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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB-2011-0009]

RIN 3170 – AA15

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation, which interprets the requirements of Regulation E. The final rule modifies a final rule published in February 2012 implementing section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The final rule adopts a safe harbor with respect to the phrase "normal course of business" in the definition of "remittance transfer provider," which determines whether a person is covered by the rule. The final rule also revises several aspects of the February 2012 final rule regarding remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers.

DATES: This rule is effective February 7, 2013.

FOR FURTHER INFORMATION CONTACT: Eric Goldberg, Counsel, or Andrea Edmonds or Dana Miller, Senior Counsels, 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 Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[1] amended the Electronic Fund Transfer Act (EFTA) 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 conducted by remittance transfer providers, the statute 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 remittance transfer providers; and (iv) liability standards for remittance transfer providers for the acts of their agents. The Bureau of Consumer Financial Protection (Bureau) published a final rule on February 7, 2012, to implement section 1073 of the Dodd-Frank Act. 77 FR 6194, Feb. 7, 2012 (February Final Rule). The February Final Rule takes effect February 7, 2013. The Bureau concurrently published a proposed rule with request for public comment seeking comment on whether to provide additional safe harbors and flexibility in applying the February Final Rule to certain transactions and persons. 77 FR 6310, Feb. 7, 2012 (February Proposal).[2]

The February Proposal addressed two aspects of the February Final Rule. First, the Bureau proposed to adopt a safe harbor for determining whether a person is providing remittance transfers in the "normal course of business," and thus is a "remittance transfer provider."

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

[2] The Bureau issued the February Final Rule and the February Proposal on January 20, 2012. Consequently, when referencing the final rule, the February Proposal used the term "January 2012 Final Rule." That term is being replaced in today's rule with "February Final Rule" to reflect the date the rule was published in the Federal Register (*i.e*., February 7, 2012). Similarly, the term "February Proposal" is being used here in place of the term "January 2012 Proposed Rule," which was used in the February Final Rule. Additionally, 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."

Second, it sought comment on possible refinements to disclosure and cancellation requirements for certain remittance transfers that are scheduled before the date of transfer, including "preauthorized remittance transfers," which are authorized in advance to recur at substantially regular intervals. The Bureau noted that providing further clarification on these issues might reduce compliance burdens for remittance transfer providers and provide better disclosures and cancellation rights to consumers. The Bureau also stated that it expected to complete any further rulemaking on matters raised in the February Proposal on an expedited basis before the February 7, 2013 effective date for the February Final Rule.

The final rule adopts a safe harbor with respect to the phrase "normal course of business" in the definition of "remittance transfer provider," which determines whether a person is covered by the rule. The final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. For a person that crosses the 100-transfer threshold, and is then providing remittance transfers for a consumer in the normal course of its business, the final rule permits a reasonable time period, not to exceed six months, to begin complying with subpart B of Regulation E.

The final rule also modifies several aspects of the February Final Rule regarding remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers. First, when a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers five or more business days before the date of transfer, the final rule permits remittance transfer providers to estimate certain information in the pre-payment disclosure and the receipt provided when payment is made. If estimates are provided under this exception, the provider generally must give the sender an additional receipt with accurate figures after the transfer is made. With respect to subsequent preauthorized remittance transfers, the final rule generally eliminates the requirement that a remittance transfer provider mail or deliver a pre-payment disclosure for each subsequent transfer, unless certain specified information has changed. However, the final rule generally requires a remittance transfer provider to provide accurate receipts after subsequent transfers are made.

The final rule also modifies the February Final Rule in several respects with regard to the disclosure requirements for remittance transfers scheduled at least three business days before the date of transfer and for preauthorized remittance transfers. The final rule generally requires disclosure of the date of transfer on the initial receipt and on any subsequent receipts provided with respect to a particular transfer. For subsequent preauthorized remittance transfers, the final rule also requires the remittance transfer provider to disclose the future date or dates the remittance transfer provider will execute subsequent transfers in the series; in most cases, the final rule offers some flexibility in how such disclosures can be made.

As noted in the February Final Rule, the Bureau intends to continue working with consumers, industry, and other regulators in the coming months regarding implementation issues. In the near future, the Bureau expects to release a small business compliance guide and a list of countries that providers may rely on for purposes of determining whether estimates may be provided under certain circumstances. The Bureau also expects to conduct a public awareness campaign to educate consumers about the new disclosures and their other rights under the Dodd-Frank Act with respect to remittance transfers.

II. Background

A. Summary of February Final Rule

The February Final Rule imposes on remittance transfer providers new disclosure, error resolution, and other substantive requirements relating to remittance transfers. These requirements are set forth in subpart B of Regulation E. Consistent with the statute, the February Final Rule provides that the term remittance transfer provider means any person that provides remittance transfers for a consumer in the normal course of business, regardless of whether the consumer holds an account with such person. 12 CFR 1005.30(f). The February Final Rule provides guidance in the commentary indicating that whether a person provides remittance transfers in the "normal course of business" will be evaluated based on the facts and circumstances, and does not set forth a numerical threshold.

Among other requirements, the February Final Rule imposes several new disclosure requirements on remittance transfer providers. First, the rule generally requires a remittance transfer provider to provide a written pre-payment disclosure to a sender containing information about the specific transfer requested by the sender, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. Second, the provider also must provide a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information such as the date of availability of the funds, the designated recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Consistent with the statute, which permits remittance transfer providers to provide estimates only in two narrow circumstances, the February Final Rule generally requires that disclosures state the actual exchange rate that will apply to a remittance transfer and the actual amount that will be received by the designated recipient of a remittance transfer.

The February Final Rule also sets forth special requirements for the timing and accuracy of disclosures with respect to "preauthorized remittance transfers," which are defined as remittance transfers authorized in advance to recur at substantially regular intervals. As discussed in the February Final Rule, 77 FR 6194, 6267, the Bureau recognizes that the market for preauthorized remittance transfers is still developing.

The February Final Rule differentiates between the first and subsequent transfers in a series of preauthorized remittance transfers. The first transfer in a series is treated the same as other standalone remittance transfers. Accordingly, the February Final Rule requires, for the first transaction in a series of preauthorized remittance transfers, that the provider provide a pre-payment disclosure at the time the sender requests the transfer and a receipt at the time payment for the transfer is made, which the commentary explains means when payment is authorized. In addition, the disclosures must be accurate as of when the payment for the transfer is made, unless a statutory exception applies.

However, recognizing the potential risks to providers associated with setting exchange rates and determining the amount to be provided to a designated recipient weeks or months before any subsequent transfer, and the potentially limited utility to consumers of information provided far in advance, the February Final Rule does not require that disclosures for the entire series of preauthorized remittance transfers be provided at the time of the sender's initial request and payment authorization. Rather, the February Final Rule requires providers to issue pre-payment disclosures and receipts for each subsequent transfer near the date of the individual transfer. Specifically, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer. The receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made.

Finally, the February Final Rule also provides senders specified cancellation and refund rights. Under the rule, a sender generally has 30 minutes after payment is made to cancel a remittance transfer. The February Final Rule, however, contains special cancellation procedures for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, including preauthorized remittance transfers. In such case, the provider would be required to cancel the remittance transfer if it received a request to cancel the transfer from the sender at least three business days before the date of the transfer.

B. Summary of the February Proposal

Concurrent with the February Final Rule, the Bureau issued a proposed rule that sought comment on two aspects of the February Final Rule. First, the Bureau proposed to adopt in commentary a safe harbor clarifying when certain persons are excluded from the statutory scheme because they do not provide remittance transfers in "the normal course of business." Second, the February Proposal sought comment on a possible safe harbor and other refinements to the disclosure and cancellation requirements for remittance transfers that are scheduled before the date of the transfer, including preauthorized remittance transfers. The Bureau indicated that these proposed amendments to the February Final Rule may reduce compliance burden for providers and allow for better disclosure and cancellation rights for senders. The Bureau stated its belief that these issues would benefit from further public comment.

Regarding the first aspect of the February Proposal, the Bureau sought comment on a proposed safe harbor interpreting the phrase "normal course of business." The Bureau proposed commentary stating that if a person made no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business during the current calendar year if it provides no more than 25 remittance transfers in that year. The Bureau also specifically solicited comment on whether, if such a safe harbor is appropriate, the threshold number should be higher or lower than 25 remittance transfers, such as 10 or 50 transfers, or some other number.

Regarding the second aspect of the February Proposal, the Bureau sought comment on refinements to the disclosure and cancellation requirements for remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers. Specifically, the February Proposal solicited comment on whether estimates should be permitted to be disclosed in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized when: (i) a consumer schedules a one-time transfer or the first in a series of preauthorized remittance transfers more than ten days in advance; and (ii) a consumer enters into an agreement for preauthorized remittance transfers under which the amount of the transfers can vary and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The February Proposal further requested comment on whether a remittance transfer provider that uses estimates in the two situations described above should be required to provide a second receipt with accurate information within a reasonable time closer to the scheduled date of the transfer. In addition, the February Proposal sought comment on whether the second receipt should be provided to senders ten days before the date of the transfer or whether the period should be longer or shorter.

The February Proposal also solicited comment on possible refinements to the disclosure provisions applicable to subsequent preauthorized remittance transfers. For example, the Bureau sought comment on two alternative approaches to the disclosure provisions for subsequent preauthorized remittance transfers: (i) whether the Bureau should retain the requirement that a remittance transfer provider provide a pre-payment disclosure for each subsequent transfer and provide a safe harbor for what constitutes “a reasonable time” for providing this disclosure; or (ii) whether the Bureau should eliminate the requirement to provide a pre-payment disclosure for each subsequent transfer.

The February Proposal also sought comment on possible changes to the cancellation requirements for remittance transfers that are scheduled before the date of the transfer, including preauthorized remittance transfers. The February Proposal solicited comment on whether the three-business-day period for canceling such remittances transfers adopted in the February Final Rule is appropriate, or whether the rule should require a deadline to cancel these transfer that is more or less than three business days. Further, the February Proposal solicited comment on three issues related to the disclosure of the deadline to cancel as set forth in the February Final Rule: first, whether the three-business-day deadline to cancel transfers scheduled before the date of transfer should be disclosed to senders, such as by requiring a remittance transfer provider to disclose in the receipt the specific date on which the right to cancel will expire; second, whether a remittance transfer provider should be allowed to describe both the three-business-day and 30-minute deadline-to-cancel time frames on a single receipt and either describe the transfers to which each deadline is applicable, or alternatively, use a checkbox or other method to designate which deadline is applicable to the transfer to which the receipt relates; third, whether the disclosure of the deadline to cancel should be disclosed in the pre-payment disclosure, rather than in the receipt, for each subsequent preauthorized remittance transfer.

C. Overview of Comments and Outreach

The Bureau received more than 50 comments on the proposed rule. The majority of comments were submitted by industry commenters, including depository institutions, credit unions, a money transmitter, and industry trade associations. In addition, letters were submitted by individual consumers, consumer groups, and an association of state banking regulators.

Commenters generally supported, or did not oppose, clarifying the meaning of "normal course of business" with a safe harbor. Consumer group commenters supported the proposed threshold of 25 transfers per year. The majority of industry commenters argued that the proposed safe harbor threshold was insufficient and suggested higher numerical thresholds, ranging from 50 remittance transfers annually to 25 transfers daily. Some industry commenters suggested alternative benchmarks for the safe harbor, including tests based on a percentage of an entity's revenues or transactions processed. A number of industry commenters stated that they or others would cease to offer remittance transfers if they did not qualify for the safe harbor. Some commenters also suggested changes in how any safe harbor was implemented, such as that the Bureau should provide time for an entity to come into compliance if the entity becomes a remittance transfer provider once the safe harbor threshold is exceeded.

Commenters also generally supported revisions to the February Final Rule regarding remittance transfers that are scheduled before the date of the transfer. Commenters generally supported providing additional flexibility in disclosure requirements and expanding the use of estimates in order to reduce risks and costs that might be passed through to senders. Industry commenters cited various operational and financial challenges, as well as legal risks, associated with disclosing an accurate exchange rate for a future transfer. (Although the February Proposal asked about estimates for one-time transfers or the first in a series of preauthorized remittance transfers, most commenters addressed the use of estimates generally for any transfer scheduled before the date of such transfer.) Some industry commenters argued that small remittance transfer providers in particular would not have the scale or expertise to create the risk management practices necessary to comply. Other industry commenters expressed concern about the potential for behavior by consumers that would increase providers' exposure to foreign exchange risk in light of the February Final Rule's three-business-day cancellation period for transfers scheduled before the date of the transfer. Thus, these commenters supported permitting estimates in pre-payment disclosures and receipts provided for remittance transfers scheduled before the date of transfer. Separately, some commenters thought the Bureau should allow providers, in lieu of (or in addition to) providing an estimate of the exchange rate on a disclosure for a transfer scheduled before the date of the transfer, to disclose the formula the provider will use to calculate the exchange rate that will apply to a transfer.

For similar reasons, industry commenters further stated that the proposed ten-day period after which estimates would not be permitted was too long, and should be shortened. Industry commenters suggested shorter time periods ranging from one to seven business days. Several industry commenters suggested that, even if estimates were permitted, remittance transfer providers might respond to the requirement to provide accurate disclosures for other one-time transfers scheduled before the date of the transfer or initial transfers in series of preauthorized remittance transfers scheduled in advance by only offering same-day remittance transfers, or remittance transfers scheduled ten or more days before the date of the transfer.

Consumer group commenters agreed that the use of estimates in disclosures may be appropriate for the first remittance transfers in series of preauthorized remittance transfers, but stated that, if remittance transfer providers were allowed to use estimates in disclosures for such transfers, senders should be informed they would not receive actual notice of the price of the transfer or of the amount to be received by the designated recipient during the periods when the senders can cancel the transfers. Alternatively, consumer group commenters suggested requiring providers to later give senders the disclosures for such transfers that include accurate information about any amounts previously estimated.

Industry commenters urged the Bureau to eliminate the requirement to provide pre-payment disclosures a reasonable time prior to each subsequent preauthorized remittance transfer. Commenters stated that such disclosures could cause consumer confusion in cases where senders receive pre-payment disclosures in close proximity to receipts for previous preauthorized remittance transfers. Further, industry commenters argued that many senders scheduling preauthorized remittance transfers are more concerned with the convenience allowed by the scheduling of transfers before the date of the transfer and having transfers made on time than with comparison shopping with pre-payment disclosures for each transfer. Thus, these commenters stated that the cost of providing pre-payment disclosures would outweigh any potential consumer benefit. Industry commenters also stated that if the requirement to provide updated pre-payment disclosures was not eliminated, the Bureau should permit estimates to be provided in those disclosures. Consumer group commenters stated that the Bureau should maintain the requirement to provide pre-payment disclosures before all subsequent preauthorized remittance transfers, but while allowing providers to provide estimates in those disclosures. These commenters also supported the Bureau's proposal that ten days before the date of transfer constitute a "reasonable time."

Most industry commenters argued that three business days is an appropriate time period for a sender to cancel a remittance transfer that is scheduled at least three business days before the date of the transfer. Some industry commenters conditioned their support for the three-business-day cancellation period on whether a remittance transfer provider would be required to disclose to the sender the exchange rate that would apply to a transfer scheduled more than three business days before the date of such transfer. One commenter suggested that the Bureau adopt a five-business-day cancellation deadline in lieu of the three-business-day deadline adopted in the February Final Rule.

With respect to the content and format of disclosures related to the cancellation period, most industry commenters argued against requiring that remittance transfer providers disclose the specific cancellation deadline in the receipt provided to a sender for a remittance transfer scheduled more than three business days before the date of the transfer. One commenter asserted that requiring disclosure of the specific cancellation deadline would create significant technical challenges for service providers. Commenters, however, generally supported the proposal to permit remittance transfer providers that provide both transfers scheduled at least three business days before and transfers less than three business days before the date of the transfer to include both the 30-minute and three-business-day cancellation periods in their receipts along with a checkbox or other method that allows the provider to designate which cancellation period is applicable to the transfer at issue.

The Bureau received few comments in response to its inquiry regarding disclosure of cancellation requirements for subsequent preauthorized remittance transfers. Among those received, there was little consensus regarding how cancellation rights for subsequent transfers should be disclosed. Some commenters asserted that the cancellation provision should be included on the pre-payment disclosure and one industry commenter supported including it on the receipt.

In addition to the comments received on the February Proposal, Bureau staff conducted outreach with various parties to gather more data regarding issues discussed in the proposal or raised in comments. Records of these outreach conversations are reflected in *ex parte* submissions included in the rulemaking record (accessible by searching by the docket number associated with this final rule at www.regulations.gov).

III. Summary of the Final Rule

A. Normal Course of Business

The final rule provides a new safe harbor clarifying when a person provides remittance transfers in the normal course of business for purposes of determining whether a person falls under the definition of "remittance transfer provider." The proposed safe harbor was located in the commentary; the final safe harbor is included in regulatory text, with further guidance in the commentary. As adopted, the final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. For a person that crosses the 100-transfer threshold, and is then providing remittance transfers for a consumer in the normal course of its business, the final rule permits a reasonable time period, not to exceed six months, to begin complying with subpart B of Regulation E.

B. Disclosure Rules for Remittance Transfers Scheduled Before the Date of Transfer

The final rule modifies the February Final Rule with respect to remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers. First, when a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers five or more business days before the date of transfer, the final rule permits remittance transfer providers to estimate certain information in the pre-payment disclosure and the receipt provided when payment is made. If a provider gives disclosures that include estimates under this exception, the final rule also requires that the provider give the sender an additional receipt with accurate figures (unless a statutory exception applies), which generally must be provided no later than one business day after the date on which the transfer is made.

Second, with respect to subsequent preauthorized remittance transfers, the final rule eliminates the requirement that a remittance transfer provider mail or deliver a pre-payment disclosure for each subsequent transfer. A receipt must be sent, however, a reasonable time prior to the transfer if certain disclosed information is changed from what was disclosed regarding the first preauthorized remittance transfer. This receipt may also contain estimates. If estimates are provided or no update is necessary, the final rule also requires a remittance transfer provider to give an accurate receipt to a sender after a transfer is made.

C. Cancellation Period and Disclosures

The final rule modifies the February Final Rule in several respects with regard to the disclosure requirements for remittance transfers scheduled at least three business days before the date of transfer and for preauthorized remittance transfers. First, the final rule requires a remittance transfer provider to disclose the date of transfer in the receipt provided when payment is made with respect to remittance transfers scheduled at least three business days before the date of the transfer and the initial transfer in a series of preauthorized transfers. The transfer date for a given transfer is also required to be disclosed on any subsequent receipts provided with respect to that transfer. The transfer date will enable a sender to identify the transfer to which the receipt pertains, and, when received prior to the date of the transfer, generally calculate the date on which the right to cancel will expire.

Second, for subsequent preauthorized remittance transfers, the final rule requires the remittance transfer provider to disclose the date or dates on which the provider will make those subsequent transfers in the series, with certain other information. The final rule provides providers some flexibility in how they may make these disclosures to senders. However, for subsequent preauthorized remittance transfers for which the date of transfer is four or fewer business days after payment is made for the transfer, the final rule requires disclosure of future dates of transfer in the receipt provided for the first transfer in the series.

Finally, the final rule also permits providers to describe on a receipt both the three-business-day and 30-minute cancellation periods and either describe the transfers to which each deadline applies, or alternatively, use a checkbox or other method to designate which cancellation period is applicable to the transfer. The final rule does not change the three-business-day cancellation period for these transfers.

IV. Legal Authority

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 senders a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer. The remittance transfer 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. Except as described below, the final rule is adopted under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this **SUPPLEMENTARY INFORMATION**.

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.

As described in more detail below, the provisions adopted in the final rule in part or in whole pursuant to the Bureau's authority in EFTA sections 904(a) and 904(c)[3] include §§ 1005.30(f)(2)(ii), .32(b)(2), .36(a), .36(b) and .36(d).[4] The provisions adopted in whole or in part pursuant to the Bureau's authority in EFTA section 919(a)(5)(A) include §§ 1005.31(a)(3)(iv) and (a)(5)(iv).

[3] Throughout this **SUPPLEMENTARY INFORMATION**, the Bureau is citing its authority under both EFTA section 904(a) and EFTA section 904(c) for purposes of simplicity. The Bureau notes, however, that with respect to some of the provisions referenced in the text, use of only EFTA section 904(a) is needed.

[4] The consultation and economic impact analysis requirement previously contained in EFTA sections 904(a)(1) - (a)(4) were not amended to apply to the Bureau. Nevertheless, the Bureau consulted with the appropriate prudential regulators and other Federal agencies and considered the potential benefits, costs, and impacts of the rule to consumers and covered persons as required under section 1022 of the Dodd-Frank Act, and through these processes would have satisfied the requirements of these EFTA provisions if they had been applicable.

V. Section-by-Section Analysis

Section 1005.30 Remittance Transfer Definitions

30(f) Definition of Remittance Transfer Provider

Overview

Section 1005.30(f) of the February Final Rule and the accompanying commentary implement the definition of the term "remittance transfer provider" in EFTA section 919(g)(3). Section 1005.30(f) states that a "remittance transfer provider" means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. A remittance transfer provider is required to comply with subpart B of Regulation E relating to remittance transfers.

As adopted in the February Final Rule, comment 30(f)-2 provides guidance interpreting the phrase "normal course of business" as used in the definition of remittance transfer provider. Specifically, comment 30(f)-2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. Comment 30(f)-2 also sets forth illustrative examples.

To provide clearer guidance on whether a person provides remittance transfers in the normal course of business, the Bureau proposed to add to comment 30(f)-2 an express safe harbor further interpreting the phrase "normal course of business." The proposed safe harbor was based on the number of remittance transfers that a person provides. Proposed comment 30(f)-2 stated that if a person provided no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business for the current calendar year if it provides no more than 25 remittance transfers in that year. The proposed comment clarified, however, that if that person makes a 26th remittance transfer in the current calendar year, the person would be evaluated under the facts and circumstances test to determine whether the person is a remittance transfer provider for that transfer and any other transfers provided through the rest of the year.

The Bureau solicited comment on the proposal to adopt a safe harbor interpreting the term "normal course of business." The Bureau also specifically solicited comment on whether, if such a safe harbor is appropriate, the threshold number should be higher or lower than 25 remittance transfers, such as 10 or 50 transfers, or some other number.

Commenters generally supported or did not oppose clarifying the meaning of "normal course of business" with a safe harbor. Consumer group commenters supported the proposed threshold of 25 transfers per year. Some industry commenters proposed that any safe harbor be based on criteria other than or in addition to the number of transfers provided per year. Furthermore, most industry commenters argued that if the Bureau adopts a safe harbor based on the number of remittance transfers provided per year, that the Bureau should use a threshold number that is higher (and in some cases significantly higher) than 25 transfers per year. Finally, some commenters suggested changes in how any safe harbor would be implemented, such as that the Bureau should provide time for an entity to come into compliance if the person becomes a remittance transfer provider once the safe harbor threshold is exceeded. These comments are discussed in more detail below.

Regulatory Text

Consumer group commenters suggested that if the Bureau adopted a safe harbor related to the term "normal course of business," that the safe harbor be included in the text of subpart B to Regulation E rather than in the commentary to the rule in order to help consumers understand when the protections in subpart B of Regulation E will apply to their transactions. Upon further consideration, the Bureau believes that, for clarity, it is appropriate to include the safe harbor regarding the phrase "normal course of business" in the text of subpart B of Regulation E. Consequently, the Bureau redesignates former § 1005.30(f) as § 1005.30(f)(1), and adopts § 1005.30(f)(2)(i), which creates the new safe harbor described below. New § 1005.30(f)(2)(ii) also creates a new transition period, described below. Revised comment 30(f)-2 provides interpretive guidance and illustrative examples.

Facts and Circumstances

Comment 30(f)-2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. The Bureau did not propose any modification to this guidance. However, one consumer group commenter suggested a rewording of the proposed safe harbor that would mean that any person who does not qualify for the safe harbor should be subject to the requirements of subpart B of Regulation E, regardless of the facts and circumstances. Furthermore, some commenters appeared to misunderstand the relevance of the Bureau's guidance in proposed comment 30(f)-2 regarding persons that do not qualify for the safe harbor.

Comment 30(f)-2 to the February Final Rule is renumbered and adopted with several non-substantive edits for clarity, and one minor modification, as comment 30(f)-2.i to the final rule. The modification is necessary because as discussed below, the final rule adopts a safe harbor similar to the safe harbor in proposed comment 30(f)-2, but, among other things, increases the threshold for that safe harbor from 25 to 100 remittance transfers per calendar year. For conformity, the Bureau has changed its guidance regarding a person that provides remittance transfers in the normal course of business. Final comment 30(f)-2.i interprets the phrase "normal course of business" to include a financial institution that makes remittance transfers generally available to customers and makes such transfers "many" times per month. Comment 30(f)-2 in the February Final Rule uses the term "multiple" rather than "many." The Bureau believes that the term "many" is more consistent with the language and approach in the safe harbor as adopted.

A Safe Harbor Based on the Number of Remittance Transfers Provided

Though most commenters did not oppose a safe harbor based on the number of remittance transfers provided, several industry commenters urged the Bureau to create a safe harbor based on other criteria. Some industry commenters suggested that a safe harbor be based on qualitative criteria, such as whether or not persons hold themselves out to be remittance transfer providers. Alternatively, some industry commenters suggested that the safe harbor apply to some or all financial institutions with less than $10 billion in assets, and other industry commenters suggested that the Bureau look to measures of the relative size of a person's remittance transfer business, such as the percent of a person's total transactions that are remittance transfers, or the percent of a person's revenue or net income that is earned from such transfers. Some industry commenters suggested the Bureau define a safe harbor based on these relative size measures alone, while others suggested that the relative size measures should apply only to certain entities or business models, or that entities should qualify for the safe harbor if they satisfy either of two alternative thresholds, such as the number of remittance transfers provided and a relative size measure. For example, one industry commenter suggested a safe harbor that would exclude from coverage of subpart B of Regulation E credit unions that (a) rely on unrelated third parties to send remittance transfers, and do not provide remittance transfers as their primary business, as long as (b) such transfers account for 30 percent or less of the credit unions' total revenues. In general, commenters suggesting relative size thresholds supported such measures because they would take into account the size of a person's overall business, or because the number of remittance transfers that a person provides may vary from year to year.

The final rule adds a safe harbor, which is described in new § 1005.30(f)(2)(i). The safe harbor in the final rule reflects several modifications to the proposed commentary included in the February Proposal, as well as several non-substantive edits for clarity. Similar to the proposed comment, the safe harbor in § 1005.30(f)(2)(i) is based on a single bright line threshold, the number of remittance transfers a person provides. It states that a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year. Comment 30(f)-2.ii provides additional clarification. It states that a person that qualifies for the safe harbor in § 1005.30(f)(2)(i) is not a remittance transfer provider, and is thus not subject to the requirements of subpart B of Regulation E. The comment also clarifies that for the purposes of determining whether a person qualifies for the safe harbor, the number of remittance transfers provided includes any transfers that are excluded from the definition of "remittance transfer" due simply to this safe harbor. In contrast, the number of remittance transfers provided in a calendar year does not include any transfers that are excluded from the definition of "remittance transfer" for reasons other than the safe harbor, such as the small value transactions and securities and commodities transfers that are excluded from the definition of "remittance transfer" by § 1005.30(e)(2).

