



Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, D.C. 20552

*Via Electronic Submission*

RE: Proposed Rule: Remittance Transfers under the Electronic Fund Transfer Act  
(Regulation E) (Docket No. CFPB-2019-0058)

To Whom It May Concern:

The Clearing House Payments Company LLC (“TCH”), the American Bankers Association, the Consumer Bankers Association, and the Bankers Association for Finance and Trade (collectively, the “Associations”)<sup>1</sup> respectfully submit this comment in response to the Consumer Financial Protection Bureau’s (“Bureau”) Notice of Proposed Rulemaking—Remittance Transfers under the Electronic Fund Transfer Act (Regulation E) (“Proposal” or “Remittance NPRM”).<sup>2</sup> In the Remittance NPRM, the Bureau proposes several changes to its Remittance Transfer Rule, subpart B of Regulation E (the “Remittance Rule” or “Rule”): (1) a proposed permanent exception that, if certain conditions are met, would allow insured institutions to estimate the exchange rate for certain remittance transfers, (2) a proposed permanent exception that, if certain conditions are met, would allow insured institutions to estimate covered third-party fees for certain remittance transfers; and (3) a proposal to raise the Remittance Rule’s 100 annual remittance transfer safe harbor to 500 annual remittance transfers. This comment letter focuses on the two proposed permanent exceptions.

The Associations greatly appreciate the Bureau’s proposal to amend the Remittance Rule and find a solution to the pending expiration of the Remittance Rule’s temporary exception (§ 1005.32(b)(2)) so that consumers can continue to use bank-provided remittance transfer services. The Associations support the Proposal because, without action by the Bureau, the expiration of the Temporary Exception will have the perverse effect of reducing consumer choice,

<sup>1</sup> Appendix A contains information regarding the Associations.

<sup>2</sup> 84 FR 67132 (Dec. 6, 2019).

forcing bank customers to use less convenient or more expensive services, and, for some consumers, leaving them without an alternative means of sending the transfers that they send today through their banks.

At the same time, as is more fully discussed below, the Associations suggest further refinement to the Proposal to better address the pending disruption the expiration will cause, particularly with respect to proposed § 1005.32(b)(5) regarding the disclosure of covered third-party fees. The suggested revisions will allow insured institutions to meet more of their customers' needs upon the expiration of the temporary exception with less disruption. Absent these refinements, the Proposal will not have the intended effect of preventing the negative consumer impacts described in our June 2019 comment letter. Accordingly, the Associations request that the Bureau:

- Expand proposed § 1005.32(b)(5) to allow insured institutions to estimate covered third-party fees when they are unable to establish the necessary relationships to disclose such fees for documented reasons that are beyond their control;
- Enable broader use of § 1005.31(b)(2) to estimate exchange rates for transfers to certain countries;
- Establish a six-month transition period after an insured institution exceeds the caps in proposed §§ 1005.32(b)(4)(i)(C) and (5)(i)(C) during which the institution could still avail itself of the new exceptions; and
- Allow for a one year compliance period before the 500 and 1,000 transfer caps in proposed §§ 1005.32(b)(4)(i)(C) and (5)(i)(C) take effect so that insured institutions can establish the necessary systems and relationships to transition to the new regime with minimal disruption to consumers' ability to send remittance transfers.

## **I. Introduction**

The Remittance Rule, which implements section 1073 of the Dodd-Frank Act (codified at section 919 of the Electronic Fund Transfer Act (“EFTA”)), established a comprehensive system of consumer protection for consumers who send remittance transfers in the United States to individuals and businesses in foreign countries. One requirement of the Remittance Rule is to provide consumers with specific disclosures that include the price of a remittance transfer (including most fees and the exchange rate), the amount of currency to be delivered to the recipient, and the date the funds will be available to the recipient.<sup>3</sup>

While the Remittance Rule generally requires disclosures be exact, Congress included an exception allowing insured depository institutions that satisfy specified conditions to estimate certain fees and the exchange rate.<sup>4</sup> This exception allows credit unions, banks, and thrifts to continue to execute wire transfers while they endeavor to develop better communication

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<sup>3</sup> See generally 12 CFR Part 1005 subpart B.

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

mechanisms with foreign financial institutions to support communication of exact fee and exchange rate information. Congress initially set the exception to last five years, until July 2015, but authorized the Bureau to extend the exception further, to July 2020, if the expiration “would negatively affect the ability of [insured institutions] . . . to send remittances.”<sup>5</sup> In 2014, the Bureau made such a determination and extended the exception to July 21, 2020.<sup>6</sup> In doing so, the Bureau acknowledged insured institutions were, for some remittance transfers, unable to disclose exact exchange rates or fees and that the Bureau did not expect solutions to this problem to emerge before July 2020.<sup>7</sup>

In 2018, the Bureau assessed the Remittance Rule (“Assessment”).<sup>8</sup> The Bureau premised many of the findings in the Assessment on the different methods banks and credit unions use to send remittance transfers as compared to non-bank money services businesses (“MSBs”). Banks and credit unions generally rely on open networks to transmit funds and these open networks make it more difficult if not impossible in some cases, to collect information on exchange rates and covered third-party fees with the precision demanded by the Rule. MSBs, on the other hand, generally rely on a closed loop system that allows them to know or control exchange rates, fees, and delivery terms with pre-determined locations where customers can pickup funds. The Assessment found that, in 2017, bank and credit union-initiated remittance transfers made up less than 5 percent of the total volume of remittance transfers but accounted for 28.2 percent of the total value of remittance transfers.<sup>9</sup> The Assessment also found that the percentage of banks using the temporary exception dropped since the Remittance Rule took effect but that 11.6 percent of banks reported using the temporary exception in 2017 and they did so for 10.2 percent of their transfers (or 6.4 percent of all bank remittance transfers).<sup>10</sup>

## **II. Proposed Exception for Estimation of Covered Third-Party Fees (Proposed § 1005.32(b)(5))**

The Bureau proposes a new permanent exception that would allow remittance transfer providers to provide estimated disclosures of covered third-party fees (and other disclosures that depend on the amount of those fees) if four conditions are met: (i) the remittance transfer provider is an insured institution; (ii) 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; (iii) the insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient’s institution; and (iv) the remittance transfer is sent from the sender’s account with the insured institution.<sup>11</sup>

The Associations appreciate the Bureau’s proposal of this new permanent exception and expect it to address some of their concerns but request that the Bureau address three areas. First,

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<sup>5</sup> *Id.*

<sup>6</sup> 79 FR 55970, 55970 (Sept. 18, 2014).

