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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB-2012-0050]

RIN 3170-AA33

Electronic Fund Transfers (Regulation E) Temporary Delay of Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to delay the February 7, 2013, effective date of final rules published by the Bureau on February 7, 2012, and August 20, 2012 (collectively, 2012 Final Rule), that amend Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The 2012 Final Rule implements statutory requirements set forth in section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding remittance transfers. The Bureau is delaying the effective date of the 2012 Final Rule pending the finalization of a proposal, published on December 31, 2012 (December 2012 Proposal), that would address three narrow issues in the 2012 Final Rule. The Bureau will determine the new effective date when it finalizes the December 2012 Proposal.

DATES: The effective date of the Final Rules published February 7, 2012 (77 FR 6194) and August 20, 2012 (77 FR 50244) and technical correction published July 10, 2012 (77 FR 40459) is delayed. The Bureau will publish a document in the Federal Register announcing the new effective date.

FOR FURTHER INFORMATION CONTACT: Eric Goldberg or Lauren Weldon, Counsels,

or Dana Miller, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Overview

Section 1073 of the Dodd-Frank Act¹ amended the EFTA² to create a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions sent by remittance transfer providers, section 1073 creates a new EFTA section 919, and generally requires: (i) the provision of disclosures prior to and at the time of payment by the sender for the transfer; (ii) cancellation and refund rights; (iii) the investigation and remedy of errors by providers; and (iv) liability standards for providers for the acts of their agents.

On February 7, 2012, the Bureau published a final rule to implement section 1073 of the Dodd-Frank Act. 77 FR 6194 (February Final Rule).³ On August 20, 2012, the Bureau published a supplemental rule adopting a safe harbor for determining which companies are not remittance transfer providers subject to the February Final Rule because they do not provide remittance transfers in the normal course of business, and modifying several aspects of the February Final Rule regarding remittance transfers that are scheduled before the date of transfer. 77 FR 50244. The 2012 Final Rule adopted an effective date of February 7, 2013. In the February Final Rule, the Bureau stated that it would continue to monitor implementation of the new statutory and regulatory requirements. The Bureau has subsequently engaged in dialogue with both industry and consumer groups regarding implementation efforts and compliance

¹ Public Law 111-203, 124 Stat. 1376, section 1073 (2010).

² 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified in 15 U.S.C. 1693o-1.

³ A technical correction to the February Final Rule was published on July 10, 2012. 77 FR 40459. For simplicity, that technical correction is incorporated into the term “February Final Rule.”

concerns.

Upon further review and analysis of these concerns, the Bureau published the December 2012 Proposal to refine several narrow aspects of the 2012 Final Rule. 77 FR 77188 (Dec. 31, 2012). The Bureau also proposed to extend the 2012 Final Rule's effective date until 90 days after the finalization of the December 2012 Proposal. The comment period on both the proposed substantive changes and the new effective date of the 2012 Final Rule closes on January 30, 2013.⁴ The Bureau intends to finalize the proposal expeditiously following the close of this comment period.

Given the impending February 7, 2013 effective date of the 2012 Final Rule, the Bureau simultaneously solicited comment on whether it should temporarily delay the effective date pending finalization of the December 2012 Proposal. The comment period on this narrow aspect of the December 2012 Proposal closed on January 15, 2013.

II. Overview of Comments and Outreach

The Bureau received approximately 43 comments on its December 2012 Proposal to delay the effective date of the 2012 Final Rule beyond February 7, 2013. Commenters generally supported, or did not oppose, the temporary delay. All commenters that addressed the effective date either directly expressed support for or did not object to the proposed delay or indirectly supported the proposed delay by addressing the December 2012 Proposal's 90-day proposed extension.

III. Summary of the Final Rule

Based on comments received, the Bureau is temporarily delaying the effective date for

⁴ Details on how to submit a comment on both the substantive changes in the proposal and the new effective date of the Final Rule, are available at 77 FR 77188 (Dec. 31, 2012) or at <https://www.federalregister.gov/articles/2012/12/31/2012-31170/electronic-fund-transfers-regulation-e>. Comments must be submitted on or before January 30, 2013.

the 2012 Final Rule pending finalization of the December 2012 Proposal. The new effective date will be determined when the substantive refinements to the December 2012 Proposal are finalized. The new effective date will be after February 7, 2013. As noted above, the Bureau proposed that the 2012 Final Rule and any revisions resulting from the December 2012 Proposal would become effective 90 days after the Bureau finalizes the proposal.