As stated in the February Proposal, 77 FR 6310, 6314-15, the Bureau believes that a safe harbor can reduce compliance burden by increasing legal certainty in the market. Without a safe harbor, some persons who currently provide remittance transfers, or are contemplating doing so, may face uncertainty and litigation risk as to whether they meet the definition of "remittance transfer provider" when they provide a small number of transfers in a given year. Increased legal certainty may encourage some such persons to continue providing remittance transfers, when they might not otherwise be inclined to offer such products, due to concerns about legal uncertainty or the cost of compliance with subpart B of Regulation E.

However, the Bureau also recognizes that a safe harbor interpreting the phrase "normal course of business" can limit the protections afforded to some consumers. The adoption of a numerical safe harbor may result in consumers not receiving the disclosures, error resolution, and other protections required by this rule in some instances in which they might otherwise, because these consumers may be customers of persons who qualify for the safe harbor and, therefore, will have certainty that they are not "remittance transfer providers" for purposes of subpart B of Regulation E.

Based on these considerations, the Bureau believes that the safe harbor should be derived from the phrase "normal course of business," should provide substantial certainty to potential providers, and should be limited in scope so as to preserve the benefits of the statutory protections as intended by Congress. The Bureau believes that a safe harbor will provide the most certainty if it is based on a bright-line measure that permits persons to identify easily whether or not they qualify.

In addition, the Bureau continues to believe that the provision of only a small number of remittance transfers per year is a reasonable basis for identifying persons that do not provide remittance transfers in the normal course of business. As explained in the February Proposal, 77 FR 6310, 6315, the Bureau believes that the inclusion of the phrase "normal course of business" in the statutory definition of "remittance transfer provider" was meant to exclude persons that provide remittance transfers on a limited basis. As a result, the fact that a person provides only a small number of remittance transfers can strongly indicate that the person is not providing such transfers in the normal course of its business. Furthermore, the number of transfers provided is an objective standard that is easy to apply and should provide substantial certainty to persons regarding whether or not they qualify for the safe harbor.[5]

The Bureau does not believe that it is appropriate, based on the current administrative record, to define a safe harbor based on asset size or a relative size measure such as percentage of revenue. Commenters did not provide, and the Bureau does not have, data suggesting, across the remittance transfer industry, why any of the specific asset size or relative size thresholds suggested by the comments would be an appropriate basis for defining normal course of business. Moreover, the Bureau is concerned that there may not be a measure of entity size that is currently used by all segments of the remittance transfer industry. While some providers, such as banks and credit unions, tend to measure their size in assets, in other segments of the remittance transfer market, revenues or some other aspect of a business may be a more widely used measure.

Additionally, the Bureau believes that due to the wide variety of business models for offering remittance transfers and lack of currently available data, it would be difficult to craft a single standalone measure of relative size for identifying persons who provide remittance transfers on only a limited basis. For example, a standalone revenue threshold might exclude from the rule's coverage both a person who makes few transfers, but at a high price, and a person who offers many more transfers for free or at a very low price, as a value-added service to its

[5] As one industry commenter suggested, given the potential for seasonal variation in the demand for remittance transfers, the Bureau believes that an annual figure is the most appropriate for the safe harbor threshold.

customers. The Bureau is concerned that many persons who fall into the latter category may, in fact, make remittance transfers generally available to customers and make many transfers each month.

The Bureau also believes that a safe harbor based on qualitative criteria could require fact-intensive determinations, and thus, unlike a bright-line threshold, would provide little additional clarity to the market. For instance, a safe harbor based on whether a person "holds itself out" as a remittance transfer provider would require context-specific evaluation similar to the evaluation of whether a person provides remittance transfers in the normal course of business based on the facts and circumstances, in accordance with the guidance in final comment 30(f)-2.i. Thus, such a safe harbor would not accomplish the goals of the February Proposal.

Size of Numerical Threshold

In proposing comment 30(f)-2, the Bureau suggested 25 transfers as a potential threshold, noting that the number would be consistent with the general threshold for coverage under the Bureau's Regulation Z, 12 CFR part 1026, which relates to credit transactions. Under Regulation Z, a creditor is defined as an entity that regularly extends consumer credit under specified circumstances. Generally, under Regulation Z, a person regularly extends consumer credit in the current calendar year when it either extended consumer credit more than 25 times in the preceding calendar year or more than 25 times in the current calendar year.[6] *See* § 1026.2(a)(17) and comment 2(a)(17)(i)-4.[7]

[6] Regulation Z in some cases provides additional protections for credit secured by a dwelling and certain high cost mortgages. For example, with respect to whether a person is a creditor, a person regularly extends consumer credit in the current calendar year if it either extended consumer credit for transactions secured by a dwelling more than five times in the previous calendar year or more than five times in the current calendar year. In addition, a person regularly extends consumer credit if it extends consumer credit for just one high-cost mortgage in a 12-month period. *See* 12 CFR 1026.2(a)(17).

[7] The Bureau notes that it has issued a separate notice of request for information on whether it should revise these threshold numbers in Regulation Z. *See* 76 FR 75825, Dec. 5, 2011.

The Bureau received a number of comments regarding the appropriate threshold on which to base any safe harbor regarding the definition of "normal course of business." Consumer group commenters supported the proposed threshold of 25 remittance transfers provided per year. In contrast, most industry commenters suggested a range of higher thresholds. For example, some commenters suggested thresholds based on annual transfer volumes ranging from 50 to 5,000 remittance transfers, or 1,000 remittance transfers per method of transfer. Other commenters suggested thresholds of 75 remittance transfers per month, 25 remittance transfers per day, or other figures. State banking regulators did not suggest a specific threshold, but maintained that the Bureau should base the threshold on data received regarding the number of remittance transfers sent by depository institutions with under $10 billion in assets. These regulators also suggested that the Bureau adopt a threshold for depository institutions that is higher than the threshold for other entities.

Many of the commenters that explained why they believed a higher threshold was appropriate focused on the cost of compliance with subpart B of Regulation E. Both in commenting on the proposed "normal course of business" safe harbor, and more generally, depository institutions, credit unions, and trade associations of depository institutions and credit unions described challenges associated with complying with the February Final Rule. These industry commenters stated that for open network transfers in particular,[8] the requirements to estimate or disclose third-party fees and exchange rates, to disclose a transfer's date of

[8] Depository institutions and credit unions have traditionally offered consumers remittance transfers by way of wire transfers, which are generally open network transactions. In an open network, no single provider has control over, or relationships with, all of the participants that may collect funds in the United States or disburse funds abroad. A number of principal providers may access the system. National laws, individual contracts, and the rules of various messaging, settlement, or payment systems may constrain certain parts of transfers sent through an open network system. However, any participant may use the network to send transfers to unaffiliated institutions abroad with which it has no contractual relationship, and over which it has limited authority or ability to monitor or control. *See* 77 FR 6194, 6195-97.

availability, and to refund transfers in certain circumstances would be impossible, challenging, risky, or costly to implement. Based on these and related concerns, industry commenters who were focused on the concerns of depository institutions and credit unions generally argued that a threshold higher than 25 was necessary in order to relieve more persons from compliance, to encourage greater continued market participation after subpart B of Regulation E takes effect, or to promote the ability of smaller depository institutions to compete with other providers. A number of industry commenters stated that they expected that some (or many) individual depository institutions and credit unions would limit the number of remittance transfers provided in order to qualify for any safe harbor, or would exit the market for remittance transfers, in order to avoid compliance with subpart B of Regulation E.

Alternatively, some industry commenters urged the Bureau to increase the size of the threshold based on what they described as typical practice among banks. For example, one commenter stated that a typical bank could reach 25 remittance transfers within the first few weeks of a year. It suggested a threshold of 300 remittance transfers per year because, it contended, that figure better represents the number of such transfers that a small institution provides, is still small enough that the excepted transactions would not generate a material source of income for a financial institution, and amounts to, on average, less than one transfer for every 25 accountholders for small banks. That commenter and other industry commenters stated that many or most depository institutions or credit unions are not "in the business" of providing remittance transfers, do not advertise the service, or generally offer remittance transfers only upon request.

Several industry commenters offered other rationales to support thresholds higher than 25 remittance transfers per year. Some industry commenters stated that a threshold of 25 would not be useful because of the complexity of preparing for compliance if the threshold is crossed. One industry commenter advocated for a threshold of 50 remittance transfers, because that figure would constitute approximately one remittance transfer per week. Suggesting a threshold of 75 remittance transfers per year, another industry commenter argued that Regulation Z was an inappropriate reference point for subpart B of Regulation E because financial institutions tend to provide far more fund transfers per year than they do loans. Another industry commenter contended that a threshold of 600 remittance transfers per year was better to exclude institutions that provide remittance transfers infrequently and in response to specific consumer requests.

Industry commenters also suggested that the Bureau commit to reevaluating the threshold on which the safe harbor is based. One industry commenter suggested that the Bureau revisit the safe harbor threshold nine months after the effective date of subpart B of Regulation E to determine whether further adjustment is appropriate. Similarly, another industry commenter suggested that the Bureau annually adjust the safe harbor threshold.

The safe harbor described in § 1005.30(f)(2)(i) of the final rule establishes a threshold of 100 remittance transfers per calendar year. The Bureau believes that it is reasonable to set a higher transaction threshold for determining when remittance transfers are provided "in the normal course of business" than for determining when a person "regularly extends" consumer credit under Regulation Z. There are several reasons why remittance transfers are different from extensions of credit. A single extension of credit typically involves an ongoing relationship between a consumer and creditor that may extend over weeks, months, or years. Credit is often provided as a standalone financial product in its own right, and can generate significant per-transaction revenues over time. A remittance transfer, on the other hand, is a one-time transaction, for which the provider generally collects a one-time set of fees. Revenues per transaction are often relatively low; additionally, remittance transfers are sometimes provided as an adjunct to other financial products (such as a long-term account relationship). As a result, a single extension of credit may be more significant to a business than a single remittance transfer would be to the business of a person that provides such transfers. Furthermore, a single extension of credit may meet the demand of a consumer with ongoing credit needs; on the other hand, multiple remittance transfers may be needed to satisfy the annual demand of a consumer with ongoing transaction needs. Similarly, the Bureau believes that because it is not uncommon for consumers who send money abroad to do so 12 or more times per year,[9] a change in the demand of just one or two customers might result in significant variance in the number of remittance transfers provided by a person who sends only a small number of transfers. The Bureau believes the same is less likely to be true of extensions of credit.

The Bureau believes that a figure of 100 or fewer transfers per year appropriately accounts for the differences between remittance transfers and extensions of credit. It is high enough that persons will not risk exceeding the safe harbor based on the needs of just two or three customers seeking monthly transfers. At the same time, the Bureau believes that a threshold of 100 is low enough to serve as a reasonable basis for identifying persons who occasionally provide remittance transfers, but not in the normal course of their business. One hundred transfers per year is equivalent to an average of approximately two remittance transfers per week, or the number of remittance transfers needed to satisfy the needs of a handful of customers sending money abroad monthly.

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[9] *See, e.g.*, Bendixen & Amandi, *Survey of Latin American Immigrants in the United States* 22 (Apr. 30, 2008), available at: http://bendixenandamandi.com/wp-content/uploads/2010/08/IDB_2008_National_Survey_Presentation.pdf.

Though industry commenters suggested a number of thresholds higher than 100 remittance transfers per year, the Bureau is concerned that a person who provides more than 100 transfers in a calendar year is more likely than other persons to be providing remittance transfers in the normal course of its business, such as by making transfers generally available to its customers, and by providing them more frequently. Furthermore, the Bureau does not have industry-wide information linking commenters' suggested higher thresholds either to the definition of "normal course of business," or to other factors that commenters suggested were relevant, such as the cost of compliance with subpart B of Regulation E.

Industry commenters provided little data to support their contentions that any particular threshold was the most appropriate. Two trade associations provided high-level summaries of limited surveys of member banks regarding the number of international funds transfers sent. Otherwise, the comments received in response to the February Proposal generally did not provide data on the overall distribution and frequency of remittance transfers across providers to support treating any particular number of transactions as outside the normal course of business.

Through additional outreach, the Bureau obtained limited data from several sources regarding the number of remittances transfers and similar transactions provided by individual depository institutions and credit unions, money transmitters, and other small businesses that may also send money abroad. The Bureau hoped that such information might enable the Bureau to better evaluate the comments received, and reveal patterns in the numbers of transfers sent by different types of providers.

The data received include results from several limited surveys of depository institutions and/or credit unions regarding the number of remittance transfers that they send; estimates of the number of consumer-initiated outbound international wire transfers conducted by individual banks and/or credit unions provided through one correspondent bank or a corporate credit union; the number of remittances and other transactions conducted by state-licensed money transmitters in California, New York, and Ohio; and estimates of the number of outbound international transfers provided by individual credit unions using a specialized service. The Bureau also discussed with an industry expert the characteristics of several types of small businesses other than depository institutions and credit unions that may send money abroad, including start-up enterprises and small businesses that send money abroad that are not registered or licensed as money transmitters.

The Bureau does not believe that it can extrapolate from any of the data sets received to the remittance transfer market as a whole or any segment of it, due to factors including the small sample sizes and the Bureau's inability to determine whether the institutions covered in any data set are representative of the market as a whole or any segment of it. Also, regarding some segments of the market, the Bureau did not receive any data. Furthermore, in some cases, the data received may overestimate or underestimate the number of remittance transfers provided. For example, the data sets from a correspondent bank and a corporate credit union may underestimate the number of transactions provided by individual institutions, as these data sets reflect only wire transfers sent through either that correspondent bank or corporate credit union, and the institutions covered by the data sets may use other such intermediary institutions, or send remittance transfers by means other than wire. By contrast, the three states' transaction data both underestimate and overestimate the number of remittance transfers sent. On the one hand, one state provided data regarding transactions only from that state to foreign countries, rather than all international transfers that the state-licensed entities may have sent from the United States. On the other hand, all three states' data mix consumer-initiated outbound international transactions with transactions that are not remittance transfers, as defined in subpart B of Regulation E, including transfers initiated by businesses, domestic transfers, and/or sales of certain payment devices or other state-regulated transactions, depending on the state.

As a result of these limitations, the Bureau does not believe it can rely on the data received to describe the number of remittance transfers provided by "typical" entities or to identify a clear pattern in the distribution of providers by the number of transfers provided. Nor does the data received allow the Bureau to distinguish meaningfully among a number of the more modest thresholds suggested by commenters, in terms of the challenge of compliance for such institutions, or other factors suggested by commenters.

Nevertheless, the Bureau believes the data collected provide some additional support for a safe harbor based on a threshold of 100 remittance transfers per year. Though the data sets regarding state-licensed money transmitters did not show that any of the licensees that recorded some transaction volume also recorded 100 or fewer transactions per year nationally,[10] each of the data sets regarding depository institutions and credit unions suggested that a meaningful portion of the institutions covered by the data set were sending 100 or fewer remittance transfers annually. In other words, the threshold is not so low as to be meaningless. In the data sets for which the Bureau received detailed information, between roughly 40 percent and roughly 90 percent of those responding to or covered by the data who reported any transactions in the most recent year also stated that they provided 100 or fewer such transactions in that year.

[10] For transmitters licensed in California, the Bureau does not know whether the number of transactions reported for a company in California is the same as or less than the number of transactions that a company sent nationwide. Because each of the states' data sets combines remittance transfers with domestic transfers, business-initiated transfers, and/or sales of certain payment instruments (depending on the state), the Bureau cannot be certain as to the number of remittance transfers provided by each listed entity. However, the Bureau's review of entity websites suggests that many of the licensees that provide international money transfers to consumers focus on that line of business, and thus, that for many of the licensees that provide any remittance transfers, most of the reported transactions are, in fact, remittance transfers.

As commenters suggested, the Bureau intends to monitor the 100-transfer threshold over time. The Bureau is working to develop better sources of information on the frequency of remittance transfers provided not only by depository institutions, credit unions, and state-licensed money transmitters, but also by other types of entities, particularly broker-dealers and others that may send money abroad but that are not state- or federally-licensed or chartered. The Bureau believes based on available information that many nonbank companies that send money abroad fewer than 100 times per year may be agents for remittance transfer providers that are required to comply with subpart B of Regulation E. However, data about the market for international money transfers remains limited, especially with regard to providers that are not State- or Federally-licensed or chartered. Thus, the Bureau intends to continue seeking better data about the business structures and consumer protection concerns in all segments of the market.

Application of the Safe Harbor

Commenters raised several questions and suggestions regarding the application of the safe harbor described in proposed comment 30(f)-2. For example, some industry commenters sought clarification that a newly formed entity or a new entrant to the market would be considered to have provided zero remittance transfers in the previous calendar year.

New § 1005.30(f)(2)(i) does not generally distinguish between entities that provided zero remittance transfers in the previous calendar year and those that provided from one to 100. For entities formed during a particular calendar year, the Bureau recognizes that the number of transfers provided during the previous calendar year (*i.e.*, none), sheds little light on those entities' current or future business practices. However, the Bureau is concerned that an exception to the safe harbor for newly formed entities or new entrants would mean that none of those entities would be able to take advantage of the increased legal certainty that the safe harbor provides to other persons. Furthermore, the Bureau expects that any newly formed entity (or new entrant) that plans to offer remittance transfers in the normal course of its business will develop systems to comply with subpart B of Regulation E from the start, rather than wait until its 101st transfer. The Bureau notes that newly formed entities or new entrants conducting 100 or fewer remittance transfers in their first year in operation likely account for a very small portion of the total volume of remittance transfers sent each year.

Some industry commenters suggested that persons who exceed the safe harbor threshold not be required to come into compliance immediately with subpart B of Regulation E. One industry commenter suggested that providers be given six months to come into compliance with subpart B of Regulation E after exceeding any safe harbor threshold. Another industry commenter suggested that compliance be required only after a person exceeds the threshold for two consecutive years.

In response to the comments received, the Bureau adopts new § 1005.30(f)(2)(ii), which provides a transition period for any person that provided 100 or fewer remittance transfers in the previous calendar year but provides more than 100 remittance transfers in the current calendar year. Upon exceeding the 100-transaction threshold, that person would be subject to greater uncertainty as to whether it is providing remittance transfers in the normal course of business. Section 1005.30(f)(2)(ii) states that if such person is then providing remittance transfers for a consumer in the normal course of its business, then the person may have a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. Compliance with subpart B will not be required for any remittance transfers for which payment is made during that reasonable period of time.

Comment 30(f)-2.iii offers further explanation and clarification. It states that if a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 such transfers in the current calendar year, the safe harbor described in § 1005.30(f)(2)(i) applies to the first 100 remittance transfers that the person provides in the current calendar year. But similar to proposed comment 30(f)-2, final comment 30(f)-2.iii clarifies that for any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of business, and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. The comment further explains that for such a person, compliance with subpart B of Regulation E will be required at the end of the "reasonable period of time" permitted by § 1005.30(f)(2)(ii) unless, based on the facts and circumstances, such a person is not a remittance transfer provider. Comment 30(f)-2.iv provides an example with specific dates to illustrate application of the safe harbor and transition period.

The Bureau believes it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt the transition period described in new § 1005.30(f)(2)(ii) because the transition period will effectuate the purposes of the EFTA and facilitate compliance. The Bureau expects that a person initiating compliance with subpart B of Regulation E may need some time to adjust business processes and computer systems and train its staff. The Bureau is concerned that absent a transition period, persons who intend to become remittance transfer providers may temporarily suspend service in order to change their systems, and that such temporary suspension could be disruptive to consumers, as well as to the providers. However, the Bureau believes that any transition period should be limited because it will permit some persons to provide remittance transfers in the normal course of business without providing the disclosure, error resolution, and other protections generally required by subpart B of Regulation E. The Bureau believes that six months is an adequate period of time for entities to come into compliance, particularly because the Bureau expects that service providers will emerge or evolve to permit new remittance transfer providers to accelerate compliance. The Bureau expects that persons who are remittance transfer providers will use the transition period permitted by § 1005.30(f)(2)(ii) to take all reasonable steps toward compliance with subpart B of Regulation E.

One industry commenter stated that it does not have a system in place to count remittance transfers during the year. The Bureau recognizes that prior to the implementation of this rule, many persons likely had no reason to identify remittance transfers. In the future, the Bureau expects that many small providers will accurately track their remittance transfers to know whether they qualify for the safe harbor described in § 1005.30(f)(2). With regard to transfers provided prior to this rule's effective date, the Bureau expects that providers who did not distinguish remittance transfers from other electronic transfers of funds sent to recipients in other countries can use reasonable means to identify what subset of these transfers were remittance transfers, based on available information. For example, a bank might conclude that every outbound international wire transfer initiated by a consumer is a remittance transfer for purposes of determining whether the safe harbor applies in the first year after the effective date.

Other Comments

Consumer group commenters requested that the Bureau clarify that transfers provided by persons that qualify for the "normal course of business" safe harbor are governed by Article 4A of the Uniform Commercial Code (UCC). Article 4A applies to international funds transfers, but generally provides that it does not apply to a funds transfer any part of which is governed by the

EFTA. In the February Final Rule, 77 FR 6194, 6212, the Bureau recognized that one consequence of covering remittance transfers under the EFTA could be legal uncertainty under the UCC for certain remittance transfer providers. The Bureau stated its belief that the best mechanisms for resolving that uncertainty rests with the states that have adopted the UCC, with the purveyors of rules applicable to specific wire systems, which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts. Similarly, the Bureau does not believe that the requested clarification is proper, as the Bureau does not implement or administer Article 4A. Furthermore, the Bureau believes that subpart B of Regulation E already makes clear what transactions it governs.

Consumer group commenters also suggested that the Bureau require that either just insured institutions or all persons that qualify for the safe harbor described in § 1005.30(f)(2)(i) disclose to consumers that consumer protections applicable to remittance transfers provided by remittance transfer providers will not apply to transactions provided by those persons. The Bureau does not believe it is appropriate to impose such a requirement without seeking notice and comment on it. Furthermore, such a requirement would be in tension with EFTA Section 919, which subpart B implements, and which does not impose any express obligation on persons that are not remittance transfer providers.

Section 1005.31 Disclosures

Overview

In the February Proposal, the Bureau solicited comment on issues relating to disclosure of the cancellation requirements in § 1005.36(c) for remittance transfers scheduled by the sender at least three business days before the date of the transfer. To address these issues, the Bureau is amending the disclosure requirements in §§ 1005.31(a)(3), (a)(5), and (b)(2) to improve consumers' ability to determine the cancellation deadlines for particular transfers. In addition, the Bureau is amending § 1005.31(b)(3), regarding combined disclosures, to allow providers to give a confirmation that the transfer has been scheduled in lieu of the proof of payment required for transfers scheduled before payment is processed for the transfer. These amendments are discussed in detail in their respective sections below.

Disclosure of Deadline to Cancel Transfers Scheduled Before the Date of Transfer

As discussed in more detail below regarding § 1005.36(c), the February Final Rule adopts a cancellation policy for remittance transfers. Under § 1005.34(a) of the February Final Rule, a sender generally has 30 minutes after payment is made to cancel a remittance transfer. The February Final Rule, however, contains special cancellation procedures for any remittance transfer that is scheduled at least three business days before the date of the transfer, including a series of preauthorized remittance transfers. For these transfers, the provider is required to cancel the remittance transfer if it receives a request to cancel from the sender at least three business days before the date of the transfer.

The February Proposal solicited comment on possible changes to the cancellation requirements for remittance transfers that are scheduled at least three business days before the date of the transfer, including preauthorized remittance transfers. Specifically, the February Proposal solicited comment on whether the three-business-day period for cancelling such remittance transfers adopted in the February Final Rule is appropriate, or whether the rule should require a deadline to cancel these transfer that is more or less than three business days. The February Proposal also solicited comment on three issues related to the disclosure of the deadline to cancel as set forth in the February Final Rule. The first issue was whether the three-business-day deadline to cancel transfers scheduled before the date of the transfer should be disclosed differently to senders, such as by requiring a remittance transfer provider to disclose in the receipt the specific date on which the right to cancel will expire. The second issue was whether a provider should be allowed to describe both the three-business-day and 30-minute cancellation provisions on a single receipt and either describe the transfers to which each cancellation period is applicable, or alternatively, use a checkbox or other method to designate which cancellation period is applicable to the transfer to which the receipt relates. The third issue was whether the cancellation requirements should be disclosed in the pre-payment disclosure, rather than in the receipt, for each subsequent preauthorized remittance transfer.

The approaches taken in the final rule for the three-business-day cancellation period and the disclosures required to be provided in connection with subsequent remittance transfers within a series of preauthorized remittance transfers are described in greater detail below in the discussion regarding §§ 1005.36(c) and (d). Consistent with these provisions, the Bureau is also revising § 1005.31 to add new §§ (a)(3)(iv), (a)(5)(iv), and (b)(2)(vii), and associated commentary, regarding the content and format of the disclosures that must be provided to senders of transfers scheduled at least three business days before the date of the transfer and of certain preauthorized remittance transfers.

Taken together, the final rule requires remittance transfer providers to disclose the date of transfer, and in certain instances, the future date or dates of transfer and related information in receipts that may be provided at the time payment is made or after the date of transfer. For any remittance transfer scheduled at least three business days before the date of the transfer, the receipt provided when payment is made must disclose the date of transfer for that transfer. Where a consumer schedules a series of preauthorized remittance transfers, the receipt provided for the first transfer must also provide the date of transfer for that first transfer. In each case, if a second receipt is required after the date of transfer, that receipt must also disclose the date the transfer was made. The final rule also addresses, among other things, a requirement to disclose future dates of transfer for subsequent preauthorized transfers. In addition to the information described above, the receipt provided for the initial transfer in a series of preauthorized remittance transfers must also disclose the future date or dates of transfer for any subsequent preauthorized remittance transfer in that series for which the date of transfer is scheduled four or fewer business days after the date on which payment for the initial transfer is made. For other subsequent preauthorized transfers, the rule provides flexibility as to whether the information regarding transfer dates and cancellation requirements for subsequent transfers is included in one or more receipts or standalone disclosures, so long as it is provided sufficiently in advance to allow the consumer to exercise his or her cancellation rights.

Finally, as is the case with one-time transfers scheduled at least three business days before the date of the transfer, the final rule also requires that receipts for subsequent preauthorized remittance transfers include the date of transfer for the transfer that is the subject of the receipt and, if the provider chooses, the future dates of transfer for the next scheduled subsequent transfer or transfers.