<sup>7</sup> *Id.* at 55983.

<sup>8</sup> The Assessment is available at <https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/>. This Assessment compiled available data on a number of data points about the Rule including data collected through bank and credit union call reports, informal surveys, and other means. Assessment at 21-28.

<sup>9</sup> *Id.* at 62-63.

<sup>10</sup> *Id.* at 139.

<sup>11</sup> Proposed 12 C.F.R. § 1005.32(b)(5).

given that the exception is capped, larger institutions may find its utility limited because the challenges they face with respect to knowing and then disclosing exact covered third-party fees are often unrelated to their size, volume of transfers they send, or their ability to invest in the necessary mechanisms. The Bureau's underlying premise for the cap—that a provider's costs associated with making Relationship Management Applications (RMAs) with a particular designated recipient is the primary factor in determining whether the provider can determine fees—is incorrect. While the cost of setting up arrangements is an important factor, other factors influence a provider's ability to establish these arrangements. Second, given that this cap will not allow estimation as often as providers estimate today, the lack of a transition period from the temporary exception will cause temporary disruption given that providers will have practically no time to implement the Rule. Third and notwithstanding these other issues, the Associations seek clarification regarding the potential application of the proposed exception including around how the Bureau defines "recipient institution."

### **A. Defining When an Insured Institution Cannot Determine the Exact Covered Third Party Fees**

The second prong of proposed § 1005.32(b)(5) would allow a remittance transfer provider to estimate covered third-party fees only if it cannot determine the exact covered third-party fees for a remittance transfer to a particular designated recipient's institution at the time the transfer is sent. The Bureau proposes comment 32(b)(5)-1, which would set forth four criteria a provider must meet to satisfy this prong of the new exception. To estimate, a provider would have to establish all of the following (and meet the other requirements of proposed § 1005.32(b)(5)):

- (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 Associations view proposed comment 32(b)(5)-1 as addressing the primary ways a U.S. institution sending a wire transfer abroad can disclose exact covered third-party fees. As the Associations explained in their comment on the RFI,<sup>12</sup> an insured institution can accurately disclose covered third party fees in two situations. The first is when the provider has a correspondent relationship with the designated recipient institution. In that case, the remittance

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<sup>12</sup> The Associations' comment on the CFPB's RFI is available here: <https://www.regulations.gov/document?D=CFPB-2019-0018-0032>.

transfer provider can send the remittance transfer directly to the beneficiary bank (its correspondent), contractually set the fee, and, then, disclose it. The second scenario occurs when the sending institution has an RMA with the designated recipient's bank and that bank agrees to charge back to the provider any covered third-party fees rather than reduce the principal amount of the payment (*i.e.*, the "split & cover" method).<sup>13</sup> This method enables the sending institution to use its RMA to communicate a payment instruction directly to the recipient bank and separately settle the payment serially as a bank-to-bank cover payment to avoid lifting fees by intermediary banks. Under this method, the provider can disclose that no covered third-party fees will be deducted from the remittance transfer.

The Associations agree that the first two conditions in proposed comment 32(b)(5)-1 satisfy the situation where the provider has a correspondent or agency relationship with the beneficiary bank and that the third describes the conditions necessary for the "split & cover" method of sending a remittance transfer. The fourth condition anticipates a theoretical and highly unlikely scenario in which the provider sends a remittance transfer using the serial method and knows that the payment will be routed through intermediary banks that all have correspondent relationships with the provider.<sup>14</sup> In sum, the Associations' understanding of proposed comment 32(b)(5)-1 is that, subject to the 500 transfer cap, estimation is permissible *except* when a remittance transfer provider has a correspondent or agency relationship with the recipient bank, has an agreement with the recipient bank for the charge back of any covered third party fees the recipient institution might charge, or knows that the payment will be routed through one or more intermediary banks that all have correspondent relationships with the provider.

Thus, the Associations understand that estimation would be permissible in various circumstances (if the other conditions are met), including the following examples:

- Bank A (the remittance transfer provider) has an RMA with Bank B (the designated recipient's bank) but not a correspondent or agency relationship. The RMA does not address whether Bank B must honor an OUR instruction from Bank A. Under this example, Bank A can estimate covered third-party fees because, under proposed comment 32(b)(5)-1, the designated recipient's institution has not agreed to charge back any covered third-party fees to the insured institution rather than impose the fees on the remittance transfer.

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<sup>13</sup> Under the split and cover method a bank (i) sends payment instruction with an "OUR" charge code directly to a beneficiary bank with which the originating bank has an established SWIFT relationship and which will honor the OUR code and (ii) settling the payment as a bank-to-bank cover payment so lifting fees will not be deducted. The OUR code in a payment instruction tells the receiving bank that it should charge back any lifting fees to the originating bank rather than deduct the fee from the principal amount of the transfer.

<sup>14</sup> With a serial wire, the payment is instructed and settled a step at a time between each of the banks in the chain. Using this method, intermediary banks will typically charge lifting fees. While the originating bank can negotiate the amount of the fee charged by its correspondent (and the first link in the correspondent banking chain) under their account agreement it is often unable to know which other banks the payment will be routed through and the fees those banks will charge. As payments move from one bank to the next in the chain, the likelihood that the instruction regarding fees is conveyed forward and honored decreases.

- Bank A has a correspondent relationship with Bank B and sends a remittance transfer using the serial method to Bank B for further credit to Bank D, the designated recipient's bank. Bank A does not know how Bank B will route the payment. Bank B sends a payment instruction to Bank C for further credit to Bank D. Bank C then charges a covered third party fee, which it deducts from the principal, and sends a payment instruction to Bank D for credit to the designated recipient. Under this example, Bank A can estimate covered third-party fees because under comment 32(b)(5)-1.4, Bank A did not know how Bank B would route its payment. Further, even if Bank A happened to have a correspondent relationship with Bank C, Bank A can estimate covered third party fees because it did not know the payment would be routed through Bank C.

### **B. Volume Alone Does not Account for Difficulties in Disclosing Covered Third-Party Fees**

Proposed § 1005.32(b)(5)(C) would allow a remittance transfer provider to estimate for only those remittance transfers sent to institutions where it sent fewer than 500 in the prior calendar year. Institutions that exceed this cap, even if the reasons they cannot disclose exact fees are justified, would not be able to estimate under this new rule and, thus, may not be able to send remittance transfers to certain institutions after the expiration of the temporary exception. This will cause some consumers to either not be able to send remittance transfers or seek out a new provider to allow them to make those transfers.