IV. Status of the Bureau's Remittance Rule Safe Harbor Countries List

On September 26, 2012, the Bureau issued a safe harbor list of countries that qualify for an exception in the 2012 Final Rule that permits estimated disclosures of certain figures where the laws of the recipient country do not permit a determination of the exact amounts.⁵ In that issuance, the Bureau explained that it would not remove countries from the list before May 1, 2013. In light of the temporary delay of the effective date of the 2012 Final Rule, the Bureau will reassess the earliest date on which, if necessary, countries may be removed from the list in connection with the finalization of the December 2012 Proposal, although that date will not be before May 1, 2013.

In the meantime, the Bureau continues to welcome input on possible amendments to the list. The Bureau's September 26, 2012 issuance on the safe harbor list of countries contains details on how to submit this feedback.

V. Legal Authority and Effective Date

Section 1073 of the Dodd-Frank Act creates a new section 919 of the EFTA and requires remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must give a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance

⁵ See http://files.consumerfinance.gov/f/201209_CFPB_Remittance-Rule-Safe-Harbor-Countries-List.pdf (Sept. 26, 2012).

transfer. The provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information. EFTA section 919(a). In addition, EFTA section 919(d) directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies and to investigate and remedy errors by providers.

In addition to the statutory mandates set forth in the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish “the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems” and to provide “individual consumer rights.” EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers, that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance.

This final rule will be effective on the date of publication in the Federal Register. Under section 553(d) of the Administrative Procedure Act (APA), the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). This final rule does not establish any requirements but rather delays the effective date of the 2012 Final Rule pending the finalization of the December 2012 Proposal. Therefore, under section 553(d)(1) of the APA, the Bureau is publishing this final rule less than 30 days before its effective date because it is a

substantive rule which grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d)(1). The Bureau further finds it has good cause pursuant to section 553(d)(3) of the APA to dispense with the 30-day delayed effective date requirement because, on balance, the need to implement immediately the delay of the 2012 Final Rule's February 7, 2013 effective date before that date occurs outweighs the need for affected parties to prepare for this delay.

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

Section V of the December 2012 Proposal contained the Bureau's preliminary analysis under section 1022(b)(2) of the Dodd-Frank Act of the potential costs of the December 2012 Proposal to consumers and covered persons (as defined in Dodd-Frank Act section 1002(6), 12 U.S.C. 5481(6)). In the final portion of that section, the Bureau addressed the impact of the proposed delay of the effective date on covered persons and consumers. *See* Section V.3. of the December 2012 Proposal.

In the proposal, the Bureau stated that the temporary delay of the 2012 Final Rule's effective date would generally benefit remittance transfer providers by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible.

The Bureau also recognized that the proposed temporary delay of the effective date would impose some costs on senders by temporarily delaying the time when they would receive the benefits of Dodd-Frank section 1073 and the 2012 Final Rule from February 7, 2013 to the ultimate effective date. Thus, consumers at most will only lose benefits from Dodd-Frank section 1073 that would have accrued during the length of the temporary delay. (As noted above, the Bureau has not yet determined when the 2012 Final Rule will take effect but has proposed that it would become effective 90 days after the Bureau finalizes the December 2012

Proposal.) The Bureau also noted that senders may benefit from the temporary delay to the extent that both the proposed refinements and the additional time providers have to implement the 2012 Final Rule may eliminate any disruptions in the provision of remittance transfer services.

Further, the Bureau is not aware of any unique impact that this final rule might have on insured depository institutions or insured credit unions with total assets of \$10 billion or less as described in section 1026(a) of the Dodd-Frank Act, or on rural consumers.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau did not perform an IFRA because it determined and certified that the December 2012 Proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau did not receive any comments regarding its certification of the delayed effective date proposed in the December 2012 Proposal, and is adopting that aspect of the December 2012 Proposal without change.

A FRFA is not required for this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will temporarily delay the February 7, 2013 effective date of the 2012 Final Rule, pending the finalization of the December

2012 Proposal that would address three narrow issues in the 2012 Final Rule. The Bureau will determine the new effective date when it finalizes the December 2012 Proposal. The delay in effective date will generally benefit small remittance transfer providers, by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible.

Accordingly, the undersigned hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act Analysis

The Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Bureau determined that the December 2012 Proposal's proposed delay of the effective date of the 2012 Final Rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered persons or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres.

List of Subjects in 12 CFR Part 1005

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

Dated: January 19, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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