those channels.

Assessment and 2017–2018 RFIs. The Bureau conducted an assessment of the Remittance Rule (Assessment), as required pursuant to section 1022(d) of the Dodd-Frank Act. Section 1022(d) requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law and to publish a report of such assessment not later than five years after the rule or order's effective date.[14] In 2017, the Bureau issued a request for information (RFI) in connection with the Assessment (2017 Assessment RFI) and received approximately 40 comments in response.[15] As referenced above, in October 2018, the Bureau published the results of the Assessment in the Assessment Report, providing insights into the effectiveness of the Rule and its provisions.

Separately, in 2018, the Bureau issued a series of RFIs as part of a call for evidence to ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers.[16] One of the 2018 RFIs concerned 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; another concerned whether the Bureau should amend rules or exercise the rulemaking authorities that it inherited from other Federal government agencies (together, the 2018 Adopted/Inherited Regulations RFIs).[17] The Bureau received a total of approximately 34 comments on the Remittance Rule in response to these two RFIs.

Industry commenters that responded to the three RFIs mentioned above suggested a variety of modifications to the Rule. Many recommended changing the scope of coverage of the Rule in various ways,[18] including raising the 100-transfer safe harbor threshold, because, they said, the current threshold is too low and causes consumer harm. Consumer advocacy groups conversely cautioned against changes to the Rule, including to the safe harbor threshold. Industry commenters suggested other scope-related changes as well, such as exempting transfers in excess of a certain amount (such as $10,000) from the Rule's definition of ''remittance transfer'' or creating blanket exemptions from the Rule for certain types of entities, such as for regulated entities with total assets under $10 billion or for all credit unions. A group of consumer advocates and a number of industry commenters also addressed the July 21, 2020 expiration of the temporary exception that allows disclosure of estimates instead of exact amounts in certain circumstances. Some industry commenters expressed concerns about the impact of the temporary exception's eventual expiration and urged the Bureau to make the exception permanent, while consumer advocacy groups expressed concern about the use of estimates permitted by the temporary exception and urged the Bureau to let the exception expire. Some industry commenters also requested that the Bureau expand the list of ''safe harbor'' countries that have laws impacting their ability to disclose exact exchange rates, arguing an expanded countries list would help alleviate some of the challenges certain providers will face when the temporary exception expires. Industry and consumer advocacy group commenters also raised other issues about various aspects of the Rule, including regarding other disclosure requirements, error resolution, and the 30-minute cancellation period.

2019 RFI. The Bureau published an RFI on April 29, 2019 (2019 RFI),[19] seeking information on several aspects of the Rule. First, based on comments and other feedback from various remittance transfer providers and their trade associations, as well as its own analysis, the Bureau was concerned about the potential negative effects of the expiration of the temporary exception. The Bureau thus sought information about the upcoming expiration of the temporary exception and potential options to mitigate its impact.

The Bureau was also concerned about the Rule's effects on certain remittance transfer providers that account for a small portion of the overall number of remittance transfers but nonetheless are subject to the Rule because they provide more than 100 transfers annually and thus are unable to rely on the current normal course of business safe harbor. The Bureau thus sought information in the 2019 RFI on possible changes to the current safe harbor threshold in the Rule[20] and whether an exception for ''small financial institutions'' may be appropriate.

The Bureau received approximately 44 comments on the 2019 RFI.[21] The overwhelming majority of comments came from banks and credit unions,

[11] 15 U.S.C. 1693*o*-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 (1) transfer amounts of $15 or less and (2) certain securities and commodities transfers. 12 CFR 1005.30(e).

[12] 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).

[13] 79 FR 55970 (Sept. 18, 2014), 81 FR 70319 (Oct. 12, 2016), and 81 FR 83934 (Nov. 22, 2016).

[14] 12 U.S.C. 5512(d).

[15] 82 FR 15009 (Mar. 24, 2017). These comment letters are available on the public docket at *https://www.regulations.gov/document?D=CFPB-2017-0004-0001. See also* Assessment Report at 149.

[16] *See https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence/.*

[17] *See* 83 FR 12286 (Mar. 21, 2018) and 83 FR 12881 (Mar. 26, 2018). The comment letters from these RFIs are available on the public dockets at *https://www.regulations.gov/docket?D=CFPB-2018-0011* and *https://www.regulations.gov/document?D=CFPB-2018-0012-0001.*

[18] *See, e.g.,* Assessment Report at 154–61.

[19] 84 FR 17971 (Apr. 29, 2019).

[20] 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 are deemed not to provide transfers in the ''normal course of business'' because they provide 100 or fewer transfers per year in both the previous and current calendar years.

[21] These comment letters are available on the public docket for the 2019 RFI at *https://www.regulations.gov/docket?D=CFPB-2019-0018.*

their trade associations, and their service providers. As discussed in greater detail below, these commenters generally urged the Bureau to replicate the temporary exception and raise the normal course of business safe harbor threshold. A number of them also supported a small financial institution exception. The Bureau received one comment letter from a ''fintech'' nonbank remittance transfer provider and one comment letter from a consumer advocacy group. These commenters generally did not support extending the temporary exception or making it permanent. They asserted that the Remittance Rule was intended to improve accountability and transparency, and said that continuing to permit estimates could stunt the movement toward realizing those objectives. Additionally, the nonbank remittance transfer provider also expressed concern that the temporary exception has helped to perpetuate a bifurcated regulatory approach, as only insured banks and credit unions are permitted to use the temporary exception. Several commenters also specifically addressed the existing permanent exception allowing estimates for transfers to certain countries and the related Bureau-established safe harbor countries list.

Ongoing market monitoring and other outreach. The Bureau has engaged in ongoing market monitoring and other outreach to industry and other stakeholders regarding the Remittance Rule. For example, in June 2019, Bureau staff met with the Bureau's Consumer Advisory Board, Community Bank Advisory Council, and Credit Union Advisory Council to discuss several topics, including the 2019 RFI.[22] The Bureau discusses feedback received through these various channels that is relevant to this proposal throughout this document.

IV. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of EFTA requiring remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must give a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer, including the amount to be received by the designated recipient. The provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information.[23] In addition, EFTA section 919(d) directs the Bureau to promulgate rules regarding appropriate error resolution standards and cancellation and refund policies.

In addition to the Dodd-Frank Act's statutory mandates, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of EFTA. The express purposes of EFTA, as amended by the Dodd-Frank Act, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' [24] EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. As described in more detail below, the changes herein are proposed pursuant to the Bureau's authority under EFTA sections 904(a) and (c).

V. Section-by-Section Analysis

1005.30 Remittance Transfer Definitions

30(f) Remittance Transfer Provider

EFTA section 919(g)(3) defines ''remittance transfer provider'' to be a person or financial institution providing remittance transfers for a consumer in the ''normal course of its business.'' The Rule uses a similar definition.[25] It states that whether a person provides remittance transfers in the normal course of its business depends on the facts and circumstances, including the total number and frequency of transfers sent by the provider.[26] The Rule currently contains a safe harbor whereby a person that provides 100 or fewer remittance transfers in each of the previous and current calendar years is deemed not to be providing remittance transfers in the normal course of its business, and therefore is outside of the Rule's coverage.[27]

When the Bureau finalized the normal course of business 100-transfer safe harbor threshold in August 2012, it stated that it intended to monitor that threshold over time.[28] The Bureau acknowledged, among other things, that the administrative record contained little data on the overall distribution and frequency of remittance transfers to support treating any particular number of transactions as outside the normal course of business.[29] After explaining the limitations in the data it did have, the Bureau stated that it did not believe it could rely on the data received to describe the number of remittance transfers provided by ''typical'' entities or to identify a clear pattern in the distribution of providers by the number of transfers provided.[30] The Bureau concluded that the data collected at the time provided some additional support for the 100 threshold, and that the threshold was ''not so low as to be meaningless.'' [31] The Bureau determined that a threshold of 100 was high enough that persons would not risk exceeding the safe harbor based on making transfers for just two or three customers each month, 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. The Bureau also noted that 100 transfers per year is equivalent to an average of approximately two transfers per week, or the number of transfers needed to satisfy the needs of a handful of customers sending money abroad monthly.[32]

Since August 2012, the Bureau has received feedback suggesting that the 100-transfer safe harbor threshold is too low, including in response to several RFIs issued by the Bureau as well as during market monitoring and other outreach to industry. (See part III above for more information on these RFIs and other outreach.)

Comments Received in Response to the 2019 RFI

Comments on the safe harbor threshold. As noted above, the Bureau in the 2019 RFI sought information on possible changes to the current normal course of business 100-transfer safe harbor threshold. A variety of industry commenters as well as a consumer advocacy group responded to questions regarding coverage of certain remittance transfer providers in the 2019 RFI, primarily focusing on changing the 100-transfer safe harbor threshold.

[22] Minutes of these meetings are available at *https://www.consumerfinance.gov/documents/7852/201906_cfpb_CAB-Meeting-Minutes.pdf, https://www.consumerfinance.gov/documents/7853/201906_cfpb_CBAC-meeting-minutes.pdf,* and *https://www.consumerfinance.gov/documents/7854/201906_cfpb_CUAC-meeting-minutes.pdf.*

[23] EFTA section 919(a); 15 U.S.C. 1693*o*-1(a).

[24] EFTA section 902(b); 15 U.S.C. 1693(b).

[25] *See* 12 CFR 1005.30(f)(1).

[26] Comment 30(f)-2.i.

[27] 12 CFR 1005.30(f)(2)(i).

[28] 77 FR 50243, 50252 (Aug. 20, 2012).

[29] *Id.* at 50251–52.

[30] *Id.* at 50251–52.

[31] *Id.* at 50252.

[32] *Id.* at 50251.

The consumer advocacy group opposed any changes to the threshold, asserting that there is insufficient evidence to make such changes.[33] A number of industry commenters, on the other hand, including credit unions, banks, trade associations, and a payments service provider to banks and credit unions, suggested increasing the threshold; specific threshold suggestions ranged from 200 to 1,200 transfers annually. These industry commenters stated that credit unions and community banks offer remittance transfers as an accommodation for their customers and generally do not provide enough transfers to recover operational and compliance costs. A trade association commenter stated that the impact of compliance costs on small providers is especially significant as they are unable to spread their costs over a large volume of transactions.

Several industry commenters also asserted, among other things, that complying with the Remittance Rule has caused credit unions and community banks to exit the remittance transfer market, limit the number of transfers that they provide, or increase the price of transfers, which they asserted has resulted in consumer harm in the form of reduced access and other inconveniences. Several industry commenters offered anecdotes of one or two customers sending a high volume of transfers that pushed a bank or credit union beyond the 100-transfer safe harbor threshold. Some industry commenters suggested that raising the threshold may encourage banks and credit unions that have stopped or limited providing remittance transfers to begin offering them again or relax the limits. A number of industry commenters also stated that raising the threshold would promote competition and thus increase options for consumers and possibly lower prices. In addition, several industry commenters asserted that raising the threshold would increase consumer access to remittance transfer services, especially for consumers in rural areas or locations serviced primarily by local banks or credit unions.

Several industry commenters, including credit unions, banks, and trade associations, alternatively or additionally suggested basing the safe harbor threshold on something other than the number of transfers. Suggestions included, among other things, basing the threshold on the percentage of an entity's customers that send remittance transfers, or the percentage of an entity's transfers that are remittance transfers. A few industry commenters suggested setting a dollar amount threshold (*e.g.,* applying the Rule only to transfers over $1,000 or $10,000, or only to transfers under $500).

A few industry commenters noted the overlap between the expiration of the temporary exception and coverage of certain remittance transfer providers under the Rule. Several trade associations stated that raising the normal course of business safe harbor threshold would address concerns from credit unions and community banks regarding the expiration of the temporary exception. These commenters asserted that a small number of credit unions have already stopped providing remittance transfers anticipating the temporary exception's expiration in July 2020, and that community banks will discontinue providing transfers if they can no longer disclose estimates.

Comments on exempting small financial institutions. In the 2019 RFI, the Bureau sought information on a possible exemption from the Rule for small financial institutions. In response, a consumer advocacy group asserted that market data and the results of the Bureau's Assessment do not support creating such an exemption. Conversely, a number of industry commenters, including credit unions, banks, trade associations, and a payments service provider to banks and credit unions, supported a small financial institution exemption. They asserted that small institutions have fewer opportunities than larger institutions to offset the cost of compliance with the Remittance Rule and indicating that such an exemption would help small financial institutions serve their customers at a lower cost. A few industry commenters also asserted that a small financial institution exemption would be particularly helpful for community banks in underserved or rural areas. Industry commenters suggested a small financial institution exemption based on an asset size threshold of $500 million, $1 billion, $3 billion, or $10 billion. A credit union suggested that the Bureau increase the safe harbor threshold to 1,000 transfers annually for financial institutions with an asset size of less than $50 billion, explaining that the Dodd-Frank Act classifies ''large banks'' as those with more than $50 billion in assets. Another industry commenter stated that in addition to asset size, the particular markets served by the institution should also be considered for creating a small financial institution exemption.

Several banks, credit unions, credit union trade associations, and a payments service provider to banks and credit unions suggested exempting from the Remittance Rule credit unions or financial institutions altogether, arguing that such institutions account for a small percentage of the total number of remittance transfers sent and therefore do not actually provide remittance transfers in the normal course of their business.

Recent Outreach Regarding Coverage

As discussed in part III above, the Bureau has engaged in ongoing market monitoring and other outreach to industry and other stakeholders regarding the Remittance Rule. As in their comments on the 2019 RFI, the general consensus from industry representatives in these meetings and discussions was that the 100-transfer safe harbor threshold is too low. Representatives from two credit unions suggested raising the threshold to 500 transfers annually. One also suggested the Bureau create an accommodation for recurring transfers and stated that it did not believe a small financial institution exemption would be helpful. Several other entities' representatives noted that market dynamics (*e.g.,* mergers and consolidations) and customer demand can cause banks and credit unions to get close to crossing the 100-transfer safe harbor threshold.

Representatives of several entities suggested other metrics for a safe harbor. A representative for a credit union stated that whether an entity provides remittance transfers in the ''normal course of business'' should be based on the entity's proportion of customers sending remittance transfers to total customers overall, while representatives of several other credit unions offered ideas for tying the safe harbor to an entity's asset size. Similarly, a representative of a bank suggested using relative size measures, such as the percentage of an entity's total transactions that are remittance transfers, or the percentage of an entity's revenue that is earned from providing remittance transfers.

Representatives of several banks offered insights as to the kind of information that entities not subject to the Rule provide or would provide to consumers. The representative for a bank currently subject to the Rule stated that if the bank no longer had to comply with the Rule, it would end its correspondent banking relationship

[33] For example, the consumer advocacy group stated that the Bureau would need additional information to raise the safe harbor threshold, such as the size and location of entities providing just above 100 transfers, the number of transfers above 100 that those entities provide, and other options in the market for sending remittance transfers and their cost.

(which it had established to provide the disclosures required by the Rule) and provide consumers with information about its own fees for sending remittance transfers but likely not the exchange rate or the date of availability. Representatives of two banks not currently subject to the Remittance Rule indicated that the only information they provide to their remittance customers are the amount of funds debited from the customer's account and their banks' wire transfer fees.

The Bureau's Proposal

The Bureau has monitored the normal course of business 100-transfer safe harbor threshold in the years since the Rule became effective. Based on comments received on the 2019 RFI, other previous RFIs, the results of the Assessment, and other informal feedback received over time, the Bureau is preliminarily persuaded that the safe harbor threshold should be increased to 500 transfers and that such a change is appropriate to implement Congress' definition of remittance transfer provider in EFTA section 919(g)(3) as a person or financial institution providing remittance transfers in the normal course of its business, whether or not the consumer holds an account with such person. The Bureau believes that a threshold of 500 transfers may be more appropriate to identify persons who occasionally provide remittance transfers, but not in the normal course of their business, and would remove them from coverage under the Rule. Five hundred transfers annually would be equivalent to an average of approximately 10 transfers per week, which the Bureau believes would allow entities to send a relatively limited number of transfers without having to incur the costs of developing and implementing processes and procedures to comply with the Rule or the costs of continued compliance with the Rule. The Bureau believes that, at this volume, entities are generally offering remittance transfers as an accommodation for their account-holding customers rather than operating a separate remittance transfers line of business. In addition, the Bureau believes that raising the safe harbor threshold would mitigate any issues that insured institutions currently providing between 101 and 500 transfers annually [34] might otherwise encounter with respect to the upcoming expiration of the temporary exception.

The Bureau seeks comment on its proposal to increase the normal course of business safe harbor threshold. Specifically, the Bureau seeks comment on its proposed 500-transfer safe harbor threshold, as well as on whether a different threshold, such as 200 or a number between 200 and 500, would be more appropriate. In particular, the Bureau requests data or other evidence that would assist it in determining what number would be most appropriate for the safe harbor threshold in the Remittance Rule. The Bureau also seeks comment on whether its proposal to increase the safe harbor threshold would in fact help reduce burden for banks and credit unions that provide transfers only as an accommodation to their customers. The Bureau also recognizes that any safe harbor interpreting the phrase ''normal course of business'' could limit the protections afforded to some consumers and seeks data and other information demonstrating the nature and magnitude of any harm to consumers as a result of such a limit.

The Bureau believes that raising the safe harbor threshold to 500 transfers would appropriately implement the purposes of EFTA section 919, including the statutory definition of remittance transfer provider, by helping to reduce burden for banks and credit unions that provide transfers only as an accommodation to their customers, thereby ensuring that banks and credit unions continue to offer the service to benefit consumers and do not bear a disproportionate cost to do so. The data now available through Call Reports [35] indicate that a substantial proportion of banks and credit unions make between 101 and 500 remittance transfers per year (*i.e.,* above the current safe harbor threshold but within the proposed threshold), although their percentage of the overall annual volume of remittance transfers is quite small.

Specifically, based on the Bureau's analysis of the 2018 Call Report data, raising the threshold from 100 to 500 transfers would remove approximately 414 banks and 247 credit unions (which represent 54.6 percent and 62.3 percent of such entities currently covered by the Remittance Rule, respectively). These entities account for 0.8 percent (92,600) of bank transfers and 6.2 percent (49,300) of credit union transfers, for a total of approximately 141,900 transfers that would no longer be covered by the Rule. Given that MSBs provide more than 95 percent of remittance transfers annually (discussed in greater detail in part II above), the combined number of bank and credit union transfers that would no longer be covered at a threshold of 500 represents only a minimal percentage of all transfers—specifically, under 0.059 percent of all remittance transfers.

If the Bureau were to raise the threshold from 100 to 200 transfers, it would remove 156 banks and 138 credit unions (which represent 20.6 percent and 34.8 percent of such entities currently covered by the Remittance Rule, respectively). These entities account for 0.18 percent (19,900) of bank transfers and 2.31 percent (18,200) of credit union transfers, for a total of approximately 38,100 transfers that would no longer be covered by the Rule. As with the proposed increase from 100 transfers to 500 transfers, given that MSBs provide more than 95 percent of remittance transfers annually, the combined number of bank and credit union transfers that would no longer be covered at a threshold of 200 represents only a minimal percentage of all transfers—specifically, under 0.016 percent of all remittance transfers.[36]

The Bureau notes that the safe harbor, as it currently exists in the Rule as well as with the proposed modification, is not limited to depository institutions but rather is applicable to all persons. However, the types of entities that would qualify for the proposed safe harbor are predominantly banks and credit unions. MSBs provide far greater numbers of transfers annually. The Bureau is not aware of any MSBs providing such a low volume of remittance transfers that they would qualify for the proposed 500-transfer safe harbor threshold, much less a 200-transfer safe harbor threshold.[37] The Bureau seeks comment on whether there are any MSBs, or other persons, that

[34] As used in this document, ''between 101 and 500'' means 101 or more and 500 or fewer—that is, above the current safe harbor threshold but at or below the proposed threshold.

[35] Banks and credit unions are required to submit quarterly ''Call Reports'' by the Federal Financial Institutions Examination Council (FFIEC) and the National Credit Union Administration (NCUA), respectively. For a more detailed description of these reporting requirements, see Assessment Report at 24.

[36] In the Assessment Report, the Bureau estimated the number of remittance transfers in 2017 to be 325 million (*see id.* at 63–64) and that more than 95 percent of transfers were provided by MSBs in 2017. The Bureau does not have an estimate of the total transfers in 2018, but assumed that 95 percent of transfers were provided by MSBs in 2018 to calculate this proportion.

