

**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 provides new protections, including disclosures and error resolution and cancellation rights, to consumers who send remittance transfers to other consumers or businesses in a foreign country. The amendments implement statutory requirements set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**DATES:** The rule is effective **[INSERT DATE ONE YEAR FROM PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Mandie Aubrey, Dana Miller, or Stephen Shin, Counsels, or Krista Ayoub or Vivian Wong, Senior Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, N.W., Washington, D.C. 20006, at (202) 435-7000.

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview**

The Bureau of Consumer Financial Protection (Bureau) is publishing this final rule to implement section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>1</sup> which creates a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Consumers transfer tens of billions of dollars from the United States each year. However, these transactions were generally excluded from existing Federal consumer protection regulations in the United States until the Dodd-Frank Act expanded the scope of the Electronic Fund Transfer Act (EFTA)<sup>2</sup> to provide for their regulation.

The new protections will significantly improve the predictability of remittance transfers and provide consumers with better information for comparison shopping. First, the statute requires consistent, reliable disclosures about the price of a transfer, the amount of currency to be delivered to the recipient, and the date of availability. Consumers must receive pricing information before they make payment, and under the final rule will generally have 30 minutes after making payment to cancel a transaction. Second, the new requirements also increase consumer protections where transfers go awry by requiring providers to investigate disputes and remedy errors. Because the statute defines “remittance transfers” broadly, most electronic transfers of funds sent by consumers in the United States to recipients in other countries will be subject to the new protections.

Authority to implement the new Dodd-Frank Act provisions amending the EFTA transferred from the Board of Governors of the Federal Reserve System (Board) to the Bureau

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376, section 1073 (2010).

<sup>2</sup> 15 U.S.C. 1693 et seq. EFTA section 919 is codified in 15 U.S.C. 1693o-1.

effective July 21, 2011. The Dodd-Frank Act requires that regulations to implement certain of these provisions be issued by January 21, 2012. To ensure compliance with this deadline, the Board issued a Notice of Proposed Rulemaking in May 2011 (May 2011 Proposed Rule) with the expectation that the Bureau would complete the rulemaking process.<sup>3</sup>

The Bureau is now issuing the final rule to define standards and provide initial guidance to industry. The final rule provides for a one-year implementation period. The Bureau is also publishing elsewhere in today's Federal Register a Notice of Proposed Rulemaking (January 2012 Proposed Rule) to further refine application of the final rule to certain transactions and remittance transfer providers. The Bureau expects to complete any further rulemaking on matters raised in the January 2012 Proposed Rule on an expedited basis before the end of the one-year implementation period.

The Bureau will work actively with consumers, industry, and other regulators in the coming months to follow up on the final rule. For instance, the Bureau has begun discussions with other Federal and state regulators concerning the fact that Congress's decision to regulate remittance transfers under the EFTA affects the application of certain State laws and Federal anti-money laundering regulations, as discussed further below. In coming months, the Bureau also expects to develop a small business compliance guide and engage in dialogue with industry regarding implementation issues. Finally, as the implementation date approaches, the Bureau expects to conduct a public awareness campaign to educate consumers about the new disclosures and their other rights under the Dodd-Frank Act.

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<sup>3</sup> 76 FR 29902 (May 23, 2011).

## II. Background

### A. Scope and Regulation of Remittance Activities

The term “remittance transfer” has been used in other contexts to describe consumer-to-consumer transfers of low monetary value, often made via non-depository companies known as “money transmitters” by migrants supporting friends and relatives in their home countries.<sup>4</sup> But while this likely is the single largest category of electronic transfers of funds by consumers in the United States to recipients in foreign countries, it is not the only one. For instance, transfers can be sent abroad by any consumers in the United States, not just immigrants. In addition to using money transmitters, consumers can transfer funds to recipients in foreign countries through depository institutions or credit unions, for instance through wire transfers or automated clearing house (ACH) transactions. Furthermore, consumers in the United States may transfer funds to businesses as well as to individuals in foreign countries, for instance to pay bills, tuition, or other expenses. Although a number of studies of certain sets of consumers’ international funds transfers have shown that transactions average several hundred dollars per transfer,<sup>5</sup> average transfer sizes vary significantly among subsets of the market, e.g., among sets of consumer transfers sent to particular destination regions, or among consumer transfers sent via particular methods or for particular purposes.<sup>6</sup>

