

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1090

[Docket No. CFPB–2014–0003]

RIN 3170–AA25

### Defining Larger Participants of the International Money Transfer Market

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

**ACTION:** Proposed rule; request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) proposes to amend the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for international money transfers. The Bureau proposes this rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank “larger participant[s]” of markets for other consumer financial products or services, as the Bureau defines by rule. The proposal (Proposed Rule) would identify a nonbank market for international money transfers and define “larger participants” of this market that would be subject to the Bureau’s supervisory authority.

**DATES:** Comments must be received on or before April 1, 2014.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. You may

submit comments, identified by *Docket No. CFPB–2014–0003* or RIN 3170–AA25, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

In general, all comments received will be posted without change to their content.

- *Mail/Hand Delivery/Courier:*

Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC 20552.

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 will be subject to public disclosure. Submit only information that you wish to make available publicly. Do not include sensitive personal information, such as account numbers or Social Security numbers. Comments will not be edited to remove any identifying or contact information, such as name and address information, email addresses, or telephone numbers.

#### FOR FURTHER INFORMATION CONTACT:

Edna Boateng, Senior Consumer Financial Protection Analyst, (202) 435–7697, Amanda Quester, Senior Counsel, (202) 365–0702, or Brian Shearer, Attorney, (202) 435–7794, Office of Supervision Policy, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

Section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), codified at 12 U.S.C. 5514,<sup>1</sup> gives the Bureau supervisory authority over all nonbank covered persons<sup>2</sup> offering or providing

<sup>1</sup> Public Law 111–203, § 1024, 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C. 5514).

<sup>2</sup> The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). “Covered persons” include “(A) any person that engages in offering or providing a consumer financial product or service; and (B) any

three enumerated types of consumer financial products or services: (1) Origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.<sup>3</sup> The Bureau also has supervisory authority over “larger participant[s] of a market for other consumer financial products or services,” as the Bureau defines by rule.<sup>4</sup>

This Proposed Rule, if adopted, would be the fourth in a series of rulemakings to define larger participants of markets for other consumer financial products or services for purposes of 12 U.S.C. 5514(a)(1)(B).<sup>5</sup> The Proposed Rule would establish the Bureau’s supervisory authority over certain nonbank covered persons participating in a market for international money transfers.<sup>6</sup>

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 of the Dodd-Frank Act for

affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.” 12 U.S.C. 5481(6).

<sup>3</sup> 12 U.S.C. 5514(a)(1)(A), (D), (E). The Bureau also has the authority to supervise any nonbank covered person that it “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.” 12 U.S.C. 5514(a)(1)(C); *see also* 12 CFR part 1091 (prescribing procedures for making determinations under 12 U.S.C. 5514(a)(1)(C)). In addition, the Bureau has supervisory authority over very large depository institutions and credit unions and their affiliates. 12 U.S.C. 5515(a). Furthermore, the Bureau has certain authorities relating to the supervision of other depository institutions and credit unions. 12 U.S.C. 5516(c)(1), (e). One of the Bureau’s mandates under the Dodd-Frank Act is to ensure that “Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.” 12 U.S.C. 5511(b)(4).

<sup>4</sup> 12 U.S.C. 5514(a)(1)(B), (a)(2); *see also* 12 U.S.C. 5481(5) (defining “consumer financial product or service”).

<sup>5</sup> The first three rules defined larger participants of markets for consumer reporting, 77 FR 42874 (July 20, 2012) (Consumer Reporting Rule), consumer debt collection, 77 FR 65775 (Oct. 31, 2012) (Consumer Debt Collection Rule), and student loan servicing, 78 FR 73383 (Dec. 6, 2013) (Student Loan Servicing Rule).

<sup>6</sup> The Proposed Rule would describe one market for consumer financial products or services, which the Proposed Rule labels “international money transfers.” The proposed definition would not encompass all activities that could be considered international money transfers. Any reference herein to “the international money transfer market” means only the particular market for international money transfers identified by the Proposed Rule.

purposes of: (1) Assessing compliance with Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets.<sup>7</sup> The Bureau conducts examinations, of various scopes, of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.<sup>8</sup>

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

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

The Bureau has published a general examination manual describing the Bureau's supervisory approach and

procedures.<sup>9</sup> As explained in the manual, the Bureau will structure examinations to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. On October 22, 2013, the Bureau released procedures specific to remittance transfers for use in the Bureau's examinations of entities within its supervisory authority.<sup>10</sup> If this Proposed Rule is adopted, the Bureau will use those examination procedures in supervising international money transfers. The procedures include instructions on examining for compliance with, among other laws and regulations, new requirements in subpart B of Regulation E relating to remittance transfers (Remittance Rule), which went into effect on October 28, 2013.<sup>11</sup>

The States have been active in regulation of money transmission, with forty-seven States and the District of Columbia requiring entities to obtain a license to engage in money transmission, as defined by applicable law. Many States also actively examine money transmitters. If the Proposed Rule is adopted, the Bureau would coordinate with appropriate State regulatory authorities in examining larger participants of the international money transfer market.

This Proposed Rule would establish a category of nonbank covered persons that is subject to the Bureau's supervisory authority under 12 U.S.C. 5514 by defining "larger participants" of a market for international money transfers.<sup>12</sup> The Proposed Rule pertains only to that purpose and would not impose new substantive consumer protection requirements. Nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal

consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

## II. Summary of Proposed Rule

The Bureau's existing larger-participant rule, 12 CFR part 1090, prescribes various procedures, definitions, standards, and protocols that apply with respect to all markets in which the Bureau has defined larger participants.<sup>13</sup> Those generally applicable provisions, which are codified in subpart A, would also be applicable for the international money transfer market described by this Proposed Rule. The definitions in § 1090.101 should be used, unless otherwise specified, when interpreting terms in this Proposed Rule.

The Bureau includes relevant market descriptions and larger-participant tests, as it develops them, in subpart B.<sup>14</sup> Accordingly, the Proposed Rule defining larger participants of the international money transfer market would become § 1090.107 in subpart B.

The Proposed Rule would define an international money transfer market that would cover certain electronic transfers of funds sent by nonbanks that are international money transfer providers. To be included in this proposed market, transfers would have to be requested by a sender in a State to be sent to a designated recipient in a foreign country. The Proposed Rule's definitions are modeled in part on the definition of "remittance transfer" and related terms in the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E.<sup>15</sup> Some of the Proposed Rule's definitions also are modeled in part on definitions in prior larger-participant rules.<sup>16</sup> The definitions in existing § 1090.101 apply for terms that the Proposed Rule does not define, such as "person" and "consumer."<sup>17</sup>

<sup>13</sup> 12 CFR 1090.100–103.

<sup>14</sup> 77 FR 42874, 42875 (Consumer Reporting Rule); 77 FR 65775, 65777 (Consumer Debt Collection Rule); 78 FR 73383, 73384 (Student Loan Servicing Rule).

<sup>15</sup> 15 U.S.C. 1693o–1(g); 12 CFR 1005.2, 1005.30.

<sup>16</sup> 12 CFR 1090.104(a), 1090.105(a) (providing definitions of "annual receipts," which the Bureau used in crafting the proposed definition of "aggregate annual international money transfer").

<sup>17</sup> As a result, some terms may have different definitions for purposes of the Proposed Rule than they do for purposes of Regulation E. The definition of "consumer" in § 1090.101 is "an individual or an agent, trustee, or representative acting on behalf of an individual," 12 CFR 1090.101, while the definition of "consumer" in Regulation E is "a natural person," 12 CFR 1005.2(e). The definition of "person" in § 1090.101 is "an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity," 12 CFR

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<sup>7</sup> 12 U.S.C. 5514(b)(1).

<sup>8</sup> See 12 U.S.C. 5514(b) (authorizing the Bureau both to conduct examinations and to require reports from entities subject to supervision).

<sup>9</sup> CFPB Supervision and Examination Manual (Oct. 1, 2012), available at <http://www.consumerfinance.gov/guidance/supervision/manual/>.

<sup>10</sup> CFPB Supervision and Examination Manual, Remittance Transfer Examination Procedures (Oct. 22, 2013), available at [http://files.consumerfinance.gov/f/201310\\_cfpb\\_remittance-transfer-examination-procedures.pdf](http://files.consumerfinance.gov/f/201310_cfpb_remittance-transfer-examination-procedures.pdf).

<sup>11</sup> 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30662 (May 22, 2013); 78 FR 49365 (Aug. 14, 2013) (codified at 12 CFR part 1005, subpart B). These changes implement the new Electronic Fund Transfer Act requirements imposed by the Dodd-Frank Act, Public Law 111–203, § 1073, 124 Stat. 1376, 2060 (2010). For additional information about the Remittance Rule, see <http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>.

<sup>12</sup> The Bureau's supervisory authority also extends to service providers of those covered persons that are subject to supervision under 12 U.S.C. 5514(a)(1), 12 U.S.C. 5514(e); see also 12 U.S.C. 5481(26) (defining "service provider").

The Proposed Rule also would set forth a test to determine whether a nonbank covered person is a larger participant of the international money transfer market. An entity would be a larger participant if it has at least one million aggregate annual international money transfers.<sup>18</sup> As prescribed by existing § 1090.102, any nonbank covered person that qualifies as a larger participant would remain a larger participant until two years after the first day of the tax year in which the person last met the applicable test.<sup>19</sup>

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

### III. Legal Authority and Procedural Matters

#### A. Rulemaking Authority

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

1090.101, while the definition of "person" in Regulation E is "a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association," 12 CFR 1005.2(j).

<sup>18</sup> As the Bureau has explained in prior rulemakings, the criterion selected for one market in a larger-participant rulemaking is not necessarily appropriate for any other market that may be the subject of a future rulemaking. Instead, the Bureau expects to tailor each test to the market to which it will be applied. 77 FR 42874, 42876 (Consumer Reporting); 77 FR 65775, 65778 (Consumer Debt Collection); 78 FR 73383, 73384 n.16 (Student Loan Servicing).

<sup>19</sup> 12 CFR 1090.102.

Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law.

#### B. Proposed Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.<sup>20</sup> The Bureau proposes that the final rule arising from this Proposed Rule would be effective no earlier than 60 days after publication.

### IV. Section-By-Section Analysis

#### Section 1090.107—International Money Transfer Market

Proposed § 1090.107 relates to international money transfers.<sup>21</sup> As a general matter, international money transfers are electronic transfers of funds sent by nonbanks from consumers in the United States to persons or entities abroad.

Many consumers who send money abroad do so through money transmitter companies that are nonbanks.<sup>22</sup> Many money transmitters operate through closed networks, receiving and disbursing funds through their own outlets or through agents such as grocery stores, neighborhood convenience stores, or depository institutions. Some money transmitters may send transfers of any size, while others cap the size of transfers they send.

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

<sup>20</sup> 5 U.S.C. 553(d).

<sup>21</sup> The term "international money transfer" is very similar to the term "remittance transfer" as defined in the Remittance Rule, 12 CFR 1005.30(e). However, the definitions differ in some substantive respects as specified below, including, for example, that transfers of \$15 or less can be "international money transfers" but not "remittance transfers." Other definitions in this Proposed Rule are similarly based on Regulation E. Usage, or omission, of specific language from the EFTA or Regulation E in the Proposed Rule is not an endorsement by the Bureau of any specific interpretation of the EFTA or Regulation E.

<sup>22</sup> CFPB, Report on Remittance Transfers 6 (July 20, 2011), available at [http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_20110720\\_RemittanceTransfers.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110720_RemittanceTransfers.pdf). Federal law requires money transmitters that meet certain criteria to register as a "money services business" with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). 31 U.S.C. 5330; 31 CFR 1010.100(ff), 1022.380. Most States also have licensing requirements for similar types of entities.