[37] The Bureau's information on MSBs that provide a small number of remittance transfers is incomplete. States that license MSBs collect information on the ''international transfers'' that are sent by MSBs, which may not be ''remittance transfers'' as defined by the Remittance Rule. Therefore, it is challenging to determine which MSBs are ''remittance transfer providers,'' as defined by the Rule, and the number of remittance transfers they provide. However, few MSBs provide 500 or fewer transfers annually and to the best of the Bureau's knowledge, none of them are remittance transfer providers under the Rule.

provide remittance transfers as their primary business that would qualify for the safe harbor at the proposed revised threshold.

As noted above, some industry representatives have claimed that some community banks and credit unions have stopped or limited remittance transfer services due to the Remittance Rule. The Bureau in its Assessment found no evidence that, on net, banks or credit unions ceased or limited providing remittance transfers because of the safe harbor threshold.[38] To the extent that this has occurred, however, the Bureau expects a likely result of raising the safe harbor threshold might be that at least some of those entities would resume their offering of transfers. The Bureau seeks comment on whether any banks or credit unions actually exited the market or limited the number of remittance transfers provided as a result of compliance costs associated with the Remittance Rule and, if so, whether they would reenter the market or lift the limits they placed on their remittance transfer services if the Bureau raised the safe harbor threshold as proposed.

The Bureau acknowledges that raising the safe harbor threshold would likely result in a reduction of protections for some consumers, because consumers that send remittance transfers from entities that newly qualify for the safe harbor would likely receive less information about the exchange rates and fees related to their remittance transfers, and those entities would likely not give the same cancellation rights or error resolution protections as required under the Remittance Rule. However, based on the results of the Assessment, as well as the updated analysis contained herein, the Bureau understands that the number of affected consumers would likely be relatively small, given that the banks and credit unions that would no longer be covered by the Rule if the Bureau raised the safe harbor threshold to 500 transfers account for a very small proportion of all remittance transfers annually.[39] The Bureau also notes that it has received relatively few consumer complaints related to any providers of remittance transfers,[40] including the subset of providers that would newly qualify for the safe harbor under this proposal. It is not clear why the Bureau does not receive many complaints about possible violations of the Remittance Rule. One possibility is that providers are complying with the law and therefore the Bureau receives few complaints.[41] Another possibility is that some consumers who send remittance transfers may have limited English proficiency and, therefore, be less likely to know that they can submit complaints to the Bureau or may be less likely to seek help from a government agency than other consumers. The Bureau seeks comment on whether entities that would no longer be covered under the Remittance Rule would discontinue providing the disclosures, cancellation rights, or error resolution protections that they are currently required to provide pursuant to the Rule. If such entities would continue providing consumer protections for some or all of their remittance transfers, the Bureau seeks comment on what those protections would be.

Based on the data the Bureau currently has, and in order to effectuate the purposes of EFTA and to facilitate compliance, the Bureau is proposing to raise the safe harbor threshold from 100 to 500 remittance transfers. Specifically, the Bureau is proposing to revise existing § 1005.30(f)(2)(i) to state that a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business (and thus not subject to the Remittance Rule), if the person provided 500 or fewer transfers in the previous calendar year and provides 500 or fewer transfers in the current calendar year. The Bureau is also proposing to revise part of existing § 1005.30(f)(2)(ii) regarding the safe harbor transition period to reflect the proposed 500-transfer safe harbor threshold and the proposed effective date for this rulemaking. (The proposed effective date is discussed in more detail in part VI below.) Specifically, the proposed revision to § 1005.30(f)(2)(ii) states that if, beginning on July 21, 2020, a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to § 1005.30(f)(1), the person has a reasonable period of time, not to exceed six months, to begin complying with subpart B.

The Bureau is also proposing to add new § 1005.30(f)(2)(iii) to address the transition period for persons qualifying for the safe harbor. Proposed § 1005.30(f)(2)(iii) states that if a person who previously provided remittance transfers in the normal course of its business in excess of the safe harbor threshold set forth in § 1005.30(f)(2) determines that, as of a particular date, it will qualify for the safe harbor, it may cease complying with the requirements of subpart B of Regulation E with respect to any remittance transfers for which payment is made after that date. The requirements of EFTA and Regulation E, including those set forth in §§ 1005.33 and 1005.34, as well as the requirements set forth in § 1005.13, continue to apply to transfers for which payment is made prior to that date.

The Bureau notes that existing language in § 1005.30(f)(2)(ii) regarding the six month transitional period for coming into compliance after ceasing to qualify for the safe harbor, as well as the proposed language in § 1005.30(f)(2)(iii) regarding newly qualifying for the safe harbor, both peg their requirements for particular transfers based on when payment is made for such transfers. The phrase ''payment is made'' is used numerous times throughout the Rule, and the Bureau believes that it provides a clear test as to whether any particular transfer is or is not subject to the Rule.[42] The Bureau is concerned that hinging the standard on, for example, when a transfer is made may not provide adequate certainty, in particular for transfers that are scheduled in advance. The Bureau seeks comment on whether when ''payment is made'' is the appropriate standard on which to hinge these provisions, or whether a different

[38] Assessment Report at 133–35.

[39] Per the Assessment Report, only about 20 percent of banks and about 25 percent of credit unions that offered remittance transfer services were covered by the Remittance Rule at the time of the report; a large portion of banks and credit unions either offered no remittance transfer services or provided 100 or fewer transfers per year and thus were excluded from coverage under the Remittance Rule by virtue of the current safe harbor threshold. *Id.* at 79 n.200.

[40] The Bureau's complaint form lists ''international money transfers'' as an option for consumers to select when submitting a complaint, which is the closest available approximation for ''remittance transfers'' as defined by the Remittance Rule. From April 1, 2013 through December 31, 2017, the Bureau received approximately 1,260,600 consumer complaints, including 4,700 international money transfer complaints representing about 0.4 percent of the total complaints received. *Id.* at 114.

[41] Bureau examinations have uncovered mixed levels of compliance among persons under the Bureau's supervision that provide remittance transfers, including general compliance at certain institutions as well as individual and wholesale violations. *See* Bureau of Consumer Fin. Prot., *Supervisory Highlights,* at 11–14 (Issue 10, Mar. 2016), *https://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.*

[42] For example, the phrase ''payment is made'' is used in the portion of existing § 1005.30(f)(2)(ii) (that the Bureau is not proposing to modify) which states that compliance with subpart B of Regulation E will not be required for any remittance transfers for which payment is made during the reasonable period of time that a person has to transition in to compliance with the Rule once that person no longer qualifies for the safe harbor. *See also, e.g.,* comment 31(e)–2, which discusses the timing of certain disclosure requirements.

standard would be better and, if so, why.

With respect to transfers scheduled before the date of transfer pursuant to § 1005.36, in particular for a series of transfers that are scheduled in advance, the Bureau notes that remittance transfer providers subject to the Rule are required to give consumers disclosures in accordance with the Rule's requirements, including but not limited to consumers' cancellation and error resolution rights. The Bureau notes that the transition from being covered by the Rule to qualifying for the safe harbor is not a new issue presented by this proposal, and seeks comment on what persons that were remittance transfer providers subject to the Rule before qualifying for the safe harbor have done—or expect to do—with respect to any transfers scheduled in advance after they qualify for the safe harbor. The Bureau further seeks comment on whether it is necessary and appropriate for the Bureau to prescribe specific notice obligations in this situation and, if so, what those obligations should be. The Bureau notes that if a provider gives consumers the required disclosures under the Rule, but does not subsequently inform consumers of its changed compliance obligations with respect to what it has previously disclosed, that person risks exposing itself to potential liability under the Dodd-Frank Act or other laws.

With respect to the commentary accompanying § 1005.30(f), first, the Bureau is proposing to revise the last sentence in existing comment 30(f)–2.i in order to avoid potential conflict or confusion with the proposed safe harbor threshold of 500 transfers. The Bureau is also proposing to revise existing comments 30(f)–2.ii and iii regarding the safe harbor and transition period for consistency with the proposed changes to § 1005.30(f)(2)(i) and (ii). In addition, the Bureau is proposing to add a sentence in comment 30(f)–2.ii that states that on July 21, 2020, the safe harbor threshold in § 1005.30(f)(2)(i) changed from 100 transfers to 500 transfers, to memorialize the change. The Bureau is also proposing to renumber existing comment 30(f)–2.iv as 30(f)–2.iv.A (in order to add two additional examples, described below), to revise the heading for this comment to make clear that it provides an example of the safe harbor and transition period for the 100-transfer safe harbor threshold that was effective prior to the proposed effective date of July 21, 2020, and to change the verb tense from present to past throughout the example. The Bureau requests comment on whether it is useful to retain this example, as it has proposed to do, or whether the example should be eliminated.

The Bureau is proposing to add new comment 30(f)–2.iv.B to provide an example of the safe harbor for a person that provided 500 or fewer transfers in 2019 and provides 500 or fewer transfers in 2020. The Bureau is also proposing to add new comment 30(f)–2.iv.C, which provides an example of the safe harbor and transition period for the 500-transfer threshold that would be effective beginning on the proposed effective date of July 21, 2020. This proposed comment is based on the example in existing comment 30(f)–2.iv, with modifications to reflect the changes the Bureau is proposing to § 1005.30(f)(2).

Finally, the Bureau is proposing to add new comment 30(f)–2.v to address continued obligations under the Rule with respect to transfers for which payment was made before a person qualifies for the safe harbor. The proposed comment states that proposed § 1005.30(f)(2)(iii) addresses situations where a person who previously was required to comply with subpart B of Regulation E newly qualifies for the revised safe harbor in proposed § 1005.30(f)(2)(i). It explains that proposed § 1005.30(f)(2)(iii) states that the requirements of EFTA and Regulation E, including those set forth in §§ 1005.33 and 1005.34 (which address procedures for resolving errors and procedures for cancellation and refund of remittance transfers, respectively), as well as the requirements set forth in § 1005.13 (which, in part, governs record retention), continue to apply to transfers for which payment is made prior to the date the person qualifies for the safe harbor in § 1005.30(f)(2)(i). The comment also explains that qualifying for the safe harbor in § 1005.30(f)(2)(i) likewise does not excuse compliance with any other applicable law or regulation. For example, if a remittance transfer is also an electronic fund transfer, any requirements in subpart A of Regulation E that apply to the transfer continue to apply, regardless of whether the person must comply with subpart B. Relevant requirements in subpart A of Regulation E may include, but are not limited to, those relating to initial disclosures, change-in-terms notices, liability of consumers for unauthorized transfers, and procedures for resolving errors.

The Bureau seeks comment on its proposed revisions and additions to commentary, as described above. The Bureau also requests comment on whether any additional clarification or guidance regarding the proposed revised safe harbor threshold is needed and, if so, what specifically should be addressed. In particular, the Bureau seeks comment on whether and to what extent providers have encountered transitional issues when qualifying for the existing safe harbor after complying with the Rule, as well as whether providers who expect to qualify for the proposed revised safe harbor anticipate any transitional issues. The Bureau also solicits comment on whether providers anticipate any particular issues with a mid-year effective date (July 21, 2020) for its proposed change to the safe harbor threshold (see also the discussion of the proposed effective date in part VI below). Finally, the Bureau seeks comment on whether there are any other provisions in existing commentary that should be modified or removed in light of the changes proposed herein.

Other potential approaches considered by the Bureau. As noted above, several industry commenters responded to the Bureau's query in the 2019 RFI as to whether there were any other factors the Bureau should consider in determining whether a person is providing remittance transfers in the ''normal course of its business.'' Suggestions included basing the term on the percentage of an entity's customers that send remittance transfers, the percentage of an entity's transfers that are remittance transfers, or an entity's total revenue generated from providing remittance transfers.

The Bureau notes that it considered these and other approaches when it finalized the 100-transfer safe harbor threshold in 2012. The Bureau stated it did not believe it was appropriate, based on the administrative record at the time, to define a safe harbor based on a relative size measure, such as percentage of revenue, or other suggested criteria, and that commenters did not provide, and the Bureau did not have data suggesting, across the remittance transfer industry, why any of the suggestions made by commenters would be an appropriate basis for the safe harbor threshold. The Bureau also stated that it believed that due to the wide variety of business models for offering remittance transfers and lack of currently available data, it would be difficult to craft a single standalone measure of relative size for identifying persons who provide remittance transfers on only a limited basis.[43] The Bureau does not have any further data to inform such approaches and thus its position on adopting any such

[43] 77 FR 50243, 50250 (Aug. 20, 2012).

alternative thresholds remains unchanged.

Entities are familiar with tracking their remittance transfers for purposes of the current safe harbor, Call Report requirements, and other purposes; the Bureau does not believe that tracking remittance transfer volume in order to confirm that entities qualify for the safe harbor will be any more difficult if the safe harbor threshold were 500 than it is with the current threshold of 100. While tracking total revenue (rather than profits) from remittance transfers may also be somewhat straightforward, the Bureau is particularly concerned that some alternative approaches, such as tracking a proportion (*e.g.,* percentage of customers that send remittance transfers), could be difficult for an entity to track on an ongoing or real-time basis and could fluctuate both up and down over the course of the year. The Bureau also believes that a safe harbor provides the most certainty if it is based on a bright-line measure that permits entities to easily identify whether or not they qualify, especially if it is a measure with which industry is already familiar.

Nonetheless, the Bureau solicits comment on whether it should adopt any alternate or additional approach for the safe harbor from the ''normal course of business'' definition. Specifically, regarding the suggestion to base the safe harbor threshold on the percentage of an entity's customers that send remittance transfers, the Bureau seeks comment on whether this would be a viable approach and if so, what the appropriate percentage of customers would be and why. In addition, the Bureau seeks comment on the time frame over which any such alternate approach should be tracked and the timing for any transitional provisions that might be necessary using such an approach. The Bureau also seeks comment on the potential burdens to entities, or challenges that could arise, in basing the safe harbor on an approach other than the annual number of remittance transfers.

In the 2019 RFI, the Bureau also requested information and evidence to determine whether an exception for small financial institutions (for example, based on asset size) might be appropriate.[44] EFTA section 904(c) contains a ''small financial institution'' exception, which provides that the Bureau ''shall by regulation 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].'' The Bureau considered the information received in response to the 2019 RFI and assessed whether the data it has would be sufficient to develop a proposed small financial institution exception that meets the criteria in section 904(c). The Bureau also considered whether other options might be more preferable to address the issue of coverage under the Remittance Rule. While some industry commenters requested a small financial institution exemption and provided some information in support of that request, the Bureau has concluded that proposing to adjust the safe harbor threshold would be a more effective approach to addressing the concerns of small financial institutions. In addition, a consumer advocacy group asserted that market data and the results of the Assessment do not support creating a small financial institution exemption. On balance, the Bureau believes that its proposal to raise the safe harbor threshold would be a more effective way to address the issue of coverage under the Remittance Rule and thus is not proposing to create a small financial institution exemption.

1005.32 Estimates

As discussed in part II above, a significant consumer protection provided by the Remittance Rule is the requirement that remittance transfer providers disclose certain information to consumers that send remittance transfers. Specifically, a provider generally must provide a pre-payment disclosure (as set forth in § 1005.31(b)(1)) to a sender when the sender requests the remittance transfer, but prior to payment for the transfer. The provider also generally must provide a receipt (as required by § 1005.31(b)(2)) to the sender when payment is made for the remittance transfer. As an alternative to providing the separate pre-payment disclosure and the receipt, a provider may provide a combined disclosure (as described in § 1005.31(b)(3)) to the sender when the sender requests a remittance transfer, but prior to payment. Section 1005.36(a)(1) and (2) sets forth special rules for when the disclosures must be given for a one-time transfer scheduled five or more business days before the date of transfer or for the first in a series of preauthorized remittance transfers.

The disclosures required by §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2) include a disclosure of the exchange rate if the transfer will be received in a currency other than the one in which the transfer was funded, as described in § 1005.31(b)(1)(iv). The disclosures required by §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2) also must include the following disclosures as set forth in § 1005.31(b)(1)(v) through (vii), respectively: (1) If ''covered third-party fees'' as defined in § 1005.30(h) are imposed, the total amount that will be transferred to the recipient inclusive of the covered third-party fees; (2) the amount of any covered third-party fees; and (3) the amount that will be received by the designated recipient (after deducting any covered third-party fees). The above disclosures set forth in § 1005.31(b)(1)(v) through (vii) must be provided in the currency in which the designated recipient will receive the funds.

Relatedly, 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 exact exchange rate and the amount to be received by the designated recipient of a remittance transfer.[45] Accordingly, the Rule generally requires that providers disclose to senders the exact amount of currency that the designated recipient will receive. Section 1005.32, however, sets forth several exceptions to this general requirement, including the temporary exception in existing § 1005.32(a). As such, the Bureau is proposing two new permanent exceptions to address the expiration of the temporary exception, set forth in proposed § 1005.32(b)(4) and (5) and related commentary.

32(a) Temporary Exception for Insured Institutions

As noted above, EFTA section 919 sets forth a temporary exception that permits certain financial institutions to disclose estimates instead of exact amounts to consumers. Remittance transfer providers qualify for the temporary exception in EFTA section 919 if: (i) They are insured depository institutions or insured credit unions (collectively, ''insured institutions'') that make 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 designated recipient but rather may disclose ''a reasonably accurate

[44] 84 FR 17971 (Apr. 29, 2019).

[45] 15 U.S.C. 1693*o*–1(a)(1) and (2).

estimate of the foreign currency to be received.'' [46]

EFTA set the temporary exception to expire five years from the enactment of the Dodd-Frank Act. EFTA also provided a one-time ability for the Bureau to extend the exception for up to five more years, until July 21, 2020, if the Bureau determined that the expiration of the exception would negatively affect the ability of insured institutions to send remittance transfers to foreign countries. In 2014, the Bureau by rule extended the exception for five years to July 21, 2020.[47] As EFTA section 919 expressly limits the length of the temporary exception to the term specified therein, the temporary exception will expire on July 21, 2020.

In implementing the temporary exception in EFTA section 919, § 1005.32(a)(1) provides that a remittance transfer provider may give estimates in compliance with § 1005.32(c) for the exchange rate (if applicable), covered third-party fees, and certain other disclosures if the provider meets three conditions. The three conditions are: (1) The provider must be an insured institution; (2) the provider must not be able to determine the exact amounts to be disclosed for reasons beyond its control; and (3) the transfer generally must be sent from the sender's account with the insured institution.[48]

Section 1005.32(a)(3) provides that insured depository institutions, insured credit unions, and uninsured U.S. branches and agencies of foreign depository institutions are considered ''insured institutions'' for purposes of the temporary exception. MSBs are not ''insured institutions'' for purposes of the temporary exception. The Bureau is not proposing to amend § 1005.32(a) but provides a discussion of this provision and related comments received in response to the 2019 RFI as background to explain its proposed two new exceptions in § 1005.32(b)(4) and (5), discussed below.

Challenges of Insured Institutions in Disclosing Exact Amounts

As discussed in part II above, banks and credit unions have predominantly utilized an ''open network'' payment system made up of the correspondent banking network to send remittance transfers on behalf of consumers, and most banks and credit unions only maintain a relatively small number of correspondent banking relationships. As such, in many cases involving remittance transfers sent via the correspondent banking network, the sending institution must find a chain of one or more intermediary financial institutions to transmit funds from the sending institution to the designated recipient's institution.

