IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, v. CITIBANK, N.A., Defendant.	Case No. 24 Civ. 0659 (JPO)

[PROPOSED] STATEMENT OF INTEREST OF THE
CONSUMER FINANCIAL PROTECTION BUREAU
IN SUPPORT OF PLAINTIFF

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INTRODUCTION

The Consumer Financial Protection Bureau respectfully submits this Statement of Interest to assist the Court in its evaluation of Citibank's motion to dismiss New York's first cause of action. Citibank argues that the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E offer no protection to consumers if a scammer accesses their online account and electronically authorizes Citibank to debit the consumer's account so that Citibank can execute a wire transfer to the scammer's bank. Because wire transfers are excluded from EFTA, Citibank claims the entire transaction is exempt from EFTA end-to-end, from when the funds are debited from a consumer's account, through the bank-to-bank wire transfer, all the way to when the funds are deposited in a scammer's account. As a result, Citibank says that it need only comply with the more permissive provisions of the Uniform Commercial Code (UCC) even with respect to the portion of the transaction involving the scammer's purported electronic authorization for Citibank to debit the consumer's account.

Citibank says that the harsh result it prefers is compelled by EFTA and longstanding regulatory history. It even goes so far as to suggest that the Bureau agrees with Citibank's understanding of the law. The Bureau does not. The Bureau submits this Statement of Interest to make its views clear, as the federal agency primarily responsible for administering, interpreting, and enforcing EFTA and Regulation E. 12 U.S.C. § 5481(12), (14); 15 U.S.C. § 1693b.

Based on more than three decades of regulatory history, the Bureau's understanding is that when a transaction that otherwise qualifies as an "electronic fund transfer" includes a fund transfer by wire, only the wire portion of the transfer is excluded from EFTA and Regulation E coverage. The remaining electronic fund transfer is subject to EFTA and Regulation E.

BACKGROUND

Statutory and Regulatory Background

EFTA was enacted in 1978 with the primary purpose of providing consumers with individual rights in electronic fund transfers. 15 U.S.C. § 1693. Among other safeguards, EFTA and Regulation E provide important consumer protections in connection with unauthorized electronic fund transfers. For instance, so long as a consumer promptly notifies their financial institution that their account access device (such as a password or a PIN) has been stolen, EFTA and Regulation E cap the consumer's losses at $50, require the financial institution to conduct an investigation, and require the financial institution to provisionally credit the consumer's account if that investigation takes longer than 10 days. *See id.* § 1693g; 12 C.F.R. §§ 1005.6, 1005.11.

EFTA defines the term "electronic fund transfer" as "any transfer of funds … which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." 15 U.S.C. § 1693a(7). EFTA also provides several exclusions from the term, which include both particular types of transfers (*i.e.*, wire transfers, certain automatic transfers, and individual telephonic transfers) and certain transactions that are completely excluded based on their purpose or how they are originated. *Id.* The wire transfer exclusion exempts only a "transfer of funds … made by a financial institution on behalf of a consumer by means of a [wire] service." *Id.* § 1693a(7)(B). As the Senate Report recognized, the exclusion thus applies to "traditional 'wire' transfers between banks," S. Rep. No. 95-915, 4, 8 (1978), because only the transfer of funds between banks occurs "by means of a [wire] service."

Although excluded from EFTA, today such bank-to-bank transfers are generally covered by the UCC and its Article 4A. Transfers over private wire networks, such as CHIPS, may be subject to Article 4A by operation of user agreements and rules, and state adoption of the UCC. Transfers over Fedwire, which is operated by the Federal Reserve Banks, are governed by Article 4A as incorporated by the Federal Reserve Board's Regulation J. In contrast to EFTA's focus on consumer rights, Article 4A is "primarily intended to govern the rights and responsibilities among the commercial parties to a funds transfer, that is, the financial institution that accepts a payment order for a funds transfer and any other financial institutions that may be involved in carrying out the transfer." 77 Fed. Reg. 6194, 6212 (Feb. 7, 2012). This contrast can have a material impact on consumers; for example, unlike EFTA's $50 cap on consumer losses for unauthorized transfers, Article 4A holds a consumer liable for the amount in full if an unauthorized transfer was made pursuant to a "commercially reasonable" security procedure and the bank accepted the payment order in good faith and in compliance with that security procedure. *See* 12 C.F.R. pt. 210, App. A, § 4A-202(b).