The Bureau bases this proposed limitation on its hypothesis that the high cost to an institution of establishing and maintaining RMAs is the primary barrier for many banks in establishing the necessary relationships to ascertain covered third-party fees.<sup>15</sup> Thus, in the Proposal, the Bureau uses an insured institution's "anticipated transfer volume" as the determining factor regarding whether a bank will choose to invest the time and money necessary to establish a relationship with a recipient institution.<sup>16</sup> However, as the Bureau acknowledges, cost and anticipated transfer volume is not the only factor in determining fees under the two main methods for sending wire transfers.<sup>17</sup> Even the largest banks with the highest volumes may be unable to enter into RMAs when they want to do so to serve their customers.

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<sup>15</sup> 84 FR at 67149.

<sup>16</sup> An RMA allows banks to send messages to each other on the SWIFT network. With an RMA, the originating bank can instruct the beneficiary bank to charge back any lifting fees to the originating bank. See Wolfsberg Group, *Wolfsberg Guidance on SWIFT Relationship Management Application (RMA) Due Diligence* at 1-2 (2016), available at <https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/wolfsberg-standards/7.%20SWIFT-RMA-Due-Diligence.pdf>. The Wolfsberg Group is an association of thirteen global banks that aims to develop frameworks and guidance for the management of financial crime risks. See <https://www.wolfsberg-principles.com/>.

<sup>17</sup> An originating bank can only use the split and cover method if two conditions are met—having an established SWIFT relationship with a beneficiary bank and having that bank honor the OUR code. Sending the OUR code to a beneficiary bank typically results in a claim from the beneficiary bank to the originating bank for reimbursement of all fees for processing the credit to the beneficiary's account. This occurs regardless of how those fees would have otherwise been collected from the beneficiary if the OUR charge code had not been sent notwithstanding agreements between recipients and their banks regarding imposition of non-covered third party fees. Under the serial method, intermediary banks will typically charge lifting fees. While the originating bank can negotiate the amount of the fee charged by its correspondent (and the first link in the correspondent banking chain) under their account agreement, it is often unable to know which other banks the payment will be routed through and the fees those banks will charge.

Establishing RMAs, so banks can use the split and cover method, is a complicated process. For most institutions, whether to enter into such an arrangement is a decision based on a number of factors, with their consumer remittance volume being just one of many. The Bureau acknowledges that the various risks that arise when partnering with foreign institutions may prevent development of the necessary relationships.<sup>18</sup> The Bureau lists one of these risks—cybercrime risk—but there are other significant risks as well.<sup>19</sup> These risks include operational and anti-money laundering risks, restrictions imposed by the Bank Secrecy Act or by a bank’s BSA/AML policy, or potential reputational risk due to prior BSA/AML issues, other sanctions, anti-bribery, or corruption fines and penalties, and other reputational risks.<sup>20</sup> In addition, U.S. banks are prohibited from engaging in business (including establishing RMAs) with banks in OFAC-sanctioned countries and individual banks that have been sanctioned under various OFAC programs.<sup>21</sup> Finally, foreign banks may not comply with SWIFT requirements or they may pose other operational or reputational risk concerns that prevent RMA relationships with certain foreign financial institutions.

Additionally, as the Associations noted in their RFI comment, foreign financial institutions may not honor OUR code instructions because OUR instructions are market practices, and not legally binding requirements.<sup>22</sup> If intermediary banks do not honor OUR instructions, fee disclosures may be inaccurate. Thus, if a bank knows an OUR code will not be honored, it may disclose estimated fees under the temporary exception. The Bureau appears to recognize this problem in its proposed commentary where it references “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” instead of only requiring an agreement to have a direct communication channel (*i.e.*, an RMA).<sup>23</sup>

Despite recognizing these non-size/volume-related risks,<sup>24</sup> the Bureau declined to address them because it felt: “it would be difficult to adopt specific exceptions to address all of these risk factors and the varying risk appetites across institutions.”<sup>25</sup> Nevertheless, the Bureau

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As payments move from one bank to the next in the chain, the likelihood that the OUR code is conveyed forward and honored decreases.

<sup>18</sup> 84 FR at 67151.

<sup>19</sup> *Id.*

<sup>20</sup> See SWIFT, *Info. Paper: RMA and RMA Plus: managing your correspondent connections*, at 4 (July 2016), <https://www.swift.com/resource/rma-and-rma-plus-managing-your-correspondent-connections> (“SWIFT Info Paper”). As SWIFT explains: “When RMA was introduced in 2009 ... the spirit of the product was for banks to open the door to as many counterparties and correspondents as possible. Today, however, the more stringent regulatory climate means that many institutions are now rationalising their correspondent banking relationships in order to remove higher risk correspondents and to help to reduce the risk of fraudulent transactions. Banks today would rather keep the door open only to parties they trust and want to do business with—and shut other doors in order to avoid potentially problematic transactions.” *Id.*

<sup>21</sup> See U.S. Treasury “Where is OFAC’s Countries List?” at [https://www.treasury.gov/resource-center/sanctions/Programs/Pages/faq\\_10\\_page.aspx](https://www.treasury.gov/resource-center/sanctions/Programs/Pages/faq_10_page.aspx)

<sup>22</sup> In its prior RFI comment, the Associations attached a list of countries where OUR instructions are routinely not honored. Several of those countries—including Canada, Japan, and the Philippines—are quite large and certainly receive more than 1,000 transfers from many U.S. banks.

<sup>23</sup> Proposed comment 32(b)(5)-1.iii.

<sup>24</sup> 84 FR at 67151 (“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.”).

<sup>25</sup> *Id.* at 67151.

proposes to address primarily those situations where insured institutions provide estimates because the costs of establishing the necessary relationships outweighs the benefits given a low number of transfers to a particular institution. This disregards the other risks that may prevent a bank from establishing a relationship with the designated recipient's bank to obtain accurate information on fees. Thus, under the Proposal, the only users of this exception will be those that maintain a transfer volume below 500 annual transfers to a particular foreign institution. Declining to adopt a broader exception due to perceived difficulty of constructing a solution will prevent insured institutions from providing remittance transfers to certain recipient institutions when they exceed the 500-transfer cap.

Given the Associations' concerns and the risks acknowledged by the Bureau, the Associations urge the Bureau to broaden the proposed exemption to recipient banks that received more than 500 transfers in the prior year. Specifically, the Bureau should recognize that a bank's willingness and ability to establish RMAs or correspondent relationships with the relevant institutions is often unrelated to the cost of doing so.