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

Many money transmitters provide other types of transfers. For example, money transmitters may permit transfers to be initiated using credit cards, debit cards, or bank account debits and may use Web sites, agent locations, stand-alone kiosks, or telephone lines to do so. Abroad, money transmitters and their partners may allow funds to be deposited into recipients' bank accounts, distributed directly onto prepaid cards, or credited to mobile phone accounts. Funds also can be transferred among consumers' nonbank accounts identified by individuals' email addresses or mobile phone numbers. According to one survey of companies that send funds from the United States to Latin America and the Caribbean, 75 percent permit consumers to send transfers of funds that can be deposited directly into recipients' bank accounts, including transfers initiated through the internet.<sup>23</sup>

Although this Proposed Rule would apply only to nonbank covered persons, depository institutions and credit unions, including those already subject to the Bureau's supervisory authority, also offer consumers international transfer services. This is often done by way of wire transfers.

International transfers play a critical role in the lives of many consumers in the United States. U.S. consumers send funds abroad for a number of reasons, including to assist family or friends with their expenses, to pay for purchases of goods, to pay the tuition of children studying abroad, or to purchase real estate. Data from the 2011 Current Population Survey (2011 CPS) show that more than 4 million households nationwide had used nonbanks to transfer funds to friends and family abroad in the preceding year, and more than 7 million households had used

<sup>23</sup> Manuel Orozco et al., *Inter-American Dialogue, The Market for Money Transfers: Ranking of Remittance Service Providers in Latin America and the Caribbean* 4 (Oct. 23, 2012), available at [http://www.thedialogue.org/uploads/Remittances\\_and\\_Development/LatAm\\_Final\\_120712.pdf](http://www.thedialogue.org/uploads/Remittances_and_Development/LatAm_Final_120712.pdf). Like cash-to-cash transfers, some of the transfers to bank accounts rely on closed networks, though others rely on open networks (between an entity and non-agents or non-affiliates) or reflect some characteristics of both open and closed network transactions.

nonbanks to make such transfers at some time in the past.<sup>24</sup>

Transferring money to international recipients can present unique challenges for consumers and providers, many of which are addressed in the Remittance Rule recently issued by the Bureau. Pricing for transfers is complex and may depend not only on fees and taxes, but also on exchange rates. Because wholesale currency markets fluctuate constantly, the exchange rates applied to individual international transfers may change from day to day, or even over the course of the day, depending on how frequently providers update their retail rates. Providers may also vary their exchange rates and fees charged based on a range of other factors, such as the sending and receiving locations, and the size and speed of the transfer. Taxes may vary depending on the type of provider, the laws of the recipient country, and various other factors. As a result, determining how much money will actually be received and which provider offers the lowest price can be challenging for consumers, particularly when not provided with proper disclosures.<sup>25</sup> In some cases, language barriers may further complicate consumers' ability to obtain and understand transaction information from providers and their agents.<sup>26</sup>

The Bureau believes that compliance with recent legislative and regulatory changes will significantly improve the predictability of remittances and provide consumers with better price information. Congress amended the EFTA in the Dodd-Frank Act.<sup>27</sup> The Bureau then implemented the amendments to the EFTA by promulgating the Remittance Rule, which went into effect on October 28, 2013.<sup>28</sup> The Remittance Rule created a comprehensive new system of consumer protections for remittance transfers sent

by consumers in the United States to individuals and businesses in foreign countries. First, the amendments generally require that information be disclosed prior to and at the time of payment by the sender for the transfer.<sup>29</sup> Second, under the Remittance Rule, consumers will generally have thirty minutes after making payment to cancel a transaction.<sup>30</sup> Third, the Remittance Rule increases consumer protections when transfers go awry by requiring providers to investigate disputes and remedy certain types of errors.<sup>31</sup> The Remittance Rule applies to any institutions that send remittance transfers in the normal course of their business, including banks, credit unions, money transmitters, broker-dealers, and others. The Bureau and prudential regulators can examine depository institutions and credit unions within their supervisory authority for compliance with Regulation E, including the new Remittance Rule.

Finalization of this Proposed Rule would bring nonbanks that are larger participants of the international money transfer market<sup>32</sup> within the Bureau's supervisory jurisdiction, thereby promoting the Bureau's objective of enforcing Federal consumer financial law consistently without regard to whether a person is a depository institution.<sup>33</sup> Supervision of larger participants of the international money transfer market would help to ensure that nonbank entities that provide a significant portion of the transactions to which the Remittance Rule applies are complying with these new and

important consumer protections, as well as with other applicable requirements of Federal consumer financial law, including the prohibition on unfair, deceptive, or abusive acts or practices.

The Bureau lacks precise data on the international money transfer market. However, available data sources, including public information and confidential State supervisory data provided by three States,<sup>34</sup> enabled the

<sup>34</sup> The Bureau based its market estimates primarily on confidential State supervisory data for the year 2012 that it received from California, New York, and Ohio pursuant to memoranda of understanding. From New York and Ohio, the Bureau received national figures for per-licensee dollar volume and number of transfers that aggregate international transfers, domestic transfers, and some other regulated transactions. The data received from California on per-licensee dollar volume and number of transfers include only outbound international transfers. Therefore, the type of data that California provided most closely matches the market activity defined in the Proposed Rule. However, the California data do not include national figures for individual entities; instead, the data only include transfers initiated in California. None of the data sets obtained from the States distinguish between transfers initiated by consumers and those initiated by businesses.

In addition to the State data, the Bureau used the following sources: The FinCEN Money Services Business Registration List; public Web sites; CFPB market research; and the licensee lists from regulatory agencies in 47 States and the District of Columbia described below. The Bureau also used data on nonbank remittance use from the 2011 CPS's June 2011 Unbanked/Underbanked Supplement, which is available at [http://thedata.web.rm.census.gov/ftp/cps\\_ftp.html](http://thedata.web.rm.census.gov/ftp/cps_ftp.html) and described at <http://www.census.gov/prod/techdoc/cps/cpsjun11.pdf>. The Bureau looked specifically at data for respondents who reported that they or someone in their household had gone to a nonbank to give or send money to relatives or friends living outside the United States at least once in the past 30 days (i.e., respondents who answered questions 20–22 positively and reported one or more instances in response to question 23). The Bureau sorted the responses by State using the Census State code (GESTCEN) and adjusted them to reflect each State's population using the CPS Supplement Person Weight (PWSUPWGT). The Bureau used the resulting figures to generate the following estimates of each State's share of all U.S. consumers living in households that had sent nonbank remittances in the last 30 days ("relative CPS shares"): Arkansas (0.17%); Alabama (0.89%); Arkansas (0.52%); Arizona (3.31%); California (22.70%); Colorado (0.97%); Connecticut (1.17%); District of Columbia (0.30%); Delaware (0.19%); Florida (8.37%); Georgia (3.73%); Hawaii (0.52%); Iowa (0.73%); Idaho (0.27%); Illinois (6.00%); Indiana (0.28%); Kansas (0.46%); Kentucky (0.16%); Louisiana (0.75%); Massachusetts (1.85%); Maryland (1.51%); Maine (0.08%); Michigan (0.21%); Minnesota (0.41%); Missouri (0.82%); Mississippi (0.10%); Montana (0.06%); North Carolina (2.91%); North Dakota (0.06%); Nebraska (0.25%); New Hampshire (0.04%); New Jersey (3.81%); New Mexico (0.62%); Nevada (1.35%); New York (8.49%); Ohio (1.48%); Oklahoma (1.30%); Oregon (0.51%); Pennsylvania (1.00%); Rhode Island (0.59%); South Carolina (0.25%); South Dakota (0.14%); Tennessee (0.44%); Texas (15.61%); Utah (0.57%); Virginia (1.20%); Vermont (0.03%); Washington (0.90%); Wisconsin (1.78%); West Virginia (0.03%); and Wyoming (0.08%). Thus, according to the Bureau's estimates, the three States from which it obtained confidential

<sup>24</sup> Fed. Deposit Ins. Corp., *National Survey of Unbanked and Underbanked Households* 32 (Sept. 2012), available at [http://www.fdic.gov/householdsurvey/2012\\_unbankedreport.pdf](http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf) (2011 CPS Report) (stating that 3.7 percent of households used "nonbank remittances" as defined in the survey in the preceding year); *id.* at 142–43 (providing estimate of 120 million U.S. households in 2011 for purposes of the survey); *id.* at 79 (estimating the number of households that have used "nonbank remittances" as defined in the survey at any time in the past).

<sup>25</sup> See CFPB, Report on Remittance Transfers 17–21 (July 20, 2011); see also 77 FR 6194, 6199 (Feb. 7, 2012).

<sup>26</sup> See 77 FR 6194, 6199 (Feb. 7, 2012).

<sup>27</sup> Public Law 111–203, § 1073, 124 Stat. 1376, 2060 (2010).

<sup>28</sup> 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30662 (May 22, 2013); 78 FR 49365 (Aug. 14, 2013) (codified at 12 CFR part 1005, subpart B).

<sup>29</sup> Public Law 111–203, § 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o–1(a)); 12 CFR 1005.31–32.

<sup>30</sup> Public Law 111–203, § 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o–1(d)(3)); 12 CFR 1005.34.

<sup>31</sup> Public Law 111–203, § 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o–1(d)); 12 CFR 1005.33.

<sup>32</sup> International money transfers are consumer financial products or services pursuant to the Dodd-Frank Act. See 12 U.S.C. 5481(15)(A)(iv) (defining "financial product or service" to include "engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer"); 12 U.S.C. 5481(5)(A) (defining "consumer financial product or service" to include financial products or services that are offered or provided for use by consumers primarily for personal, family, or household purposes); see also 12 U.S.C. 5481(15)(A)(v) (defining "financial product or service" to include generally "selling, providing, or issuing stored value or payment instruments," with specific exclusions); 12 U.S.C. 5481(15)(A)(vii) (defining "financial product or service" to include generally "providing payments or other financial data processing products or services to a consumer by any technological means," with specific exclusions).

<sup>33</sup> 12 U.S.C. 5511(b)(4).

Bureau to conduct three analyses to gain a general understanding of the basic contours of this nonbank market. These analyses produced rough estimates of (1) the overall number of nonbanks that provide international money transfers; (2) the dollar volume and number of international money transfers market-wide; and (3) the dollar volume and number of international money transfers provided by nonbanks that provide at least 500,000, one million, or three million transactions per year.<sup>35</sup>

For its first analysis, the Bureau reviewed State licensing information and estimated that approximately 340 nonbanks provide international money transfers.<sup>36</sup> The Bureau's second

supervisory data (California, New York, and Ohio) together accounted for 32.7 percent of U.S. consumers who reported that their households had sent nonbank remittances in the last 30 days in the 2011 CPS.

<sup>35</sup>The Bureau conducted entity-level analysis and produced highly approximated entity-by-entity estimates to inform its general understanding of the market and of the likely market coverage associated with potential activity thresholds. These entity-level approximations of dollar volume and number of transfers are not dispositive of whether the Bureau would ever seek to initiate supervisory activity or whether, in the event of a person's assertion that it is not a larger participant, the person would be found to be a larger participant under 12 CFR 1090.103.