But when EFTA was enacted, transfers made by means of a wire service largely lacked even the UCC's commercially-focused regulations. The UCC's Article 4A, which governs wire transfers, was not created until 1989—well after EFTA's passage. 1 Donald I. Baker et al., *The Law of Electronic Fund Transfer Systems* § 13.02 (2024). In the 1970s, wire transfers were regulated by the operating rules of private fund transfer systems; through caselaw that drew from background principles in other areas of the law; or by a previous version of Regulation J, which did not incorporate UCC Article 4A because Article 4A did not yet exist. *See* 12 C.F.R. § 210.50 et. seq. (1977); Baker, *supra*, § 13.02. Prior to its amendment to incorporate Article 4A in 1990—and at the time EFTA was enacted in 1978—Subpart B of Regulation J addressed the obligations banks had to each other with respect to wire transfers through Federal Reserve

Banks, but it notably did not regulate the relationship between a sender (the person requesting a wire transfer) and the transferor bank that would fulfill that request. *Id*.

Traditionally, wire transactions on behalf of consumers may have seldom been paid for through a means that qualified as an electronic fund transfer subject to EFTA. At EFTA's enactment in 1978, consumers authorizing wire transfers would often have gone in-person to a bank branch—a scenario that, absent more, does not satisfy the definition of an electronic fund transfer given the exclusion of fund transfers by wire. However, as banks' offerings evolved, banks sometimes offered consumers the ability to electronically authorize transfers that were conducted in part via a bank-to-bank wire transfer. Regulators kept pace: Since 1996, EFTA's implementing Regulation E has explicitly addressed what happens when an electronic fund transfer includes a transfer by wire service. Regulation E's official commentary provides that "[t]he portion of the fund transfer that is governed by the EFTA is not governed by subpart B of the Board's Regulation J." 12 C.F.R. pt. 1005, Supp. I, cmt. 3(c)(3)-2. Accordingly, "if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement, the transfer could be covered by both Regulation E and Article 4A." 61 Fed. Reg. 19678, 19680 (May 2, 1996). Similarly, "if a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by [Regulation E] even though the Fedwire or network transfer is exempt." *Id.* at 19687; *see also* 12 C.F.R. pt. 1005, Supp. I, cmt. 3(c)(3)-1.

In providing for hybrid legal treatment of these hybrid transfers, the Board considered but did not adopt industry's view that Article 4A applied end-to-end, as that would risk "subjecting consumers to full liability for unauthorized transfers merely because some part of the transfer, which would ordinarily be covered by Regulation E, is made via Fedwire." 61 Fed. Reg. at 19679-80.

Moreover, the Board's Regulation J, which governs Fedwire, one of the most commonly-used wire transfer systems in the country, also allows for EFTA coverage of some portion of a transaction that includes a wire transfer. When amending Regulation J in 1990, the Board recognized that "a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearing house or other means that is subject to the Electronic Fund Transfer Act or Regulation E." 55 Fed. Reg. 40791, 40804 (Oct. 5, 1990). The Board provided that for these kinds of hybrid transactions, Regulation J "governs a funds transfer that is sent through the Fedwire Funds Service" while "the portion of such funds transfer that is governed by the Electronic Fund Transfer Act . . . is not governed by [Regulation J]." 12 C.F.R. § 210.25(b)(3).[1]