There are two basic ways of how such a chain works where the originating (sending) institution has no correspondent banking relationship with the designated recipient's institution: the ''serial'' method and the ''cover'' method (also known as the ''split and cover'' method).[49] Sending a remittance transfer using the serial method means that the payment is instructed and settled one step at a time between each of the financial institutions in the transmittal route. Each connected pair of financial institutions in the transmittal route have a correspondent banking relationship with each other, which enables fund settlement.[50] By current market practice, each intermediary financial institution typically deducts a fee from the payment amount, which results in the recipient of the payment not receiving the full amount of the original payment order.[51] Sending a remittance transfer using the cover method means that the payment information is conveyed from the sending institution to the designated recipient's institution while settlement is handled separately through correspondent banks.[52] Further, current market practice is such that correspondent banks typically do not deduct transaction fees from payments sent using the cover method.[53]

As discussed above, the temporary exception permits insured institutions to disclose estimates (rather than exact amounts) of the exchange rate and covered third-party fees (and other amounts that have to be estimated because the exchange rate and covered third-party fees are estimated). With respect to the exchange rate, insured institutions and their trade associations have reported to the Bureau that because exchange rates fluctuate, sending institutions comply with the requirement to disclose exact exchange rates by ''fixing'' the exchange rate at the time a sender requests a remittance transfer. They do this by converting the funds to the applicable foreign currency up front themselves, or by using their correspondent bank or third-party service provider (instead of having an intermediary financial institution or the designated recipient's institution perform the foreign currency conversion). As discussed in greater detail below in the section-by-section analysis of proposed § 1005.32(b)(4), insured institutions may face a number of hurdles with respect to converting funds to certain currencies upfront. In such cases, they may rely on the temporary exception with respect to the disclosure of the exchange rate.[54] With respect to covered third-party fees, insured institutions and their trade associations have told the Bureau that when banks and credit unions send remittance transfers using the serial method (where sending institutions do not have a correspondent relationship with all the financial institutions in the remittance transfer's transmittal route), they cannot control or even know transaction fees imposed by another financial institution in the payment chain without having a correspondent relationship with that financial institution. As such, they rely on the temporary exception with respect to the disclosure of covered third-party fees.[55]

Recent market developments and potential solutions. In the Assessment Report, the Bureau observed that the remittance market has undergone substantial change since the Rule became effective. The Assessment Report described several developments regarding the growth and incorporation of innovative technologies by providers of cross-border money transfers and other companies that support such providers.[56]

The Bureau has continued to monitor the remittance transfer market since the publication of the Assessment Report and observes that most of these developments continue to progress. Examples include: (1) The continued growth and expanding functionality of the Society for Worldwide Interbank Financial Telecommunication (SWIFT)'s ''global payment innovation'' (gpi) tracking product, which can increase the amount of up-front information available to sending

[46] 15 U.S.C. 1693*o*–1(a)(4).

[47] 79 FR 55970 (Sept. 18, 2014).

[48] For the purposes of the temporary exception, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

[49] *See* 2016 BIS Report at 33–34.

[50] *Id.* at 34.

[51] *Id.* at 37.

[52] Every cross-border money transfer, including remittance transfers, sent via the correspondent banking network has two components: The payment information and the settlement instruction. Whereas these two components travel together when using the serial method, the cover method separates the payment information from the settlement instructions.

[53] 2016 BIS Report at 37.

[54] Section 1005.32(b) also contains other exceptions that permit the estimation of the exchange rate in certain circumstances.

[55] See below in the section-by-section analysis of proposed § 1005.32(b)(5) for a discussion of why sending institutions are not always able to send cover payments to designated recipients' institutions.

[56] Assessment Report at 97–106.

institutions, and the expansion of the major payment card networks' capacity to support cross-border payments;[57] (2) the continued growth of ''fintech'' nonbank remittance transfer providers and their further expansion into partnerships and other relationships with banks and credit unions, which allow such entities to tap into the closed network payment systems that nonbank remittance transfer providers have developed;[58] and (3) the continued growth and expanding partnerships of virtual currency companies, such as Ripple, which offer both a payments messaging platform to support cross-border money transfers as well as a proprietary virtual currency, XRP, which can be used to effect settlement of those transfers.[59]

These developments suggest that in the future there may be means by which banks and credit unions could reduce their remaining reliance on estimates. These developments all share a fundamental similarity: They all apply elements of a closed network payment system to cross-border money transfers sent by banks and credit unions. As discussed in part II above, in a closed network payment system, a single entity generally exerts a high degree of end-to-end control over a transaction. This control generally facilitates standardization and uniformity over terms, conditions, and processes to which participants in a closed network payment system must adhere. That standardization and uniformity, in turn, can provide a great deal of certainty to all participants in such a system as to the terms and conditions that will apply to individual transactions within that system.

To the degree banks and credit unions increase their reliance on closed network payment systems for sending remittance transfers and other cross-border money transfers, the Bureau notes that this could result in greater standardization and ease by which sending institutions can quote exact covered third-party fees and exchange rates. The Bureau also believes that expanded adoption of SWIFT's gpi product or Ripple's suite of products could similarly allow banks and credit unions to know the exact final amount that recipients of remittance transfers will receive before they send the transfer.

However, based on comments that banks, credit unions, and their trade associations submitted in response to the 2019 RFI and the Bureau's own market monitoring, the Bureau believes it is unlikely in the short-to-medium term that the developments described above will be able to fully eliminate reliance on the correspondent banking network as the predominant method for banks and credit unions to send remittance transfers. There are thousands of financial institutions worldwide that could receive remittance transfers. If, as noted above, the different approaches described above share the similarity of replicating some elements of a closed network payment system, they likely would need to enroll all or most of those financial institutions into their platforms to offer banks and credit unions up-front certainty when sending transfers for which they currently rely on the temporary exception. It may be costly, excessively time-consuming, or otherwise difficult to enroll all or even most of these institutions, especially the smaller ones. Accordingly, the Bureau believes that it is unlikely in the short-to-medium term for the developments discussed above to replace the correspondent banking system as the predominant means that banks and credit unions use to send remittance transfers.

Comments Received in Response to the 2019 RFI

As noted in part III above, the Bureau in the 2019 RFI sought information on the upcoming expiration of the temporary exception and potential options to mitigate its impact. In response to the 2019 RFI, the overwhelming majority of comments came from banks, credit unions, their trade associations, and their service providers. The Bureau received one comment from a ''fintech'' nonbank remittance transfer provider and one comment from a consumer advocacy group.

Comments from credit unions, banks, their trade associations, and their service providers. Many of these industry commenters indicated that insured institutions should still be permitted to estimate the exchange rate and covered third-party fees (and the disclosures that depend on those amounts) after the temporary exception expires. As discussed in more detail below in the section-by-section analyses of proposed § 1005.32(b)(4) and (5), several industry commenters asserted that: (1) The vast majority of international payments sent by banks and credit unions, including commercial cross-border transfers and remittance transfers, are wire transfers sent via correspondent banks in an open network payment system; and (2) as a result, depending on the identity and location of the designated recipient's institution, insured institutions have difficulty knowing the exact exchange rate and covered third-party fees for all remittance transfers at the time the disclosures required by the Remittance Rule must be given. See the section-by-section analysis of proposed § 1005.32(b)(4) for a discussion of the comments received on the exchange rate, and the section-by-section analysis of proposed § 1005.32(b)(5) for a discussion of the comments received on covered third-party fees.

Several industry commenters asserted that insured institutions might stop sending remittance transfers in situations where the insured institutions cannot provide exact disclosures of the exchange rate or covered third-party fees. Several other industry commenters acknowledged that it is possible for them to send certain remittance transfers for consumers via international ACH, or use nonbank service providers, closed network payment systems, or other methods that could allow them to control or eliminate covered third-party fees and thus provide exact amounts of those fees in the disclosures required by the Remittance Rule. They also asserted, however, that none of these methods provide a comprehensive alternative to the correspondent banking system.

Several industry commenters asserted that after the temporary exception expires, if the Bureau does not allow insured institutions to continue providing estimates, it will hurt smaller insured institutions and their customers. These industry commenters indicated that if the larger correspondent banks react to the expiration of the temporary exception by limiting or increasing the cost of their offerings, there will likely be a domino effect in the industry that will negatively influence the cost of, or access to, these services for consumers. Several industry commenters indicated that if community banks and credit

[57] SWIFT provides financial messaging services that support a large share of all cross-border interbank payments sent via correspondent banks. *See, e.g.,* Press Release, SWIFT, *SWIFT enables payments to be executed in seconds* (Sept. 23, 2019), *https://www.swift.com/news-events/press-releases/swift-enables-payments-to-be-executed-in-seconds;* John Adams, *Small cross-border deals play a big role for Visa, Mastercard,* PaymentsSource (May 21, 2019), *https://www.paymentssource.com/news/small-cross-border-deals-play-a-big-role-for-visa-mastercard.*

[58] *See, e.g.,* Zoe Murphy, *TransferWise launches TransferWise for Banks in the U.S. with Novo,* Tearsheet (Sept. 26, 2019), *https://tearsheet.co/new-banks/transferwise-launches-transferwise-for-banks-in-the-u-s-with-novo/.*

[59] *See, e.g.,* Press Release, Ripple, *Ripple Announces Strategic Partnership with Money Transfer Giant, MoneyGram* (June 17, 2019), *https://www.ripple.com/insights/ripple-announces-strategic-partnership-with-money-transfer-giant-moneygram/;* Sharon Kimathi, *PNC becomes first US bank on RippleNet,* FinTech Futures (Aug. 29, 2019), *https://www.fintechfutures.com/2019/08/pnc-becomes-first-us-bank-on-ripplenet/.*

unions start reducing or eliminating remittance transfer services, customers, especially those in rural communities, would have limited options for remittance transfers and could be left without safe, convenient, and cost-effective means to transmit funds.

Several industry commenters indicated that insured institutions that continue to offer remittance transfers may see costs increase when sending transfers to certain destinations if insured institutions have to change the ways they provide remittance transfers in order to disclose exact amounts. With respect to the exchange rate, two bank commenters indicated that if banks have to move to providing an exact exchange rate for all wire transfers, banks will have no choice but to build in an extra buffer in the exact exchange rate disclosed, so that they do not lose money on the transactions. One trade association indicated that (1) for credit unions that rely primarily on correspondent institutions to provide exchange rate and fee information, the expiration of the temporary exception could have indirect effects if correspondent banks adopt costlier processes for ensuring accurate disclosure of amounts received; and (2) if the compliance costs of correspondents are passed on to credit unions, this could further challenge credit unions' ability to offer remittance transfers at reasonable and competitive rates.

Several industry commenters asserted that they believed that there is no evidence of consumer harm from disclosing estimates rather than exact amounts. Several trade associations indicated that banks maintain databases of fee information to allow them to provide highly reliable estimates when they are unable to know with certainty the exact covered third-party fees that will be assessed.

Based on the concerns discussed above, a number of industry commenters requested that the Bureau exempt all wire transfers from the requirement to disclose the exact exchange rate and covered third-party fees to accommodate the characteristics of remittance transfers sent through correspondent banks in an open network payment system. They asserted that the Bureau could use its general exception and adjustment authority under EFTA section 904(c) to exempt wire transfers from the requirement to provide exact exchange rates or covered third-party fees (and the disclosures that depend on those amounts) when insured institutions are not able to determine exact amounts. In the alternative, several trade associations suggested that the Bureau should use its authority under EFTA section 919(c) to exempt wire transfers where exact amounts cannot reasonably be determined in advance.[60] These trade associations asserted that (1) the use of correspondent banks to send remittance transfers in an open network payment system is a method of making the transfers and that this network system does not allow insured institutions to know the amount of currency that will be received by the designated recipient for all transfers; and (2) the correspondent banking network is decentralized and that decentralization places inherent limits on the ability of insured institutions to obtain accurate exchange rate and covered third-party fee information. Relatedly, several industry commenters suggested that the Bureau amend the criteria and process for using the ''countries'' exception in § 1005.32(b)(1) (which implements EFTA section 919(c)) to make it easier to include countries on the Bureau-maintained ''countries list'' so that insured institutions can provide estimates of the exchange rate or covered third-party fees for remittance transfers to those countries. (See the end of this part V for the Bureau's request for comment on this issue.)

Other industry commenters discussed other approaches to address concerns specifically related to providing exact exchange rates, and these approaches are discussed below in the section-by-section analysis of proposed § 1005.32(b)(4). Industry suggestions to address concerns specifically relating to providing exact covered third-party fees are discussed below in the section-by-section analysis of proposed § 1005.32(b)(5).

Several industry trade associations indicated that, if the Bureau does not extend or make permanent the temporary exception, the Bureau should adopt a one-year transition period to provide a safe harbor for banks' good faith implementation and compliance efforts. These trade associations indicated that this one-year transition period is needed because of the complexities of determining how any changes in a final rule will affect services to consumers and other banks, the need to communicate those impacts to customers, and the need to create new procedures and training to enable compliance.

Comment from a nonbank remittance transfer provider. The one ''fintech'' nonbank remittance transfer provider that commented on the 2019 RFI indicated that the temporary exception was never intended to be permanent, whether directly or indirectly through an extension of other exceptions. This commenter asserted its belief that extending the exception directly or indirectly will stunt the movement toward transparency and continue the bifurcated regulatory approach under which insured institutions may be able to provide estimates but MSBs cannot.

Comment from a consumer advocacy group. The consumer advocacy group that commented on the 2019 RFI indicated that (1) the Remittance Rule is designed to improve accountability and transparency, and through those benefits to consumers, also benefit competition and innovation; (2) the temporary exception was put into place to accommodate existing practices while the market adapted to new standards under the Rule; and (3) evidence from pricing and market innovation indicate that the market has substantially adapted and is poised to move away from a need for the exception. The commenter also encouraged institutions that might consider terminating their remittance transfer services to instead partner with larger institutions or nonbank money transmitters including MSBs to act as a service provider to that withdrawing institution's customers. The commenter asserted that these partnerships would be especially useful in situations where the institution terminating the remittance transfer services serves a segment of consumers with few alternatives available when sending remittance transfers.

Recent Outreach on Impacts of the Expiring Temporary Exception

As noted in part III above, the Bureau has engaged in ongoing market monitoring and other outreach to industry and other stakeholders regarding the Remittance Rule. As in their comments on the 2019 RFI, the general consensus from industry in these meetings and discussions was that, if the Bureau does not take steps to allow estimates of the exchange rate or covered third-party fees to mitigate the expiration of the temporary exception, insured institutions may stop sending remittance transfers in situations where, despite reasonable efforts, they cannot provide exact disclosures. One trade association emphasized the difficulties that some

[60] EFTA section 919(c) (implemented in § 1005.32(b)(1)) permits the Bureau to except remittance transfer providers from having to provide exact 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 does not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient. See below for a discussion of this exception.

insured institutions face in providing exact disclosures for certain remittance transfers sent through correspondent banks in an open network payment system. This trade association reiterated the suggestions in its comment letter for potential regulatory solutions, such as the Bureau using its general exception and adjustment authority under EFTA section 904(c), or its authority under EFTA section 919(c), to exempt wire transfers from the requirement to provide exact disclosures when insured institutions are not able to determine accurate amounts.

Several large insured institutions provided information on the circumstances in which they use the temporary exception and discussed their concerns about the potential impact its expiration would have on whether they could continue to provide certain remittance transfers. These institutions indicated that they do not rely on the temporary exception to estimate the exchange rate but do rely on it in certain circumstances to estimate covered third-party fees. They also described the actions they have taken or plan to take to mitigate the potential impacts of the expiring temporary exception, and potential measures that the Bureau could take to limit further its impact. One large insured institution also identified the countries where it uses the temporary exception most often to estimate covered third-party fees, and for each of these countries provided information about the number of remittance transfers for which it uses the temporary exception.

The Bureau also received a letter from several members of Congress expressing concern that if insured institutions are no longer able to provide estimates of exchange rates and covered third-party fees after the temporary exception expires, many institutions would likely discontinue providing remittance transfer services to their customers because they would be unable to comply with the Remittance Rule. These members of Congress requested that the Bureau use its authority under EFTA section 904(a) and (c), or its authority under EFTA section 919(c), or its authority under section 1032 of the Dodd-Frank Act, to allow insured institutions to continue providing estimates of exchange rates and covered third-party fees in cases where exact disclosures are not possible. These members of Congress stated that a solution should be permanent, not temporary, so insured institutions are able to make long-term decisions regarding the provision of remittance transfer services.

The Bureau's Proposal

To mitigate the impact of the temporary exception's expiration, the Bureau is proposing two new permanent exceptions, as discussed in greater detail below in the section-by-section analyses of proposed § 1005.32(b)(4) and (5). The Bureau is retaining the temporary exception in § 1005.32(a)(1), with the current sunset date of July 21, 2020. As discussed in the 2019 RFI, EFTA section 919 expressly limits the length of the temporary exception to July 21, 2020. The Bureau, therefore, is not proposing to extend the exception or make it permanent. As such, the exception will expire on July 21, 2020 unless Congress changes the law. For similar reasons, the Bureau is not proposing to replicate the temporary exception, as some trade association commenters suggested the Bureau should do.[61]

32(b) Permanent Exceptions

32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

The Bureau is proposing to add a new permanent exception to the Remittance Rule that would permit insured institutions to estimate the exchange rate (and other disclosures that depend on the exchange rate) that must be disclosed in the disclosures required by §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2) in certain circumstances. This proposed exception is designed to help mitigate the impact of the expiration of the temporary exception on consumers' access to certain remittance transfers.

Comments Received on Estimating the Exchange Rate in Response to the 2019 RFI

Several industry commenters asserted that insured institutions have difficulty knowing the exact exchange rate at the time they must provide the disclosures required by the Remittance Rule. For example, several industry trade associations indicated that (1) insured institutions can provide the exact exchange rate in the disclosures if the insured institution, its service provider, or its correspondent bank conducts the foreign currency exchange prior to the transfer; they noted, however, that it may be difficult for this to occur for all remittance transfers sent by insured institutions; (2) in many cases, local customs or practices may make foreign currency exchange outside the United States difficult or impossible even if these restrictions are not pursuant to the laws of the receiving country; (3) for some currencies, the market is too small and illiquid, which makes maintenance of a currency-trading desk in the United States difficult or impossible; (4) for other currencies, it may not be economically viable for a correspondent bank to conduct the foreign currency exchange for other reasons, including that some currencies may just simply be difficult or expensive to purchase; and (5) banks generally profit on their foreign currency exchange services, and some foreign banks may refuse to process incoming wire transfers not denominated in U.S. dollars so as not to lose the revenue they receive from exchanging the currency themselves. One bank also indicated that it is expensive to ''lock in'' an exchange rate for highly volatile currencies because of the fluctuations in those exchange rates.

As discussed in more detail above in the section-by-section analysis of § 1005.32(a), several industry commenters indicated that if the Bureau does not adopt an exception that allows insured institutions to continue to estimate the exchange rate in certain circumstances, insured institutions may stop sending remittance transfers in situations where the insured institutions cannot disclose the exact exchange rate. Several other industry commenters indicated that insured institutions that continue to offer remittance transfers may see costs increase when sending transfers to certain countries if insured institutions have to change the ways they provide transfers in order to disclose exact exchange rates.

Several trade associations suggested that the Bureau should permit exchange rate estimates for any remittance transfer that involves exchanging a foreign currency if the remittance transfer provider or its foreign currency provider is unable to conduct foreign currency exchange ''in the ordinary course of its business.'' The trade associations indicated that this suggested exception would cover the following situations: (1) Local customs and practices, rather than specific laws, prevent banks from disclosing the exact exchange rate; (2) currencies with very small or illiquid markets, which makes the maintenance of a currency-trading desk in the U.S. difficult or impossible;

[61] Specifically, these trade association commenters asked the Bureau to exempt wire transfers generally from the requirement to disclose exact exchange rates or covered third-party fees to accommodate the characteristics of open network transactions when insured institutions are not able to determine exact amounts at the time the disclosures are provided. They also suggested that, under EFTA 919(c), the Bureau should specify that wire transfers are a ''method by which transactions are made in the recipient country'' that does not allow exact disclosures if such amounts cannot be reasonably determined at the time the disclosures are provided.

and (3) currencies that are difficult or expensive to buy so it is not economically viable for a correspondent bank to conduct the exchange.

In addition, one credit union raised a specific issue related to Department of Defense (DoD) regulations that require the credit union to benchmark the exchange rate it offers as a credit union on a military installation in a foreign country to the Military Banking Facility (MBF) rate. For one-time transfers scheduled one to four days in advance, the credit union indicates that it uses the temporary exception to estimate the exchange rate because it does not know the benchmark rate that will apply on the date of transfer and does not qualify for the existing permanent exception in § 1005.32(b)(2), which permits estimates for transfers scheduled five or more business days before the date of transfer when certain conditions are met.[62]

The Bureau's Proposal

The Bureau is proposing to add a new permanent exception to the Remittance Rule that would permit insured institutions to estimate the exchange rate (and other disclosures that depend on the exchange rate) in certain circumstances. Based on the comments received on the 2019 RFI and other outreach and research, the Bureau is concerned that if it does not adopt any additional exceptions that allow estimates of the exchange rate after the temporary exception expires, some insured institutions may choose to stop sending remittance transfers to recipients in certain countries. These insured institutions may choose to stop providing certain remittance transfers because they deem the costs of determining exact amounts for the exchange rate to be prohibitively expensive. The Bureau is concerned that if these institutions discontinue providing such transfers, consumer access to remittance transfer services for certain countries may be reduced or eliminated. As discussed in more detail above in the section-by-section analysis of § 1005.32(a), it appears increasingly unlikely that any new technologies or partnerships will be able to fully eliminate insured institutions' reliance on estimates in the short-to-medium term.