<sup>36</sup>The following analysis will hereinafter be cited as "State License Review." To arrive at the estimate that 340 nonbanks are international money transfer providers, the Bureau reviewed lists of licensees from 47 States and the District of Columbia. Most of the lists were publicly available online at the following addresses: Alaska Department of Commerce, Community, and Economic Development, [http://www.dced.state.ak.us/bsc/money\\_service\\_businesses.html](http://www.dced.state.ak.us/bsc/money_service_businesses.html); Arizona Department of Financial Institutions, <http://azdfi.gov/Consumers/Licensees/licenses.asp?list=MT&name=Money%20Transmitters>; Arkansas Securities Department, <http://www.securities.arkansas.gov/page/339/money-services>; California Department of Business Oversight, [http://www.dbo.ca.gov/Licensees/money\\_transmitters/money\\_transmitters\\_directory.asp](http://www.dbo.ca.gov/Licensees/money_transmitters/money_transmitters_directory.asp); Colorado Division of Banking, [http://www.dora.state.co.us/pls/real/bidS\\_Search.Search\\_Page](http://www.dora.state.co.us/pls/real/bidS_Search.Search_Page); Connecticut Department of Banking, [http://www.ct.gov/dob/cwp/view.asp?a=2233&q=297862&dobNAV\\_GID=1663](http://www.ct.gov/dob/cwp/view.asp?a=2233&q=297862&dobNAV_GID=1663); Delaware Office of the State Bank Commissioner, <http://banking.delaware.gov/information/nondepsearch.shtml>; Georgia Department of Banking and Finance, <https://dbfweb.dbf.state.ga.us/WebCCData.html>; Hawaii Department of Commerce and Consumer Affairs, <http://cca.hawaii.gov/dfi/>; Idaho Department of Finance, <http://finance.idaho.gov/MoneyTransmitter/MoneyTransmitterLicense.aspx>; Illinois Department of Financial and Professional Regulation, [http://www.idfpr.com/dfi/ccd/ccd\\_licensees.asp#trans](http://www.idfpr.com/dfi/ccd/ccd_licensees.asp#trans); Indiana Department of Financial Institutions, <http://extranet.dfi.in.gov/dfidb/nondepcclist.aspx>; Iowa Division of Banking, <http://www.idob.state.ia.us/>; State Bank Commissioner of Kansas, <http://www.osbckansas.org/>; Kentucky Department of Financial Institutions, <http://www.kfi.ky.gov/Pages/default.aspx>; Louisiana Office of Financial Institutions, <http://www.ofi.state.la.us/soclist.htm>; Maine Department of Professional and Financial Regulation, [http://www.maine.gov/pfr/consumer\\_credit/rosters/index.htm](http://www.maine.gov/pfr/consumer_credit/rosters/index.htm); Massachusetts Division of

analysis, an extrapolation of confidential supervisory data from California to generate nationwide estimates, indicates that the nonbank market of international money transfers, as defined here, accounted for roughly

Banks, <http://license.dob.state.ma.us/licenseelist.asp>; Michigan Department of Insurance and Financial Services, [http://www.dleg.state.mi.us/fis/ind\\_srch/ConsumerFinance/Search.asp](http://www.dleg.state.mi.us/fis/ind_srch/ConsumerFinance/Search.asp); Minnesota Department of Commerce, <http://www.commerce.state.mn.us/LicenseLookupMain.html>; Mississippi Department of Banking and Consumer Finance, <http://www.dbcf.state.ms.us/documents/lists/moneytransmitter.pdf>; Missouri Division of Finance, <http://finance.mo.gov/licensesearch/>; Nebraska Department of Banking and Finance, <http://www.ndbf.ne.gov/soc/soclicensees.shtml>; New Hampshire Banking Department, <http://www.nh.gov/banking/consumer-credit/information.htm>; New Jersey Department of Banking and Insurance, [https://www20.state.nj.us/DOBI\\_LicSearch/bnkSearch.jsp](https://www20.state.nj.us/DOBI_LicSearch/bnkSearch.jsp); New York Department of Financial Services, <http://www.dfs.ny.gov/banking/moneytransmitter.htm>; North Carolina Commissioner of Banks, <https://www.nccob.org/Online/MTS/MTSCompanyListing.aspx>; North Dakota Department of Financial Institutions, <http://www.nd.gov/dfi/regulate/reg/consumer.asp?list1=MT&sort2=city&city3=&name4=&Submit=Search>; Ohio Department of Commerce, <http://www.com.state.oh.us/default.aspx>; Oklahoma Banking Department, [http://www.ok.gov/banking/Money\\_Transmitter\\_Listing.html](http://www.ok.gov/banking/Money_Transmitter_Listing.html); Oregon Division of Finance and Corporate Securities, [http://www4.cbs.state.or.us/ex/all/mylicsearch/index.cfm?fuseaction=main.show\\_main&group\\_id=20&profession\\_id=23&profession\\_sub\\_id=23000%20](http://www4.cbs.state.or.us/ex/all/mylicsearch/index.cfm?fuseaction=main.show_main&group_id=20&profession_id=23&profession_sub_id=23000%20); Rhode Island Department of Business Regulation, [http://www.dbr.state.ri.us/documents/divisions/banking/program\\_operations/List\\_of\\_Electronic\\_Money\\_Transfers.pdf](http://www.dbr.state.ri.us/documents/divisions/banking/program_operations/List_of_Electronic_Money_Transfers.pdf); South Dakota Department of Labor and Regulation, [http://dlr.sd.gov/banking/money\\_transmitters.aspx](http://dlr.sd.gov/banking/money_transmitters.aspx); Tennessee Department of Financial Institutions, [http://www.tennessee.gov/tdfi/banking/Lic\\_MT.shtml](http://www.tennessee.gov/tdfi/banking/Lic_MT.shtml); Texas Department of Banking, [http://www.banking.state.tx.us/supreglic\\_ent.asp](http://www.banking.state.tx.us/supreglic_ent.asp); Utah Department of Financial Institutions, <http://www.dfi.state.ut.us/MonTrans.htm>; Vermont Department of Financial Regulation, <http://www.dfr.vermont.gov/banking/verify-license>; Virginia Bureau of Financial Institutions, [http://www.scc.virginia.gov/bfi/reg\\_inst/trans.pdf](http://www.scc.virginia.gov/bfi/reg_inst/trans.pdf); Wisconsin Department of Financial Institutions, [http://www.wdfr.org/fi/lfs/licensee\\_lists/Default.asp?Browse=SOC](http://www.wdfr.org/fi/lfs/licensee_lists/Default.asp?Browse=SOC); Wyoming Division of Banking, <https://sites.google.com/a/wyo.gov/banking/home/areas-of-regulation/money-transmitters/licensee-list>. The Bureau obtained lists upon request from State agencies that do not publish this data but did not receive lists from Montana, New Mexico, or South Carolina because those States do not require licenses for money transmission. Approximately 500 entities were identified on these lists. Based on company-specific research regarding every entity identified in the lists, the Bureau estimated that about 340 entities either offered international money transfers to consumers in the United States or might offer such transfers. As with its other market estimates for this rulemaking, the Bureau emphasizes that the estimate of 340 international money transfer providers could be either high or low due to limitations in the available data. For instance, the estimate does not account for entities that may be operating without a license in any State. On the other hand, the estimate includes entities that the Bureau could not rule out as possible international money transfer providers, but some of these entities might not actually provide international money transfers.

\$50 billion transferred and 150 million individual transfers in 2012.<sup>37</sup>

<sup>37</sup>The analysis in this footnote will hereinafter be cited as "CA Extrapolation." The Bureau used the information from California in estimating market size because it includes only outbound international transfers. In conducting the extrapolation, the Bureau included entities that are among the 340 entities identified by the *State License Review* and that do not have a significant number of business-initiated transfers and aggregated their total reported transfers and dollars transmitted. The Bureau used the relative CPS share for California calculated in the manner described above to estimate the percentage of international money transfers from the United States that originate in California. The Bureau thus divided the California totals by California's relative CPS share (0.227) to obtain estimates of the total size of the nationwide international money transfer market. This extrapolation was augmented by substituting for one entity the estimate it provided of its remittance transfers in a comment letter submitted in response to a prior Bureau rulemaking because the definition of "remittance transfer" closely aligns with the definition of "international money transfer" in the Proposed Rule. These calculations resulted in the Bureau's estimate that the international money transfer market transferred \$49 billion through 152 million individual transfers in 2012.

Using the 2011 CPS data to estimate market size may result in some imprecision. For instance, the questions in the 2011 CPS related to remittance use ask about transactions that differ somewhat from the definition of "international money transfer" in this Proposed Rule. Additionally, the Bureau's relative CPS share calculations are based on CPS questions that asked whether consumers in each State had used nonbank remittances, not how many such transactions were sent from a State or how much money was sent from a State. Thus, the Bureau's market size figures assume that California's share of transfers and dollar volume sent from the United States is the same as California's share of U.S. consumers who live in households that send such transfers.

The data that the Bureau received from California also do not match perfectly the Proposed Rule's definition of "international money transfers." Most significantly, the California data include some transactions initiated by businesses. The Bureau identified a few entities that the Bureau believes provide a significant number of business-initiated transfers, in addition to providing international money transfers initiated by consumers. The Bureau could not delineate between consumer-initiated and business-initiated transfers for these entities and has excluded figures attributable to those entities from the California data because including them could result in a large overstatement of the volume of dollars transmitted in the international money transfer market. This exclusion does not, however, have a significant effect on the Bureau's estimate of total market transfers because even when all of these entities' transfers are included, the total nationwide transfer estimate stills round to roughly 150 million transfers. The Bureau notes that even with this exclusion of entities that send a significant amount of business-initiated transfers, the estimates of market size may be inflated by business-initiated transfers sent by other entities.

Outside estimates suggest that the Bureau's estimate of total dollar volume, \$49 billion, is reasonable. The Bureau of Economic Analysis estimates that the foreign-born population resident in the United States sent \$36.5 billion in "personal transfers" to households abroad in 2012. Bureau of Econ. Analysis, Personal Transfers, 1992:I-2013:II, available at [http://www.bea.gov/international/supplemental\\_statistics.htm](http://www.bea.gov/international/supplemental_statistics.htm). A private consulting firm estimates that in 2005, \$42 billion in international transfers were made by money

The Bureau's third analysis developed entity-specific estimates of the number of international money transfers sent in 2012. Estimates were mostly derived using confidential supervisory data obtained from California, New York, and Ohio pursuant to memoranda of understanding. Using this analysis, the Bureau generated the following highly approximated estimates for the year 2012: (1) The highest tier of the market consists of about 10 nonbanks that each sent over 3 million international money transfers and together accounted for about three-fourths of all international money transfers; (2) The second tier of the market consists of about 15 nonbanks that each sent between 1 and 3 million international money transfers, accounting collectively for about one-sixth of all international money transfers; (3) Very few nonbanks sent between 500,000 and 1 million international money transfers, accounting collectively for about 1.5 percent of all international money transfers; and (4) The limited remaining market share is divided among a few hundred nonbanks that each sent less than 500,000 transfers in 2012.<sup>38</sup> These

transmitters in the United States. KPMG LLP Econ. & Valuation Servs., *2005 Money Services Business Industry Survey Study for Financial Crimes Enforcement Network 5* (Sept. 26, 2005), available at [http://www.fincen.gov/news\\_room/rp/reports/pdf/FinCEN\\_MSB\\_2005\\_Survey.pdf](http://www.fincen.gov/news_room/rp/reports/pdf/FinCEN_MSB_2005_Survey.pdf).

A 2008 U.S. Census Bureau survey, in contrast, suggested that monetary transfers from U.S. households to family and friends abroad totaled approximately \$12 billion in one year. Elizabeth M. Grieco et al., *Who in the United States Sends and Receives Remittances? An Initial Analysis of the Monetary Transfer Data From the August 2008 CPS Migration Supplement*, U.S. Census Bureau Working Paper No. 87 (Nov. 2010), available at <http://www.census.gov/population/www/documentation/twps0087/twps0087.html>. All of these estimates, like the Bureau's estimates here, are based on assumptions that could limit their accuracy. Further, the transfers that were considered in each of the estimates do not match the Bureau's proposed definition of "international money transfer." Therefore, variation in the estimates should be expected.