31(a) General Form of Disclosures

31(a)(3)(iv)

As discussed below, the Bureau adds new § 1005.31(b)(2)(vii) to require that in certain circumstances, a receipt for a remittance transfer include the date of the transfer for that specific transfer in order to provide consumers with a clearer explanation of their cancellation rights. Further, the Bureau adds new § 1005.36(d) to require that in certain instances, such receipts disclose the dates of upcoming transfers and related information. The Bureau is making corresponding changes to the disclosure requirements for transfers conducted entirely by telephone to require oral disclosure of transfer date information in certain circumstances. As stated in the February Final Rule, the Bureau believes that for oral telephone transactions, senders should be informed of their cancellation rights before the cancellation period has passed. 77 FR 6194, 6217. Because a receipt would generally be mailed to a sender for telephone transactions as permitted by § 1005.31(e)(2), the sender may not receive the cancellation disclosure included in that receipt until after the standard 30-minute cancellation period had passed unless the Bureau required the disclosure to be made orally before the 30-minute cancellation period expires. Consequently, § 1005.31(a)(3)(iii), as adopted in the February Final Rule, requires oral disclosure of cancellation rights when the sender requests the remittance transfer and prior to payment for the transfer, if the provider takes advantage of the option to provide pre-payment disclosures orally for transactions conducted entirely by telephone.

For similar reasons, among others, the Bureau believes that for a remittance transfer scheduled at least three business days before the date of the transfer, and for any preauthorized remittance transfer scheduled to occur four or fewer business days after the date payment is made for the transfer, an oral pre-payment disclosure regarding cancellation rights should be accompanied by an oral disclosure regarding the date of that transfer. Although the time period for cancellation of transfers scheduled in advance may be calculated in days rather than minutes, the period may still expire before the consumer receives any written material, particularly if the consumer is scheduling the transfer three or four days in advance. For preauthorized remittance transfers, several transfers in the series may be sent before a written receipt is received.

Accordingly, pursuant to its authority under EFTA section 919(a)(5)(A), the Bureau is amending § 1005.31(a)(3) to add § 1005.31(a)(3)(iv) as a further condition for the provision of oral disclosures for remittance transfers conducted entirely by telephone. This provision permits oral disclosures if (among other requirements) the provider discloses orally, to the extent applicable, (A) the information required by § 1005.31(b)(2)(vii) and (B) the information required by § 1005.36(d)(1)(i)(A) with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in § 1005.31(e)(1).

31(a)(5)(iv)

As discussed in the section-by-section analysis to the February Final Rule, since remittance transfers sent via mobile application or text message on a telephone are conducted entirely by telephone, EFTA section 919(a)(5)(A) permits the Bureau to allow oral pre-payment disclosures in connection with transfers sent via mobile application or text message if the transfer is conducted entirely by telephone. 77 FR 6194, 6217. Because oral disclosures are not retainable, the Bureau further observed that for such transactions, senders would not be less protected, and might be better informed, by receiving pre-payment disclosures via mobile application or a text message even though these disclosures may also not be retainable. *Id*. Accordingly, to effectuate the purposes of EFTA and facilitate compliance, the Bureau used its authority under EFTA sections 904(a) and (c) to include in the February Final Rule § 1005.31(a)(5), which states that the pre-payment disclosure may be provided orally or via mobile application or text message if: (i) the transaction is conducted entirely by telephone via mobile application or text message; (ii) the remittance transfer provider complies with the foreign language requirements of § 1005.31(g)(2); and (iii) the provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by § 1005.31(b)(2)(iv) pursuant to the timing requirements in § 1005.31(e)(1).

Pursuant to the same authority, and for the same reasons as those discussed above regarding with § 1005.31(a)(3)(iv), the Bureau adopts new § 1005.31(a)(5)(iv), which adds as an additional condition for the provision of the pre-payment disclosures orally or via mobile application or text message a requirement that the provider disclose, to the extent applicable, (A) the information required by § 1005.31(b)(2)(vii) and (B) the information required by § 1005.36(d)(1)(i)(A) with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in § 1005.31(e)(1).

31(b)(2) Receipt

31(b)(2)(vii) Date of Transfer

The February Final Rule requires the receipt provided to a sender to include an abbreviated statement about the sender's cancellation rights. § 1005.31(b)(2)(iv). In the February Proposal, the Bureau noted that senders may have difficulty determining the specific date on which the right to cancel expires for a particular transfer. 77 FR 6310, 6321. Accordingly, the Bureau sought comment on whether, as applicable, the three-business-day deadline to cancel transfers should be disclosed differently to consumers, such as by requiring a remittance transfer provider to disclose in the receipt the specific date on which the right to cancel will expire or to state its business days in receipts provided to senders. The Bureau also solicited comment on alternative means of disclosing the deadline for cancelling transfers scheduled at least three business days before the date of the transfer.

The Bureau received a number of comments on the cancellation disclosure from various industry members and one consumer group. Most comments focused on whether providers should be required to include the specific cancellation deadline in the receipts provided to senders. Commenters did not address any of the other questions raised on this issue in the February Proposal nor did they suggest alternatives.[11]

With respect to disclosure of the specific cancellation date, the majority of industry commenters opposed such a requirement. Some industry commenters asserted that requiring disclosure of the specific cancellation deadline for a particular transaction would make it more difficult and expensive to produce receipts by adding a new element specific to each transfer. One industry commenter stated that requiring a remittance transfer provider to specify the exact date for cancellation would create significant technical challenges because at that point, the disclosure becomes dynamic, rather than static. This commenter stated that producing such a dynamic disclosure may require updating based on the time of day of the transfer request and the provider's processing deadline, whereas a static disclosure without such a requirement can be reliably produced at any time of day. Further, the commenter stated that a sender uncertain of the cancellation deadline will contact a remittance transfer provider directly for clarification and then cancel the transaction in the course of the same contact.

In contrast, the consumer group commenter argued that the period for cancellation rights should be disclosed as a specific date. One industry commenter did not oppose requiring remittance transfer providers to disclose the specific cancellation date for each transaction, but argued that providers should be allowed to disclose a cut-off time for exercising the cancellation right because the lack of clarity regarding the time of day the cancellation period expires could result in a transfer being delayed until the next business day.

[11] Regarding the Bureau's inquiry about disclosure of the provider's business days, the Bureau did not receive comment on this issue specifically, although one industry commenter stated that providers should not be required to disclose the specific deadline to cancel or other additional items that are not required to be disclosed by the February Final Rule.

Pursuant to the Bureau's authority under EFTA section 919(d)(3), the February Final Rule is revised to add a new § 1005.31(b)(2)(vii), which requires that a receipt for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, disclose the date the remittance transfer provider will make or made the remittance transfer, using the term "Transfer Date," or a substantially similar term.

The Bureau is also adopting commentary to provide further guidance on the application of § 1005.31(b)(2)(vii). As explained in more detail below in the discussion of § 1005.36, for certain transactions, a receipt meeting the requirements of § 1005.31(b)(2), including the transfer date required under § 1005.31(b)(2)(vii), may need to be provided at different times. For example, for the first in a series of preauthorized remittance transfers, an initial receipt will need to be provided at the time payment is made for the transfer; and then in some cases, a receipt will need to be provided shortly after that particular transfer has been made. Thus, comment 31(b)(2)-4 clarifies that, where applicable, § 1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by § 1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in § 1005.36(a).

Comment 31(b)(2)-4 further clarifies that, for any subsequent preauthorized remittance transfer subject to § 1005.36(d)(2)(ii), the future date of transfer and related information must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by §§ 1005.31(a)(3) and (a)(5), in accordance with § 1005.36(a)(1)(i).

Comment 31(b)(2)-5 provides an example of how disclosure of the dates of transfer required by § 1005.31(b)(2)(vii) and § 1005.36(d)(1) should be provided in receipts required by

§ 1005.31(b)(2) pursuant to the timing requirements in § 1005.36(a)(1)(i) or (a)(1)(ii). Comment 31(b)(2)-5 also explains that if the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with 1005.36(d)(2)(i), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable each date of transfer on the receipt.

Upon further review and analysis, the Bureau concludes that because the cancellation requirements in § 1005.36(c) are based on and calculated from the date of transfer, the actual transfer date is the most logical piece of information to require since the remittance transfer provider is already required to obtain this information in order to comply with § 1005.36(c), although it is not required to be disclosed to the sender under the February Final Rule.

Further, the Bureau also believes that requiring a remittance transfer provider to disclose the date of a remittance transfer, along with a disclosure that the sender's cancellation rights will expire three business days before the date of the transfer, provides a reasonable balance between consumer and industry interests. This approach significantly improves the information provided to senders because, under the February Final Rule, a provider is generally only required to disclose the cancellation policy, with a statement such as "you can cancel for a full refund no later than three business days prior to the scheduled date of the transfer." 77 FR 6310, 6321. This required disclosure, however, does not elaborate on what constitutes the date of transfer or how the sender may determine the cancellation deadline from the date of transfer. Without a clear starting point from which to count the three-business-day deadline, the Bureau believes senders may be confused about the dates by which they are required to cancel transfers, which may make cancellation disclosures less effective. In situations such as when transferred funds will be drawn from an account at a later date rather than paid up front, the transfer date may also help the sender understand when the funds for the transfer must be available for the provider to conduct the transfer. The transfer date may also help senders differentiate and keep track of completed transfers, especially where the sender receives a number of receipts in the mail or on an account statement in close proximity to one another.

The Bureau also believes that requiring disclosure of the date of transfer is the most technically feasible solution relative to the alternatives raised in the February Proposal. The dates of transfer should be readily available to remittance transfer providers since they are likely primarily responsible for executing remittance transfer requests, and as part of their business processes should already know when they must execute transfers to satisfy the terms of their contracts with senders (if the contracts are based on the date of the transfer) or to meet any delivery deadlines (if those deadlines are the bases of the contracts). The Bureau also believes that disclosure of the date of transfer is an added benefit for senders who may choose to schedule a transaction based on when the funds must be available. Finally, the Bureau notes that the requirement to disclose the date of transfer is consistent with the existing requirement for certain preauthorized electronic fund transfers. In particular, § 1005.10(d)(1) (in subpart A of Regulation E) requires an electronic fund transfer provider to send the consumer the date of transfer (and other information) at least ten days before the scheduled date of the transfer when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization. Consequently, certain remittance transfer providers that also provide preauthorized electronic fund transfers may already have the capability to produce disclosures with the date of transfer.

Moreover, the Bureau believes that keeping disclosure forms short, simple, and succinct is helpful to senders. As noted in the February Final Rule, participants in consumer testing understood and responded positively to concise, abbreviated disclosures. 77 FR 6194, 6228. Of the options considered, the Bureau believes that disclosure of only the date of transfer best accomplishes this goal because that date may be provided independently of other information. While disclosure of the specific dates of cancellation deadlines would inform senders of the actual dates on which their rights to cancel expire, the Bureau believes that consumers would still benefit from disclosure of the date of transfer. The Bureau is concerned that requiring providers to include multiple dates on receipts may be more confusing to senders and possibly dilute the usefulness of the disclosures regarding cancellation rights.

Likewise, the Bureau is concerned that requiring providers to state their business days on receipts may result in a longer, more unwieldy form. The Bureau believes that providers will generally make available to the public upon request the days that constitute "business days" under subpart B of Regulation E, and that, therefore, senders can obtain this information as necessary. Absent further data regarding the usefulness of this information, the Bureau does not believe that it is appropriate at this time to make the forms significantly longer and more complicated to include information that is likely to be used by only a small subset of consumers who may contact their remittance transfer providers in any event to effectuate the cancellation.

Accordingly, the Bureau believes that requiring the date of transfer and cancellation rights in receipts strikes the appropriate balance between providing senders with information about their transfers and minimizing the burden to providers. However, the Bureau will continue to gather data on consumers' exercise of cancellation rights, the effectiveness of related disclosures, and programming burdens on providers over time and, if warranted, will reexamine this issue at a later date to determine if a better solution exists.

The Bureau has further determined that it is appropriate to require disclosure of the date of transfer at the time payment is made, but also in subsequent receipts required to be provided with respect to a given transfer in accordance with § 1005.36(a)(1)(ii) or § 1005.36(a)(2)(ii). The Bureau believes that a single consistent rule will be simpler as a matter of programming for providers and will frequently provide additional benefits to consumers in light of the fact that the final rule eliminates the requirement to provide the pre-payment disclosure and receipt in advance of the transfer for subsequent preauthorized transfers in a series. (*See* discussion below regarding § 1005.36(a).)

In particular, although stating the date of transfer in a post-transfer receipt will not facilitate senders' understanding of cancellation deadlines that have already passed, the Bureau believes the information will frequently be useful to senders in other ways. For example, as noted above, if a sender schedules a number of standalone transfers before the date of transfer, or a series of closely-spaced preauthorized remittance transfers, senders may receive a number of receipts in close proximity to each other and may use the date of transfer to identify and track which transfer has occurred. Having the date of transfer on receipts with respect to each transfer would likewise be helpful in situations where the receipt is provided with a periodic statement on which there are several transactions.

In addition, because senders may not receive additional disclosures prior to the subsequent preauthorized transfer in a series, the receipt provided after the transfer is completed in accordance with § 1005.36(a)(2)(ii) will contain information regarding cancellation rights (as well as the exchange rate, fees and taxes) that could help inform the sender about the upcoming subsequent remittance transfer. Furthermore, as most preauthorized remittance transfers are likely to be scheduled some time in advance, senders will generally receive receipts after the transfer is completed. This receipt would provide confirmation that the transfer occurred as scheduled. Finally, where remittance transfer providers choose to satisfy their obligations under § 1005.36(d)(1) by disclosing the future transfer dates for preauthorized transfers on a receipt relating to a prior transaction, providing the date of transfer for the prior transaction will help differentiate to which transfer the disclosures in the receipt apply.

Disclosure of Both the Three-Business-Day Deadline and the 30-Minute Deadline in Same Receipt

Under § 1005.31(b)(2)(iv) of the February Final Rule, notice of the period to cancel a remittance transfer must be disclosed in the receipt provided pursuant to § 1005.31(b)(2). For any transfer scheduled at least three business days before the date of the transfer, the receipt provided by the remittance transfer provider to the sender may describe only the cancellation rights and three-business-day deadline set forth in § 1005.36(c). For all other remittance transfers, the provider is required to describe the cancellation rights and 30-minute cancellation period set forth in § 1005.34(a). In the February Proposal, the Bureau solicited comment on whether remittance transfer providers that offer both types of transfers should be given flexibility to include the two different cancellation periods permitted by this rule on the same receipt with some statement or method such as a checkbox to designate which cancellation period applies to a given transaction.

The Bureau received only a few comments on this issue. Of those received, two industry commenters urged the Bureau to permit providers flexibility in disclosing the cancellation requirement. One industry commenter argued that allowing providers to include both cancellation period options on the same receipt would enable providers to rely on one standard receipt form, which, compared to the alternative, may result in lower costs for providers (and, presumably, lower prices for senders). The other industry commenter stated that it supported any disclosure modification that would allow smaller providers to generate and deliver one disclosure and that the proposed option would eliminate the need to produce multiple disclosures to reflect the different cancellation periods. A consumer group commenter, however, stated that, to ensure that senders receive accurate and precise information to avoid potential confusion, only the cancellation provision that corresponds to the type of remittance transfer requested should be disclosed.

After consideration of these comments, the Bureau is adding new comment 31(b)(2)-6 to clarify that providers that offer remittance transfers scheduled at least three business days before the date of the transfer, as well as remittance transfers scheduled fewer than three business days before the date of the transfer, may meet the cancellation disclosure requirements in § 1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and using a checkbox or other method to clearly designate the applicable cancellation period. In other words, remittance transfer providers that provide both transfers scheduled at least three business days before the date of the transfer and transfers scheduled closer to the date of the transfer may disclose the cancellation period applicable to a particular transfer in one of two ways: (i) describe in the receipt either the 30-minute cancellation period or the three-business-day cancellation period, as applicable to the particular transaction; or (ii) provide a description of both the 30-minute and three-business-day cancellation periods along with a clear indication of which cancellation period applies to the sender's transaction. With respect to the latter option, the comment does not mandate a particular method for identifying the applicable time period for cancellation. The comment, however, clarifies that the provider may use a number of ways to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. Finally, comment 31(b)(2)-6 states that for transfers scheduled three or more business days before the date of transfer, the cancellation disclosures provided pursuant to § 1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

The Bureau believes senders are unlikely to be confused by having a description of both cancellation deadlines in the same disclosure. To the contrary, including a description of both the 30-minute and three-business-day cancellation period with a checkbox or other method that clearly designates the cancellation time period applicable to the sender's transaction may improve senders' understanding of the cancellation provisions generally. Moreover, the ability for remittance transfer providers to use pre-printed receipt forms that describe both cancellation options with some method to identify the applicable cancellation time period may reduce the need to create multiple standard receipts, potentially reducing costs for some providers. The Bureau also notes that nothing in the final rule prohibits a provider from including only the applicable cancellation policy on a receipt.

31(b)(3) Combined Disclosure

The Bureau is revising the requirements in the February Final Rule for combined disclosures that remittance transfer providers may choose to give to senders. Under § 1005.31(b)(3) in the February Final Rule, a remittance transfer provider may combine the pre-payment disclosure required by § 1005.31(b)(1) and the receipt required by § 1005.31(b)(2) into a single, combined disclosure, if such a disclosure is provided pursuant to the timing requirements applicable to pre-payment disclosures. *See* § 1005.31(e)(1). Section 1005.31(b)(3) provides that if the provider chooses to provide a combined disclosure, the provider must also provide the sender a proof of payment for the transfer when payment is made for the remittance transfer. As described in the February Final Rule, the Bureau issued § 1005.31(b)(3) pursuant to its authority under EFTA sections 919(a)(5)(C), 904(a) and (c).

Pursuant to the same authority, the Bureau is revising § 1005.31(b)(3) to allow a remittance transfer provider to provide a confirmation of scheduling in lieu of the proof of payment with combined disclosures for transfers scheduled before the date of transfer in order to facilitate compliance and enhance consumer protection. The Bureau is redesignating § 1005.31(b)(3) from the February Final Rule as § 1005.31(b)(3)(i) and is adopting a new § 1005.31(b)(3)(ii). Section 1005.31(b)(3)(ii) states that if the disclosure described in § 1005.31(b)(3)(i) is provided in accordance with § 1005.36(a)(1)(i) (which concerns one-time transfers scheduled five or more business days before the date of transfer or the first in a series of preauthorized remittance transfers) and payment is not processed by the remittance transfer provider at the time the remittance transfer is scheduled, a remittance transfer provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment otherwise required by § 1005.31(b)(3)(i). The confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

Although the February Proposal did not propose changes to § 1005.31(b)(3), it sought comment generally on the form of disclosures for transfers scheduled before the date of transfer. 77 FR 6310, 6317. The Bureau believes that adjustments are necessary to § 1005.31(b)(3) because while comment 31(e)-2 in the final rule states that payment is made for purposes of subpart B of Regulation E when payment is authorized, this does not necessarily mean that providing “proof of payment” at the time of authorization will make sense for either the provider or the sender for a one-time remittance transfer that is scheduled before the date of transfer or the first in a series of preauthorized remittance transfers when payment may not be processed until closer to the date of such transfer.

For many remittance transfers, senders tender payment for immediate processing once they authorize the remittance transfer provider to complete the transfer (*e.g.*, by paying cash or by providing a payment device). In those situations, the Bureau does not believe there would be any downside for the sender or the remittance transfer provider if the provider provided proof of payment at the time that payment is made, *i.e.*, authorized. These situations are distinct from the case in which a sender arranges with the provider to have funds deducted from the sender's account with the provider or to process a payment with a payment device at some later time, closer to the date of a transfer. In such an instance, the Bureau is concerned that providing a sender with "proof of payment" could confuse the sender. Furthermore, the Bureau is concerned that providers may not wish to provide "proof of payment" in such instances.

New comment 31(b)(3)-2 provides additional guidance regarding the confirmation of scheduling. This comment explains that, as discussed in comment 31(e)-2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of proof of payment described in § 1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by § 1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

Section 1005.32 Estimates

32(b)(1) Permanent Exception for Transfers to Certain Countries

In the February Proposal, the Bureau proposed renumbering § 1005.32(b) to § 1005.32(b)(1) to allow for the proposed exception for the disclosure of estimates for transfers scheduled before the date of transfer (*i.e.*, proposed § 1005.32(b)(2)). The February Proposal also proposed conforming changes to provisions that reference this exception. No comments were received on this renumbering. As discussed below, the Bureau is adopting a new exception for estimates and thus is adopting as proposed conforming revisions to § 1005.32(b)(1) and is renumbering the official interpretations thereto. *See* comments 32(b)(1)-1 through -7.

32(b)(2) Permanent Exception for Transfers Scheduled Before the Date of Transfer

In the February Proposal, the Bureau proposed to use its EFTA section 904(a) and (c) authority to add a new exception, in proposed § 1005.32(b)(2), that would provide additional flexibility for remittance transfer providers to disclose estimates in pre-payment disclosures and receipts for one-time transfers or the first in a series of preauthorized remittance transfers scheduled to occur more than ten days after the transfer is authorized.

In the February Proposal, the Bureau noted that the market for remittance transfers scheduled in advance of the date of transfer, including preauthorized remittance transfers, is still in its nascent stages. The Bureau also noted its concern that requiring a remittance transfer provider to set exchange rates before the date of transfer might cause a provider that is already permitting consumers to schedule remittance transfers in advance of the date of transfer to stop offering a potentially useful product to consumers rather than bear or manage increased exchange rate risk that might be associated with such a product. While remittance transfer providers (or their business partners) may be able to develop tools to manage such risk, the Bureau stated that it was concerned that providers might not do so, or that they would pass on any new risk management costs to consumers. Based on these concerns, the Bureau sought comment on whether providers should be permitted to disclose estimates of exchange rates, and related figures, in two circumstances: (i) a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers to occur more than ten days after the transfer is authorized; or (ii) a sender enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The Bureau received comments about the use of estimates generally and conducted additional outreach to better understand some of the issues raised by commenters.

The Bureau is adopting new § 1005.32(b)(2), which permits disclosures to contain estimates in certain cases for remittance transfers scheduled before the date of transfer. The new provision allows for certain estimates for all remittance transfers scheduled five or more business days before the date of transfer, rather than only for one-time transfers or the first in a series of preauthorized remittance transfers scheduled more than ten business days before the date of the transfer (as was proposed). The allowance for estimates in disclosures for subsequent preauthorized remittance transfers will have limited application, insofar as the Bureau is eliminating the requirement that pre-payment disclosures be sent prior to subsequent preauthorized remittance transfers and is only requiring pre-transfer receipts for such transfers when certain previously disclosed figures change. However, to the extent that a remittance transfer provider must send a pre-transfer receipt, the final rule permits the provider to disclose estimates in accordance with § 1005.32(b)(2). *See* § 1005.36(a)(2)(i) (discussing pre-transfer disclosure requirements for subsequent preauthorized remittance transfers). In addition, the new exception permitting estimates is expanded from the February Proposal to allow estimates in certain cases when the provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. The new provisions and comments received are discussed in more detail below.

Provision of Estimates for Transfers Scheduled Before the Date of Transfer

Industry commenters generally supported the first option for estimates suggested by the February Proposal: an exception from the general rule requiring accurate disclosures (§ 1005.31(f)) that would permit remittance transfer providers to disclose estimates of the amount of currency to be received, as well as other information such as exchange rates, for certain remittance transfers scheduled before the date of transfer. Although the February Proposal only sought comment regarding disclosure of estimates in one-time transfers and the first in a series of preauthorized remittance transfers scheduled more than ten business days before the date of transfer, most commenters addressed the use of estimates for all transfers scheduled before the date of transfer (*i.e.*, one-time transfers scheduled before the date of transfer, the first in a series of preauthorized remittance transfers, and subsequent preauthorized remittance transfers).

Industry commenters stated that absent an exception allowing for the disclosure of estimates, remittance transfer providers would face difficulties adjusting their risk management systems to provide accurate exchange rates before the date of transfer, particularly when providers are required to allow senders to cancel remittance transfers up to three business days before the scheduled date of transfer. *See* § 1005.36(c). Commenters also favored the disclosure of estimates due to the potential legal consequences associated with creating risk management strategies required in order to provide accurate (rather than estimated) disclosures far before a scheduled remittance transfer.

First, multiple industry commenters argued that if remittance transfer providers were required to give accurate disclosures of the exchange rates that would apply to remittance transfers scheduled before the date of transfer, any providers offering such transfers would likely need to change their current methods of managing foreign exchange risk. One commenter stated that remittance transfer providers often assume the risk from fluctuations in the wholesale rates at which they buy foreign currency during the course of a day, by setting one retail exchange rate to apply to remittance transfers (or other transactions) conducted throughout that day. However, industry commenters stated that setting retail exchange rates farther before the date of transfer would cause a remittance transfer provider to incur more exchange rate risk due to the extended time period during which wholesale foreign currency markets might fluctuate. Commenters contended that in order to disclose the exchange rate that would apply to a remittance transfer far before the date of such transfer, a provider would either have to (1) bear the risk of the wholesale exchange rate changing before the date of transfer or (2) use some method to purchase currency before the date of transfer and bear the risk of the sender cancelling the transfer, leaving the provider (or its business partner) with unneeded currency.

During outreach conversations, the Bureau spoke to industry participants to learn more about how remittance transfer providers can or do manage foreign exchange risk. In these conversations, foreign currency providers and other market participants stated that if they were required to disclose accurate exchange rates several days in advance of the date of transfer, remittance transfer providers (or their business partners) might have to develop new procedures to manage fluctuations in the wholesale foreign exchange rates, *i.e.*, the rates at which remittance transfer providers (or their business partners) generally buy foreign currency.

Second, several industry commenters stated that remittance transfer providers would face difficulties implementing any of the methods that would allow them to manage the risk associated with disclosing exchange rates before the date of a transfer, and that these methods could result in increased prices for senders. Industry commenters indicated, and participants in outreach conducted by the Bureau further explained, that the primary method for remittance transfer providers (or their business partners) to manage any additional risk created due to the disclosure of actual exchange rates for remittance transfers scheduled before the date of transfer would likely be through employing foreign exchange futures or forward contracts, through which a buyer commits to buying a specified amount of foreign currency, at a specified foreign exchange rate, at a later date.[12] Industry commenters stated that a remittance transfer provider could itself, or through a third party, purchase a futures or a forward contract for the amount of the remittance transfer, and/or sell such a contract to the sender. One industry commenter explained, however, that such methods can be risky if foreign currency markets fluctuate and if a sender cancels a remittance transfer after the provider secures the currency needed for the transfer. In such a case, a remittance provider (or its business partner) may experience a loss due to changes in the foreign exchange markets.

Third, industry commenters stated that setting exchange rates before the date of transfer could implicate other laws and regulations. For example, one trade association commenter expressed concern that for some types of entities, simply setting an exchange rate before the date of transfer might be considered a forward contract, and that therefore these entities might become subject to U.S. Commodity Futures Trading Commission regulations that contain

[12] A futures contract for foreign currency is a contract between two parties to purchase a specified amount of foreign currency at a date in the future for a price agreed upon at the time of contracting. Such contracts would allow a provider to "lock-in" a rate in order for it to give customers an accurate rate when scheduling the transfer.

registration, capital, reporting, and recordkeeping requirements. Separately, in an outreach conversation, one bank expressed concern that restrictions on depository institutions' investments created by the Dodd-Frank Act may similarly limit depository institutions' ability to purchase the necessary contracts needed to manage the risk associated with setting far in advance the exchange rates that will apply to remittance transfers. Finally, one credit union commenter expressed concern that Federal credit union regulations might restrict credit unions' ability to manage foreign currency risk.