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<sup>4</sup> See, e.g., Committee on Payment and Settlement Systems and the World Bank, General Principles for International Remittance Services 6 (Jan. 2007), available at: [siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/New\\_Remittance\\_Report.pdf](http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/New_Remittance_Report.pdf) (“CPSS Principles”).

<sup>5</sup> See, e.g., Ole E. Andreassen, Remittance Service Providers in the United States: How Remittance Firms Operate and How They Perceive Their Business Environment 15-16 (June 2006), available at: [siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/BusinessmodelsFSEseries.pdf](http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/BusinessmodelsFSEseries.pdf) (“Andreassen”); Manuel Orozco, Inter-American Dialogue, Migration and Remittances in Times of Recession: Effects on Latin American and Caribbean Economies 13-14 (Apr. 2009), available at: [www.oecd.org/dataoecd/48/8/42753222.pdf](http://www.oecd.org/dataoecd/48/8/42753222.pdf); Bendixen & Amandi, Survey of Latin American Immigrants in the United States 23 (Apr. 30, 2008), available at: [idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35063818](http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35063818). (“Bendixen Survey”)

<sup>6</sup> For example, one study found that 52% of total worldwide transfers to India from Indians living abroad were made in amounts of \$1,100 and above, and of that category, 63% exceeded \$2,200. Muzaffar Chishti, Migration Policy

As described further below, the Dodd-Frank Act defines “remittance transfer” broadly to include most electronic transfers of funds sent by consumers in the United States to recipients in other countries. There is no available data regarding the volume of remittance transfers using the statutory definition, but a number of studies regarding related financial flows indicate that consumers in the United States transfer tens of billions of dollars abroad annually. Globally, the World Bank estimates that the worldwide volume of certain cash, asset, and in-kind transfers made by migrants to developing countries reached \$325 billion in 2010, and that the United States was the source of the greatest number of such transfers.<sup>7</sup> The U.S. Bureau of Economic Analysis estimates that in 2010, \$37.1 billion in cash and in-kind transfers were made from the United States to foreign households by foreign-born individuals who had spent one or more years here.<sup>8</sup> Similarly, a private consulting firm estimates that in 2005, \$42 billion in international transfers were made by money transmitters in the United States.<sup>9</sup> The U.S. Census Bureau, in contrast, estimates that monetary transfers from U.S. households to family and friends abroad totaled approximately \$12 billion in 2008.<sup>10</sup> The available data suggest that the majority of

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Institute, The Rise in Remittances to India: A Closer Look (February 2007), available at: <http://www.migrationinformation.org/Feature/display.cfm?ID=577> (citing to 2006 study by the Reserve Bank of India; study was not limited to transfers from the United States); see also Manuel Orozco, Inter-American Dialogue, Worker Remittances in an International Scope 10 (Feb. 28, 2003), available at: [www.iadb.org/document.cfm?id=35076501](http://www.iadb.org/document.cfm?id=35076501).

<sup>7</sup> World Bank, Migration and Remittances Factbook 2011 15, 17 (2d ed. 2011). The World Bank estimates include cash and in-kind transfers by migrants to their native countries, earnings of temporary workers, and certain asset transfers.

<sup>8</sup> Bureau of Economic Analysis (BEA), Personal Transfers, 1992:I–2011:III (Dec. 15, 2011). For more on the BEA’s methodology, see Mai-Chi Hoang and Erin M. Whitaker, BEA, “Annual Revision of the U.S. International Transaction Accounts,” Surv. of Current Bus., vol. 91, no. 7 (July 2011) at 47-61; Christopher L. Bach, BEA, “Annual Revision of the U.S. International Accounts, 1991–2004,” Surv. of Current Bus., vol. 85, no. 7 (July 2005) at 64-66.