<sup>38</sup>The analysis listed in this footnote will hereinafter be referred to as "*Analysis of State Supervisory Data*." The Bureau used confidential State supervisory data and other sources to estimate the 2012 market share, dollars transferred, and number of transfers of entities in the proposed market that are licensed in California, New York, and Ohio. Two different methodologies were used to generate estimates for entities, depending on the States to which the entity reported and the nature of its business.

First, the Bureau used national figures reported to New York and Ohio to estimate an entity's number of transfers if the Bureau believed that the transaction figure for the entity reflected in the New York or Ohio data was likely to reflect only international money transfers. The assessment of whether a New York or Ohio figure for a given entity was likely to include any transactions beyond international money transfers was made based on FinCEN registration information and market research.

Second, where California data were available, the Bureau used the California data to extrapolate an estimate of the national number of transfers for entities for which (1) no New York or Ohio information was available or (2) the New York or Ohio data included product offerings that are not international money transfers. To scale up the California figures to nationwide estimates, the Bureau first determined the States in which each entity operated based on FinCEN registration information. The Bureau estimated the percentage of U.S. international money transfers that originated in each State by calculating the relative CPS shares described above, and for each entity aggregated the relative CPS shares for all of the States in which the entity operated to determine the entity's cumulative CPS share. The Bureau then multiplied the transfers reported to California for each entity by the ratio of the entity's cumulative CPS share to California's relative CPS share to get a nationwide estimate. For example, if California's relative CPS share made up half of an entity's cumulative CPS share, the California data for that entity would be multiplied by 2. Where the results of this process generated a figure for any one entity that exceeded the number that the entity had reported to New York or Ohio, the Bureau used the lower figure because the Bureau assumed that the entity's actual number and dollar volume of international money transfers did not exceed the inclusive figures reported to New York or Ohio. The Bureau recognizes that this methodology assumes that an entity's market share is constant in all States of operation, which is an assumption that may result in an over- or under-estimation of a particular entity's national volume or of the number of entities that provide a given number of international money transfers. Further, use of the FinCEN registration information to determine States of operation could lead to inaccuracies to the extent that a money services business provides international money transfers in some States but not in other States in which it operates.

The Bureau derived its estimates for one firm using information from a comment received in response to a previous rulemaking, as in the *CA Extrapolation* above. Additionally, in order to account for data limitations for certain entities that provide transactions that are not international money transfers, the Bureau did not estimate figures for possible international money transfer providers identified in the *State License Review* in two circumstances: First, because the Bureau could not differentiate business-initiated transactions from consumer-initiated transactions in the State licensing data it received, the Bureau excluded entities that appeared to provide a significant amount of business-initiated transactions. (Conversely, if an entity did not provide a significant amount of business-initiated transfers, the Bureau assumed that all transfers it provided were consumer-initiated.) Second, as mentioned above, the Bureau did not derive an estimate for an entity if it was not licensed in California and the Bureau believed that the transaction figure for the entity in the New York and Ohio data mixed international money transfers with other transactions. In all, there are 6 entities excluded for these reasons that reported over 1 million transfers to New York or Ohio or that accounted for over 1 million transfers when the California figure was scaled up. Given the over-inclusive nature of the figures reported to the States for these 6 entities, the Bureau has not derived estimates for these entities or included them or their transactions in its analysis, although some of these entities may be larger participants under the proposed threshold.

Aside from these 6 entities, the Bureau derived per-firm estimates for firms in the California, New York, and Ohio data and, in doing so, identified 10 entities that sent over 3 million international money transfers, 23 entities that sent over 1 million international money transfers, and 26 entities that sent over 500,000 international money transfers.

estimates do not include providers that are not licensed in California, New York, or Ohio, but based on market research and a review of licensing data the Bureau believes that most entities that provide over 500,000 international money transfers per year are licensed in at least one of those three States.<sup>39</sup>

The Bureau is proposing at this time to define a nonbank market consisting solely of international money transfers. As explained above, such transfers present challenges to providers and consumers that distinguish international money transfers from other transactions, such as domestic money transfers. These challenges may include, for example, foreign exchange rates, foreign taxes, and legal, administrative, and language complexities related to the fact that the funds are transferred to a foreign country. Many international money transfers are subject to new protections under the Dodd-Frank Act and the Remittance Rule.<sup>40</sup> The

Using the per-firm estimates and the overall market size estimate from the *CA Extrapolation*, the Bureau then estimated that: (1) The 10 entities with over 3 million transfers account for approximately 77 percent of market transactions, (2) The 23 entities with over 1 million transactions per year account for approximately 93 percent of market transactions, and (3) The 26 entities with over 500,000 transfers account for approximately 94 percent of market transactions. The Bureau recognizes that 94 percent may overestimate the combined market share of entities with over 500,000 transactions. For instance, the *State License Review* identified about 310 other entities that operate or may operate as international money transfer providers and, based on this estimate, such entities would together account for only 6 percent of transactions in the market. Although the Bureau's market share estimates are very inexact, it is nevertheless clear from the Bureau's analysis that firms providing over one million international money transfers per year account for the vast majority of transactions in the market.

<sup>39</sup>One rough indicator of the likelihood that an entity provides more than 500,000 international money transfers is the number of States in which the entity is licensed. More than three-fourths of the California, New York, and Ohio licensees that were found to provide over 500,000 international money transfers per year in the *Analysis of State Supervisory Data* are licensed in more than 10 States. At the same time, licensure in more than 10 States does not necessarily indicate that the entity provides more than 500,000 international money transfers. For instance, the Bureau estimates that less than three-fifths of the 42 entities that are both licensed in more than 10 States and licensed in California, New York, or Ohio provide more than 500,000 international money transfers. In contrast, the Bureau's *State License Review* indicates that only 6 entities are licensed in more than 10 States but not licensed in California, New York, or Ohio. This suggests that the data received from California, New York, and Ohio are likely to include most of the entities that send over 500,000 international money transfers per year.

<sup>40</sup>In light of the close similarity between the Remittance Rule's definition of "remittance transfer" and the Proposed Rule's international money transfer market, the Bureau expects that most transfers in the international money transfer market would be subject to the Remittance Rule.

Continued

Proposed Rule would enable the Bureau to supervise nonbanks that are larger participants of the international money transfer market to assess compliance with these new protections and to evaluate risks that arise when consumers send money abroad.

*Section 1090.107(a)—Market-Related Definitions*

Unless otherwise specified, the definitions in § 1090.101 should be used when interpreting terms in this Proposed Rule. The Proposed Rule would define additional terms relevant to the proposed international money transfer market. These terms would include “international money transfer,” which delineates the scope of the identified market; “designated recipient,” “international money transfer provider,” “sender,” and “State”; and “aggregate annual international money transfers,” which the Proposed Rule would use as the criterion for assessing larger-participant status.

In drafting definitions in the Proposed Rule, the Bureau has used the definition of “remittance transfer” and related definitions from the Remittance Rule as a model because remittance transfers make up a very substantial portion of the market activity in the international money transfer market the Bureau is seeking to define. Additionally, the Remittance Rule definitions are familiar to industry and the Bureau. The Bureau has made adjustments to the Remittance Rule definitions as discussed below to reflect the distinct needs of this larger-participant rulemaking. These adjustments stem in part from the fact that the Remittance Rule imposes substantive consumer protection requirements, while the larger-participant rule differentiates larger participants from other participants in the international money transfer market in order to establish a supervisory program. Thus, in some instances, the Proposed Rule’s definitions diverge from those of the Remittance Rule to account for the different regulatory purposes.

The Bureau seeks comment on each of the definitions set forth in the Proposed Rule and any suggested additions, clarifications, modifications, or alternatives.

*Aggregate annual international money transfers.* The Bureau proposes to use aggregate annual international

money transfers as the criterion that would be used in assessing whether an entity is a larger participant of the international money transfer market. The proposed definition of “aggregate annual international money transfers” was informed by the method of calculating “annual receipts” used by the Bureau in prior larger-participant rulemakings, which in turn is modeled in part on the method used by the U.S. Small Business Administration (SBA) in calculating “annual receipts” to determine whether an entity is a small business.<sup>41</sup> Proposed § 1090.107(a) would define the term “aggregate annual international money transfers” as the “annual international money transfers” of a nonbank covered person, aggregated with the “annual international money transfers” of its affiliated companies, as calculated according to instructions set forth in the definition and discussed below.

*Calculating annual international money transfers.* Similar to the calculations in the consumer reporting and consumer debt collection larger-participant rules, “annual international money transfers” of a nonbank covered person would be calculated in one of two ways depending on how long a person has been in business.<sup>42</sup> If the nonbank covered person has been in business for three or more completed calendar years, the Bureau would divide the total number of international money transfers provided by the nonbank covered person over the last three completed calendar years by three. If the nonbank covered person has been in business for less than three completed calendar years, the Bureau would calculate the total number of international money transfers provided by the nonbank covered person during the time that the nonbank covered person has been in business, divide by the total number of weeks the nonbank covered person has been in business, and multiply by 52. This calculation would provide a prorated figure that is comparable to the approach used for entities that have been in business for the entire three-year period.

*Transfers involving agents.* The proposed definition specifies how to count transfers provided with the assistance of an agent. The Bureau believes that agents play an important role in the proposed market for international money transfers. Under the Proposed Rule, the annual

international money transfers of a nonbank covered person would include international money transfers in which an agent acts on that person’s behalf. The annual international money transfers of a nonbank covered person would not include international money transfers in which another person provided the international money transfers and the nonbank covered person performed activities as an agent on behalf of that other person.<sup>43</sup> In other words, an international money transfer provided by an international money transfer provider with the help of an agent acting on the provider’s behalf would count towards the annual international money transfers of the provider but not the agent.

For purposes of this part of the definition, an “agent” would include an agent or authorized delegate, as defined under State or other applicable law, or an affiliated company of a person that provides international money transfers when such agent, authorized delegate, or affiliated company acts for that person. The definition of “affiliated company” is found in 12 CFR 1090.101.

Including transactions conducted by an agent in calculating a provider’s annual international money transfers is consistent with the Remittance Rule, which places liability on the remittance transfer provider for violations by an agent when the agent is acting for the provider.<sup>44</sup> Not counting transactions conducted solely as an agent for a provider in assessing the agent’s annual international money transfers is also consistent with the Bureau’s determination that, for purposes of the Remittance Rule, agents acting on behalf of a remittance transfer provider are not, in doing so, themselves acting as remittance transfer providers.<sup>45</sup> Although entities that act solely as agents would not normally be larger participants of the market under the Proposed Rule, the Bureau would have the authority to supervise service providers to larger participants of the

<sup>43</sup> However, a nonbank covered person’s aggregate annual international money transfers may include transfers in which the nonbank covered person acted as an agent on behalf of an affiliated company that provided the transfer. This is because such transfers would be included in the annual international money transfers of the affiliated company and a nonbank covered person’s aggregate annual international money transfers would include the annual international money transfers of each of its affiliated companies due to the affiliate aggregation requirement discussed below.

<sup>44</sup> 15 U.S.C. 1693o–1(f); 12 CFR 1005.35. This is also consistent with the data obtained by the Bureau, which generally include transactions conducted by agents on behalf of a provider in the transaction total for the provider.

<sup>45</sup> See Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f)–1.

However, some transfers that would be in the international money transfer market under the Proposed Rule would not be “remittance transfers.” For instance, transfers of \$15 or less are not covered by the Remittance Rule. 12 CFR 1005.30(e)(2)(i).