Also, the Bureau is concerned that, when the temporary exception expires, if the Rule does not allow estimates of the exchange rate in certain circumstances, insured institutions that continue to offer remittance transfer services may see costs increase when sending transfers to certain countries if insured institutions have to change the ways they provide remittance transfers in order to disclose exact exchange rates. This would predictably lead to increased prices for consumers. In addition, the Bureau is concerned that prices for consumers may also increase for transfers to certain countries (due to reduced competition) if the number of remittance transfer providers offering remittance transfers to such countries is reduced due to some providers eliminating or curtailing transfer services because they could not determine and disclose exact exchange rates for those countries.

Proposed § 1005.32(b)(4)(i) generally provides that for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular country in accordance with § 1005.32(c) for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii) if the designated recipient of the remittance transfer will receive funds in the country's local currency and all of the following conditions are met: (1) The remittance transfer provider is an insured institution as defined in § 1005.32(a)(3); (2) the insured institution cannot determine the exact exchange rate for that particular remittance transfer at the time it must provide the applicable disclosures; (3) the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency; and (4) the remittance transfer generally is sent from the sender's account with the insured institution.[63] The Bureau also is proposing conforming changes to the following provisions to reference the proposed exception in § 1005.32(b)(4) where the temporary exception in § 1005.32(a) currently is referenced and pertains to the estimation of the exchange rate: (1) § 1005.32(c); (2) § 1005.33(a)(1)(iii)(A); (3) § 1005.36(b)(3); (4) comment 32–1; (5) comment 32(b)(1)–4.ii; (6) comment 32(d)–1; and (7) comment 36(b)-3.

Proposed § 1005.32(b)(4)(i) would generally apply to the following disclosures set forth in § 1005.31(b)(1)(iv) through (vii) respectively: (1) The exchange rate (as applicable); (2) if ''covered third-party fees'' as defined in § 1005.30(h) are imposed, the total amount that will be transferred to the recipient inclusive of the covered third-party fees; (3) the amount of any covered third-party fees; and (4) the amount that will be received by the designated recipient (after deducting any covered third-party fees). Proposed § 1005.32(b)(4)(ii) makes clear, however, that the total amount that will be transferred to the recipient inclusive of covered third-party fees, the amount of covered third-party fees, and the amount that will be received by the designated recipient (after deducting covered third-party fees) may be estimated under proposed § 1005.32(b)(4)(i) only if the exchange rate is permitted to be estimated under proposed § 1005.32(b)(4)(i) and the estimated exchange rate affects the amount of such disclosures. For example, if a remittance transfer will be received by the designated recipient in the same currency as the one in which the transfer is funded, the insured institution would not disclose an exchange rate for the transfer, and the total amount that will be transferred to the recipient inclusive of covered third-party fees, the amount of covered third-party fees, and the amount that will be received by the designated recipient (after deducting covered third-party fees) will not be affected by an exchange rate. In that case, an insured institution may not use proposed § 1005.32(b)(4) to estimate those disclosures. The insured institution, however, may be able to use another permanent exception set forth in § 1005.32(b), including the exception in proposed § 1005.32(b)(5), to estimate those disclosures if the conditions of those exceptions are met.

Proposed § 1005.32(b)(4) also would apply only if the designated recipient of the remittance transfer will receive funds in the country's local currency. Current comment 31(b)(1)(iv)–1 provides guidance on how a remittance transfer provider can determine in which currency the designated recipient will receive the funds. The comment provides that for purposes of determining whether an exchange rate is applied to the transfer, if a remittance transfer provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is denominated in Mexican pesos and the funds are

[62] The Bureau believes that the DoD regulations are not in conflict with the requirements in the Remittance Rule for one-time transfers scheduled one to four days in advance.

[63] For the purposes of the proposed exception in proposed § 1005.32(b)(4), a sender's account would not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

converted prior to deposit into the account. Thus, under this comment, a remittance transfer provider may rely on a sender's representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer, unless the remittance transfer provider has actual knowledge regarding the currency in which the funds will be received for the transfer. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

Each of the four conditions set forth in proposed § 1005.32(b)(4)(i)(A) through (D) is discussed in more detail below. The Bureau solicits comment generally on this proposed exception, and on each condition as discussed in more detail below.

The remittance transfer provider is an insured institution. Proposed § 1005.32(b)(4)(i)(A) provides that the remittance transfer provider must be an insured institution as defined in § 1005.32(a)(3).[64] As with the temporary exception, the exception in proposed § 1005.32(b)(4) is primarily designed to address providers' concerns about knowing the exact exchange rate at the time disclosures are provided for wire transfers sent via correspondent banks in an open network payment system. The Bureau believes that the great majority of these transfers are provided by insured institutions and that, in turn, these open network transfers are the most common type of remittance transfer provided by insured institutions.

Nonetheless, the Bureau understands that some remittance transfer providers that are not insured institutions could use the correspondent banking system to send remittance transfers.[65] The Bureau solicits comment on whether the Bureau should extend the exception in proposed § 1005.32(b)(4) to apply to remittance transfer providers that are not insured institutions, including MSBs and broker-dealers, and the reasons why the proposed exception should apply to these persons.

The insured institution cannot determine the exact exchange rate for the transfer at the time it must provide the applicable disclosures. As a condition of using the exception in proposed § 1005.32(b)(4), proposed § 1005.32(b)(4)(i)(B) would require that, at the time the insured institution must provide the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), as applicable, the insured institution cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for that remittance transfer. Proposed comment 32(b)(4)–1 provides guidance on whether an insured institution cannot determine the exact exchange rate applicable to a remittance transfer at the time the disclosures must be given. Specifically, proposed comment 32(b)(4)–1 explains that for purposes of proposed § 1005.32(b)(4)(i)(B), an insured institution cannot determine the exact exchange rate required to be disclosed under § 100531(b)(1)(iv) for a remittance transfer to a particular country where the designated recipient of the transfer will receive funds in the country's local currency if the exchange rate for the transfer is set by a person other than (1) the insured institution; (2) an institution that has a correspondent relationship with the insured institution; (3) a service provider for the insured institution; or (4) a person that acts as an agent of the insured institution. The Bureau believes that proposed comment 32(b)(4)–1 sets forth the circumstances in which an insured institution cannot determine the exchange rate for a particular transfer sent through correspondent banks in an open network payment system and seeks comment on this provision.

Proposed comment 32(b)(4)–1.i provides an example of when an insured institution cannot determine an exact exchange rate under proposed § 1005.32(b)(4)(i)(B) for a remittance transfer. Proposed comment 32(b)(4)–1.ii provides two examples of when an insured institution can determine an exact exchange rate under proposed § 1005.32(b)(4)(i)(B) for a remittance transfer, and thus the insured institution may not use the proposed exception in proposed § 1005.32(b)(4) to estimate the disclosures required under § 1005.31(b)(1)(iv) through (vii) for the remittance transfer. The Bureau solicits comment on the condition set forth in proposed § 1005.32(b)(4)(i)(B) generally, and on the guidance and examples set forth in proposed comment 32(b)(4)–1 for whether an insured institution can or cannot determine the exact exchange rate for a remittance transfer for purposes of proposed § 1005.32(b)(4)(i)(B).

The insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency. Proposed § 1005.32(b)(4)(i)(C) provides that with respect to the country to which the remittance transfer is being sent, the insured institution must have made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency.

Proposed comment 32(b)(4)–2.i provides that for purposes of determining whether an insured institution made 1,000 or fewer remittance transfers in the prior calendar year to a particular country pursuant to proposed § 1005.32(b)(4)(i)(C), the number of remittance transfers provided includes transfers in the prior calendar year to that country when the designated recipients of those transfers received funds in the country's local currency regardless of whether the exchange rate was estimated for those transfers. The proposed comment provides an example to illustrate. Also, proposed comment 32(b)(4)–2.ii provides that for purposes of the 1,000 transfer threshold, the number of remittance transfers does not include remittance transfers to a country in the prior calendar year when the designated recipients of those transfers did not receive the funds in the country's local currency. The proposed comment provides an example to illustrate.

The Bureau is concerned that if an insured institution is sending 1,000 or fewer remittance transfers to a particular country in the country's local currency, it may be unduly costly for the institution to establish and maintain currency-trading desk capabilities and risk management policies and practices related to foreign exchange trading of that currency, or to use service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for that currency. Based on the comments received on the 2019 RFI and additional outreach and research, the Bureau believes that cost is a primary factor in whether an insured institution will perform the currency exchange and thus whether it would know the exact exchange rate to provide in its disclosures. In these cases where the volume is less than the proposed

[64] The term ''insured institution'' is defined in § 1005.32(a)(3) to mean insured depository institutions (which includes uninsured U.S. branches and agencies of foreign 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).

[65] As noted in the 2019 RFI, a no-action letter issued by staff at the Securities and Exchange Commission (SEC) provided that staff will not take any enforcement action under Regulation E against broker-dealers that provide disclosures consistent with the requirements of the temporary exception. *See https://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf.*

1,000-transfer threshold in the previous calendar year to a particular country in the country's local currency, the Bureau is concerned that if the insured institution cannot estimate the exchange rate for a particular transfer to that country, the institution will no longer continue to make transfers to that country in the country's local currency because of the costs associated with performing the currency exchange. The Bureau is particularly concerned about smaller financial institutions that may lack the scale for it to be practicable to cover the costs of establishing and maintaining currency-trading desks and managing the risk of exchange rate trading of currency for certain countries, or to use service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for those currencies.

The Bureau has received feedback from banks, credit unions, and their trade associations that there are other circumstances in which an insured institution does not perform the foreign currency conversion upfront, and they do not appear to be directly or primarily related to the cost to the insured institution of performing the currency exchange or the scale of an insured institution's foreign exchange business. For example, some trade association commenters on the 2019 RFI asserted that local customs or practices may make foreign currency exchange outside the United States ''difficult or impossible'' even if these restrictions are not pursuant to the laws of the receiving country, or that some foreign banks may refuse to process incoming wire transfers not denominated in U.S. dollars so as not to lose the revenue they receive from performing the currency exchange themselves. Based on outreach and its understanding of the market, however, the Bureau believes that insured institutions with foreign currency exchange businesses that have reached a sufficient or large-enough scale may be better-equipped at navigating these situations. As such, the proposed threshold, if adopted, should largely obviate the concerns related to these circumstances.[66]

The Bureau solicits comment generally on this proposed condition and, in particular, on the proposed 1,000-transfer threshold. The Bureau solicits comment on whether the proposed 1,000-transfer threshold is an appropriate number of transfers to avoid institutions incurring undue costs in establishing and maintaining currency-trading desks and managing the risks related to foreign exchange trading of currency for certain countries, or to use service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for those currencies. The Bureau also solicits comment on whether some other number of transfers would be more appropriate in light of these cost considerations. The Bureau further solicits comment on whether there are other defined conditions which would warrant an exemption.

The Bureau notes that the proposed threshold amount focuses on the number of transfers to a particular country (in the country's local currency) that the insured institution made to that country in the previous calendar year. Unlike covered third-party fees, where the amount of the fees charged vary by institution, the Bureau understands that the exchange rate generally is determined at the country level. Nonetheless, the Bureau recognizes that in some cases, several countries may use the same currency, such as the Euro currency, and that in other cases one country may use more than one currency, such as Bhutan which officially allows both the ngultrum and the Indian rupee currencies to be used in the country.[67] The Bureau also notes that in some cases, a designated recipient may receive a transfer in a currency other than the country's local currency, such as where the transfer is sent to a designated recipient's institution in South Korea and the designated recipient receives the funds in Japanese yen. The Bureau solicits comment on whether this proposed exception should focus on the number of transfers in a particular currency (as opposed to a particular country in the country's local currency). For example, under this alternative approach, if more than one country uses the same currency, the insured institution would need to count the number of all the remittance transfers sent in that currency in the prior calendar year for purposes of the threshold amount, regardless of the country to which that transfer was sent. The Bureau solicits comment on whether it would be more difficult for insured institutions to count the number of remittance transfers sent in a particular currency in the prior calendar year, as opposed to counting the number of remittance transfers sent to a particular country in the country's local currency in the prior calendar year.

The remittance transfer is sent from the sender's account with the insured institution. Consistent with the temporary exception in § 1005.32(a), proposed § 1005.32(a)(4)(i)(D) provides that the remittance transfer must be sent from the sender's account with the insured institution; provided, however, for the purposes of proposed § 1005.32(b)(4)(i)(D), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account. Currently, prepaid accounts generally are subject to the Remittance Rule, but the temporary exception in § 1005.32(a) does not apply to transfers from these accounts, unless the prepaid account is a payroll card account or a government benefit account, and the other conditions of the temporary exception are met. Proposed § 1005.32(a)(4)(i)(D) is intended to continue the current application of the Remittance Rule to prepaid accounts.

Permanent exception. Proposed § 1005.32(b)(4) would be a permanent exception with no sunset date. Based on the comments received on the 2019 RFI and further outreach and research, the Bureau believes that for at least the short-to-medium term it is likely that many insured institutions will depend primarily on the correspondent banking network to send remittance transfers where it may be unduly costly to provide exact exchange rates. As discussed in more detail above in the section-by-section analysis of § 1005.32(a), the Bureau believes that certain developments in the market eventually could make it practicable for insured institutions to disclose exact exchange rates for transfers, although the Bureau cannot forecast when technological and market development will permit this to occur. As such, the Bureau solicits comment on whether the Bureau should include a sunset provision with respect to the exception in proposed § 1005.32(b)(4) and, if so, what that sunset date should be.

Legal authority. To effectuate the purposes of EFTA and to facilitate compliance, the Bureau is proposing to use its EFTA section 904(a) and (c) authority to propose a new exception under § 1005.32(b)(4). Under its EFTA section 904(c) authority the Bureau ''may provide for such adjustments and exceptions for any class of electronic

[66] For example, the ''difficulty'' or ''impossibility'' some trade association commenters raised with respect to certain local customs or practices may refer to difficulty or impossibility due to disproportionate cost.

[67] *See* Int'l Monetary Fund, Monetary & Capital Markets Dep't, *Annual Report on Exchange Arrangements and Exchange Restrictions 2018,* at 17 (Apr. 16, 2019), *https://www.imf.org/en/Publications/Annual-Report-on-Exchange-Arrangements-and-Exchange-Restrictions/Issues/2019/04/24/Annual-Report-on-Exchange-Arrangements-and-Exchange-Restrictions-2018–46162.*

fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' [68] The Bureau believes that this proposed exception would facilitate compliance with EFTA, preserve consumer access, and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law. The Bureau believes that the proposed exception would facilitate compliance where it may be infeasible or impracticable (due to undue cost) for insured institutions to determine the exchange rate because of an insufficient number of transfers to a particular country. Compliance difficulties or challenges that insured institutions face in providing exact disclosures could cause those institutions to reduce or cease offering transfers to certain countries, which in turn could mean that consumers have less access to remittance transfer services or have to pay more for them. By preserving such access, the proposed exception could also help maintain competition in the marketplace, therefore effectuating one of EFTA's purposes. If the temporary exception expires without the Bureau taking any mitigation measure, the Bureau believes certain insured institutions may stop sending transfers to certain countries, therefore potentially reducing competition for those transfers. This potential loss of competition could be detrimental to senders because the price of transfers could increase or because it could become less convenient to send them.[69]

Other approaches suggested by commenters on the 2019 RFI. The Bureau is not proposing to permit estimates for any remittance transfer that involves exchanging a foreign currency if the remittance transfer provider or its foreign currency provider is unable to conduct foreign exchange ''in the ordinary course of its business.'' The Bureau believes that the exception in proposed § 1005.32(b)(4) is a better approach in that it would create a bright-line threshold with respect to estimating exchange rates. The Bureau believes that the clarity of this standard is more likely than the suggested alternative to reduce uncertainty and promote compliance. The Bureau also believes that its proposed 1,000 threshold may address most of the concerns related to circumstances in which it is difficult for institutions to provide exact exchange rates for certain remittance transfers.

32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

The Bureau is proposing to add a new permanent exception to the Remittance Rule that would permit insured institutions to estimate covered third-party fees (and other disclosures that depend on the covered third-party fees) that must be included in certain circumstances in the disclosures required by §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). This proposed exception is designed to help mitigate the impact of the expiration of the temporary exception on consumers' access to certain remittance transfers.

The term ''covered third-party fees'' is defined in § 1005.30(h)(1) to mean any fees (other than ''non-covered third-party fees'' described in § 1005.30(h)(2)) that a person other than the remittance transfer provider imposes on the transfer. Fees imposed on a wire transfer by an intermediary institution are covered third-party fees. In addition, fees imposed by a designated recipient's institution on a wire transfer are covered third-party fees if the designated recipient's institution acts as an agent for the remittance transfer provider.

In contrast, the term ''non-covered third-party fees'' is defined as any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider. Fees a designated recipient's institution imposes on a wire transfer are non-covered third-party fees if the designated recipient's institution does not act as an agent of the remittance transfer provider. The term ''agent'' is defined in § 1005.30(a) to mean an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

Comments Received on Estimating Covered Third-Party Fees in Response to the 2019 RFI

Many industry commenters noted that most transfers sent by insured institutions are wire transfers sent through correspondent banks in an open network payment system. Several industry trade associations indicated that currently there are two ways in which an insured institution may know the amount of covered third-party fees for a remittance transfer sent through correspondent banks in an open network payment system. One way is for the insured institution to form correspondent banking relationships with other financial institutions, because such relationships allow the insured institution to know or control the transaction fees that could apply to a remittance transfer. The other way is for the insured institution to send payments to institutions using the cover method as discussed above in the section-by-section analysis of § 1005.32(a) and the ''OUR'' charge code.[70] According to these trade associations, assuming the OUR code is honored,[71] the insured institution can disclose the exact transfer amount because in honoring the OUR code the designated recipient's institution and intermediary institutions will not deduct any transaction fees from the transfer amount. However, these trade associations have asserted that an insured institution is limited in the financial institutions to whom it may send such a payment, because to send a cover payment the insured institution must have a SWIFT relationship management application (RMA) [72] with the designated recipient's institution.[73]

Several industry commenters indicated, however, that it is not possible to use correspondent relationships or the cover method for all remittance transfers sent through correspondent banks in an open network payment system. One bank indicated that due to its size and its volume of remittance transfers, it is not feasible for the bank to develop correspondent banking relationships in many foreign countries.[74] Several trade

[68] 15 U.S.C. 1693b(c).

[69] As the Bureau stated in the 2019 RFI, the Bureau recognizes the value to consumers of being able to send remittance transfers directly from a checking account to the account of a recipient in a foreign country through their bank or credit union. 84 FR 17971, 17974 (Apr. 29, 2019).

[70] The OUR code instructs financial institutions that receive payment instructions sent via SWIFT that the sending institution will bear all of the payment transaction fees and the recipient of the payment will not pay any such fees.

[71] The Bureau also notes that, as discussed above in the section-by-section analysis of § 1005.32(a), it understands that by current market practice, financial institutions do not deduct transaction fees from cover payments.

[72] When an insured institution sends payment messages through SWIFT, it needs an RMA with the designated recipient's institution to send certain types of messages to that institution.

[73] Similarly, in connection with the Bureau's 2014 rulemaking to extend the temporary exception, one large bank told the Bureau that it could only send cover payments to institutions with which it has a preexisting agreement or relationship. *See* 79 FR 23234, 23245 (Jan. 31, 2014).

[74] Several trade associations submitted a comment letter to the Bureau in response to the 2017 Assessment Report RFI in which the trade

associations indicated that (1) with respect to the cover method, insured institutions are limited in the RMAs they can establish due to anticipated volume, anti-money laundering and other risk management requirements; (2) OUR instructions are market practices, not legally binding requirements; (3) some banks do not honor OUR instructions for a number of reasons, including local custom and the additional cost and complexity to downstream banks of collecting fees from the insured institution; and (4) the nature of an open network payment system does not allow banks to know with certainty at the time the disclosures are given whether other institutions will honor an OUR code, absent sending payments to one's correspondent bank or sending cover payments.