Fourth, apart from regulatory concerns, some industry commenters and participants in outreach suggested that requiring accurate disclosures of exchange rates far before the date of transfer would significantly increase costs. Several commenters stated that any additional efforts to provide exact exchange rates in advance would result in increased prices charged to senders (though none estimated by how much). These commenters indicated that costs could be so high that senders would not choose these products.

Fifth, an industry commenter expressed concern that any requirement to disclose an accurate exchange rate before the date of a remittance transfer would pose a significant risk to remittance transfer providers if senders decide to take advantage of the three-business-day cancellation period to seek better exchange rates. The requirements in the February Final Rule in §§ 1005.31(b)(1)(iv), .33(a)(1)(iii), and .36(b) that remittance transfer providers disclose the exchange rate that applies to a remittance transfer in pre-payment disclosures and receipts and that the provider must make available to the designated recipient the amount of currency stated in the disclosure means, in effect, that a remittance transfer provider must commit to a specific exchange rate at the time the sender authorizes the transfer, even if disclosed days or weeks before the date of the transfer. As a result, the commenter stated some senders might use the three-day cancellation period applicable to transfers scheduled before the date of transfer strategically in order to seek better exchange rates. Thus, if prior to expiration of the cancellation period, the remittance transfer provider offered an exchange rate that was more favorable to the sender than the exchange rate set for the transfer, the commenter felt that a sender might decide to cancel the remittance transfer and immediately rebook it at the more favorable exchange rate available that day. Conversely, if the provider offered an exchange rate that was less favorable than the earlier rate, the sender would benefit from having locked in a better rate that the remittance transfer provider was contractually bound to apply to the transfer. The commenter stated that this phenomenon would increase providers' exchange rate risk and the cost of managing such risk. Some industry commenters indicated that, at least in some instances, providers would refuse to offer consumers the ability to schedule remittance transfers before the date of transfer if the Bureau required providers to disclose, before the cancellation deadline passes, the exchange rate that will apply to any such remittance transfer.

Consumer group commenters agreed that the use of estimates in disclosures may be appropriate for initial transfers in series of preauthorized remittance transfers, but stated that, if remittance transfer providers were allowed to use estimates in disclosures for such transfers, senders should be informed they would not receive actual notice of the price of the transfer or of the amount to be received by the designated recipient during the periods when the senders can cancel the transfers. Some of these commenters also stated that if remittance transfer providers were permitted to use estimates for transfers scheduled before the date of transfer, then providers should also be required to ensure that senders eventually receive disclosures that state the actual exchange rates that will apply to the remittance transfers prior to the expiration of the cancellation periods for those transfers, or the providers should be required to commit to the method they will use to set the exchange rate on the date of transfer.

Finally, an individual commenter and several industry commenters stated that disallowing estimates would disproportionately harm smaller remittance transfer providers. The individual commenter suggested that small providers would not have the scale or expertise to manage exchange rate risk in a manner necessary to comply with any requirement that providers disclose accurate exchange rates before the date of transfer. Relatedly, industry commenters stated that not allowing estimates for disclosures provided prior to the date of a remittance transfer would disproportionately affect small providers relative to large providers. Similarly, several industry commenters urged the Bureau to allow estimates because without estimates they would not be able to manage risk and thus would have no reliable way of providing accurate disclosures before the date of transfer of the exchange rate and related figures. If the February Final Rule remained unchanged, these providers stated they would not permit consumers to schedule transfers before the date of transfer.

Based on comments received and the Bureau's outreach and further analysis, and in order to effectuate the purposes of the EFTA and facilitate compliance, the Bureau believes it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt proposed § 1005.32(b)(2) with the changes discussed in more detail below concerning (i) when estimates will be allowed under this provision and (ii) situations where the amount to be transferred may vary.

The Bureau continues to believe that the market for remittance transfers scheduled significantly before of the date of transfer, including preauthorized remittance transfers, is currently limited. Nevertheless, the Bureau believes that if it did not adopt this provision to allow estimates, the subset of remittance transfers providers that currently offer senders the ability to schedule remittance transfers before the date of transfer – or are considering doing so – may limit such offerings because the providers (or their business partners) would not want to absorb or manage the risk associated with fixing the exchange rates that would apply to transfers far in advance of the date of transfer. As described above, many retail exchange rates are set through reference to wholesale currency markets in which rates can fluctuate frequently. As a result, whenever there are time lags between when the retail rate applied to a transfer is set, when the relevant foreign currency is purchased, and when funds are delivered, a remittance transfer provider (and/or its business partner) may face losses due to unexpected changes in the value of the relevant foreign currency. Generally, this risk may increase the more time that elapses between these events.

The Bureau is concerned that in many cases, remittance transfer providers (or their business partners) will find it more difficult or costly to manage the risks related to disclosing accurate exchange rates before the date of transfer and that such risks may be exacerbated because the final rule allows senders to cancel transfers up to three business days before the date of transfer. The Bureau is also concerned that, because remittance transfers scheduled before the date of transfer are a relatively small portion of the remittance transfer market, providers may decide not to develop necessary risk management tools and may not offer transfers scheduled before the date of transfer. The Bureau further believes that for such transactions allowing estimates may be beneficial to senders in many instances even though senders may receive less information before the date of transfer than they would under the February Final Rule. If senders received exchange rates set long before the dates of remittance transfers, in some cases, senders would receive a more favorable exchange rate than they would otherwise, while other senders would receive less favorable rates, depending on the fluctuation of the exchange rate between the date of disclosure and the date of transfer. However, allowing estimates may result in lower costs for remittance providers (and thus lower prices for all senders of transfers scheduled before the date of transfer), as well as wider access for senders to the convenience of one-time transfers scheduled before the date of transfer and preauthorized remittance transfers.

Furthermore, while under § 1005.32(b)(2) senders will not always receive disclosures of a fixed exchange rate and amount of currency to be received, the Bureau believes that even estimates of these amounts will still permit consumers to learn some information that could assist in comparing remittance transfer providers' price models. As is discussed below (*see* § 1005.32(d)) estimates provided pursuant to § 1005.32(b)(2) must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under § 1005.32(c) that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

Time Period for Estimates for Transfers Scheduled Before the Date of Transfer

Proposed § 1005.32(b)(2)(i) stated that estimates could be provided for certain items required in the pre-payment disclosure, receipt, or combined disclosure if a remittance transfer was requested or authorized by the sender more than ten days before the date of transfer. The Bureau sought comment on whether ten days is an appropriate period after which estimates should no longer be permitted or whether the period should be longer or shorter.

The Bureau received a number of comments on the appropriate period for use of estimates in disclosures provided for all remittance transfers scheduled before the date of transfer (rather than just one-time transfers scheduled before the date of transfer and first in a series of preauthorized remittance transfers as covered by the February Proposal). Industry commenters supported estimates in disclosures for all remittance transfers scheduled more than ten days before the date of transfer, but many also urged the Bureau to allow estimates for remittance transfers scheduled ten or less days before for many of the reasons discussed above – namely the risk management and other challenges that they believed that remittance transfer providers would face if they were required to disclose exchange rates far in advance of remittance transfers. These commenters urged a shorter period within which they would not be permitted to provide estimated disclosures. Commenters also expressed concern that providers would refuse to offer consumers the ability to schedule transfers ten or fewer days before the date of transfer because providers would not want to disclose exact exchange rates between one and ten days before the date of transfer.

Industry commenters suggested a range of alternatives less than ten days. One industry commenter proposed allowing estimates for all transfers scheduled more than one day before the date of transfer because it was unable to manage the risks associated with providing accurate exchange rates more than one day in advance. Other industry commenters provided similar rationales for proposed periods of less than two days, two or three days, five days, and seven days. One trade group commenter urged the Bureau to allow estimates for all remittance transfers scheduled two or more days before the date of transfer and to require only a two-day cancellation period because a shorter cancellation period would still allow senders to cancel transfers and would exacerbate providers' foreign currency risks.

Consumer group commenters favored the ten-day rule expressed in the February Proposal. One of these commenters explained that although it understood the difficulty of disclosing the actual exchange rate before the date of transfer, its research showed that consumers are better informed when they receive accurate and precise disclosures, and thus this commenter preferred to expand the period during which estimates would not permitted.

The Bureau is adopting a revised § 1005.32(b)(2)(i), which permits remittance transfer providers to estimate exchange rates and, in some instances fees and taxes, for all remittance transfers scheduled five or more business days before the date of transfer, rather than for one-time transfers or the first in a series of preauthorized remittance transfers scheduled more than ten days before the date of transfer as proposed. As is explained above regarding the use of estimates generally, compared to the proposal permitting estimates in some cases more than ten days before the date of transfer, the Bureau believes this provision will allow providers increased flexibility to continue to offer transfers scheduled five or more business days before the date of transfer while still requiring accurate disclosures for transfers scheduled less than five days before the date of transfer (except when estimates are permitted by § 1005.32(a) or (b)(1)).

The Bureau recognizes that for transfers scheduled three or four business days before the date of transfer, providers will have to disclose an accurate exchange rate (rather than an estimate) while maintaining the sender's right to cancel the transfer. *See* § 1005.36(c). The Bureau believes, however, that as compared to transfers scheduled five or more business days before the date of transfer, risk management needs are reduced for transfers scheduled less than five business days before the date of transfer. The Bureau believes that providers should not be permitted to use provide estimates, other than as permitted under §§ 1005.32(a) and (b)(1), for transfers scheduled less than five business days before the date of transfer. Because risk is generally more manageable closer to the date of transfer, the Bureau believes consumers should receive accurate disclosures during that period. To the extent that any remittance providers that currently offer, or plan to offer, remittance transfers scheduled in advance may be inclined to limit senders' ability to schedule transfers three or four business days before the date of transfer (because they are unwilling or unable to provide an accurate exchange rate while cancellation remains possible), the Bureau believes there is a limited loss of convenience to consumers as compared to a scenario where estimates are disallowed for a longer period. The Bureau presumes that any consumer has the option of a same-day transfer with a remittance transfer provider who does not offer two, three, or four days advance scheduling.

Thus, in the final rule, § 1005.32(b)(2)(i) provides that estimates may be provided in certain cases for the amounts to be disclosed under §§ 1005.31(b)(1)(iv) through (vii) if a remittance transfer is scheduled by a sender five or more business days before the date of transfer.

The Bureau proposed revisions to comment 32-1 to explained when the proposed § 1005.32(b)(2) exception would apply. The Bureau is revising proposed comment 32-1 to clarify that § 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in §§ 1005.36(a)(1)(i) and (a)(2)(i). Sections 1005.36(a)(1)(i) and (a)(2)(i) concern pre-payment disclosures and receipts for one-time transfers scheduled five or more business days before the date of transfer and preauthorized remittance transfers and are discussed in detail below.

Estimates of the Amount To Be Transferred

The Bureau also sought comment on whether remittance transfer providers should be allowed flexibility to estimate certain information in disclosures for the first scheduled transfer in a series of preauthorized remittance transfers where the exact amount of the transfer can vary. The few commenters on this issue suggested that the need to estimate the amount to be transferred could occur in two scenarios. For example, an industry commenter suggested that senders may want to transfer a variable amount (such as a paycheck or government benefits payment in an amount that varies), or may want to prearrange the delivery of a fixed amount of one currency from an account denominated in another currency, *e.g.*, U.S. dollars (which would result in the transfer amount depending on the exchange rate). The Bureau believes it unnecessary to adjust the rule expressly to address the first potential scenario. No industry commenter stated that it currently allows customers to schedule transfers of a variable amount, and the Bureau is not aware of business models permitting such remittance transfers. Under the final rule, § 1005.36(a)(2)(i) requires a receipt to be provided a reasonable time prior to a subsequent preauthorized transfer if the amount to be transferred changes from the first transfer in series a of preauthorized remittance transfers.

As to the latter scenario, outreach confirmed that the marketplace currently permits some consumers to schedule series of recurring remittance transfers in which the transfer amount is fixed in a currency other than that in which the transfer is funded. To address this latter scenario, the Bureau believes it necessary and proper to effectuate the purposes of the EFTA and to facilitate compliance to exercise its EFTA section 904(a) and (c) authority to adopt an additional revision to § 1005.32(b)(2). Specifically, the final rule states in § 1005.32(b)(2)(i) that if, at the time the sender schedules a transfer, the remittance transfer provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded, estimates may also be provided for the amounts to be disclosed under §§ 1005.31(b)(1)(i) through (iii), except as provided in § 1005.32(b)(2)(iii) (*i.e.*, in certain cases the provider can disclose estimates of the fees and taxes imposed on the transaction and the total amount of the transaction, as well as the amount that will be transferred in the currency in which the remittance transfer is funded).

New comment 32(b)(2)-1 provides an example regarding the exception for remittance transfers scheduled before the date of transfer in which the amount to be transferred is fixed in a currency other than that in which the transfer is funded.

New comment 32(b)(2)-2 clarifies the interaction between the final rule and § 1005.10(d) of subpart A of Regulation E.[13] It states that to the extent § 1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as § 1005.10(d) does not specify the form of such notice, a notice sent pursuant to § 1005.36(a)(2)(i) will satisfy § 1005.10(d) as long as the timing requirements of § 1005.10(d) are satisfied.

Relatedly, the Bureau solicited comment as to whether a remittance transfer provider should be permitted to estimate the date in the foreign country on which the funds will be available, if the amount of the transfers under the preauthorized remittance transfer arrangement varies from one transfer to the next, and the remittance transfer provider does not know the exact date on which the remittance transfer must be sent at the time that disclosures are given for the first transfer. 77 FR 6310, 6318 (suggesting that this situation could arise, for example, if remittance transfers are being used to pay bills with due dates that are not known in advance).

[13] Section 1005.10(d)(1) states: "*Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of the transfer."

No comments were received on this issue. The Bureau is not adopting any changes to the February Final Rule regarding estimates of the date on which funds will be available.

32(b)(2)(ii) and (b)(2)(iii)

To accommodate the allowance for estimates of exchange rates in certain disclosures for remittance transfers scheduled five or more business days before the date of transfer, several additional provisions are included in § 1005.32(b)(2) regarding other information disclosed in pre-payment disclosures and receipts.

Proposed § 1005.32(b)(2)(ii) permitted a remittance transfer provider to estimate taxes imposed on the remittance transfer by a person other than the provider for transfers scheduled more than ten days before the date of transfer only if those taxes were a percentage of the amount transferred to the designated recipient and are to be disclosed in the currency in which the funds will be received. Proposed § 1005.32(b)(2)(iii)(A) similarly permitted a remittance transfer provider to estimate fees imposed on the remittance transfer by a person other than the provider for transfers scheduled more than ten days before the date of transfer only if those fees were a percentage of the amount transferred to the designated recipient and are to be disclosed in the currency in which the funds will be received. Unlike proposed § 1005.32(b)(2)(ii), proposed § 1005.32(b)(2)(iii) contained an additional provision – § 1005.32(b)(2)(iii)(B) – that, in effect, reasserted the temporary exception (in § 1005.32(a)) for "insured institutions" to estimate fees. Because § 1005.32(a) remains unchanged in the final rule and continues to apply regardless of the application of § 1005.32(b)(2), the Bureau believes it unnecessary to include a provision incorporating that exception.[14]

[14] For the same reasons, the Bureau is not adopting the proposed change to comment 32(c)(1)-1, concerning potential transmittal routes or proposed comment 32(b)(2)-1 concerned fees imposed on the remittance transfer provider by a person other than the remittance transfer provider. The Bureau received no comments regarding

As a result, there is no longer a need for separate provisions for estimation of the fees and taxes in the disclosure required under § 1005.31(b)(1)(vi). In place of proposed §§ 1005.32(b)(2)(ii) and (b)(2)(iii)(A), as well as proposed comment 32(b)(2)-7, the Bureau adopts § 1005.32(b)(2)(ii), which provides that fees and taxes described in § 1005.31(b)(1)(vi) may be estimated under § 1005.32(b)(2)(i) only if the exchange rate is also estimated under § 1005.32(b)(2)(i) and the estimated exchange rate affects the amount of fees and taxes under § 1005.31(b)(1)(vi). The revised provision expands the ability to estimate fees and taxes to cover not just situations in which the tax or fee is a percentage of the amount of the funds transferred, but also to cover situations in which a tax or fee may otherwise vary depending on the exchange rate (*i.e.* a tax is only charged on transfers that exceed a certain threshold denominated in the currency in which the funds will be received, and that amount depends on the exchange rate).

The final rule also includes § 1005.32(b)(2)(iii). This provision allows remittance transfer providers to estimate fees and taxes in certain disclosures provided for remittance transfers scheduled five or more business days before the date of transfer, when a remittance transfer provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. But § 1005.32(b)(2)(iii) explains that fees and taxes described in § 1005.31(b)(1)(ii) may be estimated under § 1005.32(b)(2)(i) only if the amount that will be transferred in the currency in

comment 32(b)(2)-1. Nevertheless, the Bureau is not adopting the proposed comment because it is duplicative. *See* §§ 1005.32(a) and (b)(2)(ii). The final rule continues, in effect, to allow estimates for the fees described in § 1005.31(b)(1)(vi) in two circumstances: (i) where the fees are calculated as a percentage of the amount transferred to the designated recipient pursuant to § 1005.32(b)(2)(ii); or (ii) where an "insured institution" as defined in § 1005.32(a)(3) is permitted to estimate fees under the temporary exception in § 1005.32(a).

which it is funded is also estimated under paragraph (b)(2)(i) of this section, and the estimated amount affects the amount of such fees and taxes.

Disclosure of Formulas Used to Calculate the Exchange Rate.

In the February Proposal, the Bureau sought comment on whether, in lieu of providing an estimate of the exchange rate for a remittance transfer scheduled before the date of transfer, the Bureau should allow providers to disclose a formula that will be used to calculate the exchange rate that will apply to such a transfer, and that is based on information that is publicly available prior to the time of transfer. The sender could then use that formula to calculate the exchange rate that will apply to the transfer.

Several industry and consumer group commenters supported the use of such a formula although they disagreed on whether its use should be optional. One industry commenter stated that the disclosure of a formula could eliminate the need for remittance transfer providers to manage exchange rate risk and would reduce the burden on providers as compared to a rule that required providers to disclose actual exchange rates for transfers scheduled before the date of transfer. Another industry commenter favored disclosure of formulas rather than estimates for remittance transfers scheduled before the date of transfer because the volatility of currency markets makes disclosure of estimates of limited utility to senders trying to gauge the pricing of a particular provider's services. Other industry commenters stated that either a formula or use of estimates could reduce compliance burden on providers. One consumer group favored the use of formulas whenever the Bureau would also permit estimates on disclosures provided more than ten days before the date of transfer because formulas may make comparison shopping easier for consumers.

In contrast, one industry commenter preferred disclosure of estimates to formulas because, the commenter stated, for remittance transfers scheduled before the date of transfer, it would be easier to provide an estimate of an exchange rate to senders and such an estimate would be easier for a sender to understand.

The Bureau believes that, in some cases, compared to either an estimated or an actual exchange rate, a well-designed formula could better serve consumers and potentially reduce burden on remittance transfer providers. The Bureau believes that, given the nature of foreign currency markets, in many cases, any estimate of the exchange rate for a remittance transfer scheduled days or weeks in the future may not provide a highly precise indication to the sender of the exchange rate that would actually be applied to the sender's transfer. By contrast, a formula that will be used to calculate the exchange rate applicable to a transfer could provide more certainty to a sender as to relative prices or the pricing mechanism used and allow the sender to calculate the actual exchange rate that will apply to a transfer, before the date of the transfer. In addition, disclosing a formula would reduce the need for a remittance transfer provider to manage the currency risk associated with providing an accurate exchange rate for a transfer scheduled before the date of transfer.

Nevertheless, the Bureau does not believe it is appropriate to allow for the use of formulas in disclosures at this time. First, the Bureau is concerned that the disclosure of formulas themselves could be confusing to senders if not designed in a way that consumers can understand. Second, if a formula was not required to be disclosed by all remittance transfer providers, the Bureau is concerned that consumer confusion could be a problem if some providers disclose formulas while others disclose estimates. However, the Bureau expects to continue evaluating how disclosures can most effectively inform senders without imposing undue burden on remittance transfer providers.

32(c) and (d) Bases for Estimates

The February Proposal sought comment on the appropriate method to calculate estimates of exchange rates, and related figures, under the proposed exception for remittance transfers scheduled before the date of transfer. However, the Bureau did not propose specific changes to § 1005.32(c), which concerns the allowable bases for estimates of required disclosures.[15] The Bureau received a few comments on this issue but none that suggested revisions to § 1005.32(c). However, in order to allow remittance transfer providers to give estimates for transfers scheduled five or more business days before the date of transfer and to make those estimates more useful for consumers, the Bureau believes revisions to the allowable bases for such estimates are necessary for disclosures that contain estimates pursuant to § 1005.32(b)(2). These changes are adopted in a new § 1005.32(d).

The February Final Rule contains, in § 1005.32(c)(1), three specific approaches by which a remittance transfer provider may estimate an exchange rate when using the exceptions for estimates in §§ 1005.32(a) and (b) (now renumbered as (b)(1)). Section 1005.32(c) further allows a provider to use an estimation approach not listed in § 1005.32(c)(1) so long as the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed, as required by § 1005.31(b)(1)(vii). Under, the February Proposal, the bases for determining estimates under proposed § 1005.32(b)(2) would have been the same as the

[15] In the February Proposal, the Bureau did propose conforming changes to comment 32(c)(3)-1 that referenced the renumbered provisions relating to the permanent exception for transfers to certain countries (what is § 1005.32(b)(1) in the final rule). The Bureau received no comments on the proposed changes to this comment, and the Bureau is adopting it as proposed.

bases for determining estimates under the existing provisions permitting estimates in the February Final Rule (*i.e.*, § 1005.32(c)).

In commenting on proposed § 1005.32(b)(2), industry commenters noted that if allowed, the most likely way that they would "estimate" the future exchange rate would be by providing the actual rate available on the day of scheduling to customers sending same-day transfers. One commenter explained that while they could always disclose the actual rate available on the date the transfer is scheduled, the commenter cautioned that many variables could alter exchange rates over time. Furthermore, industry commenters stated that they believed that senders typically do little comparison shopping when scheduling transfers before the date of transfer and instead are more interested in reliable and timely transfers from a remittance transfer provider that the senders trust.

To clarify the proper bases for disclosing estimates, the Bureau adds § 1005.32(d), which states that estimates provided pursuant to § 1005.32(b)(2) must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under § 1005.32(c) that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, in accordance with § 1005.32(d), a remittance transfer provider uses a basis described in § 1005.32(c) but not listed in § 1005.32(c)(1), the provider is deemed to be in compliance with § 1005.32(d) regardless of the amount received by the designated recipient, so long as the estimation methodology is the same as that the provider would have used or did use in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.[16]

[16] Section 1005.32(c)(1) contains three methodologies for providing estimates. If a provider chooses to use a non-listed method, § 1005.32(c) explains that the amount received by the designated recipient must be the same, or greater then, the estimated amount disclosed to the sender.

The Bureau is making two changes to the bases for estimates applicable to the exception for estimates for remittance transfers scheduled five or more business days before the date of transfer. The first requires providers to base estimates on the exchange rate (or estimated exchange rate) that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. In order to allow for easier comparison shopping and for estimates to be of use to senders, the Bureau believes that remittance providers should base their estimates on similar methodologies. The Bureau believes that if providers uniformly disclose the actual rate available that day as the estimated rate for transfers scheduled before the date of transfer, senders will more easily be able to compare the offerings of various remittance transfer providers by comparing rates and fees. Moreover, commenters did not suggest any other reliable method to estimate future exchange rates.

The second change concerns estimates pursuant to § 1005.32(b)(2) by remittance transfer providers that can otherwise use the two statutory exceptions in § 1005.32(a) or (b)(1). As explained above, providers of transfers scheduled before the date of transfer who cannot use one of the enumerated methods for estimating in § 1005.32(c)(1) will have difficulties guaranteeing that the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed. The Bureau is concerned about remittance transfer providers that use estimates pursuant to § 1005.32(a) or (b)(1), and that, as permitted by § 1005.32(c), have chosen to use an estimation methodology other than those specified in § 1005.32(c)(1). With regard to such methodologies, § 1005.32(c) requires that if a provider bases an estimate on an approach that is not listed in that paragraph, the provider is deemed to be in compliance with the paragraph so long as the designated recipient receive the same, or greater, amount of funds than the provider disclosed under § 1005.31(b)(1)(vii). The Bureau is concerned that due to the fluctuations in wholesale foreign exchange markets discussed above, in many cases, remittance transfer providers that have developed estimation methodologies that reliably satisfy the requirements of § 1005.32(c) for same-day transfers, may not be able to do the same for estimates of exchange rates provided for transfers scheduled five or more business days before the date of a remittance transfer. The Bureau also recognizes that the elimination of this guarantee will reduce burden on providers.

The Bureau expects that most remittance transfer providers, if allowed, will set the retail exchange rate that applies to a remittance transfer scheduled before the date of transfer on the date of that transfer, in rough reference to one of several measures of the wholesale or market exchange rates. Insofar as there are a large number of factors that may alter exchange rates, the Bureau believes that in most scenarios, there is no method to predict with precision what those market or wholesale rates will be far before the date on which a remittance transfer provider sets a retail exchange rate. Thus, the requirement in § 1005.32(c) that providers who cannot use a listed methodology guarantee that the amount received by the designated recipient must be the same, or greater than, the estimated amounts disclosed to the sender, is not feasible for disclosures provided five or more business days before the date of transfer. Nevertheless, because providers must use the same method for transfers scheduled before the date of transfers as they use for same-day transfers, the Bureau believes there will still be consistency in the estimation methodology.

New comment 32(d)-1 explains that when providing an estimate pursuant to § 1005.32(b)(2), § 1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize either of the other two exceptions permitting the provision of estimates in § 1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under § 1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

Section 1005.33 Procedures for resolving errors.

As noted above, consumers may be permitted to schedule a series of preauthorized remittance transfers in which the transfer amount is fixed in a currency other than that in which the transfer is funded. Thus, § 1005.32(b)(2)(i) permits estimates to be provided for, among other things, the total amount of the transfer. In light of this new provision, a revision to § 1005.33(a)(1)(i) is necessary to clarify that disclosing an estimate of the total amount of the transfer in this case is not an error.

Under the February Final Rule, § 1005.33(a)(1)(i) states than "error" means an incorrect amount paid by a sender in connection with a remittance transfer. Comment 33(a)-1 explains that § 1005.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total amount of the transaction, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under § 1005.31(b)(2) or (3).

The Bureau is revising this provision to exempt from the definition of error estimates of the total amount of the transfer provided in accordance with the new exception in § 1005.32(b)(2). This exception allows for, among other things, an estimate of the amount to be transferred if, at the time the sender schedules the transfer, the remittance transfer provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. When the amount to be transferred is estimated under this section, the provider is also permitted to estimate the total amount of the transaction (*i.e.*, the amount to be paid by the sender).