<sup>9</sup> KPMG LLP Economic and Valuation Services, 2005 Money Services Business Industry Survey Study for Financial Crimes Enforcement Network 5 (Sept. 26, 2005), available at: [www.fincen.gov/news\\_room/rp/reports/pdf/FinCEN\\_MSB\\_2005\\_Survey.pdf](http://www.fincen.gov/news_room/rp/reports/pdf/FinCEN_MSB_2005_Survey.pdf) (“KPMG Report”) (Volume estimates included fees charged, as well as principal transferred. It is unclear whether estimate includes inbound, as well as outbound, transfers).

<sup>10</sup> Elizabeth M. Grieco, Patricia de la Cruz et al., Who in the United States Sends and Receives Remittances? An Initial Analysis of the Monetary Transfer Data from the August 2008 CPS Migration Supplement, U.S. Census Bureau Working Paper No. 87 (Nov. 2010), available at

consumers' international transfers from the United States are sent to the Caribbean and Latin America, and primarily to Mexico. Significant sums are also sent to Asia, and to the Philippines in particular.<sup>11</sup>

In the United States, remittance transfers sent by non-bank “money transmitters,” depository institutions, and credit unions are generally subject to Federal anti-money laundering laws and restrictions on transfers to or from certain persons. Money transmitters are also subject to State licensing and (in some cases) State regulatory regimes. However, consumer protections for remittance and other funds transfers vary widely at the State level, and international money transfers fall largely outside the scope of existing Federal consumer protections. For instance, the EFTA was enacted in 1978 to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. As implemented by Regulation E (12 CFR part 1005),<sup>12</sup> the EFTA governs transactions such as transfers initiated through automated teller machines, point-of-sale terminals, automated clearing house systems, telephone bill-payment plans, or remote banking services. However, prior to the new Dodd-Frank Amendments, Congress had specifically structured the EFTA to exclude wire transfers,<sup>13</sup> and transfers sent by money transmitters also generally fall outside the scope of existing Regulation E. As described in more detail below, these categories of transfers are believed to compose the majority of the remittance transfer market.

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<http://www.census.gov/population/www/documentation/twps0087/twps0087.html>. The report recognizes the substantial difference between its estimate and that of the BEA and offers several possible explanations, but does not reach a conclusion about the difference between the estimates.

<sup>11</sup> U.S. Gov't Accountability Office, GAO-06-204, International Remittances: Information on Products, Costs, and Consumer Disclosures 7 (November 2005) (“GAO Report”); see also Cong. Budget Office, Migrants' Remittances and Related Economic Flows 7 (Feb. 2011).

<sup>12</sup> In light of the transfer of the rulemaking authority for the EFTA (other than Section 920 of the EFTA) from the Board to the Bureau, the Bureau published for public comment an interim final rule establishing a new Regulation E at 12 CFR part 1005. See 76 FR 81020 (Dec. 27, 2011). Consequently, provisions in the Board's Regulation E at 12 CFR part 205 were republished as the Bureau's Regulation E at 12 CFR part 1005.

<sup>13</sup> See EFTA section 903(7), which has been implemented in 12 CFR 1005.3(c).

## **B. Specific Methods of Consumer Remittance and Other Money Transfers**

Consumers can choose among several methods of transferring money to foreign countries, as detailed below. Information on the volume of certain methods, particularly consumer wire transfers, is very limited, but the Bureau believes that transactions by non-bank “money transmitters” and wire transfers by depository institutions and credit unions make up the majority of the remittance transfer market.

The various methods of remittance transfer can generally be categorized as involving either closed network or open network systems, although new hybrids between open and closed networks are developing. In closed networks, a principal remittance transfer provider offers a service through a network of agents or other partners that help collect funds in the United States and disburse funds abroad. Through the provider’s own contractual arrangements with those agents or other partners, or through the contractual relationships owned by the provider’s business partner, the principal provider can exercise some control over the transfer from end-to-end.