As discussed in more detail above in the section-by-section analysis of § 1005.32(a), several industry commenters indicated that if the Bureau does not adopt any additional exceptions that allow insured institutions to continue to estimate covered third-party fees in certain circumstances, insured institutions may stop sending remittance transfers in situations where the insured institutions cannot provide exact disclosures of covered third-party fees. Several other industry commenters indicated that insured institutions that continue to offer remittance transfers may see costs increase when sending transfers to certain designated recipients' institutions if insured institutions have to change the ways they provide remittance transfers in order to disclose exact covered third-party fees.

One trade association suggested that the Bureau should expand the definition of ''non-covered third-party fees'' to cover any fees imposed by a third-party that the insured institution cannot determine after reasonable inquiry, thereby no longer requiring the disclosure of those fees. (As discussed above, non-covered third-party fees are not required to be disclosed under the Remittance Rule.) The trade association also suggested that the Bureau should amend the definition of ''error'' in § 1005.33, or provide relevant interpretive guidance, to ensure that the definition of ''error'' does not include instances in which covered third-party fees are charged that were not previously identified during a reasonable review by the remittance transfer provider.

The Bureau's Proposal

The Bureau is proposing to add a new permanent exception to the Remittance Rule that would permit insured institutions to estimate the amount of covered third-party fees (and other disclosures that depend on the amount of those fees) in certain circumstances. Based on the comments received on the 2019 RFI and other outreach and research, the Bureau is concerned that if it does not adopt any additional exceptions that allow estimates of covered third-party fees after the temporary exception expires, some insured institutions may choose to stop sending remittance transfers to recipients with accounts at certain designated recipients' institutions. These insured institutions may choose to stop providing certain remittance transfers because they deem the costs of determining exact covered third-party fees to be prohibitively expensive. The Bureau is concerned that if these institutions discontinue providing such transfers, consumer access to remittance transfer services for certain designated recipients' institutions may be reduced or eliminated. As discussed in more detail above in the section-by-section analysis of § 1005.32(a), it appears increasingly unlikely that any new technologies or partnerships will be able to fully eliminate insured institutions' reliance on estimates in the short-to-medium term.

Also, the Bureau is concerned that in a scenario where the Bureau provides no additional exceptions that allow estimates of covered third-party fees when the temporary exception expires, insured institutions that continue to offer remittance transfer services may see costs increase when sending transfers to certain designated recipients' institutions if insured institutions have to change the ways they provide remittance transfers in order to disclose exact covered third-party fees. This would predictably lead to increased prices for consumers. In addition, the Bureau is concerned that prices for consumers may also increase for transfers to certain designated recipients' institutions (due to reduced competition) if the number of remittance transfer providers offering remittance transfers to such designated recipients' institutions is reduced due to some providers eliminating or curtailing transfer services because they could not determine and disclose exact covered third-party fees for those designated recipients' institutions.

Proposed § 1005.32(b)(5)(i) generally provides that for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular designated recipient's institution in accordance with § 1005.32(c) for the amounts required to be disclosed under § 1005.31(b)(1)(vi) through (vii), if all of the following conditions are met: (1) The remittance transfer provider is an insured institution, as defined in § 1005.32(a)(3); (2) the insured institution cannot determine the exact covered third-party fees for a remittance transfer to a particular designated recipient's institution at the time it must provide the applicable disclosures; (3) the insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution; and (4) the remittance transfer generally is sent from the sender's account with the insured institution.[75] The Bureau is also proposing conforming changes to the following provisions to reference the proposed exception in § 1005.32(b)(5) where the temporary exception in § 1005.32(a) currently is referenced and pertains to the estimation of covered third-party fees: (1) § 1005.32(c); (2) § 1005.33(a)(1)(iii)(A); (3) § 1005.36(b)(3); (4) comment 32–1; (5) comment 32(c)(3)–1; and (6) comment 36(b)–3.

Proposed § 1005.32(b)(5)(i) would generally apply to the following disclosures set forth in § 1005.31(b)(1)(vi) through (vii) respectively: (1) The amount of any covered third-party fees; and (2) the amount that will be received by the designated recipient (after deducting any covered third-party fees). Proposed § 1005.32(b)(5)(ii) makes clear, however, that the amount that will be received by the designated recipient (after deducting covered third-party fees) may be estimated under proposed § 1005.32(b)(5)(i) only if covered third-party fees are permitted to be estimated under proposed § 1005.32(b)(5)(i) and the estimated covered third-party fees affect the amount of such disclosure. For example, if the covered third-party fees for a remittance transfer may not be estimated under proposed § 1005.32(b)(5), the amount that will be received by the designated recipient (after deducting any covered third-party

associations indicated that insured institutions are unable to determine exact amounts for certain destinations because the low volume of transactions and resulting lack of correspondent relationships in such geographies makes the usual means by which insured institutions gather information to enable exact disclosures cost prohibitive or not operationally feasible. These trade associations made similar comments in a letter to the Bureau in response to the 2018 Adopted Regulations RFI.

[75] For the purposes of proposed § 1005.32(b)(5), a sender's account would not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

fees) may not be estimated under proposed § 1005.32(b)(5). The insured institution, however, may be able to use another permanent exception set forth in § 1005.32(b), including the proposed exception in § 1005.32(b)(4), to estimate that disclosure if the conditions of those exceptions are met.

Each of the four conditions set forth in proposed § 1005.32(b)(5)(i)(A) through (D) is discussed in more detail below. The Bureau solicits comment generally on this proposed exception, and on each condition as discussed in more detail below.

The remittance transfer provider is an insured institution. Proposed § 1005.32(b)(5)(i)(A) provides that the remittance transfer provider must be an insured institution as defined in § 1005.32(a)(3).[76] The Bureau solicits comment on whether the Bureau should extend this exception to apply to remittance transfer providers that are not insured institutions, including MSBs and broker-dealers, and the reasons why the proposed exception should apply to these persons.[77]

The insured institution cannot determine the exact covered third-party fees for a remittance transfer to a particular designated recipient's institution at the time it must provide the applicable disclosures. As a condition of using the exception in proposed § 1005.32(b)(5), proposed § 1005.32(b)(5)(i)(B) would require that, at the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer. Proposed comment 32(b)(5)–1 provides guidance on when an insured institution cannot determine the exact covered third-party fees as applicable to a remittance transfer at the time the disclosures must be given. Specifically, proposed comment 32(b)(5)–1 provides that for purposes of § 1005.32(b)(5)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for a remittance transfer to a designated recipient's institution when all of the following conditions are met: (1) The insured institution does not have a correspondent relationship with the designated recipient's institution; (2) the designated recipient's institution does not act as an agent of the insured institution; (3) the insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer (*e.g.,* an agreement whereby the designated recipient's institution agrees to charge back any covered third-party fees to the insured institution rather than impose the fees on the remittance transfer); and (4) the insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution. The Bureau believes that proposed comment 32(b)(5)–1 sets forth the circumstances in which an insured institution cannot determine the exact covered third-party fees for remittance transfers sent through correspondent banks in an open network payment system and seeks comment on this provision.

In contrast, proposed comment 32(b)(5)–2 provides that for purposes of proposed § 1005.32(b)(5)(i)(B), an insured institution can determine, at the time it must provide the applicable disclosures, exact covered third-party fees for a remittance transfer, and thus the insured institution may not use the exception in proposed § 1005.32(b)(5) to estimate the disclosures required under § 1005.31(b)(1)(vi) or (vii) for the transfer, if any of the following conditions are met: (1) An insured institution has a correspondent relationship with the designated recipient's institution; (2) the designated recipient's institution acts as an agent of the insured institution; (3) an insured institution has an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; or (4) an insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution. The Bureau believes that proposed comment 32(b)(5)–2 sets forth the circumstances in which an insured institution can determine the exact covered third-party fees for remittance transfers sent through a correspondent banks in an open network payment system and seeks comment on this provision.

The Bureau solicits comment on the condition set forth in proposed § 1005.32(b)(5)(i)(B) generally, and on the guidance set forth in proposed comments 32(b)(5)–1 and –2 for whether an insured institution can or cannot determine the exact covered third-party fees for a remittance transfer for purposes of proposed § 1005.32(b)(5)(i)(B).

The insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution. Proposed § 1005.32(b)(5)(i)(C) provides that, with respect to the designated recipient's institution to which the remittance transfer is being sent, the insured institution must have made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution. The Bureau notes that the proposed threshold amount focuses on the number of transfers to the particular designated recipient's institution that the insured institution made in the previous calendar year. The Bureau understands that covered third-party fees generally are determined by each institution rather than at the country level.

Proposed comment 32(b)(5)–3.i provides that for purposes of determining whether an insured institution made 500 or fewer remittance transfers in the prior calendar year to a particular designated recipient's institution pursuant to proposed § 1005.32(b)(5)(i)(C), the number of remittance transfers provided includes remittance transfers in the prior calendar year to that designated recipient's institution regardless of whether the covered third-party fees were estimated for those transfers. The proposed comment provides an example to illustrate.

Proposed comment 32(b)(5)–3.ii also provides that for purposes of the proposed 500 threshold, the number of remittance transfers includes remittance transfers provided to the designated recipient's institution in the prior calendar year regardless of whether the designated recipients received the funds in the country's local currency or in another currency. The proposed comment provides an example to illustrate.

[76] The term ''insured institution'' is defined in § 1005.32(a)(3) to mean insured depository institutions (which includes uninsured U.S. branches and agencies of foreign 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).

[77] See the section-by-section analysis of proposed § 1005.32(b)(4) above for a discussion of a similar request for comment related to proposed § 1005.32(b)(4)(i)(A).

The Bureau is concerned that if an insured institution is sending 500 or fewer transfers annually to a given designated recipient's institution, it may be unduly costly for the insured institution to establish the necessary relationships to know the covered third-party fees that will apply to a remittance transfer at the time the disclosures must be given. For example, based on comments received on the 2019 RFI and other outreach and research, the Bureau understands insured institutions sending remittance transfers through correspondent banks in an open network payment system would know the exact amount of covered third-party fees that will apply to a remittance transfer at the time disclosures are given if the insured institution has a correspondent relationship with the designated recipient's institution. The Bureau understands that another way in which the insured institution may know at the time the disclosures must be given the exact amount of covered third-party fees for a particular remittance transfer is through using the cover method under the SWIFT network, as discussed above. To use the cover method, the insured institution would need an RMA with the designated recipient's institution.

The Bureau understands that there are costs to maintaining the relationships that are needed to enable insured institutions to provide exact disclosures of covered third-party fees for remittance transfers.[78] Based on comments on the 2019 RFI and other outreach and research, the Bureau believes that anticipated transfer volume from an insured institution to a particular designated recipient's institution is an important factor in the insured institution's decision about whether to form and maintain such relationships.

The Bureau also recognizes that transfer volume is not the only factor in determining whether an insured institution enters into a correspondent banking relationship or an RMA with another financial institution. Industry commenters on the 2019 RFI identified factors that relate to the insured institution's risk assessment requirements and asked the Bureau to take these into consideration when contemplating regulatory solutions. It appears that these risk assessment requirements weigh various risk factors, such as cybercrime risk, to the insured institution. Because insured institutions could take significantly different approaches to managing such risks, based on their risk appetite, the Bureau believes that it would be difficult to adopt specific exceptions to address all of these risk factors and the varying risk appetites across institutions. Thus, with respect to permitting estimates of covered third-party fees, the Bureau is proposing a bright-line threshold of insured institutions making 500 or fewer transfers to a particular designated recipient's institution in the prior calendar year. The Bureau believes the proposed threshold, if adopted, would obviate a number of the concerns related to these risk factors.

The Bureau solicits comment generally on this proposed condition, and in particular, on the proposed 500 transfer threshold amount. The Bureau solicits comment on whether the proposed 500 transfer threshold is appropriate in determining whether it is cost effective for insured institutions to incur the costs of establishing and maintaining the necessary relationships so that they can determine the exact covered third-party fees for remittance transfers to that designated recipient's institution. The Bureau also solicits comment on whether the transfer threshold should be higher or lower than 500 transfers to achieve this objective. The Bureau further solicits comment on whether there are other defined conditions which would warrant an exemption.

The remittance transfer is sent from the sender's account with the insured institution. Proposed § 1005.32(a)(5)(i)(D) provides that the remittance transfer must be sent from the sender's account with the insured institution; provided however, for the purposes of proposed § 1005.32(b)(5), a sender's account would not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.[79]

Permanent exception. Proposed § 1005.32(b)(5) would be a permanent exception with no sunset date. The Bureau solicits comment on whether the Bureau should include a sunset provision with respect to the proposed exception in § 1005.32(b)(5) and, if so, what that sunset date should be.[80]

Legal authority. To effectuate the purposes of EFTA and to facilitate compliance, the Bureau is proposing to use its EFTA section 904(a) and (c) authority to add a new exception under § 1005.32(b)(5). Under its EFTA section 904(c) authority, the Bureau ''may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' [81] The Bureau believes that the proposed exception would facilitate compliance with EFTA, preserve consumer access, and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law. The Bureau believes that the proposed exception would facilitate compliance where it may be infeasible or impracticable (due to disproportionate cost) for insured institutions to determine covered third-party fees because of insufficient volume to a particular designated recipient's institution. Compliance difficulties or challenges that insured institutions face in providing exact covered third-party fees could cause those institutions to reduce or cease offering transfers to certain designated recipients' institutions, which in turn could mean that consumers have less access to remittance transfer services. By preserving such access, the proposed exception also could help maintain competition in the marketplace, therefore effectuating one of EFTA's purposes. If the temporary exception expires without the Bureau taking any mitigation measure, the Bureau believes certain insured institutions may stop sending transfers to particular designated recipients' institutions, therefore reducing competition for those transfers. This potential loss of market participants could be detrimental to senders because it could increase the price of remittance transfers or such transfer services could become less convenient.[82]

Other approaches suggested by commenters on the 2019 RFI. The Bureau is not proposing to expand the definition of ''non-covered third-party fees'' to include any fees imposed by a third-party that the insured institution cannot determine after reasonable inquiry, thereby no longer requiring the disclosure of those fees. (Non-covered third-party fees are not required to be

[78] *See* Financial Stability Board, *FSB Correspondent Banking Data Report,* at 4, 44 (2017); 2016 BIS Report at 11.

[79] See the section-by-section analysis of proposed § 1005.32(b)(4)(i)(D) above for a discussion of a similar provision related to proposed § 1005.32(b)(4).

[80] See the section-by-section analysis of proposed § 1005.32(b)(4) above for a discussion of a similar request for comment related to proposed § 1005.32(b)(4).

[81] 15 U.S.C. 1693b(c).

[82] As the Bureau stated in the 2019 RFI, the Bureau recognizes the value to consumers of being able to send remittance transfers directly from a checking account to the account of a recipient in a foreign country though their bank or credit union. 84 FR 17971, 17974 (Apr. 29, 2019).

disclosed under the Remittance Rule.) The Bureau is likewise not proposing to amend the definition of ''error'' in § 1005.33 to exclude instances in which a covered third-party fee is charged that was not previously identified during a reasonable review by the remittance transfer provider. The Bureau believes proposed § 1005.32(b)(5) is a better approach in that it would create a bright-line threshold with respect to estimating covered third-party fees. The proposed approach would allow insured institutions to provide estimates of covered third-party fees where it may not be cost effective for those institutions to continue providing such transfers if they could not provide estimates. Also, the Bureau believes that the proposed approach would benefit consumers more than the suggested alternative related to ''non-covered third-party fees'' because the sender of the transfer would receive an estimate of the covered third-party fees if the conditions of proposed § 1005.32(b)(5) are met, rather than not receiving any information about the fees if these fees were deemed to be ''non-covered third-party fees.''

Additional Issue for Comment: The Permanent Exception in § 1005.32(b)(1) and the Bureau's Safe Harbor Countries List

As discussed above, EFTA generally requires a remittance transfer provider to disclose the exact exchange rate to be applied to a remittance transfer.[83] Also as described above, an exception to this requirement (in section 919(c) of EFTA) allows the Bureau to write regulations specific to transfers to certain countries if it has determined that the 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 the designated recipient will receive. If these conditions are met, the provider may use a reasonably accurate estimate of the foreign currency to be received, based on the exchange rate the provider conveyed to the sender at the time the sender initiated the transaction.[84]

The Bureau implemented section 919(c) of EFTA in § 1005.32(b)(1), creating a ''permanent exception for transfers to certain countries.'' The exception is available in two situations. First, § 1005.32(b)(1)(i) permits providers to use estimates if they cannot determine exact amounts because (A) the laws of the recipient country do not permit such a determination, or (B) the method by which transactions are made in the recipient country does not permit such determination. Comment 32(b)(1)–2.i explains that, for example, under the first category, the laws do not permit exact disclosures when the exchange rate is determined after the provider sends the transfer or at the time of receipt. Comment 32(b)(1)–3 offers an example of a situation that qualifies for the methods exception. The example provided is a situation where transactions are sent via international ACH on terms negotiated between the U.S. government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer. Comments 32(b)(1)–4.i through iii provide additional examples of situations that do and do not qualify for the methods exception.

Second, § 1005.32(b)(1)(ii) offers a safe harbor allowing remittance transfer providers to disclose estimates instead of exact amounts for remittance transfers to certain countries as determined by the Bureau. Notably, however, the Rule does not allow a remittance transfer provider to use the safe harbor if the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount.

In 2012, the Bureau issued a list of five countries—Aruba, Brazil, China, Ethiopia, and Libya—that qualify for this safe harbor.[85] The list contains countries whose laws the Bureau has decided prevent providers from determining, at the time the required disclosures must be provided, the exact exchange rate on the date of availability for a transfer involving a currency exchange.[86] The Bureau also explained that the safe harbor countries list was subject to change, and provided instructions for contacting the Bureau to request that countries be added or removed from the list.[87] Since 2012, the Bureau has not added any additional countries to this list.

The Bureau has received feedback over the years from some remittance transfer providers and their trade associations regarding the Bureau's countries list. In the 2019 RFI, the Bureau again sought comment on what other countries, if any, should be added to the list because their laws do not permit the determination of exact amounts at the time the pre-payment disclosure must be provided.[88] In response, several industry commenters, including trade associations, banks, and a credit union, made various requests, primarily suggesting that particular countries or regions be added to the list. A few of these commenters requested that the Bureau make other changes to the permanent exception in § 1005.32(b)(1) to address, for example, difficulties in obtaining accurate fee and exchange rate information that they assert occur when sending open network transfers. A group of trade association commenters also suggested that the Bureau loosen and revise its requirements for the inclusion of additional countries on the countries list as a way to mitigate the expiration of the temporary exception.

The Bureau again seeks comment on the permanent exception in § 1005.32(b)(1) and the Bureau's process for adding countries to the list. The Bureau requests that any commenters seeking to have particular countries added to the list describe how the relevant laws or method prevent such a determination. The Bureau is particularly interested in whether these countries are ones for which remittance transfer services are not currently being provided, or whether providers are currently relying on estimates for providing disclosures required by the Rule.

The Bureau has, to date, only put countries on the list where the *laws* of the country prevent determining the exact exchange rate, although EFTA and the Rule permit the Bureau to add counties to the list if there is an issue with the *method* as well. As noted above, some have suggested that the Bureau amend § 1005.32(b)(1)(i) to provide that wire transfers are a ''method by which transactions are made in the recipient country'' that does not allow exact disclosures if such amounts cannot be reasonably determined at the time the disclosures are provided. However, for reasons discussed above in the section-by-section analysis of § 1005.32(a), the Bureau is not proposing to do so.

[83] EFTA section 919(a)(2)(A)(iii), codified at 15 U.S.C. 1693*o*–1(a)(2)(A)(iii).

[84] EFTA section 919(c)(2), codified at 15 U.S.C. 1693*o*–1(c)(2).

[85] Bureau of Consumer Fin. Prot., *Remittance Rule Safe Harbor Countries List* (Sept. 26, 2012), *http://files.consumerfinance.gov/f/201209_CFPB_Remittance-Rule-Safe-Harbor-Countries-List.pdf*. The Bureau subsequently published that list in the **Federal Register**. 78 FR 66251 (Nov. 5, 2013).

[86] *Id.* at 3.

[87] *Id.* at 3–4.

[88] The Bureau also asked that commenters describe how the relevant laws prevent such a determination, and whether the countries were ones for which remittance transfer services were not currently being provided, or whether providers were relying on estimates. 84 FR 17971, 17977 (Apr. 29, 2019).

Nonetheless, the Bureau is interested in suggestions regarding possible changes to the substantive criteria by which it adds countries to the countries list, whether based on the laws or method. For example, the law of a country precluding determining exact amounts could mean both the express terms of the law or the law as applied.