Therefore, the Associations suggest that the proposed permanent exception be available to insured institutions that send more than the prescribed amount of remittance transfers to a particular designated recipient's institution, if one of the following conditions applies: (i) establishing a RMA or correspondent or agency arrangement with a recipient institution would exceed the provider's risk tolerance, (ii) regulatory compliance challenges posed by another rule or guideline that prevent the provider from establishing these relationships or other regulatory restriction, (iii) a recipient institution refuses to have a RMA or correspondent or agency arrangement with the provider, (iv) a recipient institution is in a jurisdiction where instructions (such as OUR codes) are routinely disregarded, or (v) the remittance transfer is instructed in a currency that is not the local currency.<sup>26</sup> During an examination, a regulator can evaluate that the provider did in fact document risk or regulatory compliance reasons for being unable to establish an RMA.<sup>27</sup>

As noted above, banks invest heavily in developing and maintaining relationships, including RMAs, which benefit their customers by minimizing risk exposure. But banks cannot enter into risky RMAs or those prohibited by other bank policies. By creating an exception that fails to take into account these legitimate concerns, the Bureau appears to want banks to overlook

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<sup>26</sup> The fifth proposed reason would address the scenario where Bank A, the sending bank, is sending a Japanese yen-denominated transfer to Bank B, the recipient institution located in the United Kingdom; Bank A sends more than 500 annual transfers to Bank B, most denominated in British pounds. While Bank A has an RMA with Bank B that addresses any covered third-party fees for British pound-denominated wires, the RMA does not address wires in other currencies. When Bank A sends the yen transfer, it must use different routing and rely on correspondent Bank C to facilitate its delivery. Bank A will not be able to know the lifting fees and thus must estimate in this situation.

<sup>27</sup> For example, a bank could provide the following to an examiner: (i) the internal risk analysis that led the bank to conclude it could not enter into a contractual arrangement with a foreign bank, (ii) citation to (and explanation, as appropriate) the relevant other law or regulation that prohibits the bank from entering into a relationship (such as guidance from OFAC or FinCEN) with a foreign bank, (iii) written refusal to enter into a contractual relationship received from a foreign bank, (iv) an RMA that applies only to local currency. The Associations note, however, that in some instances a bank's determination that it cannot contract with a foreign bank is a result of supervisory discussions with the bank's other regulators. Given that, in many instances, such supervisory guidance cannot be shared with the Bureau, banks in those cases may be unable to provide a complete record to substantiate its reasons for relying on this suggested exception.



them and enter into RMAs with institutions that have higher risk profiles or cap their transfers to certain recipient institutions. Such actions might help the institutions in their consumer remittance business, but cause trouble elsewhere for these banks including with prudential regulators. Finally, the Associations expect that if the Bureau adopted this exception, evasion or overuse would be unlikely for several reasons. First, use of estimation is already a small percentage of transfers and its use continues to decline; the same could be expected of this new exception.<sup>28</sup> Second, an examiner can confirm an insured institution had a reasonable basis for providing estimates (and the Bureau could provide guidance on what it deems acceptable). Third, if the Bureau urges the FFIEC to revise question 16.d.(3) of the Call Report Schedule RC-M, it would be able to monitor institutions' use of this exception to confirm it is not overused.

### C. Interpretive Questions and Compliance Challenges

Apart from requesting revisions to proposed § 1005.31(b)(5), the Associations seek clarification of certain aspects of this part of the proposal as set forth below.

**Definition of “Recipient Institution” for Purposes of § 1005.32(b)(5)(i)(C).** The Associations also request the Bureau provide commentary or other guidance on how to “count” transfers to recipient institutions for the purposes of determining the 500-transfer per institution threshold. The Rule does not define the term “recipient institution” and that creates ambiguity. For example, should providers consider each branch of a particular bank a separate institution? What about large foreign banks with branches in different countries and different fee practices (and applicable laws)?<sup>29</sup> The Associations urge that the Bureau adopt Business Identifier Codes (BICs) as a uniform standard. BIC codes are defined by ISO Standard 9362 and are used across the international banking industry to identify banks.<sup>30</sup> Specifically, the Bureau should count recipient institutions by the first eight digits in a BIC code, which identify a bank at a country level. The Associations urge the Bureau to count transfers at a country, rather than global level, given that multinational banks typically have very different policies from one country to the next.

**Need for a Transition Period After Crossing the 500-Remittance Transfer Threshold.** As proposed, the numerical cap in proposed § 1005.32(b)(5)(i)(C) allows no grace period for institutions that cross the threshold towards the end of a calendar year. This can create substantial compliance challenges given the time necessary to adjust compliance and either disclose actual amounts or cut off transfers to that recipient institution. For example, where a bank had 490 remittance transfers in Year 1 and has its 501<sup>st</sup> remittance transfer to a particular bank on December 31<sup>st</sup> of Year 2, the bank must, the next business day, be able to modify its procedures to provide exact disclosures for its Year 3 transfers to the same recipient institution. This poses several practical challenges, as most institutions lack systems or processes to adjust from estimation to exact fees and exchange rates with little-to-no delay. Additional transition challenges will arise following mergers and acquisitions of recipient banks. If a merger occurs

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<sup>28</sup> 84 FR at 67151.

<sup>29</sup> For example, French bank BNP Paribas operates in 77 countries under multiple brand names (*e.g.*, BNP Paribas in France, Banca Nazionale del Lavoro (BNL) in Italy, and BNP Paribas Fortis in Belgium). Within each of these brands, there are multiple branches (*e.g.*, BNL has over 700 branches just in Italy).

<sup>30</sup> See ISO 9362, available at <https://www.iso.org/obp/ui/#iso:std:iso:9362:ed-4:v1:en>.

between two recipient banks and a sending bank has sent 400 transfers to each, the Proposal allows for no grace period for the sending bank to adjust its post-merger processes.

By contrast, the Bureau has adopted a grace period for its existing 100-remittance transfer safe harbor to address similar concerns for small entities that cross that threshold and must comply with the Rule. The Associations contend that there should be a grace period under this proposed exception too.<sup>31</sup> The Associations thus suggest that the Bureau establish a grace period of at least **six months or the start of the next calendar year**, whichever is greater, before a bank must stop relying on the permanent exception. (Separately, as discussed in Part V, the Associations also request that the Bureau allow an initial, one-time transition period for banks to transition from the temporary exception to the new regime.) Given the limited nature of this exception, the very low likelihood of its abuse is outweighed by the benefits from minimized consumer disruption.