<sup>41</sup> 12 CFR 1090.104(a) (Consumer Reporting Rule); 12 CFR 1090.105(a) (Debt Collection Rule); 13 CFR 121.104 (SBA).

<sup>42</sup> 12 CFR 1090.104(a) (Consumer Reporting Rule); 12 CFR 1090.105(a) (Debt Collection Rule).

market.<sup>46</sup> Accordingly, where an agent acts as a service provider to a larger participant, the Bureau would have the authority to supervise the agent's performance of services for the larger participant.<sup>47</sup> In light of these considerations, the Bureau proposes to count transactions in which an agent acts on behalf of a provider towards the annual international money transfers of that provider, and not towards the annual international money transfers of the agent itself.

**Affiliate aggregation.** Under the Dodd-Frank Act, the activities of affiliated companies are to be aggregated for purposes of computing activity levels for rules—like this Proposed Rule—under 12 U.S.C. 5514(a)(1).<sup>48</sup> The “aggregate annual international money transfers” for each nonbank covered person would be the sum of the annual international money transfers of the nonbank covered person and the annual international money transfers of all affiliated companies. The annual international money transfers of each affiliated company would be calculated separately. For purposes of this calculation, each affiliated company would be treated as if it were an independent nonbank covered person. Accordingly, if the period of measurement for two affiliated companies differs because one affiliate has not been in business for at least three calendar years, the annual international money transfers of each entity would be calculated using the applicable period of measurement for each.

Paragraph (iii)(B) of the proposed definition of aggregate annual international money transfers sets forth the method of aggregating the annual international money transfers of a nonbank covered person and its affiliated companies when affiliation has started or ended within the nonbank covered person's period of measurement. As proposed, once a person is acquired by or acquires an affiliated company, the annual international money transfers from each affiliated company would be calculated for the entire period of measurement that is applicable to each affiliate, and then aggregated. The annual international money transfers of a

formerly affiliated company would not be included in a nonbank covered person's aggregate annual international money transfer calculation if the affiliation ceased before the nonbank covered person's applicable period of measurement, but would be included for the full period of measurement if the affiliation ceased during the applicable period of measurement.

**Designated recipient.** Proposed § 1090.107(a) would define “designated recipient” to include any person specified by the sender as the authorized recipient of an international money transfer to be received at a location in a foreign country. This proposed definition is based on the definition of “designated recipient” in the Remittance Rule,<sup>49</sup> but replaces “remittance transfer” with “international money transfer” and incorporates the larger-participant definition of “person” from 12 CFR 1090.101. The Bureau intends the term “designated recipient” to be interpreted based on the interpretation of the term in the Remittance Rule, including its commentary,<sup>50</sup> to the extent appropriate given the definitions' different regulatory contexts. For example, the Official Interpretations to Regulation E provide that a remittance transfer is to be received at a location in a foreign country if funds are to be received at a location physically outside of any State.<sup>51</sup> The Bureau intends the same interpretation to apply to an international money transfer.

**International money transfer.** Proposed § 1090.107(a) would define the term “international money transfer” to mean the electronic transfer of funds requested by a sender that is sent by an international money transfer provider to a designated recipient. The term would apply regardless of whether the sender holds an account with the international money transfer provider, and regardless of whether the transaction also is an “electronic fund transfer,” as defined in Regulation E, 12 CFR 1005.3(b). The term would not include certain transfers related to the purchase or sale of a security or commodity that are excluded from the definition of “electronic fund transfer” under 12 CFR 1005.3(c)(4).

The proposed definition of “international money transfer” tracks the Remittance Rule's definition of “remittance transfer,”<sup>52</sup> except for two deviations. First, the Bureau has

replaced the term “remittance transfer provider” where it appears in 12 CFR 1005.30(e) with the term “international money transfer provider.”<sup>53</sup>

Second, the Bureau is proposing to define “international money transfer” without regard to the amount of the transfer. By contrast, the Remittance Rule includes an exclusion for transfers of \$15 or less<sup>54</sup> because the Dodd-Frank Act's definition of “remittance transfer” does not include transfers “in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a) [of the EFTA].”<sup>55</sup> While the Dodd-Frank Act's definition of “remittance transfer” is applicable to the Remittance Rule, it is not applicable to the Bureau's authority to supervise larger participants in markets for consumer financial products or services. The Bureau believes that small-value transactions comprise part of the same market as larger transactions and, as discussed below, the number of international money transfers provided by an international money transfer provider reflects the extent of a provider's market participation. Moreover, as defined in the Proposed Rule, international money transfers are consumer financial products or services regardless of the size of a particular transfer. The Bureau is not aware of substantial administrative challenges that would make it difficult to include small-value transactions when counting the total number of international money transfers provided by a nonbank covered person. Indeed, the State supervisory data obtained by the Bureau for this rulemaking do not exclude transfers of \$15 or less. Accordingly, the Bureau believes that it would be appropriate to count all transactions regardless of dollar amount in the criterion for what constitutes a larger participant of the proposed market.

The Bureau intends the term “international money transfer” to be interpreted in the same manner as the term “remittance transfer,” with the terms “electronic transfer of funds” and “sent by an international money transfer provider” interpreted based on the interpretation of parallel terms in

<sup>46</sup> 12 U.S.C. 5514(e); see also 12 U.S.C. 5481(26)(A) (defining service provider).

<sup>47</sup> The Bureau also has the authority to supervise any nonbank covered person that it “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.” 12 U.S.C. 5514(a)(1)(C).

<sup>48</sup> 12 U.S.C. 5514(a)(3)(B).

<sup>49</sup> 12 CFR 1005.30(c).

<sup>50</sup> See Official Interpretations to Regulation E, comment 30(c).

<sup>51</sup> See Official Interpretations to Regulation E, comment 30(c)-2.

<sup>52</sup> 12 CFR 1005.30(e).

<sup>53</sup> Because an international money transfer provider must be a nonbank covered person, transfers are not international money transfers unless they are sent by a nonbank.

<sup>54</sup> 12 CFR 1005.30(e)(2)(i).

<sup>55</sup> 15 U.S.C. 1693o-1(g)(2)(B). The Board of Governors of the Federal Reserve System previously determined by rule that financial institutions are not subject to the EFTA section 906(a) requirement to provide electronic terminal receipts for small-value transfers of \$15 or less. See 12 CFR 1005.9(e).



Regulation E,<sup>56</sup> to the extent appropriate given the definitions' different regulatory contexts. For example, the Bureau intends to interpret the "international money transfer" definition consistently with the discussion in comment 30(e)–3 to Regulation E of transactions that are and are not included within the definition of "remittance transfer."<sup>57</sup>

*International money transfer provider.* Proposed § 1090.107(a) would define the term "international money transfer provider" to mean any nonbank covered person that provides international money transfers for a consumer, regardless of whether the consumer holds an account with such person. Consistent with the Proposed Rule's definition of "international money transfer," the proposed definition of "international money transfer provider" tracks the definition of "remittance transfer provider" in the Remittance Rule closely,<sup>58</sup> with the following exceptions. First, the proposed definition replaces "remittance transfer" with "international money transfer." Second, for consistency with the rest of the larger-participant rule, the proposed definition replaces the first reference to "person" with "nonbank covered person"<sup>59</sup> and incorporates the larger-participant rule's definition of "consumer" rather than the Regulation E definition. Third, the Bureau has not incorporated from the "remittance transfer provider" definition the requirement that transfers be provided "in the normal course of business."<sup>60</sup> The Bureau believes that such a limitation is unnecessary in the definition of "international money transfer provider" because the Proposed Rule would not impose any new business conduct obligations and would require that an international money transfer provider have at least one million aggregate annual international money transfers to be a larger participant.

The Bureau intends the commentary to the Remittance Rule<sup>61</sup> to be used to guide interpretation of the term

"international money transfer provider" in proposed § 1090.107(a), to the extent appropriate given the definitions' different regulatory contexts.

*Sender.* Proposed § 1090.107(a) would define the term "sender" to mean a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient. This proposed definition largely tracks the definition of "sender" in the Remittance Rule, but replaces "remittance transfer" with "international money transfer" and "remittance transfer provider" with "international money transfer provider."<sup>62</sup> For consistency with the rest of the larger-participant rule, the Proposed Rule also incorporates the definition of "consumer" from the larger-participant rule rather than the definition from Regulation E. The Bureau intends the term "sender" to be interpreted in the same manner as the term "sender" in the Remittance Rule,<sup>63</sup> to the extent appropriate given the definitions' different regulatory contexts.

*State.* Proposed § 1090.107(a) would define the term "State" to mean any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision thereof. This proposed definition is drawn from the definition of "State" in Regulation E subpart A<sup>64</sup> and is intended to be interpreted accordingly.

#### 1090.107(b)—Test To Define Larger Participants

*Criterion.* The Bureau has broad discretion in choosing a criterion for assessing whether a nonbank covered person is a larger participant of a market. For any specific market, there might be several criteria, used alone or in combination, that could be viewed as reasonable alternatives. For the international money transfer market, the Bureau is considering a number of criteria, including aggregate annual international money transfers, annual receipts, and annual transmitted dollar volume. The Bureau invites comment on these three possible criteria as well as suggestions for other criteria that commenters believe might be superior.

Among these three, the Bureau proposes to use aggregate annual international money transfers as the criterion that establishes which entities are larger participants of the international money transfer market. The definitions of "international money transfers" and "aggregate annual international money transfers" are discussed above. Aggregate annual international money transfers is an appropriate criterion because it measures in several meaningful ways the nonbank provider's level of participation in the proposed market and impact on consumers. First, the number of transfers reflects the extent of interactions an international money transfer provider has with consumers. Each transfer represents a single interaction with at least one consumer. Second, the number of transfers is a relatively durable metric in the face of changing market conditions such as exchange rates or inflation. Third, because international money transfer providers often are paid, in part, on a per-transfer basis, the number of transfers is related to the revenue received, another indicator of market participation.

The Bureau anticipates that aggregate annual international money transfers would be relatively straightforward and objective for an international money transfer provider to calculate, as the occasion to do so arises. The Bureau expects that many market participants already assemble data generally related to the number of international transactions that they provide for internal business purposes, particularly because many providers are compensated on a per-transfer basis. Moreover, many providers are required to report transaction data to State regulators. These existing practices will help providers to estimate their aggregate annual international money transfers. The Bureau expects that some market participants may choose to track the number of remittance transfers they provide each year, which could provide another source for estimates of aggregate annual international money transfers because the definition of the criterion roughly tracks the definition of "remittance transfer" used in the Remittance Rule. Accordingly, the Bureau believes that many market participants interested in doing so already would have sufficient data to estimate whether their aggregate annual international money transfers exceed a given transaction threshold.

The Bureau does not have precise and comprehensive data on the number of international money transfers provided by international money transfer

<sup>56</sup> See Official Interpretations to Regulation E, comment 30(e)–1, –2.

<sup>57</sup> Official Interpretations to Regulation E, comment 30(e)–3.

<sup>58</sup> 12 CFR 1005.30(f).

<sup>59</sup> "Nonbank covered person" includes (1) any person that engages in offering or providing a consumer financial product or service; and (2) any affiliate of a person that engages in offering or providing a consumer product or service if such affiliate acts as a service provider to such person, but does not include any persons described in 12 U.S.C. 5515(a) and 5516(a). 12 CFR 1090.101.

<sup>60</sup> 12 CFR 1005.30(f).

<sup>61</sup> Official Interpretations to Regulation E, comment 30(f).

<sup>62</sup> 12 CFR 1005.30(g).

<sup>63</sup> Official Interpretations to Regulation E, comment 30(g).