The Bureau is also interested in suggestions regarding possible changes to the processes and standards by which it adds countries to the countries list, including standards related to the nature or quantum of evidence needed for the Bureau to determine that the law or method of transfer to a country precludes providing exact disclosures. Currently, the Bureau's instructions to persons wishing to have countries considered for the countries list is to send feedback regarding whether the Bureau should make changes to the list, and any supporting materials (in English), to a specified email or mailing address. The Bureau has only included countries on the countries list where it has been able to verify that the law or regulation warrants inclusion. The Bureau has not, historically, added countries to the list when it has not been able to verify that they merit inclusion. The Bureau seeks comment on whether, in order to facilitate its review of countries list requests, it should articulate a more detailed list of information and documents (such as copies of relevant laws and regulations, as well as affidavits) that an applicant might submit to make such a request of the Bureau.

Given the new permanent exceptions proposed herein to address the expiration of the temporary exception, the Bureau seeks comment on whether insured institutions expect that proposed § 1005.32(b)(4) and (5) will address their concerns regarding providing estimates or whether they would additionally need to rely on § 1005.32(b)(1). The Bureau relatedly requests comment on the volume of transfers that remittance transfer providers send to the countries that are currently on the countries list as well as to those that they are requesting be added.

Finally, the Bureau seeks comment on whether any remittance transfer providers use estimates pursuant to § 1005.32(b)(1)(i) with respect to any countries that are not on the countries list. As the Bureau has stated in the past, that provision permits a remittance transfer provider to make its own determination that the laws of other recipient countries not on the list, or the method of sending transfers to such countries, do not permit a determination of exact amounts.[89] If providers are not relying on § 1005.32(b)(1)(i) to provide estimates, the Bureau requests comment on why they are not doing so.

The Bureau notes that its focus in this rulemaking is to address the expiration of the temporary exception and the safe harbor threshold. Accordingly, the Bureau cautions that, in light of its time frame for doing so, it will give priority to addressing those issues over the issues relating to the countries list.

VI. Effective Date

The Bureau is proposing that any final rule take effect on July 21, 2020. The Bureau anticipates that at least 30 days prior to July 21, 2020, it will publish any final rule in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.[90] As discussed above, the temporary exception in § 1005.32(a) expires on July 21, 2020. The Bureau is proposing that its modifications to the Rule, which are intended to mitigate the effects of the expiration of the temporary exception, become effective on the day the temporary exception expires.

The Bureau's proposed change to the safe harbor threshold in § 1005.30(f)(2) will also, among other things, mitigate the effect of the temporary exception's expiration on insured institutions that provide between 100 and 500 remittance transfers per year. Given the Bureau's expected timing for publication of a final rule addressing the safe harbor threshold and provisions to mitigate the expiration of the temporary exception, and the interplay between the safe harbor threshold and the temporary exception, the Bureau is likewise proposing that the change to the safe harbor threshold become effective on July 21, 2020. The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether a mid-year change in the safe harbor threshold would pose any complications for providers or cause confusion, and if so, whether the Bureau should make the change to the safe harbor threshold effective on some later date, such as January 1, 2021.

The Bureau also solicits comment on any compliance issues that might arise for insured institutions when transitioning from use of the temporary exception to use of the two new proposed exceptions set forth in proposed § 1005.32(b)(4) and (5).

After considering comments on this proposal, the Bureau intends to publish a final rule with respect to the safe harbor threshold and provisions to mitigate the expiration of the temporary exception.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[91] The Bureau also consulted with appropriate Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.[92] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts.

The proposed rule would amend several elements of the Remittance Rule. (1) It would raise the safe harbor threshold for providing remittance transfers in the normal course of business from 100 transfers to 500 transfers. Under this proposed change, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year would be deemed not to be providing remittance transfers in the normal course of its business and thus is not subject to the Rule. (2) It would provide a permanent exception that would allow insured institutions to estimate the exchange rate (and other disclosures that depend on the exchange rate) under certain conditions when sending to a country, principally that the designated recipient of the remittance transfer will receive funds in the country's local currency and (a) the insured institution made 1,000 or fewer

[89] 78 FR 66251, 66252 (Nov. 5, 2013).

[90] 5 U.S.C. 553(d). Under the Congressional Review Act (5 U.S.C. 801 through 808), if the Office of Management and Budget determines that a rule constitutes a ''major rule'' as defined in 5 U.S.C. 804(2), the rule may not take effect until the later of 60 days after it is received by Congress or published in the **Federal Register**. 5 U.S.C. 801(a)(3)(A).

[91] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact of the proposed rule on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

[92] Section 1022(b)(2)(B) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(B)) requires that the Bureau consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

transfers in the prior calendar year to that country where the designated recipients received funds in the country's local currency and (b) the insured institution cannot determine the exact exchange rate for that particular transfer at the time it must provide the applicable disclosures. (3) It would provide a permanent exception that would permit insured institutions to estimate covered third-party fees (and disclosures that depend on the amount of those fees) under certain conditions when sending to a designated recipient's institution, principally that the insured institution (a) made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year and (b) the insured institution cannot determine the exact covered third-party fees for that particular transfer at the time it must provide the applicable disclosures.

The Bureau would generally consider the benefits, costs, and impacts of the proposed rule against the baseline in which the Bureau takes no action. Under that approach, the baseline would be premised on an assumption that the Rule's existing temporary exception allowing certain insured institutions to disclose estimates instead of exact amounts to consumers would expire and the normal course of business safe harbor threshold would remain at 100 transfers. However, if the Bureau adopts the proposal as set forth herein, certain entities currently benefitting from the temporary exception would be exempt from the Rule entirely because of the expansion of the normal course of business safe harbor threshold. These entities would obtain no additional reduction in burden from the permanent exceptions for exchange rates and covered third-party fees because they would be excepted entirely from the Rule. Given this, the Bureau believes it is appropriate to consider the reduction in burden from the proposed permanent exceptions against a baseline in which the Bureau has amended the normal course of business safe harbor threshold as proposed. In other words, the Bureau considers the potential benefits, costs, and impacts of the proposed permanent exceptions only on insured institutions that provide more than 500 transfers in the prior and current calendar years. The impact analysis therefore discusses two baselines in sequence, as follows: (1) For purposes of considering the proposed normal course of business safe harbor threshold of 500 transfers, the Bureau uses a no-action baseline that assumes the temporary exception will expire and no permanent exceptions will be adopted; and (2) for purposes of considering the proposed permanent exceptions for exchange rates and covered third-party fees, the Bureau uses a baseline in which the temporary exception has expired and the agency has amended the normal course of business safe harbor threshold as proposed, so entities that provide 500 or fewer transfers in the previous and current calendar years are excluded.

With respect to the provisions of the proposed rule, the Bureau's analysis considers the benefits and costs to remittance transfer providers (covered persons) and as well as to senders (consumers). The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to benefits, costs, and impacts, as well as an appropriate baseline or baselines.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion in this impact analysis relies on data the Bureau obtained from industry, other regulatory agencies, and publicly available sources. The Bureau has done extensive outreach on many of the issues the proposal raises, including conducting the Assessment and issuing the Assessment Report as required under section 1022(d) of the Dodd-Frank Act, issuing the 2019 RFI, holding discussions with a number of remittance transfer providers that are banks and credit unions of different sizes, and consulting with other stakeholders. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of the proposed rule are generally limited.

Quantifying the benefits of the proposed rule for consumers presents certain challenges. As discussed further below, the proposed rule would tend to preserve access to wire transfers, the great majority of which are provided by insured institutions, and would tend to hold steady the pricing of wire transfers for certain, but not necessarily all, consumers who send wire transfers. The proposed rule would allow some insured institutions to continue using estimates in disclosures while other insured institutions would have to provide exact amounts in disclosures. Determining the number of consumers experiencing these different effects would require representative market-wide data on the prevalence of consumers who receive exact amounts versus estimated amounts in disclosures as well as the costs to providers of conveying this information to consumers in compliance with the Rule and the Bureau's proposed amendments thereto. The Bureau would then need to predict the responses of providers to these costs and the prevalence of consumers who would receive exact information versus estimated information in disclosures under the proposed rule. The Bureau does not have the data needed to quantify these effects, nor could it readily quantify the benefits to consumers of these effects. The Bureau asks interested parties to provide data, research results, and other factual information that would allow the Bureau to further quantify the effects of the proposed rule.

In light of these data limitations, the analysis below provides both a quantitative and qualitative discussion of the potential benefits, costs, and impacts of the proposed rule. Where possible given the data available, the Bureau has made quantitative estimates based on economic principles. Where the data is limited or not available, the Bureau relies on general economic principles and the Bureau's experience and expertise in consumer financial markets to provide a qualitative discussion of the benefits, costs, and impacts of the proposed rule.

C. Potential Benefits and Costs to Covered Persons and Consumers

As discussed above in explaining the baseline, the cost to certain insured institutions of the expiration of the temporary exception would be mitigated, although to differing extents, by the proposed increase in the normal course of business safe harbor threshold and the proposed permanent exceptions that would permit insured institutions to provide estimates of exchange rates and covered third-party fees in certain circumstances. In particular, insured institutions that currently provide between 101 and 500 transfers [93] in the prior and current calendar years would no longer be covered by the Rule and would therefore no longer need to provide any disclosures at all. If the Bureau were to adopt all of the proposed provisions, the permanent exceptions permitting estimation of exchange rates and covered third-party fees would not have any additional effect on the insured institutions (and their customers) that the Rule would no longer cover. The Bureau therefore believes that it is appropriate to consider the benefits and costs to consumers and covered persons of the proposed rule through considering: (1) The proposed permanent exceptions that would increase the normal course of business safe harbor threshold; and

[93] As noted above in the section-by-section analysis of § 1005.30(f), ''between 101 and 500'' means 101 or more and 500 or fewer.

(2) the effects of the proposals to allow certain insured institutions to provide estimates in certain disclosures under certain circumstances on banks and credit unions that currently provide more than 500 transfers annually.

As explained above, the Bureau is not aware of any nonbank remittance transfer providers that would qualify for exclusion from the Rule under the proposed 500-transfer normal course of business safe harbor threshold. In particular, the Bureau believes that all MSBs that provide remittance transfers provide more than 500 transfers annually. Further, the two proposed permanent exceptions would apply only to insured institutions and would not apply to nonbank remittance transfer providers like MSBs.

In light of the above, the proposed rule overall could affect MSBs only indirectly, through shifts in the volume of remittance transfers sent by MSBs relative to the volume sent by insured institutions. The Bureau believes, however, that these shifts would be limited because MSBs provide a somewhat different service than banks and credit unions to meet different consumer demands. For example, as discussed in part II above, in the Assessment Report, the Bureau found that the dollar value of the average remittance transfer provided by MSBs is typically much smaller (approximately $381 on average) than the dollar value of transfers (more than approximately $6,500 on average) provided by banks or credit unions.[94] Thus, in general, if certain insured institutions increase the cost of sending remittance transfers or cease sending remittance transfers to certain countries and/or designated recipients' institutions when the temporary exception expires, the Bureau believes that consumers who had been using these insured institutions to send wire transfers would generally shift to other insured institutions and not to MSBs. The Bureau therefore expects only a modest impact relative to the market today on MSBs from the expiration of the temporary exception, with or without the proposals herein. Thus, the Bureau expects only a modest impact on MSBs from the proposals relative to the assumed baseline.[95]

1. Raising the Normal Course of Business Safe Harbor Threshold to 500 Transfers Annually

The proposed rule would raise the normal course of business safe harbor threshold for Rule coverage from 100 transfers to 500 transfers. Under the proposed rule, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year would be deemed not to be providing remittance transfers in the normal course of its business and thus would not be subject to the Rule. Based on their respective Call Reports,[96] 414 banks and 247 credit unions provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year.[97] These banks and credit unions are currently covered by the Remittance Rule but would not be covered if the 500-transfer threshold was adopted as proposed. These institutions represent 55 percent of banks providing more than 100 transfers and 62 percent of credit unions providing more than 100 transfers. Thus, under the proposed rule, 661 previously covered institutions would no longer need to provide exact disclosures or meet any of the other requirements of the Rule. Comparing these numbers to calculations from 2017 and earlier in the Assessment Report, the number of banks and credit unions providing between 101 and 500 transfers has not changed much from year to year, so are likely to be representative of the impact going forward.

Benefits and Costs to Insured Institutions

As discussed above, 414 banks and 247 credit unions subject to the Rule under the no-action baseline would no longer incur the compliance costs of the Rule if the 500-transfer safe harbor threshold were adopted as proposed. The Bureau does not have a precise estimate of the costs these institutions would stop incurring if the Bureau adopts the 500-transfer normal course of business safe harbor threshold. However, the Assessment Report discusses the kinds of compliance costs faced by providers covered by the Rule.[98] These costs include staff training costs, information acquisition costs for disclosures, and error investigation and resolution costs.

In addition, if any banks and credit unions were restricting the number of remittance transfers that they provide to 100 or fewer in order to qualify for the existing normal course of business safe harbor threshold, it is possible they may decide to start providing more remittance transfers if the threshold were increased to 500 transfers as proposed. However, the Assessment Report indicates that banks and credit unions did not limit the number of transfers to stay under the existing normal course of business safe harbor threshold, nor did banks or credit unions appear to cease providing remittance transfers because of the Rule.[99] These facts suggest it is unlikely that many institutions would start providing more remittance transfers if the normal course of business safe harbor threshold were increased from 100 to 500 transfers as proposed.

Finally, it is possible that some insured institutions would see effects from an increased normal course of business safe harbor threshold because of the preferences of their customers. One possibility is that the customers of insured institutions that would be excluded from coverage if the Bureau were to increase the normal course of business safe harbor threshold to 500 transfers, might decide to start transferring with insured institutions that would remain subject to the Rule. These customers might prefer receiving the pre-payment disclosure and receipts or having the error resolution rights required under the Rule, even if they have to pay more to send remittance transfers. Conversely, if the price of sending remittance transfers is lower with the newly non-covered institutions, some customers may switch to those institutions. Given the inconvenience of changing remittance transfer providers, and the analysis of the impact of the 100-transfer normal course of business safe harbor threshold in the Assessment Report,[100] the Bureau expects that the net change in transfers and market participation would likely be small for insured institutions that

[94] Assessment Report at 68, 73.

[95] Entities besides insured institutions and traditional MSBs can be remittance transfer providers, including broker-dealers. The Bureau lacks data on the number of remittance transfers sent by these entities. The Bureau understands that broker-dealers may use wire services provided by banks for remittance transfers and that a broker-dealer's reliance on the temporary exception may mirror that of the banks with whom they are associated. As discussed above in the section-by-section analysis of proposed § 1005.32(b)(4), there is an SEC no-action letter that concluded SEC staff will not recommend enforcement actions to the SEC under Regulation E if a broker-dealer provides disclosures as though the broker-dealer were an insured institution for purposes of the temporary exception. The Bureau declines to speculate on the potential impact of the proposed rule on these entities but welcomes comment on this point.

[96] As noted above in the section-by-section analysis of § 1005.30(f), banks and credit unions are required to submit quarterly ''Call Reports'' by the FFIEC and the NCUA, respectively. For a more detailed description of these reporting requirements, see Assessment Report at 24.

[97] The 2018 transfers of a bank or credit union is included in this calculation if it provided between 101 and 500 transfers in either year, even if, for example, it transferred 100 or fewer transfers in 2018. Similarly, it is excluded if it provided more than 500 transfers in either year.

[98] *Id.* at 117–20.

[99] *Id.* at 133–38.

[100] *Id.* at 133–37.

would be no longer covered by the Rule if the normal course of business safe harbor threshold was set at 500 transfers as proposed.

Benefits and Costs to Consumers

In 2018, insured institutions that would not have been covered if the normal course of business safe harbor threshold was set at 500 transfers provided approximately 141,900 transfers.[101] These transfers represent 1.2 percent of 2018 transfers by insured institutions providing more than 100 transfers in either 2017 or 2018.[102] The Assessment Report found that these numbers have been fairly stable from year to year before 2018, so are likely to be representative of the impact going forward.[103]

The proposed rule has potential benefits and costs to the remittance customers of banks and credit unions providing between 101 and 500 remittance transfers annually. The benefits include potentially lower prices for consumers if the remittance transfer provider passes on any reduction in regulatory compliance costs. As discussed in the Assessment Report, at least some bank and credit union providers reported to the Bureau that in response to the Rule, they increased the price they charged consumers to send remittance transfers.[104] Excepting such entities from the Rule's coverage could result in decreased prices by these banks and credit unions for sending remittance transfers.

The costs to customers of banks and credit unions providing between 101 and 500 remittance transfers annually are the potential loss of the Rule's pre-payment disclosures, which may facilitate comparison shopping, and other Rule protections, including cancellation and error resolution rights. The Bureau does not have the information necessary to quantify these costs. The Bureau has received relatively few complaints from consumers arising from transfers provided by banks and credit unions not covered by Rule.[105] The Assessment Report found that consumers asserted errors for as many as 1.9 percent of transfers and cancelled between 0.29 and 4.5 percent of transfers depending on the provider.[106] Some banks and credit unions providing between 101 and 500 remittance transfers annually may continue to provide certain of these protections to their customers, although perhaps in a more limited manner than required by the Rule.

As noted above, it is possible that, to the extent any banks and credit unions intentionally provide 100 or fewer transfers (so as to qualify for the existing normal course of business safe harbor), it is possible they may decide to start providing more if the proposed rule was adopted. The Assessment Report did not find that banks or credit unions were limiting the number of transfers they provided to stay under the existing 100-transfer normal course of business safe harbor threshold or that banks or credit unions had stopped providing remittance transfers because of the Rule.[107] Thus, the Bureau does not believe that there would be much if any increase in access to remittance transfer services resulting from the proposed increase in the normal course of business safe harbor threshold.

Alternatives

The Bureau is considering an alternative 200-transfer threshold for the normal course of business safe harbor threshold. There were 156 banks and 138 credit unions in 2018 that provided between 101 and 200 transfers in either 2017 or 2018, but not more than 200 in either year, based on their respective Call Reports. As reported above, the corresponding numbers under the proposed rule are 414 banks and 247 credit unions. Thus, the proposed rule more than doubles the number of banks that would not be subject to the Rule relative to the alternative. The corresponding relative increase under the proposed rule for credit unions is 79 percent. Under the alternative, the banks and credit unions that would not be subject to the Rule represent 21 percent of banks providing more than 100 transfers in either 2017 or 2018 and 35 percent of credit unions providing more than 100 transfers in either 2017 or 2018. As reported above, the corresponding numbers under the proposed rule are 55 percent for banks and 62 percent for credit unions. The other impacts as described above for a 500-transfer normal course of business safe harbor threshold would follow for a 200-transfer threshold.

The total number of transfers in 2018 for banks and credit unions that provided between 101 and 200 transfers in either 2017 or 2018, but not more than 200 in either year, were 19,900 bank transfers and 18,200 credit union transfers. As reported above, the corresponding numbers under the proposed rule are approximately 92,600 bank transfers and 49,300 credit union transfers. Thus, the proposed rule would more than quadruple the number of bank transfers and would more than double the number of credit unions transfers that would not be subject to the Rule relative to the alternative. Under the alternative, the bank and credit union transfers in 2018 that would not be subject to the proposed rule represent 0.18 percent of transfers by banks providing more than 100 transfers in either 2017 or 2018, and 2.31 percent of transfers by credit unions providing more than 100 transfers in either 2017 or 2018. Overall this is 0.32 percent of transfers in 2018 by insured institutions providing greater than 100 transfers in either 2017 or 2018. The corresponding numbers under the proposed rule are 0.83 percent for bank transfers and 6.3 percent for credit union transfers. As reported above, this is 1.2 percent of all 2018 transfers by insured institutions providing more than 100 transfers in either 2017 or 2018. Again, the other impacts as described above for a 500-transfer normal course of business safe harbor threshold would follow for a 200-transfer threshold.

The Bureau has also considered, and is soliciting comment on, whether it should adopt any alternate or additional measures for the ''normal course of business'' safe harbor. As stated above, the Bureau particularly seeks comment on whether to base the term ''normal course of business'' on the percentage of an entity's customers that send remittance transfers, and if so, what the appropriate percentage of customers should be and why. In addition, the Bureau seeks comment on the time frame over which any such alternate metric should be tracked and the timing for any transitional provisions that might be necessary using such a metric. The Bureau also seeks comment on the potential burden to entities, or challenges that could arise, in basing the safe harbor on an approach other than the annual number of remittance transfers.