Procedural Background

New York alleges that when consumers (or purported consumers) authorize wire transfers using Citibank's online banking platform, Citibank executes the wire transfers by first conducting an initial intra-bank fund transfer that debits an individual consumer's account and moves the money to a pooled Citibank account. *See* Compl. ¶¶ 56-58, ECF No. 1. New York alleges that Citibank only sends the funds over a wire service to another bank after that intra-bank transfer. *See id*. New York argues that this initial transfer is covered by EFTA, but that

[1] This hybrid legal treatment under Regulation J deviated from the typical arrangement under the UCC's Article 4A, which provides that it does not apply to a transfer "any part of which" is governed by EFTA. Unif. Commercial Code § 4A-108. Though it incorporated Article 4A into Regulation J, the Board used its preemptive authority to apply Article 4A to fund transfers through Fedwire even if another portion of the transaction is governed by EFTA. 61 Fed. Reg. at 19680.

Citibank did not follow EFTA's error resolution procedures when consumers complained that a scammer—not the consumer—used Citibank's online banking platform to fraudulently "authorize" the debiting of the consumer's account. Instead, Citibank relied on the UCC's less-protective standards. According to New York, Citibank therefore violated EFTA and its implementing Regulation E.[2]

Citibank argues that New York's first cause of action must be dismissed because EFTA's wire transfer exclusion removes these activities from EFTA's ambit end-to-end, from when the funds are debited from a consumer's account to when they are deposited in a scammer's account. *See* Citibank Mem. of L. in Supp. of Mot. to Dismiss 13-14, ECF No. 12 (hereinafter "Mot.").

ARGUMENT

The question presented by Citibank's motion to dismiss New York's first cause of action is what law applies when an electronic fund transfer includes a transfer by wire service as a portion of the transaction. Citibank says that an entire transaction is exempt from EFTA and covered instead by the UCC if it includes a wire transfer. Based on EFTA's text and longstanding regulatory interpretations, the Bureau believes that the proper approach is to first determine whether the entire transaction constitutes an "electronic fund transfer" and then exempt only the wire transfer portion of that electronic fund transfer.

I. Where an electronic fund transfer includes a transfer by wire, EFTA applies to the portions of the transaction that are not a wire transfer.

As Regulation E has long recognized, Citibank is wrong to contend that EFTA cannot apply to any portion of a transaction that includes a wire transfer.

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[2] New York's first cause of action incorporates EFTA and Regulation E by virtue of New York's Executive Law § 62(12), which authorizes the New York Attorney General to seek injunctive and other equitable relief when a business is engaged in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York. Compl. at ¶¶ 264-272.

EFTA's targeted exclusion for wire transfers does not create a blanket carveout for the whole of any transaction that includes a wire transfer. Instead, Congress used language that carefully tracks the operation of transfers over wire networks, covering only transfers of funds "made … by means of a service that transfers funds held at either Federal Reserve Banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer." 15 U.S.C. § 1693a(7)(B). Any transfer of funds that does not occur "by means of" such a "service" is not included. Had Congress intended the exclusion to span the whole of a transaction, it could have structured the wire transfer exclusion to cover a specified transaction end-to-end, as it did in EFTA's exclusion for "transaction[s] originated by check, draft, or similar paper instrument." *Id.* § 1693a(7).

If Congress wanted the same treatment for wire transfers, it could have said that the term "electronic fund transfer" does not include "any transaction that is completed by means of" a wire transfer service. But Congress didn't say that. Instead, it confined the wire transfer exclusion to only "transfer[s] of funds" made "by means of a [wire] service," leaving EFTA to cover the rest of a transaction that otherwise qualifies as an electronic fund transfer. "[W]hen Congress includes particular language in one [portion] of a statute but omits it in another," it is appropriate to "presume[] that Congress intended a difference in meaning." *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (cleaned up); *see also Rudisill v. McDonough,* 601 U.S. 294, 308 (2024) ("we generally presume differences in language like this convey differences in meaning" (cleaned up)).

