

May 3, 2019

# CFPB Issues Request for Information on Remittance Rule

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## CFPB Requests Information to Address Potential Concerns Arising from Termination of Temporary Exemption

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### SUMMARY

On April 25, 2019, the Bureau of Consumer Financial Protection (the “CFPB”) issued a Request for Information (the “RFI”)<sup>1</sup> on its remittance rule, which addresses protections for consumers sending international money transfers, or remittance transfers.<sup>2</sup> These protections were established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), which added a new provision to the Electronic Fund Transfers Act (the “EFTA”) for this purpose. Under the EFTA and the remittance rule, companies sending remittance transfers must disclose, among other things, the exchange rate at which the customer’s funds will be converted to another currency, all fees and taxes that will be imposed by the company, and the amount that will be delivered to the recipient. Dodd-Frank included a temporary exemption from this requirement for insured depository institutions and credit unions that make transfers from their customer accounts if they are unable to know the amount of currency that will be made available to the recipient. This exemption expires, without possibility of extension, on July 21, 2020. The RFI requests information on several aspects of the remittance rule, with a view to determining the extent of disruption that will result from the expiration of this temporary exemption and identifying possible means of mitigating that disruption. The RFI also seeks information to support a determination whether to incorporate a small financial institution exception into the rule.

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### BACKGROUND

Remittance transfers are widely used by consumers to transfer dollars to recipients in foreign countries; the World Bank reported that global remittances totaled \$689 billion in 2018, of which \$529 billion consisted of remittance flows to low- and middle-income countries.<sup>3</sup> Remittance transfers made by U.S.

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residents constitute the largest portion of that total.<sup>4</sup> These transfers represent a significant portion of the gross domestic product in many receiving countries, and a critical source of income for the individual recipients.<sup>5</sup> Globally, the costs to consumers relying upon remittance transfers have remained fairly high, averaging around 9.81% of the amount transferred in 2008.<sup>6</sup> Recognizing the impact of these high costs on the consumers utilizing remittance transfers, the G8 Heads of State, including the United States, committed in 2009 to achieve a reduction in the costs of remittance transfers to below 5% within five years “through enhanced information, transparency, competition and cooperation with partners.”<sup>7</sup> Remittance costs in the U.S. have historically been relatively low,<sup>8</sup> and in 2016 averaged 6.04% of the amount transferred.<sup>9</sup>

As noted in the RFI, prior to Dodd-Frank, remittance transfers largely fell outside the scope of U.S. federal consumer protection laws. Dodd-Frank amended the EFTA by adding a new Section 919 requiring comprehensive disclosures regarding remittance transfers sent by U.S. consumers, as well as establishing other consumer protections.<sup>10</sup> In 2012, the CFPB promulgated implementing amendments to Regulation E, referred to as the “remittance rule” (the “Rule”).<sup>11</sup>

Section 919 and the Rule apply to “remittance transfer providers,” which are defined to include any person or financial institution who provides remittance transfers in the “normal course of its business.”<sup>12</sup> Remittance transfer providers who fall within the Rule must disclose, in the manner specified in the Rule, the information specified by the Rule both prior to and at the actual time of payment. Information that must be provided before sender pays for the transfer includes:<sup>13</sup>

- The amount that will be transferred to the recipient, in the currency in which the remittance transfer is funded.
- Any fees imposed and any taxes collected on the remittance transfer by the provider, in the currency in which the remittance transfer is funded.
- The total amount of the transaction, which is the sum of the two items above, in the currency in which the remittance transfer is funded.
- The exchange rate used by the provider for the remittance transfer.
- The amount that will be delivered to the recipient, in the currency in which the funds will be received by the designated recipient, if any fees described in the next bullet point are applicable.
- Any third-party fees imposed on the transaction by someone other than the remittance transfer provider, in the currency in which the funds will be received by the recipient, except for fees charged by the recipient’s bank for accepting the transfer.<sup>14</sup>
- The amount that will be received by the designated recipient, in the currency in which the funds will be received.

The challenges posed to a remittance transfer provider by these requirements differ depending upon the method used to send remittance transfers. Money services businesses (“MSBs”) tend to use “closed network” payment systems, which permit the remittance transfer provider to obtain and disclose “precise and reliable information” about applicable fees and exchange rates, facilitating compliance with the Rule.