**Excluding Closed Loop Transfers.** Some insured institutions offer both closed loop and open loop remittance transfer services. These institutions' closed loop offerings involve agency-type relationships with recipient institutions and do not require estimation. Such closed loop services are distinct from wire transfers. In addition, the closed loop services have narrow use cases, such as small value, person-to-person payments. Institutions that offer closed loop services may need to send some remittance transfers to a recipient institution using the open network because the transfers fall outside of the use cases that are permitted under the agency-type relationships. The costs and risks related to establishing these closed loop networks are distinct from those faced by the same institutions when they send wire transfers. Thus, when a bank with both closed loop and open loop services evaluates whether to establish an RMA, whether it also sends closed loop transfers to that same institution is not relevant. Thus, these closed loop transfers should not count towards an insured institution's 500 annual remittance transfers under proposed § 1005.32(b)(5)(i)(C).

### **III. Estimation of Exchange Rates**

#### **A. Proposed Exception for Estimation of Exchange Rates (Proposed § 1005.32(b)(4)).**

Proposed § 1005.32(b)(4) would allow insured institutions to continue to estimate exchange rates in certain, more limited circumstances than they currently do under the temporary exception. To estimate exchange rates under the proposed exception, remittance transfer providers would have to satisfy four conditions, three of which replicate conditions imposed on providers' use of the temporary exception: (i) that the provider is an insured institution; (ii) that the provider cannot determine the exact exchange rate; and (iii) that the remittance transfer is sent from the sender's account at the insured institution. The fourth condition would be new—proposed § 1005.32(b)(4)(i)(C) would only let remittance transfer providers use the new

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<sup>31</sup> Compare this to when two small banks merge and go over the small entity safe harbor. In the case, the merged institution will have six months to come into compliance. See 12 CFR 1005.30(f)(ii).

permanent exception if they sent 1,000 or fewer remittance transfers to the recipient country in that country's local currency in the prior calendar year.<sup>32</sup>

As explained in the discussion above of the limit in proposed § 1005.32(b)(5)(i)(C), a remittance transfer provider's ability to disclose an exchange rate is not necessarily tied to the number of transfers in local currency that it sends to a particular country. Hence, even if a provider sends more than the prescribed amount of transfers in local currency to a particular country, depository institutions may still need to estimate exchange rates due to the idiosyncrasies of certain currencies and their inability to estimate. The Associations believe their members could address these idiosyncrasies without the need to increase the 1,000-transfer limit if the Bureau encourages broader use of the Countries List exception as is discussed below (See Part III.B).

The Associations do note that two of their concerns noted above regarding proposed § 1005.32(b)(5)(i)(C) are also concerns regarding proposed § 1005.32(b)(4)(i)(C): (a) the lack of a transition period once a provider crosses 1,000 annual remittance transfers to a particular country and (b) the need to exclude closed loop transfers from the 1,000 annual remittance transfer cap. As noted above, insured institutions will need time to transition from being able to estimate exchange rates under proposed § 1005.32(b)(4) to not being able to estimate. Having the change take effect quickly (if the threshold is crossed late in the year) could pose substantial compliance challenges. Similarly, given that closed loop transfers are sent through other means, they should not count towards an institutions' tabulation of its annual remittance transfers for purposes of § 1005.32(b)(4)(i)(C).

#### **B. Interpretive Question Regarding Proposed § 1005.32(b)(4).**

The Associations also request that the Bureau clarify when remittance transfer providers must disclose an exchange rate in situations in which the sender instructs the remittance transfer provider to send the transfer in U.S. dollars, but the provider knows that the general market practice in the recipient country is to convert transfers received in U.S. dollars into the local currency. We note that this is a common situation because consumers generally instruct payment in U.S. dollars, unless a designated recipient requests to be paid a specific amount in local currency. Section 1005.31(b)(1)(iv) requires disclosure of "the exchange rate used by the provider." Existing comment 31(b)(1)(iv)-1 clarifies that:

"[i]f a 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 purposes of determining whether an exchange rate is applied to the transfer."

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<sup>32</sup> The Associations disagree with the Bureau's conclusion "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." 84 FR at 67157. The Bureau bases this assertion on interviews with a handful of banks. The Associations contend that while some institutions may not need to estimate, these interviews are not necessarily representative of all banks. As noted in its prior comment letter, the reasons institutions need to estimate exchange rates vary. The Associations urge the Bureau to not overly-discount the needs of larger institutions to estimate exchange rates in various situations, many of which are beyond their control.

The Associations request clarification regarding the application of this comment. Generally, the Associations understand this comment to mean that a remittance transfer provider's general knowledge about how transfers are handled in a particular market is not specific knowledge about how a particular transfer will be handled. However, the Associations have questions about whether the knowledge of general market practices overrides the ability of a provider to rely on the sender's representation as provided in the commentary. As a result, the Associations believe that not all providers interpret this comment the same way. Thus, because different banks take different views on whether their knowledge of market practices constitutes "specific knowledge" of currency that will be received, some banks disclose the transfer as U.S. dollar transfer with no exchange rate disclosure while others provide an estimated exchange rate disclosure based on their belief that a currency exchange will be performed in the recipient country. In this latter scenario, banks can only provide an estimated disclosure because, consistent with their customer's instruction, they cannot convert the customer's U.S. dollar transfer to local currency. Hence, the transfer will be converted to local currency by another bank. The Associations ask that the Bureau confirm in commentary that exchange rate disclosure is not required when the sender requests the transfer be sent in U.S. dollars even if the provider is aware that the general market practice in the recipient country is to convert U.S. dollar payments to local currency.

### **C. Current and Future Use of the Permanent Exception for Transfers to Certain Countries and the Countries List**

In addition to the proposed exception to estimate exchange rates, the Bureau provides guidance on and seeks feedback about a range of issues related to its permanent exception for transfers to certain countries and its Countries List.<sup>33</sup> Section 1005.31(b)(2) allows estimation for remittance transfers to certain countries if exact amounts cannot be determined and the "laws of the recipient country do not permit such a determination" or the "method by which transactions are made in the recipient country does not permit such determination." In 2013, the Bureau established a list of five countries that satisfy the first prong and, at the same time, stated it would consider changes to the list on an ongoing basis.<sup>34</sup> However, the Bureau has not added a country to the list in the subsequent six years. Additionally, the commentary limits the scope of the second prong of the exception—the method by which transactions are made—to transactions sent via international ACH.<sup>35</sup>

#### ***1. Banks' Reliance on the Permanent Exception for Transfers to Certain Countries***

Given the concerns noted above in Part III.A regarding proposed § 1005.32(b)(4) and that the Countries List is currently limited to five countries, the Associations do not believe that these two methods of estimation will address all of the times that bank would need to estimate exchange rates after the expiration of the temporary exception. This could lead to disruption in the availability of certain remittance transfer services.