Of course, in many cases, Congress's decision to structure the wire transfer exclusion differently than the check and broker/dealer exclusions does not result in EFTA coverage of any portion of transactions that include wire transfers. For instance, EFTA does not apply when a consumer provides oral authorization through a telephone conversation with a bank employee, *see* 12 C.F.R. § 1005.3(c)(6), for a financial institution to execute a wire transfer to a business beneficiary on behalf of the consumer.

However, when a consumer uses an electronic means (like an online or mobile banking platform or a prearranged telephone plan) to authorize the bank to debit the consumer's account so that the bank can transfer funds on behalf of the consumer "by means of" a wire service, the transaction both constitutes an electronic fund transfer and includes a wire transfer. In those situations, as explained more fully above, longstanding Regulation E commentary has made clear that the portion of the transaction that does not occur by means of a wire service is subject to EFTA and Regulation E.

Since 1996, Regulation E has specifically contemplated that the non-wire-transfer portions of transactions that constitute electronic fund transfers are covered by EFTA even when the transaction also includes a wire transfer covered by Regulation J. *See* 12 C.F.R. pt. 1005, Supp. I, cmt. 3(c)(3)-2; 61 Fed. Reg. at 19687. Specifically, Regulation E provides that "subpart B of the Board's Regulation J, including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA." 12 C.F.R. pt. 1005, Supp. I, cmt. 3(c)(3)-2. And when EFTA governs a portion of a fund transfer that includes a Fedwire component, "[t]he portion of the fund transfer that is governed by the EFTA is not governed by subpart B of the Board's Regulation J." *Id*. In other words, when a single transaction includes both Fedwire and non-Fedwire portions, Regulation E provides that the Fedwire portion is governed by Regulation J (and UCC Article 4A as incorporated by Regulation J), and the remaining electronic fund transfer portion is governed by EFTA and Regulation E. As an example of this "dual coverage," the Board opined in 1996 that "if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement"—a method of initiating fund transfers that generally falls under EFTA[3]—"the transfer could be covered by both Regulation E and Article 4A." 61 Fed. Reg. at 19680.[4]

Consistent with Regulation E's dual coverage discussion, since 1990, the Board's Regulation J (which applies to wire transfers conducted through Fedwire) has expressly provided that Regulation J "governs a funds transfer that is sent through Fedwire . . . even though a portion of the funds transfer is governed by the [EFTA], but the portion of such funds transfer that is governed by the [EFTA] is not governed by [Regulation J]." 12 C.F.R. § 210.25(b)(3); 55 Fed. Reg. at 40801. As explained in Regulation J's official commentary, this provision of Regulation J accounts for the fact that "[a] funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearing house or other means that is subject to the Electronic Fund Transfer Act or Regulation E." 55 Fed. Reg. at 40804.

Applying these longstanding regulatory principles to this case is straightforward. When a consumer initiates a transaction through one of the electronic means identified by EFTA, and the transaction includes a transfer of funds by wire service, the wire portion is covered by UCC Article 4A, while EFTA and Regulation E apply to the rest. This rule applies just the same whether the electronic means for initiating the transfer is a telephone transfer plan (as in 1996) or whether the electronic means is an online portal or mobile application (as today). Accordingly,

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[3] *See* 12 C.F.R. pt. 1005, Supp. I, cmt. 3(c)(6) (Telephone-Initiated Transfers).

[4] Mirroring the discussion in Regulation J, the official commentary to Regulation E also provides that "if a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, then the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt." 61 Fed. Reg. at 19687; *see also* 12 C.F.R. pt. 1005, Supp. I, cmt. 3(c)(3)-1.

EFTA and Regulation E apply to the electronic fund transfer portions of the transactions in Count 1 of New York's complaint.

This result fits neatly with EFTA's definition of "electronic fund transfer." The online-initiated wire transfers in this case are electronic fund transfers because they are a "transfer of funds" (funds are transferred from the consumer to Citibank and ultimately to a third-party recipient) "which is initiated through a … computer" (*i.e.*, by the consumer using the online platform) "so as to … authorize a financial institution to debit … an account" (*i.e.*, to authorize Citibank to debit the consumer's account). At the same time, a portion of these transactions occurs over an excluded wire transfer (*i.e.*, a "transfer of funds made by a financial institution on behalf of a consumer" "by means of a [wire-transfer] service").