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In contrast, banks and credit unions tend to use “open network” payment systems, in which obtaining precise information about fees and exchange rates is much harder. They may deal with a wide range of third parties in completing remittance transfers, including foreign banks with whom they have no prior relationship, and over whom they have no control. As a result, they may be unable to obtain the information necessary to comply with the Rule’s disclosure requirements.<sup>15</sup>

Section 919 and the Rule included three provisions that limit the application of these disclosure requirements:

- First, Section 919 provides that, for a temporary period, an insured depository institution or credit union may provide an estimate of the amount to be delivered to the recipient through a remittance transfer, rather than actual amounts, if the remittance transfer was conducted through an account of the sender with the relevant institution *and* the institution is “unable” to determine that amount, “for reasons beyond its control.” This provision will expire on July 21, 2020, and the CFPB has no authority to extend that expiry date.
- Second, in defining the term “remittance transfer provider,” the CFPB included in the Rule a safe harbor for any person who provides 100 or fewer remittance transfers in both the previous and current calendar years.<sup>16</sup> Such a person would be deemed not to meet the normal course of business definition and therefore fall outside of the Rule’s coverage.
- Third, the CFPB has adopted permanent safe harbors permitting a remittance transfer provider to use *estimates* in place of actual amounts in three other circumstances, including in connection with remittance transfers to jurisdictions whose laws or transfer methods do not allow the remittance transfer provider to know the amount of currency that will be delivered to the recipient.<sup>17</sup>

As noted above, the temporary provision will expire on July 21, 2020, and the CFPB does not have authority to extend it without congressional action. The RFI seeks information to determine the impact of its expiration, and to identify potential options to mitigate the impact of the expiration.

In the years since the Rule was enacted, a number of comment letters and responses to earlier Requests for Information have cited that compliance costs with the Rule caused an increase in prices, an exodus of credit unions from the market, and reduced services to consumers in order to stay within the safe harbor threshold.<sup>18</sup>

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### EXPIRATION OF THE TEMPORARY EXCEPTION

The CFPB indicated that the RFI was issued because of its concern about the “potential negative effects of the expiration of the temporary exception,” based on its own analysis and feedback from remittance transfer providers and their trade associations.<sup>19</sup> Those concerns caused the CFPB to limit the scope of the current RFI to questions relating to this issue, notwithstanding the fact that it has received other suggestions for ways to improve the effectiveness and reduce the burdens of the Rule.

At the outset, the RFI recognizes that insured institutions – the only entities that are addressed by the temporary exception – handle a relatively small number of remittance transfers (approximately 4.4% in 2017), but that the average transfer size for banks is larger than the average transfer handled by MSBs.<sup>20</sup>

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Even within this relatively small percentage of remittance transfers, only a small subset of insured institutions rely upon the temporary exception. Specifically, in 2017, bank call reports indicated that 886,000 remittance transfers relied on this exception – making up approximately 6% of all bank transfers, and .027% of all remittance transfers, sent in that year – and that only 80 banks used the temporary exception at all.<sup>21</sup>

The CFPB seeks information that would inform *why* some institutions may be able to provide remittance transfer services after the expiration of the temporary exemption, while others may not. The RFI notes that different banks may serve different markets, or corridors, suggesting that remittance transfers to some jurisdictions may be untouched by the expiration while others could be significantly impaired.<sup>22</sup> The RFI also notes that new remittance transfer providers and products offering greater transparency may exist in some corridors but may not be available in others.

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### COVERAGE OF CERTAIN REMITTANCE TRANSFER PROVIDERS

While the CFPB does not have the authority to extend the temporary exception, the “safe harbor” for providers that engage in only limited remittance transfer activities suffers no similar constraint. The CFPB found that approximately 80% of banks and 75% of credit unions fall within the safe harbor 100-transaction threshold, and that the remaining banks and credit unions whose activities exceed the threshold account for a relatively small number of remittance transfers overall.<sup>23</sup> Moreover, RFI indicates that the smaller the asset size of a financial institution, the fewer remittance transfers it offers on average.<sup>24</sup>

The CFPB’s data suggest that, for these smaller providers of remittance transfer services, the costs of providing remittance transfers has increased and some institutions have outsourced the provision of these services, further raising related costs.<sup>25</sup> In response, the CFPB is seeking information on whether the current definition of “normal course of business” is appropriate, and whether a small financial institution exception to the Rule is appropriate.<sup>26</sup> While the RFI does not explicitly link this proposal to the expiration of the temporary exception, the clear implication is that there may be an overlap between the institutions that rely upon the temporary exception and those that are too small or do not engage in enough activity to justify the burden of developing means of compliance. Accordingly, the adoption of such a “small institution” exception may avoid any disruption that might otherwise occur upon the expiration of the temporary exemption – particularly taken together with the safe harbor for transfers to nations that do not permit the determination of the amount to be delivered.<sup>27</sup>

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**REQUEST FOR INFORMATION**

The CFPB asks for comments in response to eighteen specific questions to guide its deliberations.

Comments will be due within 60 days of the publication of the RFI in the Federal Register.