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<sup>33</sup> 84 FR at 67152.

<sup>34</sup> 78 FR 66251 (Nov. 5, 2013).

<sup>35</sup> Comment 32(b)(1)-3. In the Proposal, the Bureau declined, as the Associations had suggested, to broaden the scope of this part of the exception. 84 FR at 67152-53.

The Bureau can lessen this disruption if it expressly permits reliance on the exception in more circumstances and with more countries. The Proposal notes that a remittance transfer provider can “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” and asks whether providers do make these determinations.<sup>36</sup> Historically, Association members have been wary of doing so because of a concern that examiners might take a dim view of their disclosing estimates for remittance transfers to countries the Bureau itself declined to include on its countries list. The Associations therefore urge the Bureau to provide a clear statement—in the Rule or its commentary—that so long as a provider has a reasonable basis to rely on the exception that the provider’s reliance is permissible for countries that the Bureau has otherwise declined to add to its list.

## ***2. Suggested Changes to Countries List Processes***

The Associations’ members would also be in a better position to take advantage of the exception if the Bureau updated its process for considering whether to add countries to its List. The Associations have, in the past, tried unsuccessfully to add countries to the list. This is in part because presenting information about other countries’ laws to the Bureau is challenging. Many countries, particularly those that have currency restrictions, do not always set forth their laws in the same manner as in the United States, may rely on opaque policy statements from central banks or may even rely on unwritten local interpretations that do not align with text of the written law. All of these make it difficult to present the Bureau with a convincing case.

The Associations appreciate the Bureau’s willingness to consider improvements to its process and want to work with the Bureau to refine it. While the Associations offer a number of suggestions below, the challenges noted above require the Bureau to be flexible given a country’s specific situation. First, the Bureau should set forth the specific types of evidence of local laws it will consider necessary to establish inclusion on the List.<sup>37</sup> Second, the Bureau should recognize that not every country would be able to meet such requirements and be flexible in how it considers a currency for inclusion. Third, the Bureau should work with parties seeking to add a country to the list to discuss the particular issue that warrants inclusion and how best to demonstrate why it should be included. Unlike remittance transfer providers, the Bureau can rely on its relationships with other government agencies such as the Department of State and the Treasury and the Federal Reserve Board to inform its understanding of local currency laws. On the other hand, providers may have more on-the-ground experience and local contacts with working knowledge of the application of relevant laws. Analyzing this information together may provide the clearest picture of whether a country belongs on the list. Fourth, the Associations also suggest that if and when the Bureau determines it will not add a suggested country to the list, the Bureau should make public the reasons for its decision. Doing so will allow remittance transfer providers to better understand how the Bureau applies its criteria. This could allow

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<sup>36</sup> 84 FR at 67153 (citing 78 FR 66251, 66252 (Nov. 5, 2013)).

<sup>37</sup> Such documentation could include: (a) copy of the country’s law or regulations, (b) interpretive statement from a regulatory authority or central bank regarding the country’s laws or regulations, (c) explanatory letter from an established local banker, lawyer, or trade association explaining how the country’s laws are applied, (d) statement from trade or standards-setting organization about the application of a country’s laws.

providers to make stronger cases in the future for other countries or to gather additional evidence to convince the Bureau to revise its determination about the country at issue.

Fifth, the Bureau should provisionally include countries on the list if a provider comes forward with a reasonable basis to conclude the country should be included unless and until the Bureau determines otherwise (*i.e.*, shift the burden to the Bureau to demonstrate a country should not be on the list, given the unique resources available to the Bureau). This would also allow a country to be included if its laws (or their application) changes without advance notice.<sup>38</sup> Finally, the Associations reiterate their prior suggestion that the Bureau should consider adopting a new methods exception to address situations where local customs and practices, rather than specific laws, prevent banks from disclosing an exact exchange rate. As noted above, local customs or practices may make foreign exchange outside the United States difficult or impossible even if these restrictions are not in the law even where banks would like to send more than 1,000 annual transfers.<sup>39</sup> For example, certain countries have imposed, often with no prior notice to the market, capital controls, or currency exchange restrictions that have caused sudden unusual volatility in exchange rates that challenges the ability of insured institutions to determine exact exchange rates.<sup>40</sup> The exception should address these sorts of unpredictable events.

While these changes would not address all of the Associations' concerns, they would allow the Countries List to be more reflective of actual challenges providers face in certain countries, and make the Bureau's process of adding countries more transparent. Additionally, the Bureau should not delay in making these changes. Increased use of the Countries List exception and an increased number of countries on the list would allow institutions to estimate in situations where they are otherwise unable to avail themselves of the new exception.

#### **IV. Limiting Estimation Will Harm Depository Institutions' Customers**

Absent further change to the Proposal, the pending expiration of the Temporary Exception will disrupt many consumers' ability to send remittance transfers. The Bureau acknowledges in the Proposal that, if finalized, insured institutions will be more limited in their ability to estimate covered third-party fees and exchange rates. The Bureau minimizes this impact by explaining that customers can move their remittance business to other institutions and continue to send their remittance transfers without interruption. The Bureau hypothesizes in its impact analysis that while some current providers will not be able to provide remittance services under the Proposal, the risk to consumers is minimal because either other insured institutions or MSBs will fill the void.<sup>41</sup> The Associations are concerned about these assumptions. Not only is there little evidence this is the case (the Bureau does not cite to any), but it substantially

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<sup>38</sup> See Rishi Iyengar, *50 days of pain: What happened when India trashed its cash*, (Jan. 4, 2017), <https://money.cnn.com/2017/01/04/news/india/india-cash-crisis-rupee/index.html>. While not directly involving exchange rates, India's sudden moves regarding currency availability is an example of how quickly a country can change its laws in this general area.

<sup>39</sup> See EFTA section 919(c) (allowing an exception when "method by which transactions are made in a recipient country" do not allow disclosure of exact information).