<sup>64</sup> The Bureau has proposed adopting the definition in Regulation E with minor stylistic changes to the last clause of the definition. Cf. 12 CFR 1005.2(l) ("'State' means any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the thereof in this paragraph (l).") (emphasis added).

providers, as defined in this Proposed Rule, or on any of the other criteria that are being considered. However, as described above, the Bureau obtained confidential supervisory data from California, New York, and Ohio regulators, and has used the 2011 CPS, U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) data listing the States in which individual money services businesses operate, entity-level data from public Web sites, CFPB market research, and licensee lists from regulatory agencies in 47 States and the District of Columbia. The Bureau believes that these data sources can adequately inform the decision of setting a threshold using the criterion of aggregate annual international money transfers.<sup>65</sup>

**Threshold.** Under the Proposed Rule, a nonbank covered person would be a larger participant of the international money transfer market if the nonbank covered person has at least one million aggregate annual international money transfers. As stated above, the Bureau estimates the proposed threshold of one million aggregate annual international money transfers would bring within the Bureau's supervisory authority approximately 25 international money transfer providers.<sup>66</sup>

The Bureau anticipates that the proposed aggregate annual international money transfer threshold of one million would be consistent with the objective of supervising market participants that represent a substantial portion of the international money transfer market and have a significant impact on consumers. According to the Bureau's estimates, the approximately 25 international money transfer providers that meet the proposed threshold collectively provided about 140 million transfers in 2012, with a total volume of about \$40 billion.<sup>67</sup> The Bureau estimates that these nonbanks are responsible for approximately 90 percent of transfers in the nonbank market for international money transfers.<sup>68</sup> They consist of both entities that send money to most of the

countries in the world and entities that focus on sending money to particular recipient countries or regions. The proposed threshold would subject to the Bureau's supervisory authority only entities that can reasonably be considered larger participants of the proposed market.<sup>69</sup>

The Bureau is also considering a lower or higher threshold. For example, the Bureau estimates that a lower aggregate annual international money transfer threshold of 500,000 would allow the Bureau to supervise about 3 additional entities that together account for about 1.5 percent of transfers in this market.<sup>70</sup> Alternatively, the Bureau estimates that an aggregate annual international money transfer threshold of three million would likely allow the Bureau to supervise the 10 largest participants of the proposed market, which collectively provide approximately three-fourths of the transfers in this market.<sup>71</sup>

In proposing a threshold, the Bureau has used a global-market approach that would apply a single threshold regardless of destination. The Bureau is also considering, as an alternative, establishing different thresholds for different destination regions. Setting a threshold for each region would allow the Bureau to set lower thresholds for entities that transfer funds to regions where the overall number of international money transfers is lower and higher thresholds for destination regions for which the overall number of international money transfers is higher. Entities that dominate the market for transfers to lower-volume destination regions might be more likely to meet the larger-participant test if the Bureau used a regional approach in setting the threshold. However, the Bureau is not aware of data sources that would support regional segmentation of this nature at this time. Additionally, even if data were available to support regional segmentation, the Bureau is concerned that such an approach would be very difficult to administer over time, as regional boundaries and volumes could shift in response to any number of factors including market forces and geopolitical events, which could lead to frequent adjustments to the market definitions and corresponding thresholds.

<sup>69</sup> According to Bureau estimates, less than 10 percent of market participants would be larger participants using the proposed threshold. See *Analysis of State Supervisory Data* (approximately 25 larger participants); *State License Review* (approximately 340 market participants).

<sup>70</sup> *Analysis of State Supervisory Data*.

<sup>71</sup> *Id.*

## V. Request for Comments

The Bureau invites comment on all aspects of this notice of proposed rulemaking and on the specific issues on which comment is solicited elsewhere herein, including on any appropriate modifications or exceptions to the Proposed Rule.

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

### A. Overview

The Bureau is considering potential benefits, costs, and impacts of the Proposed Rule.<sup>72</sup> 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 costs, benefits, and impacts of the Proposed Rule. In developing the Proposed Rule, the Bureau has consulted with or offered to consult with the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration, regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

The Proposed Rule defines a category of nonbanks that would be subject to the Bureau's nonbank supervision program pursuant to 12 U.S.C. 5514(a)(1)(B). The proposed category would include "larger participants" of a market for "international money transfers" described in the Proposed Rule. Participation in this market would be measured on the basis of aggregate annual international money transfers. If a nonbank covered person's aggregate annual international money transfers (measured as a three-year moving average of the number of annual international money transfers, aggregated with the annual international money transfers of affiliated companies)

<sup>72</sup> Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a rulemaking of this kind that does not establish standards of conduct are unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

<sup>65</sup> *Analysis of State Supervisory Data*.

<sup>66</sup> *Id.* As noted above, this estimate is based on the Bureau's review of confidential licensing data from California, New York, and Ohio and does not include entities that are not licensed in any of those States. In addition to the other possible sources of error identified in the *Analysis of State Supervisory Data*, the Bureau has not assessed affiliations of market participants. The Bureau's estimates therefore would not include entities that might have less than a threshold number of annual international money transfers on their own but that would meet the threshold when their transfers are aggregated with their affiliated companies' transfers.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

equaled or exceeded one million, it would be a larger participant. If an entity has been in business for less than three completed calendar years, its annual international money transfers would be the average amount of international money transfers per year over the course of its time in business.

#### *B. Potential Benefits and Costs to Consumers and Covered Persons*

This analysis considers the benefits, costs, and impacts of the key provisions of the Proposed Rule against a baseline that includes the Bureau's existing rules defining larger participants in certain markets.<sup>73</sup> Many States have supervisory programs relating to money transfers, which may consider aspects of consumer financial protection law. However, at present, there is no Federal program for supervision of nonbanks that are international money transfer providers with respect to consumer financial protection law. The Proposed Rule extends the Bureau's supervisory authority over international money transfer providers that are larger participants of the international money transfer market. This includes the authority to supervise for compliance with the EFTA and the Remittance Rule.

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

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

The discussion below describes three categories of potential benefits and

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

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

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

The prospect of potential supervisory activity could create an incentive for larger participants to allocate additional resources and attention to compliance with Federal consumer financial law, potentially leading to an increase in the level of compliance. They might anticipate that by doing so (and thereby decreasing risk to consumers), they could decrease the likelihood of their actually being subject to supervisory

activities as the Bureau evaluated the factors outlined above. In addition, an actual examination would be likely to reveal any past or present noncompliance, which the Bureau could seek to correct through supervisory activity or, in some cases, enforcement actions. Larger participants might therefore judge that the prospect of supervision increases the potential consequences of noncompliance with Federal consumer financial law, and they might seek to decrease that risk by taking steps to identify and cure or mitigate any noncompliance.

The Bureau believes it is likely that many market participants would increase compliance in response to the Bureau's supervisory activity authorized by the Proposed Rule. However, because finalization of the Proposed Rule itself would not require any international money transfer provider to alter its performance of international money transfers, any estimate of the amount of increased compliance would be both an estimate of current compliance levels and a prediction of market participants' behavior in response to a final rule. The data that the Bureau currently has do not support a specific quantitative estimate or prediction. But, to the extent that international money transfer providers allocate resources to increasing their compliance in response to the Proposed Rule, that response would result in both benefits and costs.<sup>74</sup>

#### a. Benefits From Increased Compliance

Increased compliance with consumer financial laws by larger participants in the international money transfer market would be beneficial to consumers who send international money transfers. The number of American consumers who could potentially be affected is significant. As noted above, data from the 2011 CPS show that more than 4 million U.S. households had used nonbanks to send money abroad to friends and family in the preceding year.<sup>75</sup> Increasing the rate of compliance with Federal consumer financial laws would benefit consumers and the consumer financial market by providing more of the protections mandated by those laws.

The EFTA and the Remittance Rule offer substantial consumer protections

<sup>74</sup> Another approach to considering the benefits, costs, and impacts of the Proposed Rule would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to inform the rulemaking more fully.

<sup>75</sup> 2011 CPS Report 32, 142–43.

<sup>73</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to inform the rulemaking more fully.

for international money transfers that are also remittance transfers. Together, the EFTA and the Remittance Rule clarify the remittance process for consumers by requiring the provision of standardized disclosures about pricing as well as increased consumer protections when transfers do not go as planned. For consumers, this should increase the transparency of remittance prices and facilitate dispute resolution when errors occur.

More broadly, the Bureau would be examining for compliance with other Federal consumer financial laws, which would include examining for whether larger participants of the international money transfer market engage in unfair, deceptive, or abusive acts or practices (UDAAPs).<sup>76</sup> Conduct that does not violate an express prohibition of another Federal consumer financial law may nonetheless constitute a UDAAP.<sup>77</sup> To the extent that any international money transfer provider is currently engaged in any UDAAPs, the cessation of the unlawful act or practice would benefit consumers. International money transfer providers might improve policies and procedures in response to possible supervision in order to avoid engaging in UDAAPs.

The possibility of supervision also may help make incentives to comply with Federal consumer financial laws more consistent between the likely larger participants and banks, which are already subject to Federal supervision with respect to Federal consumer financial laws. Although some nonbanks are already subject to State supervision, introducing the possibility of Federal supervision could encourage nonbanks that are likely larger participants to devote additional resources to compliance. It could also help ensure that the benefits of Federal oversight reach consumers who do not have ready access to bank-provided international transfers. In 2011, approximately one-sixth of individuals who sent money abroad to friends and family through a nonbank did not have a bank account.<sup>78</sup>

#### b. Costs of Increased Compliance

To the extent that nonbank larger participants would decide to increase

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

In considering any potential price effect of the Proposed Rule, it is important to take into account the fact that nonbanks below the larger-participant threshold would not be subject to supervision as a result of this rule. Because their costs would be unaffected by the Proposed Rule, their pricing should also not be affected. To the extent that nonbank larger participants raise their prices in response to this rule, small international money transfer providers could potentially seem attractive relative to larger participants. This potential effect could reduce the likelihood that larger participants would choose to increase their prices in response to the Proposed Rule.

#### 2. Benefits and Costs of Individual Supervisory Activities

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

##### a. Benefits of Supervisory Activities

Supervisory activity could provide several types of benefits. For example, as a result of supervisory activity, the Bureau and an entity might uncover deficiencies in the entity's policies and procedures. The Bureau's examination manual calls for the Bureau generally to prepare a report of each examination, to assess the strength of the entity's compliance mechanisms, and to assess the risks the entity poses to consumers, among other things. The Bureau would share examination findings with the

entity because one purpose of supervision is to inform the entity of problems detected by examiners. Thus, for example, an examination might find evidence of widespread noncompliance with Federal consumer financial law, or it might identify specific areas where an entity has inadvertently failed to comply. These examples are only illustrative of the kinds of information an examination might uncover.

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

Given the obligations international money transfer providers have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision also may benefit international money transfer providers under supervision by detecting compliance problems early. When an entity's noncompliance results in litigation or an enforcement action, the entity must face both the costs of defending its actions and the penalties for noncompliance, including potential liability for damages to private plaintiffs. The entity must also adjust its systems to ensure future compliance. Changing practices that have been in place for long periods of time can be expected to be relatively difficult because they may be severe enough to represent a serious failing of an entity's systems. Supervision may detect flaws at a point when correcting them would be relatively inexpensive. Catching problems early can, in some situations, forestall costly litigation. To the extent early correction limits the amount of consumer harm caused by a violation, it can help limit the cost of redress. In short, supervision might benefit international money transfer providers under supervision by, in the aggregate, reducing the need for other more expensive activities to achieve compliance.<sup>79</sup>

<sup>79</sup> Further potential benefits to consumers, covered persons, or both might arise from the Bureau's gathering of information during

<sup>76</sup> 12 U.S.C. 5531.