II. Citibank's end-to-end interpretation of EFTA's wire transfer exclusion is incorrect.

Citibank's contrary interpretation that the wire-transfer exclusion wholly exempts transactions end-to-end, even when the transaction constitutes an electronic fund transfer independent of the wire-transfer portion, misreads EFTA's text and cherry picks from the regulatory history. Remarkably, Citibank spends pages discussing the history of Regulations E and J without once addressing those regulations' longstanding acknowledgment that EFTA covers the electronic fund transfer portion of a transaction involving a wire transfer. Citibank's suggestions that applying EFTA to the electronic fund transfer portions of wire transactions would be inconsistent with EFTA's other provisions are similarly unfounded.

a. Citibank's statutory arguments are unavailing.

Citibank argues that applying the wire transfer exclusion to the bank-to-bank transfer, *i.e.* the wire itself, cannot be the right reading of the statutory text because it (1) eliminates the term "consumer" from the exclusion and (2) renders the exclusion meaningless. Citibank is wrong on both counts.

First, Citibank asserts that "the consumer is written out of the wire transfer" if the wire transfer exclusion applies only to the wire itself. Mot. at 14. Not so. The exclusion covers transfers of funds "made by a financial institution on behalf of a consumer by means of a [wire] service." 15 U.S.C. § 1693a(7)(B). The transfer via wire is executed by the financial institution on behalf of a consumer (or, in the instance of fraud, purportedly on behalf of a consumer), pursuant to the consumer's instructions. It is hard to imagine what "on behalf of a consumer" would mean if not that.

Second, Citibank argues that the wire transfer exclusion cannot cover the wire portion only, because the wire portion could not have been subject to EFTA in the first place. Mot. at 14-15. According to Citibank, the wire portion could never be subject to EFTA as it does not debit or credit an account established for "personal, family or household" uses, as is required to meet EFTA's definition of "account." Mot. at 14-15. Because the bank-to-bank portion of a wire transfer does not debit an "account" as defined by EFTA, Citibank argues, it cannot meet EFTA's definition of an "electronic fund transfer" (which incorporates the term "account") and would never have been governed by EFTA. *See* Mot. at 14-15.

Citibank is wrong to the extent it suggests that the wire transfer exclusion would be rendered meaningless surplusage if, consistent with EFTA's text, the exclusion only exempts the bank-to-bank wire transfer itself. As the transactions in this case demonstrate, the wire transfer exclusion has a meaningful role to play under the Bureau's understanding of EFTA. Without the exclusion, EFTA would apply from end-to-end to the transfers at issue in this case. However, in light of the wire transfer exclusion, EFTA does not apply to bank-to-bank portion of the transfers. Accordingly, the Bureau's interpretation gives meaning to each part of the statute.

Moreover, there was ample reason for Congress to enact a wire transfer exclusion that exempted only bank-to-bank wire transfers themselves. At the time of EFTA's enactment, wire transfers were generally thought of as electronic transfers of funds: in the course of amending Regulation J, the Board called wire transfers "electronic fund transfers" in 1976, 41 Fed. Reg. 3097, 3098 (Jan. 21, 1976), and "electronic payments" in 1977, 42 Fed. Reg. 31763 (June 23, 1977). Absent clarification from Congress, there would have been reasonable uncertainty as to whether the new EFTA or the pre-existing Regulation J governed the rights and responsibilities of member banks of the Federal Reserve effectuating transfers over Fedwire. Indeed, without the wire transfer exclusion, for example, a wire transfer in which the instructions for crediting a consumer's account (*i.e.*, an account established for "personal, family or household" purposes) were transmitted on magnetic tape would have fallen under EFTA's definition of an "electronic fund transfer." The wire transfer to a consumer is initiated electronically because the method of initiating transfers over the bank-to-bank wire transfer service occurs via electronic means (*i.e.*, the magnetic tape). 15 U.S.C. § 1693a(7). And, the receiving bank is electronically "order[ed], instruct[ed], or [authorized]" to credit a consumer's account. *Id*. Even with the exclusion, the Board elected to clarify this point via official commentary in 1981. *See* 46 Fed. Reg. 46876-01, 46879 (Sept. 23, 1981) (3-2 Q); *see also infra* at p. 13.