Thus, as revised, § 1005.33(a)(1)(i) states that the term error means an incorrect amount paid by a sender in connection with a remittance transfer, unless the disclosure stated an estimate of the amount paid by a sender in accordance with § 1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount. As discussed in detail below, when a remittance transfer provider estimates of the total amount of the transfer in a receipt provided at least five or more business days before the date of transfer (*see* §§ 1005.36(a)(1)(i) and (a)(2)(i)), the provider must also send a receipt without the estimate after the transfer (*see* §§ 1005.36(a)(1)(ii) and (a)(2)(ii)). Thus, the sender will still receive a receipt with the actual amount the sender paid for the transfer and can still assert an error based on the disclosure of the amount paid in that receipt.

Section 1005.36 Transfers Scheduled Before the Date of Transfer

Overview

The February Final Rule sets forth several procedures for the timing, content, and accuracy of pre-payment disclosures and receipts for preauthorized remittance transfers. At the same time, the February Proposal sought comment on whether further adjustments were necessary to address one-time transfers scheduled before the date of transfer and preauthorized remittance transfers.

Specifically, the February Final Rule treats the first in a series of preauthorized remittance transfers the same as most other remittance transfers by requiring that accurate (not estimated) figures be disclosed in the pre-payment disclosure and receipt. But in recognition of the potential risks associated with setting exchange rates and the potential difficulty of determining the amount to be provided to a designated recipient weeks or months before subsequent transfers, the February Final Rule does not require that disclosures for an entire series of preauthorized remittance transfers be provided when the sender initially requests the transfer and authorizes payment. Instead, the February Final Rule requires remittance transfer providers to issue pre-payment disclosures and receipts for each subsequent transfer closer to the dates of the individual transfers. In particular, under the February Final Rule, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer, and the receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made. The pre-payment disclosure and receipt for each subsequent transfer must be accurate when the respective transfer is made, unless a statutory exception applies. *See* § 1005.36(b). Senders must also be permitted to cancel these transfers up to three business days before the date of transfer. *See* § 1005.36(c).

Because the Bureau was concerned that even with the modifications permitted by the February Final Rule, the disclosure requirements could pose difficulty for certain remittance transfers scheduled significantly before the date of transfer, the February Proposal asked a number of questions regarding whether to make further adjustments to the disclosure and cancellation regime for these transfers. The Bureau sought input on how to manage the importance to senders of accurate and timely disclosures, permit growth of this portion of the remittance transfer market, and limit industry compliance burdens in light of the potential risks associated with providing accurate exchange rates and the difficulty of determining the amount to be received by designated recipients for a particular transfer.

Specifically, the February Proposal sought comments on a number of potential changes to the February Final Rule concerning the type, timing, and accuracy of pre-payment disclosures and receipts a sender should receive in connection with one-time transfers and the first in a series of preauthorized remittance transfers scheduled to occur more than ten days before the date of transfer. The February Proposal also sought comment on whether senders should receive disclosures for subsequent preauthorized remittance transfers and, if so, what form those disclosures should take. Finally, the February Proposal sought comment on what cancellation rules should apply to these transactions and how and when those rules should be disclosed to senders.

Based on comments received, the Bureau is amending the February Final Rule to allow providers increased flexibility, while maintaining requirements that senders receive sufficient and timely information to help inform their selection of remittance transfer providers and help them understand the terms of their remittance transfers. With respect to timing, the final rule requires pre-payment disclosures and receipts for one-time transfers scheduled five or more business days before the date of transfer and the first in a series of preauthorized remittance transfers to be provided in the same manner as they are provided for all other transfers (*i.e.*, at request and at payment authorization). The final rule also requires providers to give senders additional, accurate receipts after the transfer is sent if prior disclosures contained estimates pursuant to § 1005.32(b)(2). The Bureau is also maintaining the three business day cancellation period in § 1005.36(c). Finally, although the Bureau is generally eliminating the requirement to provide pre-payment disclosures for subsequent remittance transfers in a preauthorized series, the Bureau is adopting a new § 1005.36(d) to require disclosure of upcoming dates of transfer and cancellation provisions a reasonable time before the dates of such transfers.

36(a) Timing

Section 1005.36(a) of the February Final Rule addresses the timing of disclosures for the first in a series of preauthorized remittance transfers. In the February Proposal, the Bureau sought comment on a number of questions relating to the timing of disclosures for all remittance transfers that are scheduled more than ten days before the date of transfer, including preauthorized remittance transfers, as described below.

As is discussed further below, to further the purposes of the EFTA and facilitate compliance, the Bureau finds it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt §§ 1005.36(a)(1)(i), (a)(1)(ii), and (a)(2)(i) through (iii) and to eliminate the requirement to provide pre-payment disclosures for subsequent preauthorized remittance transfers. Sections 1005.36(a)(1)(i), (a)(1)(ii), (a)(2)(i), and (a)(2)(ii) are revised from the February Final Rule. Section 1005.36(a)(2)(iii) is a new provision in the final rule.

36(a)(1) Timing of Disclosures for One-Time Transfers Scheduled Before the Date of Transfer and the First in a Series of Preauthorized Remittance Transfers.

Section 1005.36(a) of the February Final Rule addresses the timing of required disclosures for preauthorized remittance transfers. Section 1005.36(a)(1) of the February Final Rule requires that, for the first in a series of preauthorized remittance transfers, the pre-payment disclosure and receipt be provided in the same manner as required for all other transfers. In the February Proposal, the Bureau sought comment on whether to make further adjustments in the disclosure rules for preauthorized remittance transfers and certain other transfers scheduled before the date of transfer.

With respect to the timing of pre-payment disclosures and receipts given to senders upon request of and payment for a transfer, the Bureau received few comments, apart from those raising the concerns discussed earlier regarding the disclosure of exact exchange rates far before the date of a remittance transfer. Largely, industry commenters did not raise other concerns about the requirement that remittance transfer providers give pre-payment disclosures (or combined disclosures) when transfers are requested and prior to payment and receipts (if no combined disclosures were provided) when payment is authorized for either one-time transfers scheduled before the date of transfer or the first in a series of preauthorized remittance transfers. In the final rule, the Bureau maintains the requirement from the February Final Rule that for any one-time remittance transfer scheduled five or more business days before the date of transfer, and for the first transfer in a series of preauthorized remittance transfers, a remittance transfer provider must provide a pre-payment disclosure and a receipt to the sender subject to the same timing rules that apply to any one-time transfer.

For clarity and consistency, the Bureau is revising § 1005.36(a)(1) from the February Final Rule as a new § 1005.36(a)(1)(i) by adjusting the provision to apply both to a one-time advance transfer scheduled five or more business days before the date of transfer and the first in a series of preauthorized remittance transfers, rather than just the latter. The Bureau is also clarifying that remittance transfer providers may use combined disclosures, pursuant to § 1005.31(b)(3), for transfers covered by this provision.

The Bureau also requested comment on what follow-up disclosures, if any, should be provided to senders after authorization of a remittance transfer scheduled before the date of transfer. Specifically the Bureau asked whether a second receipt with accurate information should be provided to a sender within a reasonable time period prior to such a transfer, if the remittance transfer provider previously disclosed estimates pursuant to proposed § 1005.32(b)(2).

Most industry commenters argued against requiring a second receipt with accurate figures to be given prior to a remittance transfer when the original pre-payment disclosure and receipt contained estimates. These commenters argued that to the extent such a provision required disclosure of accurate figures ten days before the date of transfer, it would render the exception allowing providers to disclose estimates meaningless.

To the extent the Bureau would instead allow a second receipt to contain estimates, industry commenters argued that giving senders three documents (a pre-payment disclosure when requesting the remittance transfer, a receipt when payment is authorized for the transfer, and a second receipt a reasonable time before the transfer) would be confusing and unhelpful to senders. One industry commenter suggested there would be limited value added by a second receipt that could contain information that, other than updated estimated exchange rates and associated figures, would be identical to the information included in the initial receipt. Another commenter expressed concern that a sender could be confused into thinking that a remittance transfer provider has made a single transfer multiple times or that an error had occurred, necessitating the additional disclosure. Industry commenters also stated that they thought senders would benefit little from additional disclosures before a transfer, particularly when any such benefit is balanced against the increased upfront and ongoing costs to the remittance transfer providers of giving senders the additional receipt. These commenters argued that providers would pass these costs on to senders. Finally, as an alternative to a second pre-transfer receipt, one industry commenter suggested that providers give senders receipts reflecting actual figures (and not estimates) after the providers send the transfers to the designated recipient. Consumer group commenters argued that receipts with actual figures (and not estimates) be provided to senders a reasonable time prior to the date of each transfer.

In light of the Bureau's decision to allow the use of estimates in certain disclosures for remittance transfers scheduled five or more business days before the date of a remittance transfer rather than ten days as originally proposed, the Bureau believes that a follow-up receipt provided closer to the date of the transfer is not likely to provide significant benefit to senders in many cases. For example, if a remittance transfer provider schedules a remittance transfer one month before the date of transfer, and discloses an estimated exchange rate at that time, and then provides a sender a receipt with an accurate exchange rate only four business days before the date of transfer (because unless a statutory exception applies, § 1005.32(b)(2) of the final rule permits estimates only for disclosures five or more business days before the date of transfer) the receipt might not reach the sender before the expiration of the three-business-day cancellation period in § 1005.36(c). Conversely, if this follow-up receipt were sent five or more business days before the date of transfer, estimates of certain amounts would be permitted under § 1005.32(b)(2). The Bureau believes that such a disclosure generally would be of little additional value as compared to the initial estimate provided in the pre-payment disclosure and receipt required by § 1005.36(a)(1)(i) if the wholesale rate, and thus the retail rate, had not moved significantly since the initial estimate was provided.

Although the Bureau is not requiring a second receipt closer to the time of transfer, the Bureau believes that for every remittance transfer, where a sender receives a disclosure that contains estimates pursuant to § 1005.32, the sender should also receive an accurate post-transfer disclosure that informs the sender of the actual exchange rate (as well as fees, taxes, and other figures) applied to the transfer. Thus, to further consumer protections, the Bureau is adopting a revised § 1005.36(a)(1)(ii), which requires that if the disclosures provided pursuant to § 1005.36(a)(1)(i) contain estimates as permitted by § 1005.32(b)(2) (for transfers scheduled five or more business days before the date of transfer), the provider must mail or deliver to the sender an additional receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of transfer.[17] If the transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by § 1005.36(a)(1)(ii) may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided. As required by § 1005.36(b)(3), which is discussed below, this receipt must contain accurate figures unless estimates are allowed by § 1005.32(a) or (b)(1).

As many remittance transfers scheduled before the date of transfer are conducted by senders who have accounts with remittance transfer providers, the Bureau believes the final rule may relieve many providers of having to provide receipts immediately after each preauthorized remittance transfer or after one-time transfer scheduled five or more business days before the date of the transfer. In addition, the Bureau believes that an accurate receipt will ensure that senders receive accurate accountings of their transfers. Furthermore, to the extent that senders of preauthorized remittance transfers want to comparison shop based on price for future transfers, these receipts may be a mechanism that allows senders to better understand providers' pricing

[17] The timing requirement in § 1005.36(a)(1)(ii) does not prevent a remittance transfer provider from providing this receipt before the date of the transfer. The same is true for disclosures required by § 1005.36(a)(2)(ii), which are discussed below.

mechanisms (by allowing a sender to know the exchange rate applied to each transfer) and the amount received by the designated recipient.

36(a)(2) Timing of Disclosures for Subsequent Preauthorized Remittance Transfers

The February Final Rule contains disclosure provisions specific to subsequent preauthorized remittance transfers (*i.e.*, all preauthorized remittance transfers after the first in the series of transfers). Section 1005.36(a)(2)(i) of the February Final Rule requires that a remittance transfer provider also mail or deliver a pre-payment disclosure to the sender for each subsequent transfer and requires the disclosure to be mailed or delivered within a reasonable time prior to the scheduled date of each subsequent transfer. This provision is in lieu of the general timing rule, which would have required that a pre-payment disclosure for each transfer in a series of preauthorized remittance transfers be given at the time of the initial request (and thus a sender would receive a disclosure for every preauthorized transfer when requesting the entire series). *See* § 1005.31(e)(1). Section 1005.36(a)(2)(ii) in the February Final Rule requires a receipt to be mailed or delivered no later than one business day after the transfer or, for account-based transactions, on or with the next regularly scheduled periodic statement or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

In the February Proposal, the Bureau sought comment on an alternative to the requirement in the February Final Rule that a pre-payment disclosure for each subsequent transfer in a series of preauthorized remittance transfer be provided within a reasonable time prior to the scheduled date of transfer: whether the pre-payment disclosure requirement for subsequent preauthorized remittance transfers should be eliminated.

Industry commenters generally favored eliminating the requirement for providing pre-payment disclosures for subsequent preauthorized remittance transfers for many of the same reasons these commenters disfavored a rule requiring accurate pre-payment disclosures for other transfers scheduled before the date of transfer. These commenters argued that a pre-payment disclosure for each subsequent transfer would be unnecessary, potentially confusing to senders, and burdensome to providers. For example, one commenter argued that senders schedule preauthorized remittance transfers for purposes of convenience and that senders typically do not comparison shop to complete each recurring transfer. The same commenter expressed concern that the requirement of an additional pre-payment disclosure might cause some providers to no longer allow consumers to schedule transfers before the date of transfer.

In contrast, one consumer group commenter supported requiring pre-payment disclosures to be provided to senders ten days before each subsequent transfer in a series of preauthorized remittance transfers (and stated that if estimates were permitted for disclosures related to such transfers, that those disclosures contain current estimates). This commenter urged that the Bureau maintain the requirement in the February Final Rule for pre-payment disclosures so that senders have additional information regarding the details of each preauthorized remittance transfer prior to such transfer.

Upon consideration of these comments and to facilitate compliance, the Bureau is eliminating the requirement to provide a pre-payment disclosure within a reasonable time prior to the scheduled date of each subsequent preauthorized remittance transfer. Thus, the Bureau is eliminating what was § 1005.36(a)(2)(i) in the February Final Rule. The Bureau is doing so for several reasons. The Bureau is concerned that the requirement in the February Final Rule – a pre-payment disclosure sent a reasonable time prior to each subsequent remittance transfer – might provide senders only a limited amount of information because pre-payment disclosures for subsequent preauthorized remittance transfers sent five or more business days before the date of transfer could contain estimates, pursuant to § 1005.32(b)(2). In addition, in some scenarios, this could create a potential for confusing and overlapping disclosures and receipts.

Conversely, the Bureau believes that if it mandated that pre-payment disclosures be sent less than five business days before a subsequent transfer such that the disclosures could not contain estimates under § 1005.32(b)(2), the disclosure would be of little use to the sender for the upcoming transfer as it could be received too close to (or after) the cancellation deadline. Separately, confusion for senders could exist in some circumstances where preauthorized remittance transfers are scheduled relatively close together or receipts are provided with periodic statements. In these cases, a sender might receive a post-transfer receipt from a prior preauthorized remittance transfer close in time to a pre-payment disclosure for the next transfer. These documents, with potentially differing exchange rates and other figures, might confuse senders unnecessarily.

The Bureau also believes that eliminating the requirement for pre-payment disclosures for subsequent preauthorized remittance transfers is appropriate in part because senders will receive some relevant information in receipts for prior preauthorized remittance transfers. The final rule requires that for any preauthorized remittance transfer, the remittance provider must provide a sender a receipt with accurate information (except to the extent estimates are permitted by § 1005.32(a) or (b)(1)). A receipt from the prior transfer with accurate amounts may provide the sender with information that could educate the sender not only about the prior transfer but also about the provider's practices generally, which may help the sender judge whether to continue with the provider for future preauthorized remittance transfers. The Bureau believes a sender can learn about a remittance transfer provider's exchange rate practices from what the designated recipient actually received from the prior transfers in the series. In addition, the receipt provided for the initial transfer in a series provides information about the fees and taxes that will apply to all subsequent preauthorized remittance transfers, unless a change necessitates a new disclosure, as discussed below.

Although the Bureau is eliminating the requirement that a remittance transfer provider provide a pre-payment disclosure for each subsequent transfer in a series of preauthorized remittance transfers, the Bureau remains concerned that previously disclosed figures (other than the estimates themselves) could change, rendering the figures disclosed in the pre-payment disclosure provided for the initial transfer inaccurate as applied to the subsequent transfers.[18] Comment 31(f)-1 to the February Final Rule explains that under the general timing and accuracy rules in subpart B of Regulation E, providers must give senders new pre-payment disclosures before accepting payment if previously provided pre-payment disclosures are inaccurate. However, since a receipt provided pursuant to § 1005.36(a)(1)(i) or, as discussed below, .36(a)(2)(i), may serve as a disclosure with respect to multiple subsequent preauthorized transfers, the temporal elements disclosed on those receipts would only be accurate with respect to the transfer to occur after the receipt is provided.

Thus, the Bureau is adopting a new § 1005.36(a)(2)(i) to specifically address certain changes in terms related to subsequent preauthorized remittance transfers. Section 1005.36(a)(2)(i) states that if any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or § 1005.36(a)(2)(i), other than the temporal disclosures required by §§ 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, then the remittance transfer provider must provide an updated receipt meeting the

[18] Although changes in terms trigger notice requirements in some instances under Regulation E (*see* 12 CFR 1005.10), that provision does not apply to remittance transfers that are not electronic fund transfers.

requirements described in § 1005.31(b)(2) to the sender. The provider must mail or deliver this receipt to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. Such receipt must clearly and conspicuously indicate that it contains updated disclosures.

New comment 36(a)(2)-1 clarifies when the disclosure required by § 1005.36(a)(2)(i) must be provided. Specifically, it states that when a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, § 1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in § 1005.31(e). *See* § 1005.36(a)(1)(i). While certain information in those disclosures is expressly permitted to be estimated (*see* §§ 1005.32(b)(2)(i) through (iii)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) (the Date Available) and (b)(2)(vii) (the Transfer Date), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with § 1005.31(b)(2) and which discloses, among the other disclosures required by § 1005.31(b)(2), the changed terms.

For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and .36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and .36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, § 1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted in § 1005.32, changes.

New comment 36(a)(2)-2 explains that in order to clearly and conspicuously indicate that the provider's fee has changed as required by § 1005.36(a)(2)(i), the provider could, for example, state on the receipt: "Transfer Fees (UPDATED) ……. $30." To the extent that other figures on the receipt must be revised because of the new fee, the receipt should similarly indicate that those figures are updated.

In the February Proposal, the Bureau also solicited comment on whether it should provide a safe harbor interpreting the ''within a reasonable time'' standard for providing a pre-payment disclosure for subsequent preauthorized remittance transfers. Although such a disclosure is no longer required, the same "within a reasonable time" requirement now applies to receipts required by § 1005.36(a)(2)(i). The bulk of the comments received on how to interpret "within a reasonable time" concerned industry commenters' concerns regarding the requirement in the February Final Rule that any required pre-payment disclosures reflect the actual exchange rates that will apply to preauthorized remittance transfers. Industry commenters stated that it would be difficult to disclose accurate exchange rates ten days before the date of a remittance transfer. Insofar as § 1005.32(b)(2) allows estimates in disclosures provided for remittance transfers scheduled five or more business before the date of transfer, this concern should be alleviated. Industry commenters generally stated that if estimates were permitted, ten days was a reasonable period of time.

New comment 36(a)(2)-3 explains if a receipt required by § 1005.36(a)(2)(i) (or, as discussed below, required by § 1005.36(d)(1)) is mailed, the receipt would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails the receipt not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers the receipt not later than five business days before the scheduled date of the transfer, the provider would be deemed to have mailed or delivered the receipt within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

In addition, the Bureau is modifying § 1005.36(a)(2)(ii) from the February Final Rule, which requires receipts for all subsequent preauthorized remittance transfers. As adopted, § 1005.36(a)(2)(ii) explains when receipts must be sent. It states that unless a receipt was provided in accordance with § 1005.36(a)(2)(i) that contained no estimates pursuant to § 1005.32, the remittance transfer provider must mail or deliver to the sender a receipt described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

Finally, the Bureau is adopting an additional disclosure requirement for subsequent preauthorized remittance transfers as § 1005.36(a)(2)(iii), which requires providers to provide the disclosures required by § 1005.36(d) in accordance with the timing requirements of that section. Section 1005.36(d) is discussed in more detail below.

36(b) Accuracy

The February Final Rule contains, in § 1005.36(b), requirements for the accuracy of disclosures for preauthorized remittance transfers. Under that provision in the February Final Rule, the pre-payment disclosures and receipt for the first scheduled transfers in a series of preauthorized remittance transfers are required to be accurate at the time of payment (*i.e.*, they must comply with § 1005.31(f), which states that disclosures must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32). For subsequent preauthorized remittance transfers, as discussed above, the February Final Rule requires providers to give accurate pre-payment disclosures as of when the transfer is made within a reasonable time prior to each transfer and then to provide an accurate receipt after each transfer.

To further compliance and to enhance consumer protections, the Bureau finds it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt a revised § 1005.36(b). The Bureau is revising § 1005.36(b) to address the accuracy of receipts provided for remittance transfers that are scheduled five or more business days before the date of transfer, as well as preauthorized remittance transfers. The Bureau is adopting § 1005.36(b)(1), which states that for a one-time transfer scheduled five or more business days before the date of transfer or the first in a series of preauthorized remittance transfers, disclosures provided in accordance with § 1005.36(a)(1)(i) must comply with § 1005.31(f) by being accurate when the sender makes payment, except to the extent estimates are permitted by § 1005.32.

For subsequent preauthorized remittance transfers, the Bureau is adopting § 1005.36(b)(2), which states that for each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of when such transfer is made, except: (i) the temporal elements required by §§ 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided, and (ii) to the extent estimates are permitted by § 1005.32. As noted above, since a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) may serve as a disclosure with respect to multiple subsequent preauthorized transfers, the temporal elements disclosed on those receipts need only be accurate with respect to the transfer to occur after the receipt is provided.

To address situations in which receipts may be provided after the date of a remittance transfer, the Bureau is adopting a new § 1005.36(b)(3). That provision states that such receipts (provided pursuant to either § 1005.36(a)(1)(ii) or (a)(2)(ii)) must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a) or (b)(1).

Proposed comment 36(b)-1 addressed estimates and, in particular, stated that providers may use any of the exceptions set forth in § 1005.32, to the extent applicable. This comment is adopted largely as proposed, with changes to reflect the newly adopted § 1005.32(b)(2), which allows for estimates in certain disclosures for transfers scheduled five or more business days before the date of transfer, and the revised §§ 1005.36(a)(1)(i) and (a)(2)(i), which permit use of estimates under § 1005.32(b)(2). The comment also notes that when estimates are permitted, they must be disclosed in accordance with § 1005.31(d).

New comment 36(b)-2 explains that, for a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to § 1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by §§ 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to § 1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made. As a receipt may apply to multiple transfers in a series of preauthorized remittance transfers, the disclosure required by § 1005.31(b)(2)(ii) (*i.e*. disclosure of the date in the foreign country on which funds will be available to the designated recipient) need not be accurate for subsequent preauthorized remittance transfers that occur after the first transfer to which the receipt pertains.

Finally, new comment 36(b)-3 clarifies that a receipt required by § 1005.36(a)(1)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to § 1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a) or (b)(1). In providing receipts pursuant to § 1005.36(a)(1)(ii) or (a)(2)(ii), §§ 1005.36(b)(2) and (b)(3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to § 1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to § 1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to § 1005.32(b)(2), the second receipt provided pursuant to § 1005.36(a)(1)(ii) must also disclose the fee as $10. The Bureau is adopting this comment to clarify that the purpose of receipts required by §§ 1005.36(a)(1)(ii) and (a)(2)(ii) is to provide a sender with the actual exchange rate applied to the transfer (unless the statutory exceptions for estimates apply) rather than the estimate previously disclosed for the transfer pursuant to § 1005.32(b)(2). Thus, the final rule does not permit a provider to change other items, such as non-estimated fees and taxes, from a prior disclosure applicable to that transfer on the post-transfer receipt.

36(c) Cancellation

The February Final Rule contains cancellation requirements for remittance transfers. For most remittance transfers, § 1005.34(a) requires the remittance transfer provider to comply with a cancellation request received no later than 30 minutes after the sender makes payment for the remittance transfer if: (i) the sender's request allows the provider to identify the sender's name and address or telephone number and the specific transaction to be cancelled; and (ii) the transferred funds have not been picked up by the designated recipient or deposited into the recipient's account. For remittance transfers scheduled at least three business days before the date of the transfer, including preauthorized remittance transfers, § 1005.36(c) of the February Final Rule requires the remittance transfer provider to comply with a sender's request for cancellation if the request: (i) enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and (ii) is received at least three business days before the scheduled date of the remittance transfer. Section 1005.31(b)(2)(iv) requires the provider to include a statement about the sender's cancellation rights, using the language set forth in Model Form A-37 of Appendix A to subpart B or substantially similar language.

The Bureau is amending Regulation E in this final rule to, among other things, clarify the obligations of the remittance transfer provider for remittance transfers scheduled before the date of transfer and to provide senders with information to calculate the cancellation deadline for remittance transfers scheduled at least three business days before the date of the transfer. As discussed above, the Bureau is making certain adjustments to the disclosure and timing requirements in other sections of the final rule in order to enhance senders' ability to properly determine the cancellation deadline for remittance transfers, to enable senders to more easily identify and track preauthorized remittance transfers that occur in close proximity to one another, and to facilitate industry compliance with the cancellation disclosure requirements.

As discussed above, the final rule adds § 1005.31(b)(2)(vii), which requires remittance transfer providers to disclose the date of transfer in certain receipts provided to senders pursuant to § 1005.31(b)(2). These requirements apply only to remittance transfers scheduled by the sender at least three business days before the date of the transfer, as well as the initial transfer in a series of remittance transfers. As discussed below, § 1005.36(d)(2)(ii) also requires future transfer dates to be disclosed for subsequent transfers in a series of preauthorized remittance transfers, for which payment is made by the sender four or fewer business days before the date of the transfer.

However, as discussed below, the Bureau is retaining in § 1005.36(c) the requirement that a remittance transfer provider must comply with any oral or written request to cancel a remittance transfer if the request to cancel is received at least three business days before the scheduled date of the remittance transfer. The Bureau is also adopting a new § 1005.36(d) to require providers to disclose the future dates of transfer, cancellation requirements, and provider's contact information for subsequent preauthorized remittance transfers no more than 12 months and no less than five business days before the date of the transfer. This timing requirement for these disclosures does not apply to subsequent transfers in a series of preauthorized remittance transfers for which payment is made by the sender four or fewer business days before the date of the transfer. For this subset of transfers, the information required by § 1005.36(d)(1), including future dates of transfer, must instead be included in the receipt for the first transfer in the series of preauthorized remittance transfers provided in accordance with § 1005.36(a)(1)(i). For subsequent preauthorized remittance transfers and transfers scheduled at least three business days before the date of transfer, any receipt provided after the transfer is made in accordance with § 1005.36(a)(1)(ii) or (a)(2)(ii) must include the date of transfer (and cancellation requirements) for the transfer that is the subject of the receipt.