<sup>77</sup> The CFPB Supervision and Examination Manual provides further guidance on how the UDAAP prohibition applies to supervised entities and is available at <http://www.consumerfinance.gov/guidance/supervision/manual>.

<sup>78</sup> Bureau estimate based on 2011 CPS data, which is available at [http://thedataweb.rm.census.gov/ftp/cps\\_ftp.html](http://thedataweb.rm.census.gov/ftp/cps_ftp.html) and described at <http://www.consumerfinance.gov/prod/techdoc/cps/cpsjun11.pdf>.

## b. Costs of Supervisory Activities

The potential costs of actual supervisory activities would arise in two categories. The first would involve any costs to individual international money transfer providers of increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs would be similar in nature to the possible compliance costs, described above, that larger participants in general might incur in anticipation of possible supervisory actions. This analysis will not repeat that discussion. The second category would be the cost of supporting supervisory activity.

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

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

The primary cost an entity would face in connection with an examination would be the cost of employees' time to collect and provide the necessary information. If the Proposed Rule is adopted, the frequency and duration of examinations of any particular entity would depend on a number of factors, including the size of the entity, the compliance or other risks identified, whether the entity has been examined previously, and the demands on the Bureau's supervisory resources imposed by other entities and markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that entities might incur.

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

The average duration of the on-site portion of Bureau nonbank payday exams is approximately 8 weeks.<sup>80</sup> Assuming that each exam requires 2 weeks of preparation time by international money transfer provider staff prior to the exam as well as on-site assistance by staff throughout the duration of the exam, the Bureau assumes that the typical examination in this nonbank market would require 10 weeks of staff time. The Bureau has not suggested that counsel or any particular staffing level is required during an examination. However, for purposes of this analysis, the Bureau assumes, conservatively, that an entity might dedicate the equivalent of one full-time compliance officer and one-tenth of a full-time attorney to the exam. The average hourly wage of a compliance officer in a nonbank entity that operates

<sup>80</sup> This estimate was derived using confidential supervisory Bureau data on the duration of on-site payday loan examinations at nonbanks. For purposes of this calculation, the Bureau counted its payday loan examinations for which the on-site portion had been completed. The Bureau counted only the on-site portion of an examination, which included time during the on-site period of the examination that examiners spent examining the entity while off-site for holiday or other travel considerations. However, the Bureau did not count time spent scoping an examination before the on-site portion of the examination or summarizing findings or preparing reports of examination afterwards.

in activities related to credit intermediation is \$31.53, and the average hourly wage of a lawyer in the same industry is \$77.52.<sup>81</sup> Assuming that wages account for 67.1 percent of total compensation,<sup>82</sup> the total labor cost of an examination would be about \$23,500.<sup>83</sup> The Bureau estimates that the cost for an entity that sends 1 million transfers per year, with an average transfer amount of \$200, would be approximately 0.18 percent of total revenue from such transfers for that year.<sup>84</sup> Note that this is a conservative estimate in several respects because it reflects revenue only from this line of business and uses a relatively small average international money transfer size as well as the minimum number of transactions that a larger participant would provide.<sup>85</sup>

The overall costs of supervision in the international money transfer market would depend on the frequency and extent of Bureau examinations. Neither the Dodd-Frank Act nor the Proposed Rule specifies a particular level or

<sup>81</sup> Bureau of Labor Statistics Occupational Employment Statistics (OES) Survey, May 2012 estimates for NAICS code 522300, available at [http://www.bls.gov/oes/current/naics4\\_522300.htm](http://www.bls.gov/oes/current/naics4_522300.htm).

<sup>82</sup> Bureau of Labor Statistics series CMU202522000000D, Quarters 2 and 3 2012, available at [http://data.bls.gov/timeseries/CMU202522000000D?data\\_tool=XGtable](http://data.bls.gov/timeseries/CMU202522000000D?data_tool=XGtable).

<sup>83</sup> Assuming that individuals are compensated for 40 hour work weeks, this is calculated as follows:  $[(0.1 * 77.52 + 31.53) / 0.671] * 40 * 10$ .

<sup>84</sup> This assumption is based on research on remittances suggesting that the average price of sending money abroad from the United States is roughly 6.42 percent of the total amount sent. World Bank, Remittance Prices Worldwide, An Analysis of Trends in the Average Total Cost of Migrant Remittance Services (Sept. 2013) 11 (percentage is average price of \$200 transfers in Q3 2013), available at [https://remittanceprices.worldbank.org/sites/default/files/RPW\\_Report\\_Sep2013.pdf](https://remittanceprices.worldbank.org/sites/default/files/RPW_Report_Sep2013.pdf). The Bureau measured proportion of revenues using the following equation:  $\text{Proportion of revenues} = [(0.1 * 77.52 + 31.53) / 0.671] * 40 * 10 / \{1,000,000 * 200 * 0.0642\}$ .

<sup>85</sup> A \$200 average transfer size is a conservative estimate. Review of the *CA Extrapolation* figures (\$49 billion total market dollar volume and 152 million total market transfers) suggests that the average transaction size is just over \$300. For entities reporting to California, New York, and Ohio that sent over 500,000 transfers, the *Analysis of State Supervisory Data* suggests that the average transfer size is about \$300. Using a \$300 average transfer size, the cost of supervision would be approximately 0.12 percent of total revenues for an entity that sends 1 million transfers per year. Other sources from 2005 and 2008 also suggest a higher average transfer size. Ole E. Andreassen, Remittance Service Providers in the United States: How Remittance Firms Operate and How They Perceive Their Business Environment 15–16 (June 2006), available at <http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/BusinessmodelsFSEseries.pdf> (\$550); Bendixen & Amandi, Survey of Latin American Immigrants in the United States 23 (Apr. 30, 2008), available at [idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35063818](http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35063818) (\$325).

frequency of examinations.<sup>86</sup> The frequency of examinations would depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations; and the demands that other markets make on the Bureau's supervisory resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means. The Bureau therefore declines to predict, at this point, precisely how many examinations in the international money transfer market it would undertake in a given year.

### 3. Costs of Assessing Larger-Participant Status

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

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

To the extent that some international money transfer providers do not already

know whether their transactions exceed the threshold, such nonbanks might, in response to the Proposed Rule, develop new systems to count their transactions in accordance with the proposed definition of "international money transfer." The data that the Bureau currently has do not support a detailed estimate of how many international money transfer providers would engage in such development or how much they would spend. Regardless, international money transfer providers would be unlikely to spend significantly more on specialized systems to count transactions than it would cost to be supervised by the Bureau as larger participants. It bears emphasizing that even if expenditures on a counting system successfully proved that an international money transfer provider was not a larger participant, it would not necessarily follow that the entity could not be supervised. The Bureau can supervise specific international money transfer providers whose conduct the Bureau determines, pursuant to 12 U.S.C. 5514(a)(1)(C), poses risks to consumers. Thus, an international money transfer provider choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it would not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes very few if any international money transfer providers would undertake such expenditures.

### 4. Consideration of Alternatives

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

First, the Bureau is considering various other criteria for assessing larger-participant status, including annual receipts from international money transfers and annual transmitted dollar volume. Calculating either of those metrics may be more involved than calculating the number of international money transfers. If so, a given nonbank might face greater costs for evaluating or disputing whether it qualified as a larger participant should the occasion to do so to arise. The Bureau expects that for both annual receipts and annual transmitted dollar volume it could choose a suitable threshold for which the number of larger participants, among those nonbanks participating in the market today, would be the same as the number of nonbanks expected to qualify under the Proposed Rule. Consequently, the

costs, benefits, and impacts of supervisory activities should not depend on which criterion the Bureau uses.

The second possible alternative the Bureau is considering is selecting a different threshold. One alternative would be to set the threshold substantially higher—for example at three million aggregate annual international money transfers—and cover only the very largest nonbanks in the market. Under such an alternative, the benefits of supervision to both consumers and covered persons would likely be reduced because entities impacting a substantial number of consumers and/or consumers in important market segments might be omitted. On the other hand, the potential costs to covered persons would of course be reduced if fewer entities were defined as larger participants and thus fewer were subject to the Bureau's supervisory authority on that basis. Conversely, lowering the threshold would subject more entities to the Bureau's supervisory authority, but the total direct costs for actual examination activity might not change substantially because the Bureau conducts exams on a risk basis and would not necessarily examine more entities even if the rule's coverage were broader.<sup>87</sup>

### C. Potential Specific Impacts of the Proposed Rule

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

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

<sup>87</sup> Another alternative under consideration is setting different thresholds for each region. As alluded to earlier, international money transfer submarkets tend to be segmented by corridor: Individuals wishing to send remittances to El Salvador, for example, cannot easily substitute transfers to Moldova. One could define a larger-participant threshold for different geographic regions so that the entities that provide the most transfers to a given region could be supervised. Given the paucity of data on region-specific transactions, however, any definition of these thresholds might be more difficult to establish and to administer over time.

<sup>86</sup> The Bureau declines to predict at this time precisely how many examinations it would undertake at each international money transfer provider if the Proposed Rule is adopted. However, if the Bureau were to examine each entity that would be a larger participant of the international money transfer market under the Proposed Rule once every two years, the expected annual labor cost of supervision per larger participant would be approximately \$11,750 (the cost of one examination, divided by two). This would account for 0.09 percent of the international money transfer revenue of an entity that sends one million transfers in a year, assuming an average transaction amount of \$200.

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

Because the rule applies uniformly to international money transfers of both rural and non-rural consumers, the rule should not have a unique impact on rural consumers. The Bureau is not aware of any evidence suggesting that rural consumers have been disproportionately harmed by international money transfer providers' failure to comply with Federal consumer financial law. The Bureau would welcome any comments that may provide information related to how international money transfers affect rural consumers.

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.<sup>88</sup> 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.<sup>89</sup>

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) of any proposed rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.<sup>90</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.<sup>91</sup>

The undersigned certifies that the Proposed Rule, if adopted, would not have a significant economic impact on a substantial number of small entities

<sup>88</sup> 5 U.S.C. 601 *et seq.* The term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment]. *Id.* at 601(4). The term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]. *Id.* at 601(5). The Bureau is not aware of any small governmental units or small not-for-profit organizations to which the Proposed Rule would apply.

<sup>89</sup> 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with SBA and an opportunity for public comment.

<sup>90</sup> 5 U.S.C. 605(b).

<sup>91</sup> 5 U.S.C. 609.

and that an IRFA is therefore not required.

The Proposed Rule would define a class of international money transfer providers as larger participants of the international money transfer market and thereby authorize the Bureau to undertake supervisory activities with respect to those nonbanks. The Proposed Rule adopts a threshold for larger-participant status of one million aggregate annual international money transfers. Under what the Bureau believes is the most relevant SBA threshold, an international money transfer provider is a small business only if its annual receipts are below \$19 million.<sup>92</sup> Of the approximately 25 potential larger participants identified by the Bureau among the California, New York, and Ohio licensees, the Bureau estimates there are approximately 10 providers with annual receipts under \$19 million.<sup>93</sup>

<sup>92</sup> 13 CFR 121.201 (NAICS code 522390). The Bureau believes that larger participants in the proposed international money transfer market are likely to be classified in North American Industry Classification System (NAICS) code 522390, "Other Activities Related to Credit Intermediation." NAICS lists "[m]oney transmission services" as an index entry corresponding to this code. See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522390&search=2012NAICSSearch>. The Bureau welcomes comment on whether this or any other NAICS code is most appropriate for this market. The Bureau is aware that a nonbank larger participant of the proposed international money transfer market might be classified in a NAICS code other than the one that includes money transmission services. For example, some larger participants may be classified under NAICS code 522320 for financial transactions processing, reserve, and clearing house activities. NAICS lists "[e]lectronic funds transfer services" as an index entry corresponding to code 522320. See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2012>.