<sup>40</sup> Examples include Argentina, and Zimbabwe. See Paul Wallace, *Zimbabwe's Currency Rout Makes Argentina's Seem Like a Blip*, (Sept. 9, 2017), <https://www.bloomberg.com/news/articles/2019-09-17/zimbabwe-s-currency-rout-makes-argentina-s-seem-like-a-mere-blip>.

<sup>41</sup> 84 FR at 67159.

discounts how difficult it will be for these consumers to take their business elsewhere. For most consumers, sending a wire transfer through their preferred bank is the most efficient, cost-effective, and preferred method of transferring funds abroad. The alternatives—taking their business to a new bank or seeking out a non-bank pose obvious challenges in both cost, time and convenience.

MSBs may be inadequate replacements for consumers' banks for several reasons. First, most MSBs send to only a handful of recipient countries and often focus on high volume corridors not impacted by the temporary exception's expiration.<sup>42</sup> Second, most MSBs limit the dollar amount of a customer's transfer,<sup>43</sup> a point noted by the Bureau in the discussion of the Proposal and its Assessment; those restrictions might make it impractical to expect a MSB can serve as an alternative provider.<sup>44</sup> Third, it may be difficult or impossible for an MSB to send a transfer from a consumer's account at a bank as some MSBs only allow consumers to fund remittance transfers in cash.<sup>45</sup> Fourth, MSBs may only allow for cash pickup rather than depositing funds into a recipient's account.<sup>46</sup> Fifth, MSBs often base their fees on the size or speed of the transfer whereas banks typically charge a flat fee. For consumers who send higher-dollar amount transfers through a bank, sending that same transfer through an MSB could be impossible, if no provider offers service for the particular corridor, or be more expensive, if the consumer has to send multiple transfers, due to dollar-amount limits imposed by MSBs.

Consumers may also face challenges sending a remittance transfer through another insured institution. Doing so is not as simple as walking down the street to another bank that is either exempt from the rule altogether or able to estimate. Because a prerequisite for estimation under the two proposed exceptions requires a sender to have an account with the provider, consumers will usually be required to open new bank accounts in order to send a remittance transfer from a new bank.<sup>47</sup> The Proposal does not account for the difficulty consumers likely face when they must switch banks to send a remittance transfer. Beyond the hassle of having to establish an account, doing so also takes time. Funding that account so that the new bank can make the transfer takes more time. Additionally, banks may consider it a red flag under their antifraud and BSA/AML policies if a new customer opens an account and their initial transaction after funding the account is to originate an international wire transfer, possibly leading to further delays in sending funds. Finally, consumers may be harmed by "unbundling" their banking services by switching their remittance services to another provider while retaining other banking

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<sup>42</sup> As the Associations explained in the RFI comment (at 12), MSBs are often not alternatives for transfers sent by banks reliant on the temporary exception given limited corridors available. As SWIFT explained recently: "Importantly, we don't think that cross-border payments challenges should be solved for with closed loop systems. Doing so would easily solve for a subset—or multiple subsets—of participants, but value needs to move everywhere—from every account, to every account. Loops create barriers and friction; they reduce fungibility and portability, they limit competition and they fragment liquidity." SWIFT, *Payments: Looking to the future*, (June 20, 2019), [https://www.swift.com/news-events/news/payments\\_looking-to-the-future](https://www.swift.com/news-events/news/payments_looking-to-the-future)

<sup>43</sup> See Assessment at 73, 165.

<sup>44</sup> The average size of a bank-sent remittance transfer is \$6,500 (*id.* at 94), which exceeds some MSBs' maximum transfer amount. (See, e.g., Ria Money Transfer ("You can send up to \$2,999.99 per money transfer, per day."), <https://www.riamoneytransfer.com/us/en/faqs>.)

<sup>45</sup> Assessment at 99. While some MSBs may allow funding by ACH, that funding may take several days to clear and will thus add an additional delay before the MSB can send the transfer.

<sup>46</sup> *Id.*

<sup>47</sup> See proposed § 1005.32(b)(4)(A) and (5)(A).

services with the initial provider because most banks will charge (or not charge) customers fees based on service level or average deposit balance value and provide an incentive for clients to bundle. By splitting their assets across two institutions, costs to consumers may increase.

Additionally, the Proposal appears to encourage a sort of regulatory arbitrage without any corresponding consumer benefit.<sup>48</sup> The Bureau presumes that other banks will be able to replace banks unable to avail themselves of the new exceptions. The Bureau does not cite evidence this is the case. To the contrary, the Associations believe that if Bank A determines that it cannot disclose fees with certainty for transfers to Recipient Bank C, it is likely that Bank B would make the same determination for transfers to Recipient Bank C. Given the limited number of other U.S. banks that act as correspondents for other banks, there may be a limited number of options. Relatedly, the Proposal may also cause customers of large banks that cannot estimate to take their business to small banks that are or will be exempt entirely from the Rule. According to the Bureau, all but 343 banks will be exempt from the Remittance Rule under the proposal to raise the safe harbor to 500 annual transfers.<sup>49</sup> Customers choosing these exempt institutions will have no protections, rather than receiving benefits afforded by the Rule, such as error resolution, cancelation, disclosure of the provider's fees and exchange rates. The Associations contend that a result where consumers receive a receipt with estimated fees (and thus all of the protections of the Rule) is a far better outcome for those consumers than receiving no protections at all.

## **V. The Proposed Effective Date and Lack of Transition Period**

### **A. The Proposed Effective Date is Too Soon**

The Proposal's July 21, 2020 effective date would not allow for a reasonable transition period from the expiration of the temporary exception to the new, narrower permanent exceptions. Assuming the Bureau takes two months to finalize the Proposal, insured institutions would only have a few months to implement the changes. This would lead to substantial, short-term disruption and would harm consumers with little countervailing benefit.

The short transition period poses numerous challenges, including:

- **General Operational Challenges.** Adjusting banks' methods for sending remittance transfers, including changing from estimates to actual disclosures or shutting off recipient institutions or entire countries is a complicated endeavor that banks cannot complete in the time allotted. For example, a bank will need to determine which transfer it can no longer send. Next, the bank will need to inform its branches and its customers of this change and give the customers opportunity to seek an alternative.
- **Data Tracking Infrastructure.** The Associations' members generally do not track the information necessary to know if they comply with the caps in each of

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<sup>48</sup> For example, the Proposal may encourage banks to lower their risk tolerances for RMAs so that they can send more consumer remittances than a more risk-averse competitor can.