The Three-Business-Day Deadline to Cancel

As noted above, section 919(d)(3) of EFTA provides the Bureau broad discretion to fashion cancellation requirements for remittance transfers. In the February Final Rule, the Bureau adopted in § 1005.36(c) specific cancellation requirements for remittance transfers scheduled at least three business days before the date of the transfer. In adopting the three-business-day cancellation rule for such transfers, the Bureau explained that the general 30-minute cancellation period would not be appropriate for remittance transfers scheduled far in advance because it would permit only a short time for cancellation even though the remittance transfer might not occur for many days or even months. 77 FR 6194, 6268. Thus, the Bureau concluded that a three-business-day time period is more beneficial because it provides senders with more time to decide whether to go through with the transaction while giving remittance transfer providers sufficient time to process a cancellation request before the transaction is executed. *Id*.

In the February Proposal, the Bureau explained that further consideration of the three-business-day cancellation rule and its application to remittance transfers scheduled before the date of transfer was necessary to ensure that the rule provided appropriate protection to senders without imposing an undue burden on providers. 77 FR 6310, 6321. Accordingly, the Bureau solicited comment on whether the three-business-day deadline to cancel advance transfers accomplishes these goals, or whether the deadline to cancel should be more or less than the three days adopted in the February Final Rule. The Bureau also solicited comment on whether it is important to maintain consistency between the cancellation deadline adopted for preauthorized remittances transfers in § 1005.36(c) and the cancellation deadline for preauthorized electronic fund transfers in § 1005.10(c)(1). 77 FR 6310, 6321. Finally, the Bureau solicited comment on whether the deadline to cancel would be easier to calculate if the cancellation period was based on calendar days instead of business days.

Several commenters addressed the cancellation deadline for remittance transfers scheduled three or more business days in advance. Both industry and consumer group commenters generally agreed that the three-business-day time period for cancellation in the February Final Rule appropriately balances the interests of both parties to the transfer. One industry commenter opposed the three-business-day time period for cancellation; this commenter proposed as an alternative a five-day cancellation period, arguing that the Bureau should take into consideration providers' existing compliance obligations under other laws as well. Another industry commenter posited that, if the Bureau does not amend the definition of "remittance transfer provider" to exclude depository institutions executing certain types of international wire transfers, cancellation should be allowed only until a transfer has been executed by a depository institution. One industry commenter agreed that the Bureau should continue to require the deadline to cancel to be expressed in business days as opposed to calendar days.

Although most commenters expressed support for the three-business-day cancellation period, a few industry commenters conditioned their support on whether and to what extent remittance transfer providers may be required to disclose to senders the exchange rates that apply to transfers scheduled before the date of transfer. One industry commenter stated that the three-business-day cancellation period would be appropriate only if a remittance transfer provider were not required to disclose the actual exchange rates that would apply to preauthorized remittance transfers ten days before the dates of such transfers. The industry commenter, however, also agreed that senders should be able to cancel preauthorized remittance transfers or other remittance transfers scheduled to take place in the future, but that the cancellation requirements should be balanced with a shorter time period for exchange rate disclosure. Another industry commenter argued that the three-business-day cancellation requirement would present a substantial risk of loss to a remittance transfer provider if the provider were required to disclose the exchange rate that would apply to a remittance transfer more than one day before the scheduled date of transfer. This commenter suggested that the Bureau establish a bifurcated cancellation structure for transfers scheduled before the date of transfer under which: (i) the 30-minute cancellation period in § 1005.34(a) would apply for any transfer for which the provider discloses the actual exchange rate; and (ii) the three-business-day cancellation period established in § 1005.36(c) would apply for any transfer in which the provider discloses an estimated exchange rate.

The Bureau recognizes the concern expressed by a few industry commenters that remittance transfer providers may incur additional risk if the time period to cancel a transfer extends beyond the date upon which a remittance transfer provider must disclose the actual exchange rate that will apply to a remittance transfer. As the Bureau noted in the discussion regarding § 1005.32(b)(2)(i), whenever there are time lags between when the retail exchange rate that applies to a remittance transfer is set, when the relevant foreign currency is purchased, and when funds are delivered, a remittance transfer provider (and/or its business partner) may face losses due to unexpected changes in the value of the relevant foreign currency. The Bureau's decision in § 1005.32(b)(2) of the final rule to allow remittance transfer providers to provide an estimated exchange rate in certain disclosures for remittance transfers scheduled five or more business days before the date of transfer should help alleviate these concerns. (See discussion above regarding § 1005.32(b)(2) for additional analysis of foreign exchange risks.) As a result, under the final rule, a remittance transfer provider will not be required to disclose, prior to the date of the transfer, an actual, as opposed to an estimated, exchange rate if the transfer is scheduled five or more business days before the date of transfer. This five-business-day period is shorter than the more than ten day period proposed in the February Proposal and reduces the period during which a remittance transfer provider that permits transfers to be scheduled before the date of transfer may face additional foreign exchange risks due to the gap between the time the provider sets an exchange rate and the date of the transfer. And, while there is a short period outside the cancellation window in which the remittance transfer provider is required to disclose actual rather than estimated exchange rates, the Bureau believes that providers may be able to manage the foreign currency risks or may choose not to offer consumers the ability to schedule remittance transfers in this period. The Bureau does not believe the latter option presents a substantial risk of harm to senders, because it believes that any provider that generally permits consumers to schedule remittance transfers in advance will at least retain the option for consumers to schedule their transfers the day of or five or more business days before the date of the transfer.

Accordingly, the Bureau concludes that the three-day-business cancellation period for remittance transfers scheduled at least three business days before the date of the transfer as adopted in the February Final Rule is appropriate. The Bureau believes that cancellation rights are important because they allow senders time to review the disclosure for accuracy and cancel the transaction when warranted by a change in circumstances. In addition, the Bureau believes the three-business-day cancellation period strikes an appropriate balance between sender and remittance transfer provider interests. This time period is close enough to the transfer date so that senders will know if there are circumstances warranting a cancellation, while it gives providers an adequate amount of time to process a cancellation request. Finally, as the Bureau noted in the February Final Rule, the three-business-day cancellation period is consistent with the cancellation requirement for electronic fund transfers. 77 FR 6194, 6268. Since many remittance transfer providers also provide electronic fund transfers, maintaining similar regulatory regimes should minimize burden and facilitate compliance.

Disclosure of Cancellation Period in Pre-Payment Disclosures for Subsequent Preauthorized Remittance Transfers

In the February Proposal, the Bureau solicited comment on whether a remittance transfer provider should be required to disclose the cancellation period in the pre-payment disclosure for each subsequent remittance transfer in a series of preauthorized remittance transfers, rather than in the receipt for each subsequent transfer. As the Bureau recognized in the February Proposal, this issue would be relevant only if the pre-payment disclosure requirement in § 1005.36(a)(2)(i) of the February Final Rule is retained in this rulemaking. 77 FR 6310, 6323.

As discussed above, the Bureau is revising the disclosure requirements for preauthorized remittance transfers to eliminate the requirement that remittance transfer providers provide a pre-payment disclosure for each subsequent transfer in series of preauthorized remittance transfers. Instead, the final rule requires that, in most circumstances, a receipt for each subsequent transfer be provided to the sender. Consequently, the Bureau's inquiry of whether the cancellation disclosure should be provided in the pre-payment disclosure or the receipt for each subsequent transfer is now generally moot. Since there generally is no longer a requirement to provide a pre-payment disclosure for subsequent transfers, the sender's cancellation rights must be disclosed on any receipt provided in accordance with §§ 1005.36(a)(2) and (d)(2) (see discussion below), as applicable.

36(d) Additional Requirements for Subsequent Preauthorized Remittance Transfers

Under the February Final Rule, remittance transfer providers are required to provide senders with both a pre-payment disclosure and a receipt for each subsequent preauthorized remittance transfer in a series. Specifically, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer, and the receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made. As discussed above, however, the Bureau is concerned with balancing the interest of consumers in receiving timely disclosures for subsequent transfers with the interests of industry in reducing risks and developing this market segment. Thus, in the February Proposal, the Bureau sought comment on a number of issues related to subsequent preauthorized remittance transfers, including whether senders should receive disclosures for subsequent preauthorized remittance transfers and, if so, what form those disclosures should take. 77 FR 6310, 6223. The February Proposal also sought comment on what cancellation rules should apply to these transfers and when those rules should be disclosed to senders.

The Bureau received few comments in response to its inquiry regarding disclosure of cancellation requirements for subsequent preauthorized remittance transfers. Among those received, there was little consensus regarding how cancellation rights for subsequent preauthorized transfers should be disclosed. One industry commenter advocated for flexibility on the disclosure requirements to minimize costs. Another industry commenter asserted that the cancellation rights should be included only in the first pre-payment disclosure for each subsequent transfer, while a consumer group commenter posited that a subsequent pre-payment disclosure disclosing cancellation rights should be sent before each subsequent transfer. Only one industry commenter supported including the statement regarding cancellation rights for the next scheduled transfer on the current receipt, arguing that it would give senders more time to cancel the transfer than if the cancellation rights were included in a pre-payment disclosure provided before the subsequent transfer.

Having eliminated the pre-payment disclosure requirement for subsequent transfers and altered the requirements for when a receipt would have to be provided for a subsequent transfer in the final rule, the Bureau is concerned that senders may not receive adequate and timely information regarding the dates of upcoming transfers and, thus, may not know when their right to cancel those transfers expires. Further, as discussed above regarding § 1005.31(b)(2)(vii), even when senders receive disclosures regarding their cancellation rights, they may not have the type of information needed to determine the date on which the right to cancel a subsequent transfer expires. The Bureau is also concerned that, where senders receive a number of receipts in close proximity to one another as part of a series of preauthorized remittance transfers, senders may not have information that would be helpful in distinguishing to which transfer a particular receipt applies.

Accordingly, to further the purposes of EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to adopt a new § 1005.36(d), which amends the disclosure requirements for subsequent preauthorized remittance transfers.

Section 1005.36(d)(1)(i) states that, for any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose to the sender: (A) the date the provider will make the subsequent transfer, using the term “Future Transfer Date,” or a substantially similar term; (B) a statement about the rights of the sender regarding cancellation as described in § 1005.31(b)(2)(iv); and (C) the name, telephone number(s), and Web site of the remittance transfer provider. Section 1005.36(d)(1)(ii) states that if the future date or dates of transfer required to be disclosed by this paragraph are described as occurring in regular periodic intervals, *e.g.*, the 15th of every month, rather than as a specific calendar date or dates, the remittance transfer provider must disclose any future date or dates of transfer that do not conform to the described interval.

Section 1005.36(d)(2)(i) establishes the general timing requirements for disclosures required by § 1005.36(d)(1), stating that, except as described in § 1005.36(d)(2)(ii), the disclosures required by § 1005.36(d)(1) must be received by the sender no more than 12 months, and no less than five business days prior to the date of any subsequent preauthorized remittance transfer to which it pertains. Section 1005.36(d)(2)(i) also states that the disclosures required by § 1005.36(d)(1) may be provided in a separate disclosure or on one or more disclosures required by subpart B related to the same series of preauthorized remittance transfers, so long as the consumer receives the required information for each subsequent preauthorized remittance transfer in accordance with the timing requirements of § 1005.36(d)(2)(i).

The Bureau believes that information regarding cancellation rights is as important to subsequent preauthorized remittance transfers as it is to other transfers. Accordingly, as noted in the discussion regarding § 1005.31(b)(2)(vii), senders need the date of transfer to determine, among other things, when the cancellation period for a certain preauthorized transfer expires. At the same time, the Bureau recognizes that when authorizing a preauthorized remittance transfer, the sender establishes a recurring schedule. The Bureau believes the repetitive and cyclical nature of preauthorized remittance transfers reduces the need for senders to receive notice of the cancellation period in individual notices sent immediately before each subsequent transfer, and warrants additional flexibility to remittance transfer providers to determine the timing and type of disclosure to be used to advise senders of their cancellation rights for subsequent preauthorized remittance transfers. The Bureau notes, however, that such notices must be provided within a timeframe that would be useful to senders and is concerned that a notice provided more than 12 months before the date of such transfers would likely be unhelpful to senders. Likewise, a notice received fewer than five business days before the date of transfer may not provide the sender with enough time to determine whether cancellation is warranted and, thus, would also not be helpful to senders.

The Bureau also recognizes that for subsequent preauthorized remittance transfers scheduled four or fewer business days before the date of the transfer, remittance transfer providers will be unable to provide the disclosures regarding the future date of transfer and cancellation rights five or more business days before the date of transfer. Accordingly, § 1005.36(d)(2)(ii) states that for any preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by § 1005.36(d)(1) must be provided on or with the receipt described in § 1005.31(b)(2), or disclosed as permitted by §§ 1005.31(a)(3) and (a)(5), for the initial transfer in that series in accordance with § 1005.36(a)(1)(i). For example, if, on Monday, a sender authorizes a series of preauthorized remittance transfers in which the initial transfer occurs that day and the first subsequent transfer is scheduled to occur on Wednesday, the 30-minute cancellation period under § 1005.34(a) would apply to both transfers. If, however, in the same series of preauthorized remittance transfers the second subsequent remittance transfer is scheduled to occur on Friday, the three-business-day cancellation period would apply to that transfer. For either subsequent transfer, the provider would be unable to provide the required information at least five business days before the date of the transfer. In that instance, the provider would be required to disclose the cancellation period and future date of transfer for the subsequent remittance transfer on or with the receipt provided for the initial preauthorized remittance transfer.

As a result, preauthorized remittance transfers scheduled fewer than three business days from the date of the transfer are now subject to different disclosure requirements than standalone remittance transfers scheduled fewer than three business days from the date of the transfer. With respect to the latter, there is no requirement to disclose the date of transfer or future date of transfer on receipts. The Bureau, however, believes these two sets of transfers present different concerns warranting different treatment. Preauthorized remittance transfers by definition are authorized to recur at substantially regular intervals. As a result, as discussed above, preauthorized remittance transfer present a higher risk of confusion since, depending on the frequency of the subsequent transfers in the series, senders may receive multiple receipts at or around the same time and, absent identifying information such as the date of transfer, may be unable to identify the transfer to which a particular receipt applies. One-time transfers scheduled in advance do not generally present the same risks because in most instances the sender would schedule a single transfer at any given time as opposed to a series of transfers and should not have difficulty identifying the transfer to which the receipt applies. Further, if disclosures were only required for subsequent preauthorized transfers occurring at least three business days in the future, consumers may mistakenly believe that no transfers were scheduled on any days prior to that time.

Thus, while the Bureau believes the date of transfer would be helpful to senders of preauthorized remittance transfers, it does not believe such information is necessary for standalone transfers scheduled fewer than three business days from the date of the transfer. As stated above, the Bureau believes that it will be simpler for remittance transfer providers to program their receipts to include the transfer date information consistently for preauthorized transfers than to create separate receipt forms for one-time and preauthorized remittance transfers.

New §§ 1005.36(d)(3) and (d)(4) address formatting and accuracy requirements for disclosures required under § 1005.36(d)(3). Section 1005.36(d)(3) states that the information required by § 1005.36(d)(1)(i)(A) generally must be disclosed in close proximity to the other information required by § 1005.36(d)(1)(i)(B). Section 1005.36(d)(4) states that any disclosure required by § 1005.36(d)(1) must be accurate as of the date the subsequent preauthorized remittance transfer to which it pertains is made.

The Bureau is also adopting commentary to provide further guidance on the application of § 1005.36(d). Comment 36(d)-1 clarifies that § 1005.36(d)(2) permits remittance transfer providers some flexibility in determining how and when the disclosures required by § 1005.36(d)(1) may be provided to senders. Comment 36(d)-1 states that the disclosure may be provided as a separate disclosure, or on or with any other disclosures required by subpart B of Regulation E related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in § 1005.36(d)(2) and other applicable provisions in subpart B are satisfied. For example, the required disclosures may be made on or with a receipt provided pursuant to § 1005.36(a)(1)(i); a receipt provided pursuant to § 1005.36(a)(2)(ii); or in a separate disclosure created by the provider. The comment also provides a fact pattern describing how a remittance transfer provider would comply with § 1005.36(d)(1).

Comment 36(d)-2 clarifies that § 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider's contact information no more than 12 months and no less than 5 business days prior to the date of the subsequent preauthorized remittance transfer. Comment 36(d)-2 also cross-references comment 36(a)(2)-3 for purposes of determining when a disclosure required by § 1005.36(d)(1) is received by the sender.

Comment 36(d)-3 provides guidance on how the remittance transfer provider should disclose the date of transfer. Specifically, comment 36(d)-3 clarifies that the date of transfer of a subsequent preauthorized remittance transfer may be disclosed either as a specific date (*e.g.*, July 19, 2013), or by using a method that clearly permits identification of the date of transfer, such as periodic intervals (*e.g.*, the third Monday of every month, or the 15th of every month). Comment 36(d)-3 further clarifies that if the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not conform to the described period, *e.g.,* if a weekend or holiday causes the provider to deviate from the normal schedule, the provider should disclose the specific date of transfer for the affected transfer. Finally, comment 36(d)-4 clarifies the accuracy requirements for disclosures required by § 1005.36(d)(1). Comment 36(d)-4 explains that if any of the information required by § 1005.36(d)(1) changes, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to § 1005.36(d)(2).

VI. Section 1022(b)(2) Analysis

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[19]

In this rulemaking, the Bureau is amending subpart B of Regulation E, which implements EFTA section 919, and the accompanying commentary. This rule modifies the February Final Rule and the accompanying commentary. The final rule provides a new safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a "remittance transfer provider." In the final rule, the Bureau is also refining the disclosure requirements for certain remittance transfers scheduled before the date of the transfer, including preauthorized remittance transfers, and the accompanying interpretations of those requirements. The analysis below considers the benefits, costs, and impacts of this rule relative to the baseline provided by the February Final Rule.

In the February Proposal, the Bureau sought information regarding various aspects of the market for remittance transfers. Among other things, the Bureau sought information describing the number of consumers who send remittance transfers through persons who would qualify for the proposed safe harbor or who schedule remittance transfers before the date of the transfer. Similarly, the Bureau sought data describing the number and characteristics of persons who would qualify for the proposed safe harbor. Additionally, the Bureau requested that interested parties provide data describing the number of firms that schedule remittance transfers before the

[19] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act 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 section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

date of the transfer, the number of remittance transfers provided, and the revenues earned from those transfers.

The Bureau received limited information in response to these requests. In their comments in response to the February Proposal, two trade associations provided high-level summaries of limited surveys of member depository institutions. Through additional outreach, the Bureau obtained more detailed data from these associations, as well as data from several other sources regarding the number of remittance transfers or similar transactions provided by individual depository institutions, credit unions, and state-licensed money transmitters. However, as discussed above, the data received through this process were neither comprehensive nor necessarily representative of the entire population of remittance transfer providers or of the populations covered by the data. Furthermore, the Bureau did not receive any data pertaining to certain types of persons who may be remittance transfer providers, such as non-depository institutions that are not state-licensed money transmitters.

The Bureau also did not receive any industry-wide data regarding the number of remittance transfer providers that send preauthorized remittance transfers or standalone remittance transfers scheduled before the date of the transfer, or the number of consumers using these services. Nor did the Bureau receive specific figures regarding the costs of the options discussed in the February Proposal.

Due to the limited quantitative information received, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. Considered with the limited data that are available, general economic principles provide insight into these benefits, costs, and impacts but do not support a quantitative analysis.

A. Benefits and Costs to Consumers and Covered Persons

Normal Course of Business

Section 1005.30(f) of the February Final Rule defines the term "remittance transfer provider" to mean any person that provides remittance transfers for a consumer in the normal course of its business. Such persons are required to comply with subpart B of Regulation E relating to remittance transfers. Comment 30(f)-2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. Though it includes two examples, comment 30(f)-2 to the February Final Rule does not state a specific numerical threshold for determining when a person is not providing remittance transfers in the normal course of its business.

The final rule provides, in § 1005.30(f)(2)(i), a safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a "remittance transfer provider." The final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business.

For a person that crosses the 100-transfer threshold, and is then providing remittance transfers in the normal course of its business, the final rule also permits a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. For such a person, compliance with subpart B of Regulation E will be required at the end of the "reasonable period of time" unless, based on the facts and circumstances, such a person is not a remittance transfer provider.

The safe harbor will benefit persons who qualify by reducing the legal uncertainty they likely would have had under the February Final Rule regarding whether they provided remittance transfers in the normal course of business and their compliance costs to the extent they decide not to comply voluntarily with subpart B of Regulation E. Furthermore, the safe harbor does not impose any burden on the persons who qualify. The safe harbor is based on a bright-line numerical threshold that persons may use to determine easily whether they do not meet the definition of remittance transfer provider. The bright-line threshold should reduce uncertainty and legal risk for persons who provide a small number of remittance transfers each year as to whether they do not provide remittance transfers in the normal course of business and thus are not required to comply with subpart B of Regulation E. For those persons who do not qualify for the safe harbor, whether or not they are providing remittance transfers in the normal course of business will continue to depend on the facts and circumstances.

As a result, the Bureau expects that the safe harbor could enable persons who qualify to continue providing remittance transfers to consumers, as opposed to exiting the market or increasing prices in response to the February Final Rule. The Bureau expects that some persons who qualify for the safe harbor would have exited the market for remittance transfers, absent the safe harbor, rather than incurred the cost associated with implementing the requirements of subpart B of Regulation E under the February Final Rule or risking non-compliance (due to legal risk surrounding the interpretation of the term "normal course of business"). Alternatively, some persons may have chosen to implement subpart B of Regulation E if it resulted in higher expected net benefits than either risking non-compliance or ceasing to offer remittance transfers (and foregoing any revenues earned from them). Such persons may have increased their prices to recover some, or all, of the cost of complying with subpart B of Regulation E.

Under the final rule, by contrast, the Bureau expects that most persons who qualify for the safe harbor will not voluntarily choose to implement the requirements of subpart B of Regulation E given the expense associated with implementing the requirements. The Bureau expects that, for these persons, the cost associated with counting remittance transfers (to ensure the conditions of the safe harbor are met) is lower than the cost of unnecessarily implementing the requirements of subpart B of Regulation E. Furthermore, the Bureau expects that the clarity provided by the safe harbor will encourage more persons to continue to offer remittance transfers rather than exiting the market – thus retaining a revenue stream they may otherwise have foregone.

For certain persons who are newly entering the market or who plan to expand their business such that they may no longer qualify for the safe harbor, the Bureau expects that the transition period in the final rule may also reduce the cost of compliance, by permitting such providers a reasonable period of time during which to come into compliance with subpart B of Regulation E. Under the February Final Rule, those persons considered to be remittance transfer providers would have been required to implement the requirements of subpart B of Regulation E for each remittance transfer.

Consumers may experience both benefits and costs from the additional clarity offered by both the safe harbor and the transition period permitted by the final rule. Some consumers may benefit from additional access to remittance transfers and increased competition among providers, including potentially lower prices, if, absent the safe harbor, some persons who qualify for the safe harbor would have exited the market. However, some consumers may incur costs associated with not receiving disclosures, error resolution rights, and other protections generally required by subpart B of Regulation E. Some consumers might incur such costs due to the transition period. Other consumers may incur such costs because some of the persons who qualify for the safe harbor might have complied with subpart B of Regulation E absent the safe harbor. If persons who would have provided more than 100 remittance transfers absent the safe harbor choose to limit the number of remittance transfers provided so that they may qualify for the safe harbor, some consumers could also experience decreased access. However, the Bureau expects any cost arising from not receiving disclosures, error resolution rights, and other protections will be incurred by a small number of consumers, as the Bureau estimates that depository institutions, credit unions, and others that will qualify for the safe harbor are responsible for only a very small fraction of all remittance transfers provided each year.

The Bureau cannot quantify the number of persons who will qualify for the safe harbor or the transition period implemented in the final rule. As discussed above, the Bureau received limited survey results and data from several sources regarding the number of remittance transfers or similar transactions provided by individual depository institutions, credit unions, and state-licensed money transmitters. The Bureau does not believe that it can extrapolate from any of these data sources to determine precisely the number of persons who will qualify for the safe harbor, or the fraction of those persons who might cross the 100-transfer threshold in any year, and thus be eligible for the transition period. However, as discussed above, the data suggest that a meaningful number of insured institutions and credit unions will likely qualify for the safe harbor while few state-licensed money transmitters will qualify. Data sources of varying quality and comprehensiveness show that between roughly 40 and roughly 90 percent of depository institutions or credit unions that responded to a survey or were otherwise covered by the data, and that reported any transactions, sent 100 or fewer covered transactions in the prior year.[20] As

[20] Caveats associated with these data sources are described above.

noted above, the Bureau estimates that the depository institutions, credit unions, and others that qualify for the safe harbor are responsible for only a very small fraction of the remittance transfers provided each year.

In addition, the Bureau cannot determine the number of persons who will no longer implement subpart B of Regulation E as a result of the final rule. It is likely that some persons who qualify for the safe harbor would not have implemented subpart B of Regulation E, in any event, either because they would have relied on the facts and circumstances to conclude that they were not providing remittance transfers in the normal course of business under the February Final Rule, or because they would have exited the market absent the safe harbor. It is also possible that some of the persons who qualify for the safe harbor or are eligible for the transition period will choose to implement some portions of the requirements in subpart B of Regulation E due to market demands. Therefore, whether there is a change, and the extent of such a change, in the number of institutions that will implement subpart B of Regulation E relative to the February Final Rule is not known. However, all persons who qualify for the safe harbor now have an additional option available to them for determining whether they are required to comply with subpart B of Regulation E and therefore may potentially benefit from this provision of the final rule. Furthermore, all persons who qualify for the safe harbor but then cross the 100-transfer threshold will be eligible for the transition period.

Estimates and Disclosure Requirements

The February Final Rule requires, for the first transfer in a series of preauthorized remittance transfers, that the provider provide a pre-payment disclosure at the time the sender requests the transfer and a receipt at the time payment for the transfer is made, which the commentary explains means when payment is authorized. The February Final Rule also requires that both the pre-payment disclosure and the receipt be accurate when payment is made. In the case of subsequent preauthorized remittance transfers, the February Final Rule requires that a pre-payment disclosure be provided a reasonable time prior to each subsequent preauthorized remittance transfer and that a receipt be provided following the transfer. These pre-payment disclosures and receipts are required to include accurate figures, unless a statutory exception permitting the use of estimates applies.

In the final rule, a new exception, § 1005.32(b)(2), permits disclosures required to be provided prior to or when payment is made to contain estimates of exchange rates and certain related figures in certain cases for remittance transfers scheduled five or more business days before the date of the transfer, including preauthorized remittance transfers. If a remittance transfer provider discloses estimates under this provision, the final rule requires that the provider later give senders receipts with accurate figures unless a statutory exception permitting the use of estimates applies.

As discussed above, industry commenters stated that disclosing an exchange rate that would apply to a remittance transfer long before the date of that transfer poses particular difficulties. Commenters stated that such a disclosure would potentially subject the remittance transfer provider (or its business partners) to additional exchange rate risk since a wholesale exchange rate may vary between the date that a remittance transfer is scheduled (and disclosures are provided) and the date of the transfer. Although some of this risk may be reduced through the use of financial instruments, risk mitigation strategies may increase costs to providers, and some providers may not want to absorb or manage the associated risks. In addition, an industry commenter indicated that, at least in some instances, providers would refuse to offer remittance transfers scheduled three or more business days before the date of the transfer if the Bureau required providers to disclose an accurate exchange rate prior to the expiration of the consumer's cancellation right.