In contrast, 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. But any participant, such as a U.S. depository institution, 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.<sup>14</sup>

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<sup>14</sup> See generally CPSS Principles at 9-10.

## Remittance Transfers through Money Transmitters

Historically, many consumers have sent remittance transfers through non-depository institutions called “money transmitters.”<sup>15</sup> Money transmitters generally operate through closed networks, receiving and disbursing funds through their own outlets or through agents, such as grocery stores, neighborhood convenience stores, or depository institutions. Money transmitters have traditionally dominated the market for transfers from consumers in the United States to relatives or other households abroad.<sup>16</sup> These businesses, in turn, have tended to focus on modest-sized transfers. Many cap the size of individual transfers,<sup>17</sup> and some evidence suggests that for some destination markets, money transmitters’ prices for transfers of several hundred dollars tend to be lower than depository institutions’ prices.<sup>18</sup>

For a remittance transfer conducted through a money transmitter, a consumer typically provides basic identifying information about himself and the recipient, and pays cash sufficient to cover the transfer amount and any transfer fees charged by the money transmitter. The consumer is often provided a confirmation code, which the consumer relays to the recipient. The money transmitter sends an instruction to a specified payout location or locations in the recipient’s country where the recipient may pick up the transferred funds in cash, often in local currency, on or after a specified date, upon presentation of the confirmation code and/or other identification. These transfers are generally referred to as cash-to-cash remittances.

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<sup>15</sup> Federal law requires money transmitters to register with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury. 31 U.S.C. 5330; 31 CFR 1022.380. Most states also require money transmitters to be licensed by the State.

<sup>16</sup> Bureau, Report on Remittance Transfers 6 (July 20, 2011), available at: [http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_20110720\\_RemittanceTransfers.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110720_RemittanceTransfers.pdf) (“Bureau 2011 Report”).

<sup>17</sup> KPMG Report at 47.

<sup>18</sup> See, e.g., Remittance Prices Worldwide: Making Markets More Transparent. Sending Money FROM United States, at: <http://remittanceprices.worldbank.org/Country-Corridors/from-United-States> (tracking select providers’ prices for sending \$200 and \$500 transfers from the United States to select countries).



Although most money transmitters focus on cash-to-cash remittance transfers, many have also broadened their product offerings, with respect to both the methods for sending and the methods for receiving remittance transfers. For example, money transmitters may permit transfers to be initiated using credit cards, debit cards, or bank account debits, through websites, dedicated telephone lines at agent locations, at stand-alone kiosks, or by telephone. Abroad, money transmitters and their partners may allow funds to be deposited into recipients' bank accounts, or distributed directly onto prepaid cards. Funds can also be transferred among consumers' "virtual wallets," through accounts identified by individuals' email addresses or mobile phone numbers. A recent survey of companies sending funds from the United States to Latin America showed that approximately 75% permit consumers to send transfers of funds that can be deposited directly into recipients' bank accounts, and about 15% offer internet-based transfers.<sup>19</sup>

The cost of a transfer sent through a money transmitter generally has two components, in addition to any governmental taxes. The first component is fees. In general, money transmitters charge up-front fees at the time that a transaction is sent. Though it is possible that agents that disburse funds may charge additional fees, the contractual relationships that money transmitters hold with their agents – or with intermediaries that manage such agents – may allow money transmitters, as a condition of network participation, to forbid such fees.