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## ENDNOTES

- <sup>1</sup> See Bureau of Consumer Financial Protection: Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, Docket No.: CFPB-2019-0018 (Apr. 25, 2019), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_rfi\\_remittance-rule.pdf](https://files.consumerfinance.gov/f/documents/cfpb_rfi_remittance-rule.pdf).
- <sup>2</sup> The CFPB has defined a “remittance transfer” as “the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider.” It includes such transfers 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 otherwise regulated under the CFPB’s Regulation E. 12 C.F.R. § 1005.30(e)(1). The Rule explicitly excludes transfer amounts of \$15 or less and certain securities and commodities transfers. *Id.* § 1005.30(e)(2).
- <sup>3</sup> See The World Bank, Press Release: Record High Remittances Sent Globally in 2018 (Apr. 8, 2019), available at <https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018>.
- <sup>4</sup> Congressional Research Service, Remittances: Background and Issues for Congress at 1 (May 9, 2016), available at <https://fas.org/sqp/crs/misc/R43217.pdf>.
- <sup>5</sup> *Id.* at 4-7.
- <sup>6</sup> *Id.* at 3.
- <sup>7</sup> G8 L’Aquila Summit Responsible Leadership for a Sustainable Future (July 8, 2009), available at <http://worldjpn.grips.ac.jp/documents/texts/summit/20090708.D1E.html> (“134. Given the development impact of remittance flows, we will facilitate a more efficient transfer and improved use of remittances and enhance cooperation between national and international organizations, in order to implement the recommendations of the 2007 Berlin G8 Conference and of the Global Remittances Working Group established in 2009 and coordinated by the World Bank. We will aim to make financial services more accessible to migrants and to those who receive remittances in the developing world. We will work to achieve in particular the objective of a reduction of the global average costs of transferring remittances from the present 10% to 5% in 5 years through enhanced information, transparency, competition and cooperation with partners, generating a significant net increase in income for migrants and their families in the developing world.”).
- <sup>8</sup> Congressional Research Service, *supra* note 4, at 3.
- <sup>9</sup> *Id.* at 3. However, these costs vary depending on the “corridor” through which the remittance transfer is sent, and on the type of service provider handling the transfer. See Doug King, The Cost and Availability of Remittances Originating from the United States with a Focus on the Mexico Corridor 8, 10 (Fed. Res. Bk. Of Aug. 2017), available at <https://www.frbatlanta.org/-/media/documents/rprf/publications/Cost%20Accessibility%20of%20Remittances%202017.pdf>.
- <sup>10</sup> 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified at 1693o-1.
- <sup>11</sup> Bureau of Consumer Financial Protection: Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194 (Feb. 7, 2012).
- <sup>12</sup> 15 U.S.C. § 1693o-1(g)(3); 12 C.F.R. § 1005.30(f)(1).
- <sup>13</sup> 15 U.S.C. § 1693o-1(a)(1) and (2).
- <sup>14</sup> However, if the recipient’s bank charges those fees for acting as the remittance transferor’s agent, then those fees must be included in this item. 12 C.F.R. § 1005.30(h).
- <sup>15</sup> See RFI at 7-9. The RFI acknowledges that new market players have developed “variations of the closed payment system” that permit them to comply with the rule, and may also increase consumer choice – including the ability to complete larger transactions such as those typically provided by banks and credit unions.
- <sup>16</sup> See 12 CFR § 1005.30(f)(2)(i).

ENDNOTES (CONTINUED)

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- 17 Section 919 authorizes rules adapting the disclosure requirements with respect to remittance transfers to a nation that does not legally allow, or in which the method of transfer does not allow, the remittance transfer provider to know the amount of currency that will be delivered to the recipient, and the CFPB has included a safe harbor for such transactions in the Rule. 12 C.F.R. § 1005.32(b)(1). The other safe harbors relate to transactions scheduled at least five days before the date of transfer and some third-party fees. *Id.* § 1005.32(b)(2) & (3).
- 18 See RFI at 14. The RFI asserts that these concerns may not be borne out by the existing data. “Note that since the Rule took effect the share of credit unions offering remittance transfers has increased while the share of banks initially declined but has been increasing.” *Id.* at 15 n.38. This concern also may vary among different remittance transfer corridors. See King, *supra* note 9, at 7-10.
- 19 See RFI at 6.
- 20 *Id.* at 4. Much of the information on which the CFPB’s analysis relies is derived from a report assessing the impact of the Rule, which it prepared in 2018 as required by Dodd-Frank. See CFPB, Remittance Rule Assessment Report (2018), available at [https://www.consumerfinance.gov/documents/6963/bcfp\\_remittance-rule-assessment\\_report.pdf](https://www.consumerfinance.gov/documents/6963/bcfp_remittance-rule-assessment_report.pdf).
- 21 See RFI at 11. Credit unions are not required to report information regarding their reliance upon the exception, and so the CFPB based its analysis on an assumption that all of the approximately 760,000 remittance transfers sent by credit unions relied upon the exception.
- 22 *Id.* at 12.
- 23 *Id.* at 15.
- 24 *Id.* at 16.
- 25 *Id.*
- 26 *Id.*
- 27 See *supra* note 17.

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