<sup>49</sup> 84 FR at 67157.



the proposed permanent exceptions. Not only will they have to develop and implement systems to do so prospectively, they will have to research this information about past transactions during 2019 to know whether they can avail themselves of the exception for the rest of 2020 and into 2021. If this information is not available in a reasonable format, the banks will have to engage in costly and manual historical analyses. At the very least, institutions will have to dedicate staff and time to develop infrastructure to automate this work on a going-forward basis.<sup>50</sup> Given the inherent uncertainty about the content of any final rule, institutions cannot start this work until the Bureau finalizes the Proposal.

- **New Agreements and Relationships.** This short effective date period does not allow institutions to enter into new RMAs (assuming they can do so at all). It typically takes two years to establish a new RMA. Banks thus cannot establish new RMAs between now and July or even the end of this year. While the Bureau anticipates providers will, collectively, invest \$6.886 million in establishing new relationships,<sup>51</sup> the Proposal does not account for either the time necessary to establish RMAs nor the disruption to consumers in the interim (the period between the effective date and the establishment of the new RMA).<sup>52</sup>
- **New Currency Desks.** This short effective date period does not allow institutions to develop currency trading desks or relationships for new currencies (assuming they can do so at all).

Given these challenges, the Associations request the Bureau delay the two per-transaction limits in the proposed permanent exceptions until July 21, 2021.<sup>53</sup> A delay until these limits come into effect would give institutions more time to adapt their systems to the new disclosure regime. While some might argue that banks should have prepared for the end of the temporary exception and not need an extension, banks have been relying on indications from the Bureau that it would address the expiration through a change to the Remittance Rule. The Bureau has been inquiring about the impact of the expiration since early 2017<sup>54</sup> and included this rulemaking on its agenda since spring 2019.<sup>55</sup> Until this Proposal, the Bureau has provided no clear indications of its intentions regarding the temporary exception. Given this background, banks

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<sup>50</sup> Surprisingly, the Bureau’s proposed Paperwork Reduction Act analysis states that the proposal would impose no new burden on remittance transfer providers. *Id.* at 67161 (“The Bureau does not believe that this proposed rule would impose any new or substantively revised collections of information as defined by the PRA.”). The Associations contend this is incorrect because all providers that want to avail themselves of these exceptions will need to track their usage and implement systems to stop their usage once they hit the threshold for a particular country or recipient institution.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* The Bureau also does not explain how it determined these new relationships will cost \$6.886 million to establish.

<sup>53</sup> In other words, the Bureau should delay the effective date of proposed §§ 1005.32(b)(4)(C) and (b)(5)(C) until July 21, 2021.

<sup>54</sup> 82 FR 15009 (Mar. 24, 2017) (noting the Bureau would gather data during the Assessment about the potential impact of the expiration of the temporary exception).

<sup>55</sup> See Unified Agenda, available at

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=3170-AA96>.

have been waiting patiently to see what the Bureau would do, if anything, before investing substantial sums in preparing for that alternative. Had the Bureau outlined its final plans a year or two ago, institutions may have been better able to prepare.

Additionally, the Bureau should allow institutions that cannot retroactively track the necessary information to take data from the date of the final rule to the end of 2020 and extrapolate that data to the entire year. This would allow them to avoid costly historical research into past transfers if they do not already track such information in a format relevant to this new application. This one-time exception would not allow for any abuse of the new exceptions given their limited utility and the lack of time an institution would have to game the system. Nor would delaying the numerical limitations cause a dramatic increase in estimation. Today, with no limitation, usage of the temporary exception is limited. The same usage should be expected for the remainder of 2020, as institutions would not suddenly start estimating more if they had to stop estimating in 2021.

### **B. The Bureau Should Not Sunset the Proposed Permanent Exceptions**

The Bureau also seeks comment on whether either of its two proposed exceptions should include a provision that sunsets the exceptions in the future rather than being permanent. As has been demonstrated by the need for the current proposal, the lack of permanency creates problems for both providers and consumers and so the Associations urge the Bureau to make both exceptions permanent without a sunset. It is possible and perhaps even likely, as the Bureau suggests, that technologies and practices will continue to improve and allow for less estimation in the future. However, there is no guarantee that the need to estimate will ever disappear and, if so, when that would occur. Sending money around the world is subject to ever changing conditions including the geopolitical climate as well as changes to currency trading practices and institutions' abilities to establish RMAs and other relationships. Additionally, for banks that want to send remittance transfers to every corner of the world, this means that there are literally thousands of potential destinations. Each institution and its practices are subject to change; even if estimation hypothetically went to zero, there remains the possibility that a foreign bank or country would change practices and require U.S. banks to estimate again. Nor is there any guarantee, as noted above, that suitable alternatives will always exist for all remittance transfers that require banks to use estimates.

In lieu of sunsetting these new exceptions, the Associations suggest that the Bureau work with the FFIEC to revise the Call Report questions on the temporary exception to ask about banks' usage of these two new exceptions.

\* \* \*

Thank you for your consideration and review of this comment letter. If you have any questions or wish to discuss this letter, please do not hesitate to contact any of the undersigned.

Sincerely,

**The Clearing House Payments Co., L.L.C.**

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## **Appendix A**

### **Information about the Associations**

#### **The Clearing House Payments Co., LLC**

Since its founding in 1853, The Clearing House has delivered safe and reliable payments systems, facilitated bank-led payments innovation, and provided thought leadership on strategic payments issues.

Today, The Clearing House is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. It continues to leverage its unique capabilities to support bank-led innovation, including launching RTP®, a real-time payment system that modernizes core payments capabilities for all U.S. financial institutions. As the country's oldest banking trade association, The Clearing House also provides informed advocacy and thought leadership on critical payments-related issues facing financial institutions today. The Clearing House is owned by 25 financial institutions and supports hundreds of banks and credit unions through its core systems and related services.

#### **American Bankers Association**

The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10.4 trillion in loans. Learn more at [www.aba.com](http://www.aba.com).

#### **Consumer Bankers Association**

The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

#### **BAFT (The Bankers Association for Finance and Trade)**

BAFT is a financial services trade association whose membership includes large global and regional banks, service providers, and fintech companies headquartered around the world. BAFT provides advocacy, thought leadership, education, and a global forum for its members in transaction banking, including international trade finance and payments. For nearly a century, BAFT has expanded markets, shaped policy, developed business solutions, and preserved the safety and soundness of the global financial system. Learn more at <http://www.baft.org>.