The second component is the exchange rate applied to the transfer, which determines how much money a consumer will have to pay in order for a recipient to receive a certain amount of local currency. Money transmitters also often set the exchange rates that apply to the transfers

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<sup>19</sup> Manuel Orozco, Elizabeth Burgess et al, Inter-American Dialogue, A Scorecard in the Market for Money Transfers: Trends in Competition in Latin American and the Caribbean 6 (June 18, 2010) ("Scorecard"). Like cash-to-cash remittances, many of these new offerings rely on closed networks, though others rely on open networks or reflect some characteristics of both open and closed network transactions. The primary means of open network transfers are wire transfers and international ACH transfers, discussed in more detail below.

they send, at or before the time that a consumer tenders payment. However, some money transmitters offer floating rate products where the exchange rate is not determined until the recipient picks up the funds. In either scenario, the exchange rate that applies to a transfer usually reflects a spread: a percentage difference between that exchange rate (the “retail” rate) and some “wholesale” exchange rate.<sup>20</sup> Spreads can be used to generate revenue for the money transmitter or its partners. Spreads are also one of several mechanisms that money transmitters or their partners may use to manage exchange rate risk, which arises due to the frequent fluctuations in most wholesale currency markets and the time lags between when transfers are initiated, when destination market currency is bought, when transfers are picked up by recipients, and when the parties settle their transactions.

Funds sent through a money transmitter are generally available in one to three business days, although same day delivery may be available, often for a higher fee. At the time of the transaction, transmitters generally set a date (and possibly time) when funds will be available. Based on the contractual relationships among network participants, money transmitters may require agents in the recipient country to make funds available to recipients before accounts are settled among the agent in the United States, the money transmitter, the agent abroad, and any other entities involved. But the processes and methods that agents in the United States, money transmitters, agents abroad, and other entities communicate with each other, transfer funds among each other, and settle accounts can vary widely.<sup>21</sup>

Because money transmitters generally work through closed networks, even those that do not operate their own retail outlets often have direct contractual relationships with agents in the

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<sup>20</sup> There are a variety of ways to measure the wholesale exchange rate. For example, researchers may rely on publicly available interbank exchange rates, which are the rates available to large financial institutions exchanging very large quantities of currency with each other. By contrast, in calculating their revenues due to spread, money transmitters generally rely on the rates at which they buy currency, which may be different from interbank rates.

<sup>21</sup> See generally Andreassen at 3-5; CPSS Principles at 41-42.

United States through which consumers initiate transfers, as well as agents abroad, which make funds available to recipients. Alternatively, money transmitters may have direct relationships with intermediaries that, in turn, contract with and manage individual agents. In either scenario, money transmitters can use the terms of their contractual relationships to restrict the terms under which agents or other network partners can operate and to obtain information from the agents or other networks to monitor their compliance with contractual and legal requirements.

### International Wire Transfers

Depository institutions and credit unions have traditionally offered consumers remittance transfer services by way of wire transfers, which are certain electronically transmitted orders that direct receiving depository institutions to pay identified beneficiaries.<sup>22</sup> Unlike closed network transactions, which generally can only be sent to agents or other entities that have signed on to work with the specific provider in question, wire transfers are generally open network transactions that can reach virtually any bank worldwide through national payment systems that are connected through correspondent and other intermediary bank relationships.<sup>23</sup> Historically, while money transmitters have focused on modest-sized transfers between persons who may not use depository institutions or credit unions, wire transfers have generally been used for large transactions sent by consumers with deposit accounts to recipients with deposit accounts. Wire transfers are generally not capped on the amount that can be sent, and individual transactions can involve thousands or millions of dollars. Because flat fees are common, the price of a wire

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<sup>22</sup> Wire transfers can, in fact, be composed of a sequence of payment orders, each of which are settled using different payment systems. For instance, an international wire transfer may be composed, in part, by a domestic wire transaction between the sending institution in the United States and an intermediary also operating in the United States; a “book transfer” between two accounts held by the intermediary institution; and a transaction between that intermediary and the receiving institution (that may be conducted through the domestic wire system in the receiving country).

<sup>23</sup> A correspondent relationship is generally one in which a financial institution has a contractual arrangement to hold deposits and provide services to another financial institution, which has limited access to certain financial markets.

transfer, as a percent of the transaction amount, often decreases as the size of the transfer increases. Information on the volume of consumer wire transfers is very limited.