<sup>93</sup> The Bureau was able to access revenue figures of potential larger participants from New York's confidential licensing data as well as the Nationwide Mortgage Licensing System & Registry (NMLS), a centralized licensing database used by many States to manage their license authorities with respect to various consumer financial industries, including money transmitters. The NMLS provided the Bureau with information regarding specific entities pursuant to a memorandum of understanding. The revenue figures that the Bureau used did not include annual receipts of affiliates, as those terms are defined by the SBA. 13 CFR 121.104 (annual receipts); 13 CFR 121.103 (affiliation). As mentioned above, the Bureau identified 23 entities among the California, New York, and Ohio licensees that it believes would be larger participants under the Proposed Rule. 9 of these entities had less than \$19 million in receipts according to information from the NMLS and confidential licensing data from New York. As explained above in the *Analysis of State Supervisory Data*, there are an additional 6 entities for which the Bureau was not able to estimate international money transfers because the data received include a significant amount of business-initiated transactions or include other transactions that are not likely to constitute international money transfers. The Bureau believes it is possible that some of these 6 entities would be larger

According to the 2007 Economic Census, there are more than 5,000 small firms in the North American Industry Classification System (NAICS) industry the Bureau believes is applicable to most international money transfer providers.<sup>94</sup> Therefore, according to the Bureau's analysis, this rule would impact less than one percent of the small businesses in the industry.<sup>95</sup> For these reasons, the Proposed Rule would not have a significant impact on a substantial number of small entities.<sup>96</sup>

participants. Of the 6 entities, the Bureau estimates that 1 has annual receipts under \$19 million based on data from the NMLS and New York. Although there may be additional larger participants that the Bureau has not identified because they are not licensed in California, New York, or Ohio, it is unlikely that there are many more small entities that would be subject to the Proposed Rule because as explained above the Bureau's market research suggests that most entities that provide one million or more transfers per year are licensed in at least one of those three States.

<sup>94</sup> U.S. Census Bureau, 2007 Economic Census, American FactFinder, Finance and Insurance: Subject Series—Etab. and Firm Size: Summary Statistics by Revenue Size of Firms for the United States, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_52SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_52SSSZ4&prodType=table) (NAICS code 522390).

<sup>95</sup> The Bureau believes that this a conservative estimate for the most applicable NAICS code (522390) because the Bureau estimates that only about 10 larger participants licensed in California, New York, or Ohio would be small businesses, accounting for approximately 0.2 percent of the roughly 5,000 small firms within NAICS code 522390. Alternatively, the Bureau notes that the SBA's size standard for NAICS code 522320, "Financial Transactions Processing, Reserve, and Clearing House Activities," is \$35.5 million in annual receipts. 13 CFR 121.201 (NAICS code 522320). Using that size standard, the Bureau estimates that 12 of the 23 entities that the Bureau identified as potential larger participants among the California, New York, and Ohio licensees might be small businesses. Among the 6 additional entities mentioned above for which the Bureau could not estimate transaction amounts, the Bureau estimates that 2 would be small businesses under this standard based on receipts information from NMLS and New York. There could be additional small entities that are larger participants but were not included in the foregoing estimates because they are not licensed in California, New York, or Ohio, but as noted above it is unlikely that there would be many such entities. According to the 2007 Economic Census, there are at least 1,800 small firms classified under NAICS code 522320. U.S. Census Bureau, 2007 Economic Census, American FactFinder, Finance and Insurance: Subject Series—Etab. and Firm Size: Summary Statistics by Revenue Size of Firms for the United States, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_52SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_52SSSZ4&prodType=table) (NAICS code 522320). Therefore, under the Bureau's analysis, this Proposed Rule would impact less than 1 percent of the small businesses in the industry under that NAICS code.

<sup>96</sup> Because the Bureau has not assessed the affiliations of potential larger participants, the Bureau's estimate of small entity larger participants may include some larger participants that are not in fact small entities due to the receipts of their affiliates, which are counted towards an entity's annual receipts for purposes of assessing whether

Additionally, and in any event, the Bureau believes that the Proposed Rule would not result in a “significant impact” on any small entities that could be affected. The rule does not itself impose any business conduct obligations. As previously noted, when and how often the Bureau would in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the extent of such activity) would depend on a number of considerations, including the Bureau’s allocation of resources and the application of the statutory factors set forth in 12 U.S.C. 5514(b)(2). Given the Bureau’s finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, when and how often a given international money transfer provider would be supervised is uncertain. Moreover, when supervisory activity occurred, the costs that would result from such activity are expected to be minimal in relation to the overall activities of an international money transfer provider.<sup>97</sup>

Finally, 12 U.S.C. 5514(e) authorizes the Bureau to supervise service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. Because the Proposed Rule would not address service providers, effects on service providers need not be discussed for purposes of this RFA analysis. Even were such effects relevant, the Bureau believes that it would be very unlikely that any supervisory activities with respect to the service providers to the approximately 25 larger participants of the proposed nonbank market for international money transfers would result in a significant economic impact on a substantial number of small entities.<sup>98</sup>

an entity is a small business concern under the SBA’s definition. 13 CFR 121.104(d). Conversely, it is possible there are additional small firms that have less than one million annual international money transfers on their own, but that would meet the proposed threshold of one million transfers when their transfers are aggregated with their affiliated companies’ transfers. However, the Bureau anticipates no more than a very few such cases, if any, in the international money transfer market.

<sup>97</sup> As discussed above, the Bureau estimates that the cost of participating in an examination would be approximately 0.18 percent of annual revenue from international money transfers for an entity at the threshold of 1 million aggregate annual international money transfers.

<sup>98</sup> The Bureau is aware that there are likely thousands of service providers to potential larger participants of the international money transfer market. Many of these service providers might be considered to be in the industry with NAICS code 522390 for other activities related to credit intermediation. As discussed above, according to the 2007 Economics Census, there are more than

Accordingly, the undersigned certifies that the Proposed Rule would not have a significant economic impact on a substantial number of small entities.

#### VIII. Paperwork Reduction Act

The Bureau has determined that this Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 12 CFR Part 1090

Consumer protection, Credit.

#### Authority and Issuance

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

#### PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER FINANCIAL PRODUCT AND SERVICE MARKETS

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

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

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

#### § 1090.107 International Money Transfer Market.

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

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

5,000 small firms in the industry. Other service providers may be classified in NAICS code 522320 for financial transactions processing, reserve, and clearing house activities, which includes at least 1,800 small firms. Still other service providers, including many retail agents, are likely to be considered in other NAICS codes corresponding to the service provider’s primary business activities. As noted above with respect to larger participants themselves, the frequency and duration of examinations that would be conducted at any particular service provider would depend on a variety of factors. However, it is implausible that in any given year the Bureau would conduct examinations of a substantial number of the more than 5,000 small firms in NAICS code 522390, the more than 1,800 small firms in NAICS code 522320, or the small firm service providers that happen to be in any other NAICS code. Moreover, the impact of supervisory activities, including examinations, at such small firm service providers can be expected to be less, given the Bureau’s exercise of its discretion in supervision, than at the larger participants themselves.

(i) *Annual international money transfers.* Annual international money transfers of a nonbank covered person are calculated as follows:

(A) Annual international money transfers of a nonbank covered person that has been in business for three or more completed calendar years means the international money transfers provided by the nonbank covered person over its three most recently completed calendar years divided by three.

(B) Annual international money transfers of a nonbank covered person that has been in business for less than three completed calendar years means the international money transfers provided by the nonbank covered person for the period the nonbank covered person has been in business divided by the number of weeks the nonbank covered person has been in business, multiplied by 52.

(ii) *Agents.*

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

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

(C) For purposes of this paragraph (ii), agent means an agent or authorized delegate, as defined under State or other applicable law, or affiliated company of a person that provides international money transfers when such agent, authorized delegate, or affiliated company acts for that person.

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

(A) The annual international money transfers of each affiliated company of a nonbank covered person are calculated separately in accordance with paragraphs (i) and (ii) of this definition, treating the affiliated company as if it were an independent nonbank covered person for purposes of the calculation. This may result in using a different period of measurement to calculate an affiliated company’s annual international money transfers. Thus, for example, if an affiliated company has been in business for a period of less than three years, the affiliated company’s international money transfers are to be annualized in accordance with paragraph (i)(B) of this definition even if the nonbank covered



person with which it is affiliated has been in business for three or more completed calendar years.

(B) The annual international money transfers of a nonbank covered person and the annual international money transfers of its affiliated companies are aggregated as follows:

(1) If a nonbank covered person has acquired an affiliated company or been acquired by an affiliated company during the applicable period of measurement, the annual international money transfers of the nonbank covered person and the affiliated company are aggregated for the entire period of measurement (not just the period after the affiliation arose).

(2) The annual international money transfers of a formerly affiliated company are not included if affiliation ceased before the applicable period of measurement as set forth in paragraph (i) of this definition. The annual international money transfers of a formerly affiliated company are aggregated for the entire period of measurement if affiliation ceased during the applicable period of measurement as set forth in paragraph (i) of this definition.

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

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

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

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

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

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

Dated: January 23, 2014.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2014-01606 Filed 1-30-14; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapter 1

[Docket No. FAA-2013-0988]

#### Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of proposed clarification of policy; Extension of comment period.

**SUMMARY:** In order to provide the public additional time to submit comments on the proposed Policy, the Federal Aviation Administration ("FAA") is extending the public comment period for thirty days. This action proposes to amend the FAA Policy and Procedures Concerning the Use of Airport Revenue published in the **Federal Register** at 64 FR 7696 on February 16, 1999 ("Revenue Use Policy") to clarify FAA's policy on Federal requirements for the use of proceeds from taxes on aviation fuel. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. The revenue use requirements apply to certain state and local government taxes on aviation fuel as well as to revenues received directly by an airport operator. This notice publishes a proposed clarification of FAA's understanding of the Federal requirements for use of revenues derived from taxes on aviation fuel. Briefly, an airport operator or state government submitting an application under the Airport Improvement Program must provide assurance that revenues from state and local government taxes on aviation fuel are used for certain aviation-related purposes. These purposes include airport capital and operating costs, and state aviation programs. In view of the interests of sellers and consumers of aviation fuel, and of state and local government taxing

authorities in limits on use of proceeds from taxes touching aviation fuel, this notice solicits public comment on the proposed policy clarification. This notice also solicits comments about whether there are other reasonable interpretations regarding local taxes that are not enumerated here and should be considered by the FAA. Finally, this proposed policy clarification, if finalized, would apply prospectively to use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering from revenue use requirements.

**DATES:** Comments period for the Notice published on November 21, 2013, at 78 FR 69789 and closed on January 21, 2014 is extended to March 3, 2014. Comments that are received after that date will be considered only to the extent possible.

**ADDRESSES:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may also send written comments by any of the following methods.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically. Docket Number: FAA 2013-0988.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington DC 20590-0001.

- *Hand Delivery:* Deliver to mail address above between 9:00 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251

Identify all transmission with "Docket Number FAA 2013-0988" at the beginning of the document.

**FOR FURTHER INFORMATION CONTACT:** Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3085; facsimile (202) 267-5257.

#### SUPPLEMENTARY INFORMATION:

#### Authority for the Proposed Policy Clarification

This notice is published under the authority described in Subtitle VII, part B, chapter 471, section 47122, and the Federal Aviation Administration Authorization Act of 1994, § 112(a),