[101] From the bank and credit union Call Reports. The total represents approximately 92,600 bank transfers and 49,300 credit union transfers.

[102] From the bank and credit union Call Reports. The dollar volume of the transfers provided by banks providing between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year, was $2 billion. Credit unions do not report their dollar volume.

[103] *Id.* at 76–77, 83–84.

[104] *Id.* at 94.

[105] About 0.4 percent of complaints the Bureau has received are about ''international money transfers'' including remittance transfers. *Id.* at 113–16. As noted above, the number of complaints may be low because providers are complying with the law. Another possibility is that some consumers who send remittance transfers may have limited English proficiency, and therefore, be less likely to know that they can submit complaints to the Bureau or may be less likely to seek help from a government agency than other consumers.

[106] *Id.* at 126, 131.

[107] *Id.* at 133–38.

A limitation on the ability of the Bureau to consider the impacts of this alternative is the lack of institutional-level data or representative averages for groups of institutions on, among other things, the percentage of customers that send remittance transfers, the average number of remittance transfers sent by customers who send remittance transfers, and the distribution of transfers across customers (*e.g.,* whether sending remittance transfers is concentrated among a small share of customers or dispersed). The numbers of consumers and covered persons affected by different per-consumer thresholds would depend on this information. The qualitative effects on consumers and covered persons that would be not be covered by the Rule at different normal course of business safe harbor thresholds would be as described above. The Bureau requests data and other information that would be useful for quantifying the number of affected consumers and persons sending remittance transfers and the benefits and costs on the affected consumers and persons.

2. Proposed Permanent Exceptions

This section considers the benefits, costs, and impacts of the two permanent exceptions proposed by the Bureau that would allow remittance transfer providers that are insured institutions to estimate exchange rates and covered third-party fees in certain circumstances. This analysis proceeds in two steps. First, it examines the information available to the Bureau to determine the likely impact of the expiration of the existing temporary exception. The analysis then considers the likely benefits, costs, and impacts of the proposed permanent exceptions. For reasons explained above, the analysis generally considers only the impacts of the expiration and proposed permanent exceptions on banks and credit unions that provide more than 500 transfers annually.

According to their Call Reports, of 343 banks providing more than 500 transfers in 2017 or 2018, 48 (14 percent) reported using the temporary exception in 2018.[108] These 48 banks estimate they used the temporary exception for approximately 770,000 transfers in 2018, representing approximately 7.0 percent of all transfers by banks providing more than 500 transfers annually. The Bureau does not have comparable information on the use of the temporary exception for credit unions. Under the circumstances, the Bureau considers it appropriate to assume that credit union usage is similar to that of banks.[109] Specifically, assuming that the same proportion of credit unions providing more than 500 transfers annually use the temporary exception as banks and use the temporary exception for the same proportion of transfers as banks, around 21 credit unions would have used the temporary exception for 52,000 transfers. Thus, absent any mitigation to address the potential impact of the expiration of the temporary exception (other than the expansion of the normal course of business safe harbor threshold described above), it is reasonable to estimate that 70 insured institutions using the temporary exception for approximately 822,000 transfers would need to undertake certain adjustments.[110]

Bank Call Reports do not differentiate between the use of the temporary exception for exchange rates and covered third-party fees. From discussions with some large banks and a trade association representing a number of the largest banks, the Bureau understands that the temporary exception generally is not used by very large banks to estimate exchange rates because providing the exact exchange rate is not difficult for such banks. Accordingly, the analysis assumes that a substantial majority of the remittance transfers and institutions using the temporary exception are using it exclusively for covered third-party fees. The Bureau requests additional data and other information on the share of remittance transfers that rely on the temporary exception to estimate exchange rates alone, covered third-party fees alone, and both exchange rates and covered third-party fees.

Proposed Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

The proposed rule would provide a permanent exception that would allow insured institutions to estimate the exchange rate (and other disclosures that depend on the exchange rate) under certain conditions when sending to a country. Principally, these conditions are that the designated recipient of the remittance transfer will receive funds in the country's local currency and (a) the insured institution made 1,000 or fewer transfers in the prior calendar year to that country where the designated recipients received funds in the country's local currency and (b) the insured institution cannot determine the exact exchange rate for that particular transfer at the time it must provide the applicable disclosures.

The information available to the Bureau indicates that the predominant use of the temporary exception is for estimating covered third-party fees. However, as discussed below, the Bureau understands that certain insured institutions may incur additional costs in order to disclose exact exchange rates. Further, these costs, as well as the willingness to incur them, may differ across insured institutions. Thus, under the baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers as proposed, it is possible that the requirement to disclose exact exchange rates may cause some insured institutions to cease providing transfers to certain countries. The proposed permanent exception for estimating exchange rates would tend to mitigate cost increases and reductions in the provision of remittance transfers at any particular insured institution.

Benefits and Costs to Insured Institutions

Under the baseline, insured institutions that are covered by the Rule and have been using the temporary exception to estimate exchange rates would either need to provide exact exchange rate disclosures or stop sending those transfers. To provide exact exchange rate disclosures, these insured institutions would incur certain costs. An insured institution may need to establish and maintain currency-trading desk capabilities and risk management policies and practices related to the foreign currency and country or to use service providers, correspondent institutions, or persons that act as the insured institution's agent. These additional costs may also differ across insured institutions, due to differences in existing arrangements with service providers or correspondent banks, the ability to negotiate changes in those arrangements, the expertise of existing staff, and the likely volume of transfers. Insured institutions may also

[108] It is possible that there are more banks using the temporary exception than report it on their Call Reports. For example, smaller bank providers that rely on a larger service provider may not accurately report their usage.

[109] The Bureau requests data and other information on the use of the temporary exception by credit unions, and in particular by credit unions providing more than 500 transfers annually.

[110] According to their Call Reports, 34 banks providing between 101 and 500 remittance transfers annually relied on the temporary exception for 6,500 transfers. Assuming proportional use for credit unions providing between 101 and 500 remittance transfers annually approximately 20 credit unions relied on the temporary exception for 3,500 transfers. For a baseline in which the normal course of business safe harbor threshold was not increased, the impacts on consumers and covered persons considered would also apply to these transfers and covered persons.

differ in the level of commitment to sending remittance transfers to particular countries, based on the needs of their customers, and thus their willingness to incur additional costs. Overall, the requirement to disclose exact exchange rates under the baseline may cause some insured institutions to cease providing transfers to certain countries. These effects would likely differ across insured institutions.

The Bureau believes that the proposed permanent exception for estimating the exchange rate would tend to mitigate these costs and impacts. The Bureau lacks information about the percentage of transfers by recipient country that rely on the temporary exception for exchange rates and the portion of those transfers that could rely on the permanent exception being proposed. However, the Bureau understands that insured institutions are predominantly using the temporary exception to estimate covered third-party fees, rather than exchange rates. Thus, the Bureau believes that the additional costs under the baseline may be relatively modest overall, and the proposed permanent exception could mitigate most of the increase that would otherwise occur. Further, it is the Bureau's understanding from discussion with some large banks and a trade association representing a number of the largest banks that providing exact exchange rates is not difficult for very large banks. Thus, to the extent that very large banks would have an advantage under the baseline in sending transfers to particular countries, the proposed permanent exception would mitigate this advantage by allowing smaller institutions to continue to estimate exchange rates in disclosures for certain remittance transfers.

Some insured institutions that currently provide exact exchange rates might have been able to accommodate customers from other insured institutions that currently use the temporary exception and that would choose not to begin providing exact exchange rates under the baseline. Under the proposed permanent exception for estimation of exchange rates, these insured institutions will not obtain the benefit of these new customers.

Benefits and Costs to Consumers

Under the baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers as proposed, the preferred insured institution for some consumers might not be able to provide an exact exchange rate disclosure for transfers to certain countries. Some consumers, therefore, would need to seek out an alternate remittance transfer provider to send transfers to those countries. As noted above, it is the Bureau's understanding from discussion with some large banks and a trade association representing a number of the largest banks that providing the exact exchange rate is not difficult for very large banks. Thus, to the extent that a consumer's preferred insured institution cannot provide the exact exchange rate, there would likely be a less preferred insured institution that could provide the exact exchange rate and send the transfer.[111]

Under the proposed permanent exception for estimating the exchange rate, more consumers would be able to continue to use their preferred insured institution to send transfers. These consumers may also potentially be able to do so at lower prices if, for example, an insured institution decided to pass on the higher costs incurred to obtain exact exchange rate information.

The cost to these consumers is that they will not receive exact disclosures. Disclosures that include exact exchange rate information make it easier for a consumer to know whether a designated recipient is going to receive an intended sum of money, or the amount in U.S. dollars that the consumer must send to deliver a specific amount of foreign currency to a designated recipient. Requiring the disclosure of exact exchange rates may also make it easier for consumers to compare prices across providers. The proposed permanent exception for estimating exchange rates may therefore impose a cost on certain consumers in the form of these foregone benefits.

Overall, the evidence available to the Bureau suggests that the costs to consumers of allowing providers to use estimates for exchange rates are not likely to be significant. Certain consumers may be less likely to engage in comparison shopping or the comparison shopping may be less effective. However, as discussed above, the Bureau believes the proposed permanent exception for estimating exchange rates would be used for only a small portion of all remittance transfers sent by insured institutions. Further, as discussed in the Assessment Report and noted above, the Bureau reviewed evidence from its complaints database and did not find evidence of significant consumer complaints regarding the use of estimates for exchange rates or for covered third-party fees.[112]

Proposed Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

As noted above, under the baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers as proposed, the Bureau estimates that approximately 70 insured institutions would need to stop providing estimated disclosures for 822,000 transfers. Based on its analysis of available information, the Bureau expects that many of these insured institutions could form additional relationships or set up new systems to provide exact fee disclosures for a large portion of the transfers currently using the temporary exception for estimating covered third-party fees. The Bureau held discussions with banks and a trade association representing a number of the largest banks, reviewed comments from the 2019 RFI, and analyzed Call Reports from banks that have reduced their reliance on the temporary exception. Based on the information received from these sources, banks appear to be willing to set up the relationships or establish other systems (such as international ACH) necessary to reduce their reliance on estimates to around half of the number of transfers for which they used the temporary exception in 2018.[113] The Bureau has no information that would suggest a different conclusion for credit unions. Forming these relationships would allow these insured institutions to provide exact disclosures and continue to send these transfers and their customers would gain the benefit of receiving exact disclosures. However, forming these relationships comes at some cost to insured institution providers, and some of these costs could be passed on to consumers. Note that these costs are not costs of the proposed rule; they are costs incurred under the baseline in which the temporary exception expires and the Bureau increases the normal course of business safe harbor threshold as proposed.

There are a limited number of outcomes for the remaining half of

[111] These consumers may also consider using an MSB to send transfers if it is too difficult or expensive to find an insured institution that can send the transfer. MSBs are generally able to provide exact exchange rate information for the reasons discussed in part II above. However, MSBs provide a somewhat different service than banks and credit unions to meet different consumer demands. The Bureau therefore considers that there would be relatively few consumers, under the baseline, who use an MSB because they find it too difficult or expensive to use an insured institution.

[112] Assessment Report at 113–16.

[113] The Bureau cautions that this prediction is not necessarily accurate and is based on limited information.

transfers for which insured institutions used the temporary exception in 2018 and which could not be sent with estimated disclosures under the baseline. Consumers requesting these transfers would need to find an alternative remittance transfer provider. The Bureau understands that the alternative remittance transfer provider would most likely be an insured institution that sends enough remittance transfers to the designated recipient's institution that the sending insured institution either has relationships or would form additional relationships or set up new systems to provide exact covered third-party fee disclosures. The alternative provider might also be an MSB. As discussed above, however, MSBs provide a somewhat different service than banks and credit unions to meet different consumer demands. This would tend to reduce any substitution from insured institutions to MSBs. In either case, these consumers would lose the convenience and other benefits of transferring with their preferred bank or credit union. Finally, it is hypothetically possible that no insured institution or MSB (or combination of MSBs), at any price, could transfer a consumer's preferred amount to certain designated recipients' institutions. This would occur if no insured institution is able to provide exact disclosures and no MSB (or combination of MSBs) is able to transfer high enough amounts to certain designated recipients' institutions.

The Bureau does not have the information necessary to quantify how many transfers would fall into each category. For purposes of the analysis below, the Bureau assumes that under the baseline, customers of an insured institution that would no longer send remittance transfers to a designated recipient's institution would generally search for and find a different insured institution that would send the transfer. The Bureau considers it unlikely that no insured institution or MSB (or combination of MSBs), at any price, could send the desired amount of funds to a designated recipient's institution.

Under the proposed permanent exception for estimating covered third-party fees, transfers covered by the Rule fall into two main categories: (1) Transfers that are below the threshold for covered third-party fees, and therefore disclose estimates, but under the baseline would have been provided with exact disclosures at a higher price or by a remittance transfer provider other than the consumer's first choice; or (2) transfers that are above the threshold for covered third-party fees, and so will be provided with exact disclosures for fees under both the proposed rule and baseline. Relative to the baseline, in which all bank or credit union transfers that take place would have exact disclosures, only (1) represents a change considered for the costs or benefits of the proposed permanent exception for estimating covered third-party fees.

Benefits and Costs to Insured Institutions

As stated above, under the baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers as proposed, the Bureau estimates that approximately 70 insured institutions would need to stop providing estimated disclosures for 822,000 transfers. While the Bureau does not have market-wide information, information provided by certain large banks suggests that there are few designated recipient banks to which these large banks individually send more than 500 transfers and with which these large banks would not be able or willing to set up a relationship sufficient to provide exact disclosures. Based on this information, the Bureau expects that under both the baseline and the proposed permanent exception for estimating covered third-party fees, these 70 institutions will form roughly the same number of relationships and will provide exact disclosures for about half of these transfers. Forming these relationships comes at some cost to insured institution providers, and some of these costs could be passed on to consumers.

As explained above, under the baseline, the other half of the remittance transfers with estimated disclosures would no longer be provided by the insured institutions that currently send them but would be sent by different insured institutions. Based on the information available from certain large banks, under the proposed permanent exception for estimating covered third-party fees, the Bureau expects that the insured institutions that currently send these transfers would continue to send them. These transfers (category (1) above) provide estimated disclosures, so these insured institutions would not need to form additional relationships. These insured institutions would benefit from not turning away potential customers and by being able to continue providing a valuable service to their customers. These benefits might be significant, although they are difficult quantify.

Benefits and Costs to Consumers

Under category (1) above, certain remittance transfers would have been provided with exact disclosures under the baseline but at higher price or by a remittance transfer provider other than the consumer's first choice. As discussed above, the Bureau expects that the proposed permanent exception for estimating covered third-party fees when an insured institution makes 500 or fewer transfers to the designated recipient's institution in the prior calendar year would mitigate all or almost all of the costs to consumers from the loss of access to transfers to certain designated recipient's institutions under the baseline. These remittance transfers represent the most important benefit of the proposed permanent exception for consumers. While the Bureau does not have the information to quantify the number of transfers in this category or the exact value to consumers, the benefit to consumers of continued access is potentially large.

Under category (1) above, consumers will receive disclosures containing estimates. As discussed above in considering the impact of the proposed permanent exception for exchange rates, the use of estimates for covered third-party fees may make it more difficult for consumers to engage in comparison shopping and impose a cost on consumers by making disclosures less accurate.

Alternative

For purposes of considering the effects of the proposed permanent exceptions that allow institutions to estimate exchange rates and covered third-party fees, the Bureau used a baseline in which the temporary exception expired and the Bureau amended the normal course of business safe harbor threshold as proposed. If instead the Bureau maintains the existing normal course of business safe harbor threshold at 100 transfers, then this provision of the current Rule would be part of the baseline, along with the expiration of the temporary exception.

Under this baseline, the proposed permanent exceptions that would allow institutions to estimate exchange rates and covered third-party fees would have effects on insured institutions that provide between 101 and 500 remittance transfers per year and the consumers on whose behalf these institutions send remittance transfers. These effects would be in addition to the effects on insured institutions that provide more than 500 remittance transfers per year and the consumers on

whose behalf these insured institutions send remittance transfers.

As discussed above, 414 banks and 247 credit unions provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year. In 2018, they respectively sent about 92,600 and 49,300 transfers. These banks and credit unions would remain covered by the Rule under the alternative since the normal course of business safe harbor threshold remains at 100 transfers. However, all of these insured institutions would necessarily meet the respective 500-transfer and 1,000-transfer threshold requirements in the proposed permanent exceptions. Thus, all of these insured institutions could continue to disclose estimates for exchange rates and covered third-party fees to the extent that they already do so. The ability to disclose estimates under the proposed permanent exceptions would mitigate costs relative to the baseline used here.

These insured institutions currently provide error resolution rights and meet the other conditions of the Rule. These insured institutions would continue to do so under both the baseline used here and under the alternative proposed rule, that provided only the permanent exceptions for estimating exchange rates and covered third-party fees.

D. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

As stated above, based on their Call Reports, 414 banks and 247 credit unions provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year. Of these, 386 banks and all 247 credit unions had $10 billion or less in total in assets in 2018. Some of these insured institutions currently provide exact disclosures (based on Call Report data) and all of them would have to provide exact disclosures under the baseline expiration of the temporary exception. None of these insured institutions would be covered by the Rule under the proposed increase in the normal course of business safe harbor threshold. It follows that the large majority of the banks and all of the credit unions affected by the proposed change in the normal course of business safe harbor threshold have $10 billion or less in assets. Thus, the impacts of the proposed increase in the normal course of business safe harbor threshold, described above, are also generally the specific impacts for depository institutions and credit unions with $10 billion or less in total assets.

In addition, 190 banks and 142 credit unions with $10 billion or less in assets in 2018 provided more than 500 transfers in 2017 or 2018. As above, some of these banks and credit unions currently provide exact disclosures, and all of them would have to provide exact disclosures under the baseline expiration of the temporary exception. These banks and credit unions would not be directly affected by the proposed change in the normal course of business safe harbor threshold. They might be affected, compared to the baseline expiration of the temporary exception, by the proposed permanent exceptions for estimating the exchange rate and covered third-party fees. According to the bank Call Report data, only 18 of these banks reported using the temporary exception, and they did so for approximately 66,600 transfers. As discussed above, the Bureau understands that remittance transfer providers that are smaller depository institutions and credit unions obtain information about exchange rates and covered third-party fees from a limited number of service providers that are either very large insured institutions or large nonbank service providers. Given this reliance, the impacts of the proposed permanent exceptions, described above, are also generally the specific impacts for depository institutions and credit unions with $10 billion or less in total assets.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience different impacts from the proposed rule than other consumers. The Bureau has discretion to define rural areas as appropriate for this impact analysis. For the impact analysis in this section, the Bureau used its 2018 rural counties list.[114] The Bureau compared the address each bank and credit union reported on its Call Report with this rural county list to determine if that bank or credit union was located in a rural county. This comparison is limited to the location listed in the Call Report, which is generally the headquarters of the bank or credit union. There are likely rural branches of insured institutions with headquarters located in non-rural areas, so this comparison captures only a portion of the impact of the proposed rule on consumers in rural areas.

According to the Call Reports, 83 banks provided between 101 and 500 remittance transfers in either 2017 or 2018, but not more than 500 in either year, and were headquartered in rural counties. These banks provided 17,000 transfers in 2018. Further, 15 credit unions provided between 101 and 500 remittance transfers in either 2017 or 2018, but not more than 500 in either year, and were located in rural counties. These credit unions provided 2,200 transfers. Finally, three banks provided more than 500 transfers in either 2017 or 2018, were located in rural areas, and reported relying on the temporary exception. These banks reported that they relied on the temporary exception for 2,000 transfers total. Assuming reliance on the temporary exception is similar for credit unions, the four credit unions that provided more than 500 transfers in either 2017 or 2018 and were located in rural areas would have used the temporary exception for approximately 900 transfers.