To initiate a wire transfer, a consumer typically provides the sending depository institution or credit union not only information about himself and the recipient of the transfer, but also technical information about the recipient's financial institution and the account into which money will be received. The fees charged by the sending institution and the principal amount to be transferred are deducted from the consumer's account. No access code or similar device is typically required because the funds will be deposited into the designated recipient's account in the foreign country.

Like money transmitters, providers of wire transfers usually charge up-front fees at the time of the transaction. In some cases, intermediary institutions impose additional fees (sometimes referred to as "lifting fees") and recipient institutions may also charge fees for converting funds into local currency and/or depositing them into recipients' accounts. Often, intermediary and recipient institutions charge fees to the consumer by deducting them from the principal amount transferred, although sometimes fees are charged to the sending institution instead.

For wire transfers that will be received in a foreign currency, the mechanics of the currency exchange may depend on the circumstances. A sending depository institution or credit union that participates in foreign exchange markets may exchange the currency at the time of transfer, using an exchange rate that the sending institution sets. In such cases, the principal amount will be then transferred in the foreign currency. Even if the funds are to be received in a foreign currency, however, the sending financial institution may not conduct the foreign exchange itself. Some financial institutions, particularly smaller institutions, may not participate

in any foreign currency markets. In other cases, a depository institution or credit union may choose not to trade an illiquid currency or a consumer may request that the financial institution send the transfer in U.S. dollars. In these cases, the sending institution's correspondent institution, the first cross-border intermediary institution in the recipient's country, or the recipient's institution, may set the exchange rate that applies to the transfer. Like exchange rates applied to closed network transfers, exchange rates applied to wire transfers may reflect a spread between the retail rate and the wholesale rate; this spread can be used to generate revenue or to help manage exchange rate risk.

Funds that are sent by wire transfers are usually not available on the same day that the transaction is initiated. Because of time zone differences, and because payment is often not made before funds are settled among the various parties, wire transfers generally take at least one day for delivery. They may take longer, depending on the number of institutions involved in the transmittal route, the payment systems used, and individual institutions' business practices.

Communications within the open network can be complicated. Where a sending institution has no contractual, account, or other relationships with a recipient institution, it may communicate indirectly by sending funds and payment instructions to a correspondent institution, which will then transmit the instructions and funds to the recipient institution directly or indirectly through other intermediary institutions. In some cases the sending institutions may not know the identity of the intermediary institution prior to initiating the transfer because more than one transfer route may be possible. Institutions may learn about each other's practices through any direct contractual or other relationships that do exist, through experience in effectuating wire transfers over time, through reference materials, or through information provided by the consumer. However, as open networks operate today, there is no global practice

of communications by intermediary and recipient institutions that do not have direct relationships with a sending institution regarding fees deducted from the principal amount or charged to the recipient, exchange rates that are set by the intermediary or recipient institution, or compliance practices. Furthermore, even among contractual partners, communication practices could vary.

### International ACH

More recently, some depository institutions and credit unions have begun to offer other methods for initiating remittance transfers, such as through the automated clearing house system (ACH), which provides for batched electronic fund transfers generally on a nightly basis. To reach a foreign recipient, transfers initiated through the ACH system must generally pass through a “gateway operator” in the United States, to an entity in the recipient country (such as a foreign financial institution) according to the terms of an agreement between the two; the transfers are then cleared and settled through a payment system in the recipient country. Individual financial institutions can serve as gateway operators, and through a set of branded services called FedGlobal ACH Payments, the Federal Reserve Banks also offer international ACH gateway services.<sup>24</sup>

Similar to the typical money transmitter services, the FedGlobal ACH Payments services have been designed for modest sized transfers. They have been marketed, at least in part, to serve migrants sending money to their countries of origin, and some of the FedGlobal services