b. The regulatory history does not support Citibank's end-to-end interpretation of the wire transfer exclusion.

Citibank ignores the Regulation E sources that speak directly to the issue in this case, *see supra* at 7, 11, which make clear that EFTA applies to the electronic fund transfer portion of transactions that include wire transfers. Instead, Citibank identifies a number of regulatory sources to try to support its end-to-end interpretation of EFTA's wire transfer exclusion, but none support Citibank's contention that the wire transfer exemption applies to online-initiated wire transfers end-to-end.

Citibank quotes selectively from the Board's Regulation J commentary, which indeed states that "[i]n general [a phrase that Citibank omits], Fedwire funds transfers to or from consumer accounts are exempt from the EFTA and Regulation E." Mot. at 16 (citing 12 C.F.R. pt. 210, subpt. B, App. A (commentary to 210.25(b)(4)). But this is not the end of the discussion. The text that *immediately follows*—which Citibank also omits—provides that:

> A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through the Fedwire Funds Service and in part through an automated clearinghouse or other means that is subject to the EFTA or Regulation E. In these cases, [UCC Article 4A] would not govern the portion of the funds transfer that is governed by the EFTA or Regulation E.

12 C.F.R. pt. 210, subpt. B, App. A (commentary to 210.25(b)(4)). When read in full, the comment that Citibank cites accords with Regulation E's 1996 telephone-plan discussion: a consumer wire transaction can be governed in part by EFTA when it features a portion (ACH or otherwise) that falls under EFTA and Regulation E.[5]

Much of the other authority Citibank cites stands for the undisputed proposition that EFTA does not apply to transactions in which the only electronic portion is conducted by wire. For instance, Citibank relies on the Board's 1981 Regulation E comment regarding magnetic tape instructions for crediting consumers' accounts. Mot. at 15. That comment—which has since been rescinded and has no modern analogue in Regulation E today—said simply that "[i]f a transfer of

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[5] Citibank also quotes selectively from the Board's historical discussion of the wire transfer exclusion in an attempt to argue that "the payment, from sender to recipient, is appropriately treated as one transfer" for purposes of EFTA coverage. Mot. at 15. But as discussed above, the Board's commentary goes the other way, explicitly acknowledging that a portion of a transfer can be subject to EFTA even if another portion of the transfer occurs via Fedwire and therefore is not.

funds to a financial institution is sent by Fedwire or a similar network, and the instructions for crediting individual consumers' accounts are transmitted on magnetic tape," the transfer of funds is exempt. 46 Fed. Reg. at 46879. Far from precluding hybrid coverage, the comment deals with a different issue entirely: the import of one bank using magnetic tape to give instructions to another bank with respect to a wire transfer conducted between those banks. Under EFTA, a transfer of funds that is initiated through "magnetic tape" so as to instruct a financial institution to credit a consumer's account is an electronic fund transfer subject to EFTA and Regulation E. 15 U.S.C. § 1693a(7). So it makes sense that the Board would clarify that EFTA does not apply to this bank-to-bank provision of electronic instructions for the treatment of funds transferred between those banks through a wire service.