Under the final rule, remittance transfer providers choosing to provide estimates in certain circumstances will avoid the cost associated with providing accurate figures before the date of transfer but will incur the cost associated with providing accurate receipts after the date of transfer. Since remittance transfer providers retain the option of giving accurate pre-payment disclosures and receipts as required under the February Final Rule, net costs incurred by remittance transfer providers choosing to use the new exception for estimates should not increase relative to the February Final Rule. Permitting estimates of certain amounts on the pre-payment disclosure and receipt given in connection with remittance transfers scheduled five or more business days before the date of the transfer reduces the cost of compliance. Specifically, the exception eliminates the need for remittance transfer providers (or their business partners) to manage any exchange rate or other risk associated with committing to an exchange rate on disclosures provided five or more business days before the date of the transfer.

If a remittance transfer provider chooses to estimate certain information under this new exception, it is also required to provide an additional receipt with figures that are accurate as of the date the transfer is made (unless estimates are permitted under either of the two statutory exceptions). For one-time remittance transfers or the first in a series of preauthorized remittance transfers scheduled five or more business days before the date of the transfer, this requirement could require three disclosure forms, rather than the two disclosures required by the February Final Rule. To provide this additional disclosure in these cases, remittance transfer providers may incur additional costs, *e.g.* for programming, printing or distribution, if it is not already the providers' standard business practice to provide this disclosure.

Consumers scheduling remittance transfers five or more business days before the date of the transfer may receive benefits or incur costs as a result of the changes made by the final rule to provisions concerning these transfers. Industry commenters indicated that, at least in some instances, remittance transfer providers would cease offering transfers scheduled before the date of the transfer if they were required to disclose accurate exchange rates at the time of scheduling. In addition, to address any risk associated with setting exchange rates before the date of the transfer, providers might have disclosed less favorable exchange rates to consumers, thus effectively increasing the prices of their services. Permitting the use of estimates may result in more providers offering remittance transfers scheduled before the date of the transfer, and doing so at a lower cost. Therefore, consumers may benefit from expanded access to remittance transfers scheduled five or more business days before the date of the transfer, increased competition, and potentially lower prices. If providers who otherwise would have provided accurate figures choose to disclose estimates under the final rule, some consumers may incur costs if they receive less reliable information regarding the exchange rate, the amount transferred, and the amount received before the date of the transfer. The magnitude of these costs would depend on the size of any discrepancy between estimated and accurate disclosures and the extent to which the consumer relies on the disclosure to choose among providers or to make spending, budgeting, or other financial decisions. However, consumers valuing accurate information retain the option of not pre-scheduling remittance transfers. Furthermore, this change will have no impact on consumers who send remittance transfers that require no foreign exchange because they are funded and received in the same currency and thus no exchange rate needs to be disclosed.

Disclosure Rules for Subsequent Preauthorized Remittance Transfers

The final rule eliminates the requirement that remittance transfer providers mail or deliver a pre-payment disclosure a reasonable time prior to each subsequent preauthorized remittance transfer. Instead, the final rule requires that a provider send a receipt a reasonable time prior to the scheduled date of the next preauthorized remittance transfer if certain disclosed information is changed from what was disclosed regarding the first preauthorized remittance transfer (or what was disclosed in a prior updated receipt, if such a receipt was provided previously). This receipt must disclose the changed terms, in addition to the other disclosures required by § 1005.31(b)(2).[21] If no updated receipt is necessary (or if the updated receipt contains estimates), providers generally must give an accurate receipt to consumers for each subsequent preauthorized remittance transfer shortly after the date of transfer.

The Bureau does not know the number of remittance transfer providers offering preauthorized remittance transfers, but comments and information received through outreach suggest that they comprise a small percentage of all remittance transfers.[22] Furthermore, based on the Bureau's understanding of the remittance transfer market, the Bureau believes that, although some depository institutions and credit unions that are remittance transfer providers offer preauthorized remittance transfers, a very small number of state-licensed money transmitters do so.

For the remittance transfer providers that offer preauthorized remittance transfers, the elimination of the pre-payment disclosure for subsequent preauthorized remittance transfers reduces the costs associated with providing preauthorized remittance transfers. These costs may

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[21] It may contain estimates as permitted by § 1005.32(b)(2).

[22] One trade association reported that it believes that less than three percent of remittance transfers at credit unions are preauthorized remittance transfers. Another trade association noted that "preauthorized international transfers" make up only a small percentage of the "total international transfers initiated by consumers." One money transmitter stated that, although the product is relatively new and growing, scheduled payments currently represent only a small percentage of its overall business.

include distribution cost as well as compliance risk arising from uncertainty surrounding the interpretation of "reasonable time."

For consumers, the changes in the requirements regarding subsequent preauthorized remittance transfers could result in some benefits and some costs. Since the risk and burden associated with providing accurate pre-payment disclosures for subsequent preauthorized remittance transfers might have discouraged some providers from offering preauthorized remittance transfers or caused them to increase prices, consumers potentially will have increased access to this product and the convenience associated with it. Furthermore, in some cases, the elimination of the pre-payment disclosure requirement may provide some benefit to consumers who might otherwise have been confused when receiving, in close proximity, both receipts from completed preauthorized remittance transfers as well as pre-payment disclosures for future preauthorized remittance transfers.

With the elimination of the requirement for pre-payment disclosures for subsequent preauthorized remittance transfers, consumers could also be harmed by generally not receiving additional reminders of upcoming remittance transfers and their cost close to the date of the transfer. However, the Bureau expects that any such effect will be small. As discussed below, the final rule generally requires that providers disclose the date of the transfer, cancellation requirements, and the provider's contact information to senders of subsequent preauthorized remittance transfers no fewer than five business days and no more than 12 months before the date of the transfer. This should serve as a reminder to consumers of future preauthorized remittance transfers and the method of cancellation. With respect to cost, the accurate figures provided in receipts may serve as a basis for the consumer to project the likely cost associated with future preauthorized remittance transfers.

Cancellation Period and Other Disclosures

The final rule modifies the February Final Rule in several respects with regard to the cancellation disclosure requirements for transfers scheduled at least three business days before the date of the transfer, as well as preauthorized remittance transfers. First, the final rule requires a remittance transfer provider to disclose the specific date of the transfer in receipts given in association with certain transfers, so that a sender may calculate the date on which the sender's right to cancel will expire. This requirement applies to one-time remittance transfers scheduled at least three business days before the date of the transfer, as well as the first transfer in a series of preauthorized remittance transfers. Also, the final rule requires, in conjunction with certain disclosures related to initial transfers in series of preauthorized transfers, disclosures of the date of transfer regarding any subsequent preauthorized transfer in that series for which the date of the transfer is four or fewer business days after the date payment is made for that transfer. Second, for other preauthorized remittance transfers (*i.e.*, those scheduled five or more business days before the date of the transfer), the final rule requires the remittance transfer provider to disclose the date or dates on which the remittance transfer provider will execute such subsequent transfers in the series of preauthorized remittance transfers, the applicable cancellation requirements, and contact information for the provider. The final rule permits providers some flexibility in determining how these disclosures may be provided, although there are specific timing requirements. In addition, disclosures regarding the dates of transfer for all preauthorized remittance transfers must be accurate as of the date the preauthorized remittance transfer to which the disclosure pertains is made. Finally, the final rule also permits providers to describe on the same receipt both the three-business-day and 30-minute cancellation periods (the latter applying to remittance transfers scheduled fewer than three business days before the date of the transfer) and either describe the transfers to which each period applies or, alternatively, use a checkbox or other method to designate which cancellation period is applicable to the transfer.

Remittance transfer providers could incur costs from the requirement in the final rule that they disclose certain dates of transfer on receipts given in connection with one-time remittance transfers scheduled at least three business days before the date of the transfer and certain preauthorized remittance transfers. To comply with this new requirement, remittance transfer providers will need to revise receipts for these transfers to include the date or dates of the transfer.[23] The additional disclosures on certain receipts may constitute an additional cost to remittance providers if they do not already include this information on their receipts. The Bureau lacks specific information regarding the additional burden imposed on remittance transfer providers by this change but believes that it involves a slight modification of a disclosure required by the February Final Rule to include information maintained by providers. For those providers producing receipts electronically, this customization will likely involve a one-time change to information technology systems.

For transfers scheduled at least three business days before the date of the transfer, the date of the transfer gives consumers a basis from which to determine when their cancellation rights expire, thus providing consumers with additional clarity regarding their cancellation rights that could benefit those consumers who may want to cancel. This requirement also provides consumers with additional information about when the transfer will take place and, thus, the date by which the consumer's funds must be available in order for the remittance transfer provider to make the transfer.

[23] In some limited circumstances described in § 1005.36(d)(2)(ii), disclosure regarding future dates of transfer may also be accompanied by additional information regarding cancellation periods.

As discussed above, the final rule also requires that the provider disclose to the sender the upcoming date of the transfer, cancellation requirements, and the provider's contact information for any subsequent preauthorized remittance transfer scheduled five or more business days before the date of the transfer.[24] This additional requirement in the final rule represents an additional cost to providers who are not already required to, or do not otherwise voluntarily, provide this information to consumers. The Bureau does not have information regarding the cost associated with disclosing the dates of transfer, cancellation requirements, and the provider's contact information for subsequent preauthorized remittance transfers. For remittance transfer providers who choose to include this information on an electronically-generated periodic statement or receipt, this likely represents a modest, one-time programming cost. The final rule does not require that this information be provided on an additional, separate disclosure, but rather permits providers to modify existing statements, receipts, or disclosures to include this information, which is already maintained by the remittance transfer provider. If the provider elects to do so, however, it may disclose this information in a separate disclosure that may be provided annually.

As described above, the date of the transfer gives consumers a basis from which to determine when their cancellation rights expire. This requirement provides consumers with additional clarity regarding their cancellation rights that could benefit those consumers that may want to cancel. It also provides consumers with additional information about when the transfer will take place and, thus, the date by which the consumer's funds must be available in order for the remittance transfer provider to make the transfer.

[24] Timing requirements for this additional requirement are addressed in § 1005.36(d)(2)(i).

The final rule also states that remittance transfer providers that offer both remittance transfers scheduled at least three business days before the date of the transfer and remittance transfers scheduled fewer than three business days before the date of the transfer may describe both the three-business-day and 30-minute cancellation periods applicable to such transfers on one receipt, provided they either describe the applicable deadline, or alternatively, use a checkbox or some other method to designate which cancellation period is applicable. This allows providers to use one standardized form, though each receipt needs to be modified for that particular remittance transfer. Providers who offer remittance transfers scheduled three or more business days before the date of the transfer, in addition to remittance transfers scheduled closer to or on the date of the transfer, may be relieved of costs since they are otherwise required by the February Final Rule to produce two distinct types of receipts. This additional flexibility benefits providers without imposing any additional costs because providers retain the option of complying with the requirements of the February Final Rule.

Disclosing both cancellation provisions on the same receipt could result in a receipt that is potentially more confusing to consumers.[25] However, the Bureau believes that consumers are unlikely to be confused by having a description of both cancellation deadlines in the same disclosure. To the contrary, including a description of both the 30-minute and three-business-day cancellation periods with a checkbox or other method that clearly designates the cancellation time period applicable to a consumer's transaction may improve consumers' understanding of the cancellation provisions generally.

[25] These potential confusion costs, which the Bureau is unable to monetize, are likely only incurred by consumers using remittance transfer providers that offer remittance transfers scheduled more than three business days before, as well as remittance transfers scheduled closer to, the date of the transfer. It is possible, however, that a consumer using a provider that does not offer remittance transfers scheduled three or more business days before the date of the transfer could be exposed to both cancellation periods if, for example, the provider utilizes a third-party software solution that prints both periods on the same receipt.

B. Potential Specific Impacts of the Final Rule

Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau does not believe that the costs and benefits arising from the final rule for depository institutions and credit unions with $10 billion or less in total assets are substantively different from those discussed in the general analysis. However, the Bureau does believe that that those depository institutions and credit unions with $10 billion or less in total assets are more likely to benefit from the additional clarity and burden reduction provided by the safe harbor than larger institutions or non-depository institutions. Although the Bureau lacks comprehensive data describing the number of remittance transfers provided by each entity, information that the Bureau obtained through comments and outreach suggests that, among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and the number of remittance transfers sent by the institution is positively, though imperfectly, related. As a result, the Bureau expects that a greater share of depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers will qualify for the safe harbor compared with those with more than $10 billion in total assets. The Bureau does not have any data with which to predict the percentage of those institutions that may, at some point, stop qualifying for the safe harbor, and thus be eligible for the transition period included in the final rule.

With respect to the elements of the final rule addressing remittance transfers scheduled before the date of the transfer, the Bureau does not believe that the costs and benefits arising from the final rule for depository institutions and credit unions with $10 billion or less in total assets are substantively different from those discussed in the general analysis.

Consumers in Rural Areas

Consumers in rural areas may experience different impacts from the final rule than consumers in general. In the February Proposal, the Bureau solicited additional information regarding the characteristics of rural consumers who send remittance transfers, the types of businesses through which they send remittance transfers, and the quantitative and qualitative characteristics of the services provided to them. The Bureau did not receive information regarding the types of institutions that rural consumers use to send remittance transfers and whether those institutions are more or less likely to benefit from the additional clarity provided by the safe harbor provision.[26] Furthermore, the Bureau did not receive information regarding whether rural consumers are more or less likely than other consumers either to schedule remittance transfers three or more business days before the date of the transfer or to send preauthorized remittance transfers.

As discussed above, the final rule generally lowers costs for persons providing remittance transfers relative to the February Final Rule.[27] If consumers in rural areas are more likely to send remittance transfers through persons who qualify for the safe harbor and, absent the safe harbor, would have exited the market, they likely will experience greater benefits from the final rule – in terms of increased access or more competitive pricing – than consumers generally. If persons providing remittance transfers to rural consumers are more likely to qualify for the safe harbor and, absent the safe harbor, would have chosen to implement subpart B of Regulation E, rural consumers may be more likely to lose potential benefits arising from the disclosure, cancellation, and error resolution rights.

[26] A few commenters suggested that rural banks would benefit from the safe harbor. The Bureau did not receive comment regarding whether rural consumers were more or less likely to use non-depository institutions than other consumers.

[27] Exceptions include additional requirements in certain cases to disclose the date of the transfer and other cancellation information as described above.

It is likely that depository institutions and credit unions serving rural consumers are smaller in terms of asset size, on average, suggesting that they might be more likely to benefit from the safe harbor. This benefit may be muted, however, if rural consumers are more likely than other consumers to use remittance transfer providers that are not depository institutions or credit unions.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (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.[28] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[29]

The Bureau is certifying the final rule. Therefore, a FRFA is not required for this rule because it will not have a significant economic impact on a substantial number of small entities.

In this rulemaking, the Bureau is amending subpart B of Regulation E, which implements the EFTA, and the official interpretation to the Regulation. This rule modifies the February Final Rule as well as the accompanying commentary. The final rule provides a new safe harbor clarifying when a person does not provide remittance transfers in the normal course of business

[28] For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[29] 5 U.S.C. 609.

for purposes of determining whether a person is a "remittance transfer provider." In the final rule, the Bureau is also refining the disclosure requirements for certain remittance transfers scheduled before the date of the transfer, including preauthorized remittance transfers, and the accompanying interpretations of those requirements.

This rule facilitates compliance with the February Final Rule and eases possible compliance burden while generally preserving potential benefits to consumers arising from the disclosure, cancellation, and error resolution requirements of the February Final Rule. The Bureau concluded that the February Proposal would not have a significant economic impact on a substantial number of small entities, and to the extent that it has such impacts, they would largely be positive.

The Bureau received a number of comments in response to the February Proposal addressing the burden imposed by the February Proposal and potential alternatives as well as the burden imposed by the February Final Rule. These comments are summarized above. The Bureau also invited comment from members of the public regarding whether the rule, as proposed, would have a significant impact on a substantial number of small entities. One commenter urged the Bureau to employ the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process. This commenter also suggested that the Bureau engage in outreach to credit unions and community banks prior to finalizing the rule.[30]

As discussed below, the Bureau considered these comments, data, and other information obtained through further outreach in concluding that a factual basis exists for certifying the final

[30] This commenter appeared to be confusing the February Proposal with the February Final Rule. The letter states: "As noted in the final rule, the agency concluded that the proposed rule could have a significant economic impact on small entities regarding international wire transfers." This is not true of the February Proposal in which the Bureau certified that the February Proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

rule. The analysis examines the regulatory impact of the final rule against the baseline of the February Final Rule.

A. Affected Small Entities

Potentially affected small entities include depository institutions and credit unions that have $175 million or less in assets that offer remittance transfers as well as non-depository institutions that have average annual receipts that do not exceed $7 million.[31] These affected small entities may include state-licensed money transmitters, among others.[32] Of the 7,319 insured depository institutions, 3,845 are small entities.[33] As explained in the February Final Rule, these institutions generally offer remittance transfers through wire transfers, though they may also offer remittance transfers through other means.

Regulatory filings by insured depository institutions do not contain information about the number of institutions that offer consumer international wire transfers (or other types of remittance transfers). Two trade association surveys of a small number of depository institutions found that seven percent of respondents (in one survey) and ten percent (in the other survey) stated that they do not offer international funds transfers on behalf of consumers.[34] The Bureau

[31] Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf. Effective March 26, 2012.
[32] For the purpose of this analysis, the Bureau assumes that providers, and not their agents, will assume any costs associated with implementing the final rule. A remittance transfer provider is liable for any violation of subpart B by an agent when the agent acts for the provider (*See* § 1005.35). There may be other entities that serve as remittance transfer providers that are not depository institutions, credit unions, or money transmitters, as traditionally defined. These entities could include broker-dealers that send remittance transfers. The Bureau does not have information regarding the number of broker-dealers that send remittance transfers.
[33] Federal Deposit Insurance Corporation, http://www2.fdic.gov/idasp/main.asp, downloaded July 12, 2012. Count includes active institutions as of March 31, 2012.
[34] One survey of 146 banks reported that 10.3 percent of respondent banks did not "initiate electronic funds transfers (wires or IAT) for consumers in the U.S. to persons or entities outside the U.S." Another survey of 277 banks found that 6.9 percent of bank respondents did not send international fund transfers on behalf of consumers. In its comment letter, the same trade association stated that 68 percent of community banks offer international funds transfers to consumers and cited to a survey with 713 respondents (implying that 32 percent of banks do not offer international funds transfers).

does not believe it can extrapolate from either survey to the entire population of depository institutions. However, for the purposes of this analysis, the Bureau assumes that all but seven percent of small depository institutions, *i.e.*, 3,576, send remittance transfers. The Bureau believes that this figure likely overestimates the number of small entity depository institutions offering remittance transfers. Data from the National Credit Union Administration suggest that, as of March 2012, 3,382 of the 7,019 federally insured credit unions offer international wire transfers. Of the insured credit unions that offer international wire transfers, 2,548 are small entities. Though the Bureau does not have exact data on the number of credit unions that offer remittance transfers, the Bureau assumes that the figure is similar.

Apart from insured depository institutions and credit unions, the Bureau believes that most of the other small entities affected by this rule are state-licensed money transmitters. In comment to the February Final Rule, one trade association estimated that there are about 500 state-licensed money transmitters. In analysis performed in connection with the February Final Rule, the Bureau estimated that 350 of these 500 state-licensed money transmitters had $7 million or less in total revenues and therefore would be considered small entities under the Small Business Administration's small business size standards.[35]

As discussed below, the Bureau expects that many small entities will likely benefit from the additional clarity provided by the safe harbor. The small entities directly affected by other aspects of the final rule are those entities that are required to comply with subpart B of Regulation E and either (i) provide remittance transfers scheduled at least five business days

[35] Regulatory data received from New York shows that 55 percent of money transmitters licensed in that state had $7 million or less in revenue in 2011. Applying that percentage to the figure of 500 state-licensed money transmitters would result in an estimate of 275 small entity money transmitters. However, absent further information, the Bureau does not believe that it can extrapolate from the New York data to the entire money transmitter market.

before the date of the transfer; (ii) provide preauthorized remittance transfers; or (iii) provide remittance transfers scheduled three or more business days before the date of the transfer as well as remittance transfers scheduled fewer than three business days before the date of the transfer.

B. Normal Course of Business

Comment 30(f)-2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. The final rule provides a new safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a "remittance transfer provider." The final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. For a person that crosses the 100-transaction threshold, and is providing remittance transfers for consumers in the normal course of its business, the final rule permits a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. For such a person, compliance with subpart B of Regulation E will be required at the end of the "reasonable period of time" unless, based on the facts and circumstances, such a person is not a remittance transfer provider.

The Bureau expects that persons who believe they qualify for the safe harbor will endeavor to track the number of remittance transfers that they send each year. Though there may be a cost associated with tracking the number of remittance transfers provided, persons elect to incur it at their option. Persons qualifying for the safe harbor will be relieved of uncertainty and legal risk regarding whether they provide remittance transfers in the normal course of business.

Furthermore, persons who formerly qualified for the safe harbor, but then provide more than 100 remittance transfers in a year, will benefit from the final rule's transition period. Therefore, the final rule may only decrease compliance costs relative to the baseline established by the February Final Rule.

As discussed above, the Bureau is unable to state definitively the number of small entities that would benefit from the additional certainty provided by the safe harbor and the benefits of the transition period. The Bureau received limited survey results and data from several sources describing the number of remittance transfers or similar transactions (which may include remittance transfers) provided by individual depository institutions, credit unions, and state-licensed money transmitters. This information suggests that a meaningful number of depository institutions and credit unions will likely qualify for the safe harbor. Furthermore, for depository institutions and credit unions that provide remittance transfers, these sources also suggest a generally positive relationship between asset size and remittance transfer counts, suggesting that small entity institutions are more likely to qualify for the safe harbor than larger institutions.

In addition to data regarding depository institutions and credit unions, the Bureau obtained some information from state regulators in California, New York, and Ohio regarding entities licensed as money transmitters in those states. These data generally tracked transactions that are money transmissions under each state's law, which generally include remittance transfers, as defined in subpart B of Regulation E, but may not include all such remittance transfers, and may include a number of other types of transactions that are not remittance transfers under subpart B of Regulation E. Nevertheless, these data, combined with the Bureau's research regarding the business models of covered companies, suggest that few state-licensed money transmitters would qualify for the safe harbor. Therefore, the additional clarity provided by the safe harbor would likely represent little, if any, change relative to the February Final Rule for small entity state-licensed money transmitters.[36]

C. Estimates and Disclosure Requirements

In the final rule, § 1005.32(b)(2) permits providers to estimate certain information in pre-payment disclosures and certain receipts provided for remittance transfers scheduled by a sender five or more business days before the date of the transfer, including preauthorized remittance transfers. If a remittance transfer provider chooses to give estimated disclosures pursuant to § 1005.32(b)(2), the final rule also requires that it provide a receipt with accurate figures (unless a statutory exception permitting the use of estimates applies).

This provision for estimates only affects remittance transfer providers that offer consumers the option to schedule remittance transfers five or more business days before the date of the transfer. As discussed above in the Section 1022 Analysis, these providers are relieved of the potential burden associated with disclosing accurate exchange rates five or more business days before the date of the transfer.

Remittance transfer providers choosing to employ this exception for estimates will potentially incur additional costs associated with providing an additional receipt with accurate figures to consumers in connection with one-time transfers and the first in a series of preauthorized remittance transfers. However, remittance transfer providers retain the option of complying with the February Final Rule and providing accurate pre-payment disclosures and receipts (and thus not providing a second receipt) for every transfer. Therefore, remittance

[36] Although the Bureau does not have access to data regarding other types of entities that potentially provide remittance transfers, those entities could only benefit from the clarity provided by the safe harbor and the reduction in compliance costs associated with the transition period.

transfer providers, including small entity providers, should only benefit and not incur any additional costs from this change.

D. Disclosure Rules for Subsequent Preauthorized Remittance Transfers

The final rule eliminates the requirement that remittance transfer providers mail or deliver pre-payment disclosures within a reasonable time prior to the date of each subsequent preauthorized remittance transfer. Instead, the final rule requires a receipt be provided to the consumer within a reasonable time prior to the date of the next preauthorized remittance transfer only if certain figures (generally those that are not estimates or based on estimates) on the receipt provided with respect to the first in that series of preauthorized remittance transfers change (or the figures disclosed from a prior updated receipt change, if one was previously provided). This receipt must disclose the changed terms, among the other disclosures required by § 1005.31(b)(2).[37] This additional flexibility will benefit providers, including small entity providers. With respect to these pre-payment disclosures, providers will no longer incur the costs associated with providing these disclosures or compliance risk arising from uncertainty surrounding the interpretation of "reasonable time." When certain figures change, providers will still incur some cost associated with providing a receipt displaying these figures a reasonable time prior to the subsequent transfer. However, it is expected that an obligation to provide updated receipts will occur less frequently than the requirement in the February Final Rule to provide pre-payment disclosures before every subsequent preauthorized transfer.

E. Cancellation Period and Disclosures

The final rule requires that remittance transfer providers disclose the date of the transfer on receipts given in association with any transfer scheduled at least three business days before

[37] It may contain estimates as permitted by § 1005.32(b)(2).

the date of the transfer, as well as the first transfer in a series of preauthorized remittance transfers. Also, the final rule requires, in conjunction with certain disclosures related to initial transfers in series of preauthorized transfers, disclosures of the date of transfer regarding any subsequent preauthorized transfer in that series for which the date of the transfer is four or fewer business days after the date payment is made for that transfer. To comply with this new requirement, remittance transfer providers must program systems to disclose the date of the transfer on receipts for certain transfers. This may constitute an additional cost to remittance providers if they do not already include this information on their receipts. The Bureau lacks specific information regarding the additional burden imposed on remittance transfer providers by this provision, but believes it to be modest given that it involves a slight modification of a disclosure already required by the February Final Rule to include information already maintained by the provider. For those remittance transfer providers producing receipts electronically, this will likely involve a one-time programming change to information technology systems.

The additional requirement in the final rule that providers disclose the date of the transfer, as well as cancellation requirements and the provider's contact information, within a certain period before each subsequent preauthorized remittance transfer scheduled five or more business days before the date of the transfer represents an additional cost to remittance transfer providers that do not already disclose this information. Among other options, providers may include this information in an existing statement or disclosure, or in a single notice covering multiple transfers that is provided up to a year before the date of the transfer.[38] The Bureau believes that modifying existing statements or disclosures to include information already maintained by the remittance transfer provider likely represents a modest, one-time programming

[38] This flexibility does not extend to subsequent preauthorized remittance transfers scheduled four or fewer business days after the date payment is made for that transfer.

cost for those remittance transfer providers generating statements or disclosures electronically. Furthermore, the rule permits providers flexibility to disclose the required information in any number of ways. Thus, providers may be able to choose the least expensive among several disclosure options.