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<sup>24</sup> Board, Report to the Congress on the Use of the Automated Clearinghouse System for Remittance Transfers to Foreign Countries 4-6, 7, 9 (July 2011), available at: [http://www.federalreserve.gov/boarddocs/rptcongress/ACH\\_report\\_201107.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/ACH_report_201107.pdf) (“Board ACH Report”)

include transaction limits.<sup>25</sup> Unlike some money transmitters, FedGlobal does not offer transfers that can be picked up on the same day on which they are sent.<sup>26</sup>

Development of the FedGlobal system has occurred in the last decade. In 2001, the Federal Reserve Banks began offering cross-border ACH services to Canada. In 2004, the Federal Reserve Banks launched an interbank mechanism in partnership with the central bank of Mexico, later branded “Directo a México,” to carry out cross-border ACH transactions between the United States and Mexico. The Federal Reserve Banks now offer international ACH services to 35 countries in Europe, Canada, and Latin America through agreements with private-sector or government entities.<sup>27</sup> In each case, the Federal Reserve and the entity or entities with which the Federal Reserve has an agreement receive, process, and distribute ACH payments to financial institutions or recipients within the respective domestic payment systems, and in accordance with the terms of the FedGlobal ACH service.<sup>28</sup> Depending on the recipient country, institutions may offer customers account-to-account transfers, or allow customers to send transfers that may be picked up in cash at a participating institution or other payout location abroad.<sup>29</sup>

The Federal Reserve provides U.S. financial institutions access to its FedGlobal ACH Payments Service for a fee. Financial institutions, in turn, offer the product to their customers for a fee.<sup>30</sup> For the purposes of this discussion, international ACH transactions will be

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<sup>25</sup> Board ACH Report at 4, 10; Fed. Reserve Bank Services, FedGlobal® ACH Payments Service Origination Manual 23, 48, available at: [http://www.frbservices.org/files/serviceofferings/pdf/fedach\\_global\\_service\\_orig\\_manual.pdf](http://www.frbservices.org/files/serviceofferings/pdf/fedach_global_service_orig_manual.pdf) (“FedGlobal Originations Manual”).

<sup>26</sup> FedGlobal Originations Manual at 11, 49.

<sup>27</sup> Board ACH Report at 9, 14; Fed. Reserve Bank Services, FedGlobal ACH Payments, available at: [http://www.frbservices.org/serviceofferings/fedach/fedach\\_international\\_ach\\_payments.html](http://www.frbservices.org/serviceofferings/fedach/fedach_international_ach_payments.html) (“FedGlobal ACH Payments”).

<sup>28</sup> FedGlobal Originations Manual.

<sup>29</sup> FedGlobal ACH Payments, [http://www.frbservices.org/serviceofferings/fedach/fedach\\_international\\_ach\\_payments.html](http://www.frbservices.org/serviceofferings/fedach/fedach_international_ach_payments.html).

<sup>30</sup> See, e.g., Lenora Suki, Competition and Remittances in Latin America: Lower Prices and More Efficient Markets, Working Paper at 27 (Feb. 2007), available at: <http://www.oecd.org/dataoecd/31/52/38821426.pdf> (“Competition and Remittances”).

considered open network transactions. However, depending in part on the nature of the agreements between U.S. gateway operators and the foreign entities involved, international ACH transfers also share some characteristics of closed network transfers. For example, like wire transfers, international ACH transfers can involve payment systems in which a large number of sending and receiving institutions may participate, such that the sending institution and the receiving institution may have no direct relationship. Agreements formed by the gateway operator with foreign entities may, however, restrict some terms of the service and the participants in the system. For example, unlike institutions that receive wire transfers, institutions that receive FedGlobal ACH transfers are generally restricted, by the terms of the service, from deducting a fee from the principal amount (though the service may permit recipient institutions to charge certain other fees, such as fees for receiving a transfer).<sup>31</sup>

In some instances, the financial institution originating a FedGlobal ACH transfer can choose to conduct the foreign exchange, and send the transfer in the foreign currency. In other cases, however, transfers are sent in U.S. dollars and any applicable exchange rate is determined afterward, by the foreign ACH counterpart, either directly or through foreign depository institutions.<sup>32</sup> For such transfers, the terms of the FedGlobal service can determine how and when the applicable rate is set. For instance, for FedGlobal transfers to Mexico, the exchange rate is based on rate published by the Bank of Mexico on the date the transfer is credited to the beneficiary's account, minus a fixed spread.<sup>33</sup> Funds are deposited into the recipient's account or

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<sup>31</sup> FedGlobal Originations Manual at 13, 27, 37, 42, 51. For transfers to Europe, the terms of the service provide for reimbursement of any fees deducted from the principal.