Consumers in rural areas may have access to fewer remittance transfers providers and therefore may benefit more than other consumers from a rule change that keeps more insured institutions in the market or helps reduce costs to the extent that cost reductions are passed on to consumers. However, these consumers will also disproportionately lose consumer protections relative to other consumers, under the baseline in which the temporary exception expires, to the extent that the banks and credit unions that provide remittance transfers to these consumers are disproportionately excluded from the Rule or use the permanent exceptions under the proposed rule. As stated above, the 414 banks and 247 credit unions that provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year, represent 55 percent of the banks and 62 percent of the credit unions that provided more than 100 transfers in both years. In rural areas, the corresponding 83 banks and 15 credit unions represented 75 percent of the banks and 79 percent of the credit unions that provided more than 100 transfers in both years in rural areas. Thus, the proposed increase in the normal course of business safe harbor threshold would have somewhat larger effects in rural areas in both preserving access to remittance transfer providers and possibly reducing the protections provided by the Rule, as described previously.

[114] *See https://www.consumerfinance.gov/policy-compliance/guidance/rural-and-underserved-counties-list/.*

VIII. Regulatory Flexibility Act Analysis

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.[115] 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.[116] Potentially affected small entities include insured institutions that have $550 million or less in assets and that provide remittance transfers in the normal course of their business.[117]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[118] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[119]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, the temporary exception expires, and therefore no remittance transfer providers—including small entities—would be able to provide estimates using that exception. Under the proposed rule, certain small entities that would otherwise be covered by the Remittance Rule would not be covered by the Rule and certain other small entities would be able to provide estimates in certain circumstances. Thus, the Bureau believes that the proposed rule would only reduce burden on small entities relative to the baseline.[120]

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposed rule on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[121] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

As explained below, the Bureau has determined that this proposed rule does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under that OMB control number. The proposed rule would amend 12 CFR part 1005 (Regulation E), which implements EFTA. The Bureau's OMB control number for Regulation E is 3170–0014.

Under Regulation E, the Bureau generally accounts for the paperwork burden for the following respondents pursuant to its administrative enforcement authority: Federally insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions subject to Regulation E. Accordingly, the Bureau has allocated to itself half of the proposed rule's estimated reduction in burden on non-depository financial institutions subject to Regulation E. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have enforcement and/or supervision authority. They may use the Bureau's burden estimation methodology, but need not do so.

The Bureau does not believe that this proposed rule would impose any new or substantively revised collections of information as defined by the PRA. Specifically, based on the above analysis, the Bureau believes that the overall impact of the proposal to increase the normal course of business safe harbor threshold to 500 and to allow limited use of estimates for covered third-party fee and exchange rate disclosures is small. The Bureau recognizes, however, that it lacks data with which to determine the precise impact of the proposal. Comments are specifically requested concerning information that would assist the Bureau with making a determination on the impact of allowing limited use of estimates in certain disclosures on the Bureau's current collection of information pursuant to Regulation E.

Current Total Annual Burden Hours on Bureau Respondents, Regulation E: 3,445,033.

Current Total Annual Burden Hours on Bureau Respondents, Subpart B only: 1,471,808.

Estimated Total Annual Burden Hours on Bureau Respondents Under the Proposed Rule, Subpart B only: 1,448,938.

Estimated Change in Total Annual Burden Hours on Bureau Respondents Under the Proposed Rule: −22,870.

In addition, the Bureau estimates that Bureau respondents will incur one-time costs of $6.886 million under the proposed rule, mostly to form new relationships with designated recipients' institutions.

The Bureau has determined that the proposed rule does not contain any new or substantively revised information collection requirements as defined by the PRA and that the burden estimate for the previously approved information collections should be revised as

[115] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any small governmental units or not-for-profit organizations to which the proposal would apply.

[116] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[117] Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[118] 5 U.S.C. 603 through 605.

[119] 5 U.S.C. 609.

[120] In general, given the expiration of the temporary exception and assuming the adoption of the proposed rule, some small entities that currently provide estimates would be able to continue to provide estimates for some or all of their remittance transfers and some would need to begin providing exact disclosures. Using the bank Call Reports, however, the Bureau finds that no small banks would need to begin providing exact disclosures. Specifically, the Bureau finds that there were 75 banks in 2018 with assets under $550 million covered by the Rule (because they provided greater than 100 transfers in 2017 or 2018). Of these banks, only 12 would be covered by the Rule if the normal course of business safe harbor threshold was adopted as proposed. Further, none of these banks currently report relying on the temporary exception. Thus, no small banks would need to begin providing exact disclosures even if the proposed exceptions on use of estimates were not adopted. Using the credit union Call Reports, the Bureau finds that there were 120 credit unions covered by the Rule in 2018 (because they provided more than 100 transfers in 2017 or 2018). Of these credit unions, only 29 would be covered by the Rule if the normal course of business safe harbor threshold was adopted as proposed. The credit union Call Reports do not report utilization of the temporary exception. However, since none of the 12 small banks that would remain covered by the proposed rule use the temporary exception, the Bureau considers it reasonable to suppose that that few or none of the 29 small credit unions that would remain covered by the proposed rule use the temporary exception.

[121] 44 U.S.C. 3501 *et seq.*

explained above. The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA. Comments should be submitted as outlined in the **ADDRESSES** section above. All comments will become a matter of public record.

List of Subjects in 12 CFR Part 1005

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend 12 CFR part 1005 as set forth below:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o–1.

Subpart B—Requirements for Remittance Transfers

■ 2. Amend § 1005.30 by revising paragraphs (f)(2)(i)(A) and (B) and (f)(2)(ii), and adding paragraph (f)(2)(iii) to read as follows:

§ 1005.30 Remittance transfer definitions.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(A) Provided 500 or fewer remittance transfers in the previous calendar year; and

(B) Provides 500 or fewer remittance transfers in the current calendar year.

(ii) *Transition period—coming into compliance.* If, beginning on July 21, 2020, a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to paragraph (f)(1) of this section, the person has a reasonable period of time, not to exceed six months, to begin complying with this subpart. Compliance with this subpart will not be required for any remittance transfers for which payment is made during that reasonable period of time.

(iii) *Transition period—qualifying for the safe harbor.* If a person who previously provided remittance transfers in the normal course of its business in excess of the safe harbor threshold set forth in this paragraph (f)(2) determines that, as of a particular date, it will qualify for the safe harbor, it may cease complying with the requirements of this subpart with respect to any remittance transfers for which payment is made after that date. The requirements of the Act and this part, including those set forth in §§ 1005.33 and 1005.34, as well as the requirements set forth in § 1005.13, continue to apply to transfers for which payment is made prior to that date.

* * * * *

■ 3. In § 1005.32:

■ a. Add paragraphs (b)(4) and (5); and

■ b. Remove ''(a) or (b)(1)'' and add in its place ''(a) or (b)(1), (4), or (5)'' in the first sentence of paragraph (c) introductory text.

The additions read as follows:

§ 1005.32 Estimates.

* * * * *

(b) * * *

(4) *Permanent exception for estimation of the exchange rate by an insured institution.* (i) Except as provided in paragraph (b)(4)(ii) of this section, for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular country in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii), if the designated recipient of the remittance transfer will receive funds in the country's local currency and all of the following conditions are met:

(A) The remittance transfer provider is an insured institution as defined in paragraph (a)(3) of this section;

(B) At the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for that remittance transfer;

(C) The insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency; and

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, for the purposes of this paragraph (b)(4)(i)(D), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(ii) The disclosures in § 1005.31(b)(1)(v) through (vii) may be estimated under paragraph (b)(4)(i) of this section only if the exchange rate is permitted to be estimated under paragraph (b)(4)(i) of this section and the estimated exchange rate affects the amount of such disclosures.

(5) *Permanent exception for estimation of covered third-party fees by an insured institution.* (i) Except as provided in paragraph (b)(5)(ii) of this section, for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular designated recipient's institution in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(vi) through (vii), if all of the following conditions are met:

(A) The remittance transfer provider is an insured institution as defined in paragraph (a)(3) of this section;

(B) At the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer;

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

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, for the purposes of this paragraph (b)(5)(i)(D), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(ii) The disclosure in § 1005.31(b)(1)(vii) may be estimated under paragraph (b)(5)(i) of this section only if covered third-party fees are permitted to be estimated under paragraph (b)(5)(i) of this section and the estimated covered third-party fees affect the amount of such disclosure.

* * * * *

§ 1005.33 [Amended]

■ 4. Amend § 1005.33(a)(1)(iii)(A) by removing ''(a), (b)(1) or (b)(2)'' and adding in its place ''(a) or (b)(1), (2), (4), or (5)''.

§ 1005.36 [Amended]

■ 5. Amend § 1005.36(b)(3) by removing ''(a) or (b)(1)'' and adding in its place ''(a) or (b)(1), (4), or (5)''.

■ 6. In supplement I to part 1005:

■ a. Under Section 1005.30—*Remittance Transfer Definitions,* revise *30(f) Remittance Transfer Provider.*
■ b. Under Section 1005.32—*Estimates:*
■ i. Revise introductory text paragraph 1 and *32(b)(1) Permanent Exceptions for Transfers to Certain Countries;*
■ ii. Add *32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution,* and *32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution;* and
■ iii. Revise *32(c)(3) Covered Third-Party Fees,* and *32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer;* and
■ d. Under Section 1005.36—*Transfers Scheduled Before the Date of Transfer,* revise *36(b) Accuracy.*

The revisions and additions read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

Section 1005.30—Remittance Transfer Definitions

* * * * *

30(f) Remittance Transfer Provider

1. *Agents.* A person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

2. *Normal course of business.* i. *General.* Whether 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. For example, if a financial institution generally does not make remittance transfers available to customers, but sends a couple of such transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes remittance transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers more frequently than on an occasional basis, the institution provides remittance transfers in the normal course of business.

ii. *Safe harbor.* On July 21, 2020, the safe harbor threshold in § 1005.30(f)(2)(i) changed from 100 transfers to 500 transfers. Under § 1005.30(f)(2)(i), beginning on July 21, 2020, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business. Accordingly, a person that qualifies for the safe harbor in § 1005.30(f)(2)(i) is not a ''remittance transfer provider'' and is not subject to the requirements of subpart B of this part. For purposes of determining whether a person qualifies for the safe harbor under § 1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of ''remittance transfer'' due simply to the safe harbor. In contrast, the number of remittance transfers provided does not include any transfers that are excluded from the definition of ''remittance transfer'' for reasons other than the safe harbor, such as small value transactions or securities and commodities transfers that are excluded from the definition of ''remittance transfer'' by § 1005.30(e)(2).

iii. *Transition period.* A person may cease to satisfy the requirements of the safe harbor described in § 1005.30(f)(2)(i) if, beginning on July 21, 2020, the person provides in excess of 500 remittance transfers in a calendar year. For example, if a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, the safe harbor applies to the first 500 remittance transfers that the person provides in the current calendar year. For any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in § 1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B of this part, if that person is then providing remittance transfers in the normal course of its business. At the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. *Examples.* A. *Example of safe harbor and transition period for 100-transfer safe harbor threshold effective prior to July 21, 2020.* Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor applied to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provided a 101st transfer on September 5, 2014, the facts and circumstances determine whether the person provided remittance transfers in the normal course of business and was thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provided in 2014. Furthermore, the person would not have qualified for the safe harbor described in § 1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person was then providing remittance transfers for a consumer in the normal course of business, the person had a reasonable period of time, not to exceed six months, to come into compliance with subpart B of this part. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B was not required for remittance transfers made on or before March 5, 2015 (*i.e.,* six months after September 5, 2014). After March 5, 2015, the person was required to comply with subpart B if, based on the facts and circumstances, the person provided remittance transfers in the normal course of business and was thus a remittance transfer provider.

B. *Example of safe harbor for a person that provided 500 or fewer transfers in 2019 and provides 500 or fewer transfers in 2020.* On July 21, 2020, the safe harbor threshold in § 1005.30(f)(2)(i) changed from 100 transfers to 500 transfers. Thus, beginning on July 21, 2020, 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 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year. If a person provided 500 or fewer transfers in 2019 and provides 500 or fewer remittance transfers in 2020, that person qualifies for the safe harbor threshold in 2020. For example, assume that a person provided 200 remittance transfers in 2019 and 400 remittance transfers in 2020. The safe harbor will apply to the person's transfers in 2020 beginning on July 21, 2020, as well as the person's first 500 transfers in 2021. See comment 30(f)-2.iv.C for an example regarding the transition period if the 500-transfer safe harbor is exceeded.

C. *Example of safe harbor and transition period for the 500-transfer*

safe harbor threshold beginning on July 21, 2020. Assume that a person provided 490 remittance transfers in 2020 and 490 such transfers in 2021. The safe harbor will apply to the person's transfers in 2021, as well as the person's first 500 remittance transfers in 2022. However, if the person provides a 501st transfer on September 5, 2022, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for the 501st and any subsequent remittance transfers that it provides in 2022. Furthermore, the person would not qualify for the safe harbor described in § 1005.30(f)(2)(i) in 2023 because the person did not provide 500 or fewer remittance transfers in 2022. However, for the 501st remittance transfer provided in 2022, as well as additional remittance transfers provided thereafter in 2022 and 2023, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B of this part. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2023 (*i.e.,* six months after September 5, 2022). After March 5, 2023, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

v. *Continued compliance for transfers for which payment was made before a person qualifies for the safe harbor.* Section 1005.30(f)(2)(iii) addresses situations where a person who previously was required to comply with subpart B of this part newly qualifies for the safe harbor in § 1005.30(f)(2)(i). That section states that the requirements of EFTA and Regulation E, including those set forth in §§ 1005.33 and 1005.34 (which address procedures for resolving errors and procedures for cancellation and refund of remittance transfers, respectively), as well as the requirements set forth in § 1005.13 (which, in part, governs record retention), continue to apply to transfers for which payment is made prior to the date the person qualifies for the safe harbor in § 1005.30(f)(2)(i). Qualifying for the safe harbor in § 1005.30(f)(2)(i) likewise does not excuse compliance with any other applicable law or regulation. For example, if a remittance transfer is also an electronic fund transfer, any requirements in subpart A of Regulation E that apply to the transfer continue to apply, regardless of whether the person must comply with subpart B. Relevant requirements in subpart A may include, but are not limited to, those relating to initial disclosures, change-in-terms notices, liability of consumers for unauthorized transfers, and procedures for resolving errors.

3. *Multiple remittance transfer providers.* If the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary to comply with the requirements that subpart B of this part imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.

* * * * *

Section 1005.32—Estimates

1. *Disclosures where estimates can be used.* Sections 1005.32(a) and (b)(1), (4), and (5) permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). To the extent permitted in § 1005.32(a) and (b)(1), (4), and (5), estimates may be used in the pre-payment disclosure described in § 1005.31(b)(1), the receipt disclosure described in § 1005.31(b)(2), the combined disclosure described in § 1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in § 1005.36(a)(1) and (2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in § 1005.36(a)(1)(i) and (a)(2)(i).

* * * * *

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. *Laws of the recipient country.* The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception or the exception set forth in § 1005.32(b)(4).

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under § 1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under § 1005.31(b)(1)(iv) through (vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under § 1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.* i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

* * * * *

32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

1. *Determining the exact exchange rate.* For purposes of § 1005.32(b)(4)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for a remittance transfer to a particular country where the designated recipient of the transfer will receive funds in the country's local currency if a person other than the insured institution sets the exchange rate for that transfer, except where that person has a correspondent relationship with the insured institution, that person is a service provider for the institution, or that person acts as an agent of the insured institution.

i. *Example where an insured institution cannot determine the exact exchange rate.* The following example illustrates when an insured institution cannot determine an exact exchange rate under § 1005.32(b)(4)(i)(B) for a remittance transfer:

A. An insured institution or its service provider does not set the exchange rate required to be disclosed under § 1005.31(b)(1)(iv), and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution that does not have a correspondent relationship with, and does not act as an agent of, the insured institution.

ii. *Examples where an insured institution can determine the exact exchange rate.* The following examples illustrate when an insured institution can determine an exact exchange rate under § 1005.32(b)(4)(i)(B) for a remittance transfer, and thus the insured institution may not use the exception in § 1005.32(b)(4) to estimate the disclosures required under § 1005.31(b)(1)(iv) through (vii) for the remittance transfer:

A. An insured institution has a correspondent relationship with an intermediary financial institution (or the intermediary financial institution acts as an agent of the insured institution) and that intermediary financial institution sets the exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for a remittance transfer.

B. An insured institution or its service provider converts the funds into the local currency to be received by the designated recipient for a remittance transfer using an exchange rate that the insured institution or its service provider sets. The insured institution can determine the exact exchange rate for purposes of § 1005.32(b)(4)(i)(B) for the remittance transfer even if the insured institution does not have a correspondent relationship with an intermediary financial institution in the transmittal route or the designated recipient's institution, and an intermediary financial institution in the transmittal route or the designed recipient's institution does not act as an agent of the insured institution.

2. *Threshold.* For purposes of determining whether an insured institution made 1,000 or fewer remittance transfers in the prior calendar year to a particular country pursuant to § 1005.32(b)(4)(i)(C):

i. The number of remittance transfers provided includes transfers in the prior calendar year to that country when the designated recipients of those transfers received funds in the country's local currency regardless of whether the exchange rate was estimated for those transfers. For example, an insured institution exceeds the 1,000 threshold in the prior calendar year if the insured institution provided 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency when the exchange rate was estimated for those transfers and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and the exchange rate for those transfers was not estimated.

ii. The number of remittance transfers does not include remittance transfers to a country in the prior calendar year when the designated recipients of those transfers did not receive the funds in the country's local currency. For example, an insured institution does not exceed the 1,000 threshold in the prior calendar year if the insured institution provides 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same country in the prior calendar year when the designated

recipients of those transfers did not receive funds in the country's local currency.

32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

1. *Insured institution cannot determine the exact covered third-party fees.* For purposes of § 1005.32(b)(5)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for a remittance transfer to a designated recipient's institution when all of the following conditions are met:

i. The insured institution does not have a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution does not act as an agent of the insured institution;

iii. The insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer (*e.g.,* an agreement whereby the designated recipient's institution agrees to charge back any covered third-party fees to the insured institution rather than impose the fees on the remittance transfer); and

iv. The insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

2. *Insured institution can determine the exact covered third-party fees.* For purposes of § 1005.32(b)(5)(i)(B), an insured institution can determine, at the time it must provide the applicable disclosures, exact covered third-party fees, and thus the insured institution may not use the exception in § 1005.32(b)(5) to estimate the disclosures required under § 1005.31(b)(1)(vi) or (vii) for the transfer, if any of the following conditions are met:

i. An insured institution has a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution acts as an agent of the insured institution;

iii. An insured institution has an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; or

iv. An insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

3. *Threshold.* For purposes of determining whether an insured institution made 500 or fewer remittance transfers in the prior calendar year to a particular designated recipient's institution pursuant to § 1005.32(b)(5)(i)(C):

i. The number of remittance transfers provided includes remittance transfers in the prior calendar year to that designated recipient's institution regardless of whether the covered third-party fees were estimated for those transfers. For example, an insured institution exceeds the 500 threshold in the prior calendar year if an insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the covered third-party fees were estimated for those transfers and also sends 400 remittance transfers to the designated recipient's institution in the prior calendar year and the covered third-party fees for those transfers were not estimated.

ii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution in the prior calendar year regardless of whether the designated recipients received the funds in the country's local currency or in another currency. For example, an insured institution exceeds the 500 threshold in the prior calendar year if the insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same designated recipient's institution in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

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32(c) Bases for Estimates

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32(c)(3) Covered Third-Party Fees

1. *Potential transmittal routes.* A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under § 1005.31(b)(1)(vi) pursuant to the § 1005.32(a) temporary exception or the exception under § 1005.32(b)(5), an insured institution may rely upon the representations of the designated recipient's institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. *In general.* When providing an estimate pursuant to § 1005.32(b)(2), § 1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize an exception permitting the provision of estimates in § 1005.32(a) or (b)(1) or (4), the provider may provide estimates based on a methodology permitted under § 1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

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Section 1005.36—Transfers Scheduled Before the Date of Transfer

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36(b) Accuracy

1. *Use of estimates.* In providing the disclosures described in § 1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in § 1005.32. When estimates

are permitted, however, they must be disclosed in accordance with § 1005.31(d).

2. *Subsequent preauthorized remittance transfers.* For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to § 1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by § 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to § 1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. *Receipts.* A receipt required by § 1005.36(a)(1)(ii) or (a)(2)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to § 1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a) or (b)(1), (4), or (5). In providing receipts pursuant to § 1005.36(a)(1)(ii) or (a)(2)(ii), § 1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to § 1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to § 1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to § 1005.32(b)(2), the second receipt provided pursuant to § 1005.36(a)(1)(ii) must also disclose the fee as $10.

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Dated: November 25, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

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