The final rule also states that remittance transfer providers may describe both the three-business-day and 30-minute cancellation periods on one receipt, provided they either describe the remittance transfers to which each period applies, or alternatively, use a checkbox or some other method to designate which cancellation period is applicable to the transfer.[39] This permits the use of one standardized form, though each receipt would need to be modified for the particular remittance transfer. This may result in reduced costs for those providers that offer both remittance transfers scheduled either three or more business days before the date of the transfer and closer to or on the date of the transfer, since providers otherwise are required by the February Final Rule to produce two types of receipts. This additional flexibility may benefit providers while not imposing any additional costs on them since they retain the option of complying with the requirements of the February Final Rule.

The Bureau did not receive specific information regarding the number of small entities that would be affected by these changes. As discussed above, the Bureau believes that a meaningful number of small insured depository institutions and credit unions will qualify for the safe harbor in the final rule, and thus are not remittance transfer providers and are not required to comply with subpart B of Regulation E. The Bureau additionally believes that, though few state-licensed money transmitters are likely to qualify for the safe harbor in the final rule, very few

[39] Consumers scheduling remittance transfers at least three business days before the date of the transfer may cancel the remittance transfer up to three business days prior to the date of the transfer. Otherwise, consumers have 30 minutes from when they make payment to cancel.

small state-licensed money transmitters offer consumers preauthorized remittance transfers or the ability to schedule remittance transfers to be sent at some later date. Therefore, the Bureau believes that provisions relating to preauthorized or prescheduled transfers are not likely to have a significant economic impact on a substantial number of small entities.

F. Cost of Credit for Small Entities

The final rule does not apply to credit transactions or to commercial remittances. Therefore, the Bureau does not expect the final rule to increase the cost of credit for small businesses. With a few exceptions, the final rule generally does not change or lowers the cost of compliance for depositories and credit unions, many of which offer small business credit. Any effect of this rule on small business credit, however, would be highly attenuated. The final rule also generally does not change or lowers the cost of compliance for money transmitters. Money transmitters typically do not extend credit to any entity, including small businesses.

G. Certification

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

VIII. Paperwork Reduction Act

The Bureau's information collection requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). This collection of information was submitted to OMB as an amendment to the previously approved collection for the Electronic Fund Transfer Act (Regulation E) 12 CFR 1005 under OMB control number 3170-0014. Under the Paperwork Reduction Act (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

The information collection requirements in this final rule are in 12 CFR Part 1005. This information collection is required to provide benefits for consumers and is mandatory. *See* 15 U.S.C. 1693, *et seq*. The likely respondents are remittance transfer providers, including small businesses. This information collection is required to provide disclosures and receipts to consumers in the United States who, primarily for personal, family, or household purposes, request remittance transfer providers to send remittance transfers to designated recipients, to be received in a foreign country. The disclosures provide pricing information and information regarding cancellation and error resolution rights. This information may be used by consumers for budgeting and shopping purposes and by consumers and Federal agencies to determine when violations of the underlying rules and statute have occurred.

The Bureau estimates that the frequency of response to the collection of information in the final rule will be on-occasion. The Bureau estimates that the total one-time burden for all 10,689 respondents potentially affected by the final rule to comply with Regulation E decreases by 914,311 hours as a result of the final rule, and the total ongoing annual burden decreases by 532,784 hours.[40] This decrease in total burden is largely, but not exclusively, attributable to respondents who will decide not to comply with subpart B of Regulation E due to the safe harbor

[40] The decrease in respondents relative to the PRA analysis for the February Final Rule reflects a revision by the Bureau of the estimate of the number of non-Bureau depository institutions and credit unions offering remittance transfers relative to the number reported in the February Final Rule. The Bureau previously estimated that approximately 11,000 insured depositories and credit unions not supervised by the Bureau provide remittance transfers. The Bureau now believes that that number may be closer to 10,000. The decrease in burden relative to what was previously reported from this revision is not included in the change in burden reported here. However, the revised entity counts are used for the purpose of calculating other changes in burden arising from the final rule. This number also assumes that 500 money transmitters, and not their agents, are respondents.

provided for in the final rule.[41] Although the Bureau does not have precise information regarding the number of entities qualifying for the safe harbor, the information obtained in this rulemaking suggests that a meaningful number of insured depositories and credit unions may qualify. For purposes of this PRA analysis, the Bureau has assumed that all respondents availing themselves of the safe harbor are non-Bureau respondents, since the Bureau estimates that larger depository institutions and credit unions (in terms of asset size) are less likely to qualify for the safe harbor. Other Federal agencies, including the Federal Trade Commission, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Despite this overall reduction, the Bureau estimates that one-time burden for Bureau respondents increases slightly.[42] For the 154 large depository institutions and credit unions (including their depository affiliates) considered to be Bureau respondents for the purposes of this PRA analysis, the Bureau estimates that the final rule increases one-time burden by 809 hours and has no impact on ongoing burden. For the 500 non-depository money transmitters for

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[41] The Bureau previously made the conservative assumption in the PRA analysis for the February Final Rule that no respondent would choose not to comply with subpart B of Regulation E. By increasing certainty as to whether a remittance transfer provider does not provide remittance transfers in the normal course of business, the Bureau anticipates that the final rule's safe harbor will increase the number of respondents that take advantage of the normal course of business exclusion and therefore decide to not comply with subpart B.

[42] The Bureau's estimates of burden and respondents have changed from the February Proposal due to modifications to the Bureau's estimation methodology. Specifically, this PRA analysis reduces certain burdens in instances where disclosures are no longer required. The Bureau also assumes that no ongoing burden is associated with the modification of an existing disclosure. Additionally, burden attributed to reading the final rule is included. With respect to Bureau respondents, the Bureau further assumes that money transmitters, and not their agents, incur the burden associated with the provisions in this rulemaking, which generally involve the modification of existing disclosures.

which the Bureau has administrative enforcement authority for the purposes of the PRA, the rule increases one-time burden by 1,313 hours and has no impact on ongoing burden.[43]

In conjunction with the February Proposal, the Bureau received comments on the merits of various aspects of the final rule, including the burden of compliance generally, the relative burden of providing actual exchange rates and estimates, whether or how information regarding cancellation periods should be disclosed, estimates of the number of institutions affected by the safe harbor, and whether particular disclosure forms should be required. These comments relate to core issues in the February Proposal and the Bureau's consideration of these comments is discussed above. The Bureau received no comments specifically addressing the Bureau's proposed PRA burden estimates or numbers of Bureau respondents.

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.

Authority and Issuance

For the reasons stated in the preamble, the Bureau of Consumer Financial Protection amends 12 CFR part 1005 as set forth below:

PART 1005 – ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 1005 is revised to read as follows:

12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601.

Subpart B – Requirements for Remittance Transfers

2. Amend § 1005.30 to revise paragraph (f) to read as follows:

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[43] The Bureau and the Federal Trade Commission generally both have enforcement authority over non-depository institutions subject to Regulation E. Accordingly, the Bureau has allocated to itself half of the total estimated 2,626 burden hours incurred by non-depository money transmitters subject to the final rule.

§ 1005.30 Remittance transfer definitions.

*   *   *   *   *

(f) *Remittance transfer provider*. (1) *General definition*. "Remittance transfer provider" or "provider" means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.

(2) *Normal course of business.* (i) *Safe harbor*. For purposes of paragraph (f)(1) of this section, a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person:

(A) Provided 100 or fewer remittance transfers in the previous calendar year; and

(B) Provides 100 or fewer remittance transfers in the current calendar year.

(ii) *Transition period*. If a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to paragraph (f)(1) of this section, the person has a reasonable period of time, not to exceed six months, to begin complying with subpart B. Compliance with subpart B will not be required for any remittance transfers for which payment is made during that reasonable period of time.

*   *   *   *   *

3. Amend § 1005.31 to revise paragraphs (a)(3)(iii), (a)(5)(ii), (a)(5)(iii), (b)(2)(v), (b)(2)(vi), and (b)(3); and add paragraphs (a)(3)(iv), (a)(5)(iv), (b)(2)(vii), and (b)(3)(ii) to read as follows:

§ 1005.31 Disclosures.

(a) *General form of disclosures.*

*   *   *   *   *

(3) * * *

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by § 1005.36(d)(1)(i)(A), with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

*   *   *   *   *

(5) * * *

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally or via mobile application or text message, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by § 1005.36(d)(1)(i)(A), with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

*   *   *   *   *

(b) *Disclosure requirements* * * *

(2) * * *

(v) The name, telephone number(s), and website of the remittance transfer provider;

(vi) A statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A-37 of Appendix A to this part or substantially similar language. The disclosure must provide the name, telephone number(s), and website of the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the name, toll-free telephone number(s), and website of the Consumer Financial Protection Bureau; and

(vii) For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, the date the remittance transfer provider will make or made the remittance transfer, using the term “Transfer Date,” or a substantially similar term.

(3) *Combined disclosure.* (i) *In General*. As an alternative to providing the disclosures described in paragraphs (b)(1) and (2) of this section, a remittance transfer provider may provide the disclosures described in paragraph (b)(2) of this section, as applicable, in a single disclosure pursuant to the timing requirements in paragraph (e)(1) of this section. Except as provided in paragraph (b)(3)(ii) of this section, if the remittance transfer provider provides the combined disclosure and the sender completes the transfer, the remittance transfer provider must provide the sender with proof of payment when payment is made for the remittance transfer. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

(ii) *Transfers scheduled before the date of transfer*. If the disclosure described in paragraph (b)(3)(i) of this section is provided in accordance with § 1005.36(a)(1)(i) and payment is not processed by the remittance transfer provider at the time the remittance transfer is scheduled, a remittance transfer provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment otherwise required by paragraph (b)(3)(i) of this section. The confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

* * * * *

4. Amend § 1005.32 to revise paragraphs (b) and (c) and to add paragraph (d) to read as follows:

§ 1005.32 Estimates

* * * * *

(b) *Permanent Exceptions*—(1) *Permanent exception for transfers to certain countries.*

(i) *General.* For disclosures described in §§ 1005.31(b)(1) through (b)(3) and 1005.36(a)(1) and (a)(2), estimates may be provided for transfers to certain countries in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (b)(1)(vii), if a remittance transfer provider cannot determine the exact amounts when the disclosure is required because:

(A) The laws of the recipient country do not permit such a determination, or

(B) The method by which transactions are made in the recipient country does not permit such determination.

(ii) *Safe harbor.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether estimates may be provided under paragraph (b)(1) of this section, unless the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount.

(2) *Permanent exception for transfers scheduled before the date of transfer.* (i) Except as provided in paragraph (b)(2)(ii) of this section, for disclosures described in §§ 1005.36(a)(1)(i) and (a)(2)(i), estimates may be provided in accordance with paragraph (d) of this section for the amounts to be disclosed under §§ 1005.31(b)(1)(iv) through (vii) if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer. In addition, if, at the time the sender schedules such a transfer, the provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded, estimates may also be provided for the amounts to be disclosed under §§ 1005.31(b)(1)(i) through (iii), except as provided in paragraph (b)(2)(iii) of this section.

(ii) Fees and taxes described in § 1005.31(b)(1)(vi) may be estimated under paragraph (b)(2)(i) of this section only if the exchange rate is also estimated under paragraph (b)(2)(i) and the estimated exchange rate affects the amount of such fees and taxes.

(iii) Fees and taxes described in § 1005.31(b)(1)(ii) may be estimated under paragraph (b)(2)(i) of this section only if the amount that will be transferred in the currency in which it is funded is also estimated under paragraph (b)(2)(i) of this section, and the estimated amount affects the amount of such fees and taxes.

(c) *Bases for Estimates Generally.* Estimates provided pursuant to the exceptions in paragraph (a) or (b)(1) of this section must be based on the below-listed approach or approaches, except as otherwise permitted by this paragraph. If a remittance transfer provider bases an estimate on an approach that is not listed in this paragraph, the provider is deemed to be in compliance with this paragraph so long as the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed under § 1005.31(b)(1)(vii).

*   *   *   *   *

(d) *Bases for Estimates for Transfers Scheduled Before the Date of Transfer.* Estimates provided pursuant to paragraph (b)(2) of this section must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under paragraph (c) of this section that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, in accordance with this paragraph, a remittance transfer provider uses a basis described in paragraph (c) of this section but not listed in paragraph (c)(1) of this section, the provider is deemed to be in compliance with this paragraph regardless of the amount received by the designated recipient, so long as the estimation methodology is the same that the provider would have used or did use in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

5. Amend § 1005.33 to revise paragraphs (a)(1)(i) as follows:

§ 1005.33 Procedures for Resolving Errors

(a) * * *

(1) * * *

(i) An incorrect amount paid by a sender in connection with a remittance transfer unless the disclosure stated an estimate of the amount paid by a sender in accordance with § 1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount;

*   *   *   *   *

6. Amend § 1005.36 to revise paragraphs (a) and (b) and to add paragraph (b)(3) and (d) to read as follows:

§ 1005.36 Transfers Scheduled Before the Date of Transfer

(a) *Timing.* (1) For a one-time transfer scheduled five or more business days before the date of transfer or for the first in a series of preauthorized remittance transfers, the remittance transfer provider must:

(i) Provide either the pre-payment disclosure described in § 1005.31(b)(1) and the receipt described in § 1005.31(b)(2) or the combined disclosure described in § 1005.31(b)(3), in accordance with the timing requirements set forth in § 1005.31(e); and

(ii) If any of the disclosures provided pursuant to paragraph (a)(1)(i) of this section contain estimates as permitted by § 1005.32(b)(2), mail or deliver to the sender an additional receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(2) For each subsequent preauthorized remittance transfer:

(i) If any of the information on the most recent receipt provided pursuant to paragraph (a)(1)(i) of this section, or by this paragraph, other than the temporal disclosures required by §§ 1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, then the remittance transfer provider must provide an updated receipt meeting the requirements described in § 1005.31(b)(2) to the sender. The provider must mail or deliver this receipt to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. Such receipt must clearly and conspicuously indicate that it contains updated disclosures.

(ii) Unless a receipt was provided in accordance with paragraph (a)(2)(i) of this section that contained no estimates pursuant to § 1005.32, the remittance transfer provider must mail or deliver to the sender a receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(iii) A remittance transfer provider must provide the disclosures required by paragraph (d) of this section in accordance with the timing requirements of that section.

(b) *Accuracy*. (1) For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures provided pursuant to paragraph (a)(1)(i) of this section must comply with § 1005.31(f) by being accurate when a sender makes payment except to the extent estimates are permitted by § 1005.32.

(2) For each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to paragraph (a)(1)(i) or (a)(2)(i) of this section must be accurate as of when such transfer is made, except: (i) the temporal elements required by §§ 1005.31(b)(2)(ii) and (b)(2)(vii) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided, and (ii) to the extent estimates are permitted by § 1005.32.

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a) or (b)(1).

*   *   *   *   *

(d) *Additional Requirements for Subsequent Preauthorized Remittance Transfers*. (1) *Disclosure requirement.* (i) For any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose to the sender: (A) the date the provider will make the subsequent transfer, using the term "Future Transfer Date," or a substantially similar term; (B) a statement about the rights of the sender regarding cancellation as described in § 1005.31(b)(2)(iv); and (C) the name, telephone number(s), and Web site of the remittance transfer provider.

(ii) If the future date or dates of transfer are described as occurring in regular periodic intervals, *e.g.*, the 15th of every month, rather than as a specific calendar date or dates, the remittance transfer provider must disclose any future date or dates of transfer that do not conform to the described interval.

(2) *Notice requirements*. (i) Except as described in paragraph (d)(2)(ii) of this section, the disclosures required by paragraph (d)(1) of this section must be received by the sender no more than 12 months, and no less than five business days prior to the date of any subsequent transfer to which it pertains. The disclosures required by paragraph (d)(1) of this section may be provided in a separate disclosure or may be provided on one or more disclosures required by this subpart related to the same series of preauthorized transfers, so long as the consumer receives the required information for each subsequent preauthorized remittance transfer in accordance with the timing requirements of this paragraph.

(ii) For any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by paragraph (d)(1) of this section must be provided on or with the receipt described in § 1005.31(b)(2), or disclosed as permitted by §§ 1005.31(a)(3) or (a)(5), for the initial transfer in that series in accordance with paragraph (a)(1)(i) of this section.

(3) *Specific format requirement.* The information required by (d)(1)(i)(A) generally must be disclosed in close proximity to the other information required by (d)(1)(i)(B).

(4) *Accuracy*. Any disclosure required by paragraph (d)(1) must be accurate as of the date the preauthorized remittance transfer to which it pertains is made.

7. In Supplement I to part 1005:

a. Amend comment 30(f) by revising paragraph 2 to read as follows:

*   *   *   *   *

Section 1005.30—Remittance Transfer Definitions

*   *   *   *   *

30(f) Remittance Transfer Provider

*   *   *   *   *

2. *Normal course of business.* i. *General.* Whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make remittance transfers available to customers, but sends a couple of such transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes remittance transfers generally available to customers (whether

described in the institution's deposit account agreement, or in practice) and makes transfers many times per month, the institution provides remittance transfers in the normal course of business.

ii. *Safe harbor*. Under § 1005.30(f)(2)(i), a person that provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business. Accordingly, a person that qualifies for the safe harbor in § 1005.30(f)(2)(i) is not a "remittance transfer provider" and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor under § 1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of "remittance transfer" due simply to the safe harbor. In contrast, the number of remittance transfers provided does not include any transfers that are excluded from the definition of "remittance transfer" for reasons other than the safe harbor, such as small value transactions or securities and commodities transfers that are excluded from the definition of "remittance transfer" by § 1005.30(e)(2).

iii. *Transition period*. A person may cease to satisfy the requirements of the safe harbor described in § 1005.30(f)(2)(i) if the person provides in excess of 100 remittance transfers in a calendar year. For example, if a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, the safe harbor applies to the first 100 remittance transfers that the person provides in the current calendar year. For any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in

§ 1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B, if that person is then providing remittance transfers in the normal course of its business. At the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. *Example of safe harbor and transition period*. Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor will apply to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provides a 101st transfer on September 5, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provides in 2014. Furthermore, the person would not qualify for the safe harbor described in § 1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2015 (*i.e.*, six months after September 5, 2014). After March 5, 2015, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

*   *   *   *   *

b. Add new commentary to §§ 1005.31(b) as follows:

*   *   *   *   *

Section 1005.31—Disclosures

*   *   *   *   *

31(b) Disclosure Requirements.

*   *   *   *   *

31(b)(2) Receipt

*   *   *   *   *

4. *Date of Transfer on Receipt*. Where applicable, section 1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by § 1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in § 1005.36(a). For any subsequent preauthorized remittance transfer subject to § 1005.36(d)(2)(ii), the future date of transfer must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by §§ 1005.31(a)(3) and (a)(5), in accordance with § 1005.36(a)(1)(i).

5. *Transfer Date Disclosures*. The following example demonstrates how the information required by § 1005.31(b)(2)(vii) and § 1005.36(d)(1) should be disclosed on receipts: On July 1, a sender instructs the provider to send a preauthorized remittance transfer of US$100 each week to a designated recipient. The sender requests that first transfer in the series be sent on July 15. On the receipt, the remittance transfer provider discloses an estimated exchange rate to the sender pursuant to § 1005.32(b)(2). In accordance with § 1005.31(b)(2)(vii), the provider should disclose the date of transfer for that particular transaction (*i.e.*, July 15) on the receipt provided

when payment is made for the transfer pursuant to the timing requirements in § 1005.36(a)(1)(i). The second receipt, which § 1005.36(a)(1)(ii) requires to be provided within one business day after the date of the transfer or, for transfers from the sender's account held by the provider, on the next regularly scheduled periodic statement or within 30 days after payment is made if a periodic statement is not provided, is also required to include the date of transfer. If the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with § 1005.36(d)(2), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to any date of transfer on the receipt.

6. *Cancellation Disclosure*. Remittance transfer providers that offer remittance transfers scheduled three or more business days before the date of the transfer, as well as remittance transfers scheduled fewer than three business days before the date of the transfer, may meet the cancellation disclosure requirements in § 1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and using a checkbox or other method to clearly designate the applicable cancellation period. The provider may use a number of methods to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. For transfers scheduled three business days before the date of the transfer, the cancellation disclosures provided pursuant to § 1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

*   *   *   *   *

31(b)(3) Combined Disclosures

*   *   *   *   *

2. Confirmation of Scheduling. As discussed in comment 31(e)-2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of proof of payment described in § 1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by § 1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

*   *   *   *   *

c. Revise comment 32-1 to read as follows:

Section 1005.32—Estimates

1. *Disclosures where estimates can be used*. Sections 1005.32(a) and (b)(1) permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and(2). To the extent permitted in §§ 1005.32(a) and (b)(1), estimates may be used in the pre-payment disclosure described in § 1005.31(b)(1), the receipt disclosure described in § 1005.31(b)(2), the combined disclosure described in § 1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in §§ 1005.36(a)(1) and (a)(2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in §§ 1005.36(a)(1)(i) and (a)(2)(i).

*   *   *   *   *

d. Replace commentary to § 1005.32(b) with new commentary to §§ 1005.32(b)(1) and (b)(2) as follows:

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. *Laws of the recipient country.* The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under § 1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under § 1005.31(b)(1)(iv) through (b)(1)(vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under § 1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.* i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1. *Fixed amount of foreign currency.* The following is an example of when and how a remittance transfer provider may disclose estimates for remittance transfers scheduled five or more business days before the date of transfer where the provider agrees to the sender's request to fix the amount to be transferred in a currency in which the transfer will be received and not the currency in which it was funded. If on February 1, a sender schedules a 1000 Euro wire transfer to be sent from the sender's bank account denominated in U.S. dollars to a designated recipient on February 15, section § 1005.32(b)(2) allows the provider to estimate the amount that will be transferred to the designated recipient (*i.e.*, the amount described in § 1005.31(b)(1)(i)), any fees and taxes imposed on the remittance transfer by the provider (if based on the amount transferred) (*i.e.*, the amount described in § 1005.31(b)(1)(ii)) and the total amount of the transaction (*i.e.*, the amount described in § 1005.31(b)(1)(iii)). The provider may also estimate any fees and taxes imposed on the remittance transfer by a person other than the provider if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees and taxes (as allowed by § 1005.32(b)(2)(ii)).

2. *Relationship to § 1005.10(d).* To the extent § 1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as § 1005.10(d)

does not specify the form of such notice, a notice sent pursuant to § 1005.36(a)(2)(i) will satisfy § 1005.10(d) as long as the timing requirements of § 1005.10(d) are satisfied.

e. Revise commentary to § 1005.32(c) as follows:

32(c)(1) Exchange Rate

1. Most recent exchange rate for qualifying international ACH transfers. If the exchange rate for a remittance transfer sent via international ACH that qualifies for the § 1005.32(b)(1)(i)(B) exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, *i.e.*, the current business day's exchange rate.

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f. Add new commentary to § 1005.32(d) as follows:

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer.

1. *In general.* When providing an estimate pursuant to § 1005.32(b)(2), § 1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize either of the other two exceptions permitting the provision of estimates in § 1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under § 1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance provider could not send any remittance transfer until the next day (for reasons such as the provider's

deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

g. Revise commentary to § 1005.36 as follows:

Section 1005.36—Transfers Scheduled Before the Date of Transfer

36(a) Timing.

36(a)(2) Subsequent Preauthorized Remittance Transfers

1. *Changes in Disclosures.* When a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, § 1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in § 1005.31(e). While certain information in those disclosures is expressly permitted to be estimated (*see* §§ 1005.32(b)(2)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by §§ 1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with § 1005.31(b)(2) and which discloses, among the other disclosures required by § 1005.31(b)(2), the changed terms. For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is

$20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and .36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and .36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, § 1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted by § 1005.32(b)(2), changes.

2. *Clearly and conspicuously.* In order to indicate clearly and conspicuously that the provider's fee has changed as required by § 1005.36(a)(2)(i), the provider could, for example, state on the receipt: "Transfer Fees (UPDATED) ……. $30." To the extent that other figures on the receipt must be revised because of the new fee, the receipt should also indicate that those figures are updated.

3. *Reasonable time.* If a disclosure required by § 1005.36(a)(2)(i) or .36(d)(1) is mailed, the disclosure would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails a disclosure required by § 1005.36(a)(2)(i) or .36(d)(1) not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers a disclosure not later than five business days before the scheduled date of the transfer, the provider would be deemed to have provided

the disclosure within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

36(b) Accuracy

1. *Use of Estimates.* In providing the disclosures described in § 1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in § 1005.32. When estimates are permitted, however, they must be disclosed in accordance with § 1005.31(d).

2. *Subsequent preauthorized remittance transfers*. For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to § 1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by §§ 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to § 1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. *Receipts.* A receipt required by § 1005.36(a)(1)(ii) or (a)(2)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to § 1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a) or (b)(1). In providing receipts pursuant to § 1005.36(a)(1)(ii) or (a)(2)(ii), §§ 1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to § 1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to § 1005.36(a)(1)(i) and that receipt contained an estimate of the exchange

rate pursuant to § 1005.32(b)(2), the second receipt provided pursuant to § 1005.36(a)(1)(ii) must also disclose the fee as $10.

*   *   *   *   *

36(d) Date of Transfer for Subsequent Preauthorized Remittance Transfers

1. *General*. Section 1005.36(d)(2)(i) permits remittance transfer providers some flexibility in determining how and when the disclosures required by § 1005.36(d)(1) may be provided to senders. The disclosure described in § 1005.36(d)(1) may be provided as a separate disclosure, or on or with any other disclosure required by this subpart B related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in (d)(2) and other applicable provisions in subpart B are satisfied. For example, the required disclosures may be made on or with a receipt provided pursuant to § 1005.36(a)(1)(i); a receipt provided pursuant to § 1005.36(a)(2); or in a separate disclosure created by the provider. Thus, for example, a remittance transfer provider complies with § 1005.36(d)(1) for a period of one year if it provides in the receipt provided to the sender when payment is made for the initial preauthorized remittance transfer, a schedule or summary of the dates of transfer of all the subsequent preauthorized remittance transfers in the series scheduled to occur over the next 12 months (and the applicable cancellation requirements and contact information).

2. *Delivery of disclosure*. Section 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider's contact information no more than 12 months, and no less than 5 business days prior to the date of transfer of the subsequent preauthorized remittance transfer. For purposes of determining when a disclosure required by § 1005.36(d)(1) is received by the sender, refer to comment 36(a)(2)-3.

3. *Disclosure of the date of transfer*. The date of transfer of a subsequent preauthorized remittance transfer may be disclosed as a specific date (*e.g.*, July 19, 2013) or by using a method that clearly permits identification of the date of the transfer, such as periodic intervals (*e.g.*, the third Monday of every month, or the 15th of every month). If the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not otherwise conform to the described period, *e.g.*, if a holiday or weekend causes the provider to deviate from the normal schedule, the remittance transfer provider should disclose the specific date of transfer for the affected transfer.

4. *Accuracy requirements*. Section 1005.36(d)(4) sets forth accuracy requirements for disclosures required for subsequent preauthorized remittance transfers under § 1005.36(d)(1). If any of the information provided in these disclosures change, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to § 1005.36(d)(2).

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED “ELECTRONIC FUND TRANSFERS (REGULATION E)”]

Dated: August 7, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.