The Bureau's preamble language in its 2012 Remittance Rule does not lend Citibank support either, despite Citibank's claims, Mot. at 17-18. The Consumer Financial Protection Act amended EFTA to extend special protections to remittances, *see* 12 U.S.C. § 5601, which are sometimes conducted in part via wire service. When the Bureau revised Regulation E to account for the EFTA remittance amendments, it discussed the existing regulatory treatment for wire transfers. To the extent that the Bureau's general discussion in the preamble of 2012 rule was imprecise—because it did not specify that there are some situations in which EFTA and Regulation E already applied to a portion of a transaction that includes a wire transfer—any such imprecision did not and could not amend the existing commentary provisions that expressly contemplate that possibility. In any event, Citibank is wrong to suggest (at 17) that the existence of partial EFTA coverage for the special subset of online-initiated wire transfers would have made it "unnecessary" for Congress to enact the remittance amendments, as those amendments provided broader remittance-specific protections to all covered transactions from end-to-end.

Finally, Citibank's citation to a 1994 interpretive letter issued by the Federal Deposit Insurance Corporation (FDIC), Mot. at 16, fails also. That letter simply (and appropriately) says that EFTA does not apply at all when a transaction that is not an electronic fund transfer includes a wire transfer. Per the letter, a consumer "went to her bank in Germany" to initiate a wire and the recipient "received a cashier's check" from her bank in Arizona. FDIC, Interpretive Letter, *Users' Rights Under the Elec. Funds Transfer Act In the Event of Bank Error Regarding An Elec. Wire Transfer*, 1994 WL 393720, at *1. Because such a transaction is not an electronic fund transfer (as the bank-to-bank transfer via wire is the only portion that is potentially initiated electronically, and that portion is exempt from EFTA's definition of "electronic fund transfer"), the FDIC's letter simply reiterates what the wire transfer exclusion says: the movement of funds over a wire service is not subject to EFTA's protections.

c. Other provisions of EFTA and Regulation E are consistent with the bank-to-bank application of the wire transfer exclusion.

Citibank claims that other parts of EFTA and Regulation E preclude an understanding of the wire transfer exclusion that applies it only to the bank-to-bank wire transfer, as per the exclusion's terms. First, Citibank argues that this would produce absurd results in the context of EFTA's periodic statement disclosure requirements. Second, Citibank argues that even if the pre-wire consumer debit it executes is not covered by EFTA's wire transfer exclusion, EFTA's automatic transfer exclusion would apply instead. Neither outcome would come to pass under the Bureau's understanding of the wire transfer exclusion.

As explained above, under EFTA and Regulation E, an electronic fund transfer generally encompasses the entire movement of funds from a sender to its ultimate recipient. Where that movement of funds includes a transfer via wire service, that bank-to-bank transfer is excluded, but the remainder of the transaction is covered by EFTA and Regulation E.

Citibank argues that EFTA and Regulation E's periodic statement requirements would be rendered "senseless," as banks would be required to list themselves, rather than the relevant third-party beneficiary, as the recipients of electronically-initiated wire transfers. Mot. at 18-19. But no such problem arises on the Bureau's understanding. Consistent with the periodic statement requirements of 12 C.F.R. § 1005.9(b), the Bureau's view is that if a consumer (or a scammer who has compromised the consumer's account) uses an online portal to authorize a transfer to a specified recipient that will occur in part through a bank-to-bank wire transfer, the consumer's financial institution is required in the periodic statement to disclose that ultimate recipient.

On the automatic transfer exclusion, Citibank argues that if one considers the initial transfer of funds from a consumer's account to a bank's pooled account as a separate electronic fund transfer, EFTA's protections still would not apply because Regulation E's automatic transfer exclusion would govern. Mot. at 22. Any such issue does not arise on the Bureau's view. In addition, the automatic transfer exclusion only applies to transfers that occur "under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers *without a specific request from the consumer*." 12 C.F.R. § 1005.3(c)(5) (emphasis added). But in the wire transactions at issue, a consumer (or a purported consumer) *has* made a specific request that the transfer occur, which is a specific request that the bank debit the consumer's account.

CONCLUSION

For these reasons, the Bureau respectfully urges this Court to deny Citibank's motion to dismiss New York's first cause of action.

May 28, 2024

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