<sup>32</sup> Board ACH Report at 10-11.

<sup>33</sup> See Foreign Exchange Rate, available at: <http://directoamexico.com/en/tipodecam.html>.



made available to be picked up, in accordance with a delivery schedule that is established by the rules applicable to each FedGlobal service, and the practice of receiving financial institutions.<sup>34</sup>

International ACH transfers sent through the FedGlobal service or other mechanisms likely account for a small share of the remittance transfers sent annually. In July 2011, the Board reported that about 410 financial institutions had enrolled in the FedGlobal ACH Payments Service, and that only about one-third of those initiated transfers in a typical month. The Board further reported that some enrolled institutions do not offer the service for consumer-initiated transfers; a large portion of the transfers sent through the FedGlobal's Canadian and European services were commercial payments; and the volume of transfers through the FedGlobal's Latin America service was negligible.<sup>35</sup>

The FedGlobal ACH services account for only about 20 percent of cross-border transactions that are processed through the U.S. ACH networks.<sup>36</sup> The Bureau believes that remittance transfers account for only a small portion of these additional transactions, which include not only outbound, consumer-initiated transfers, but also inbound transfers and transfers initiated by government and businesses.<sup>37</sup> Section 1073 of the Dodd-Frank Act directs the Board to work with the Federal Reserve Banks and the Department of the Treasury to expand the use of the ACH system and other payment mechanisms for remittance transfers to foreign countries.

#### Other Transfer Methods

Over the last decade, some depository institutions and credit unions have independently developed other remittance transfer products, or have directly partnered with or joined other

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<sup>34</sup> Board ACH Report at 11; FedGlobal Originations Manual at 11, 13

<sup>35</sup> Board ACH Report at 12 & n.53, 14-15.

<sup>36</sup> Board ACH Report at 5 & n.20, 9.

<sup>37</sup> Board ACH Report at 6.

networks of financial institutions or other payout locations. Often designed with a focus on modest-sized transfers, these products include account-to-account, account-to-cash, and cash-to-account products that may be offered through closed network systems and resemble those offered by money transmitters.<sup>38</sup> Services may be offered to non-account holders, as well as accountholders.

In addition, depository institutions, credit unions, money transmitters, and other entities, including brokerages, may directly, or in partnership with others, offer consumers other closed network, open network, and other models for sending money abroad. Some of these other models relying on prepaid and debit cards can be used to deliver funds to a person located abroad. For example, consumers may send funds to recipients abroad using prepaid cards. In one model, a consumer in the United States purchases a prepaid card, loads funds onto the card, and has it sent to a recipient in another country. The recipient may then use the prepaid card at an ATM or at a point of sale, at which time any currency exchange typically occurs. The consumer can reload the recipient's prepaid card through the provider's website.<sup>39</sup>

A consumer may also add a recipient in another country as an authorized user on his or her checking or savings account based in the United States, which could be denominated in dollars or in a foreign currency. A debit card linked to the consumer's account is provided to the recipient, who can use it to withdraw funds at an ATM or at a point of sale.<sup>40</sup>

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<sup>38</sup> See, e.g., Scorecard at 7, 25-26.

<sup>39</sup> Depending on the business model, a prepaid card could also be reloaded at in-person locations or through other reload mechanisms.

<sup>40</sup> Consumers may also use informal methods to send money abroad, such as sending funds through the mail or with a friend, relative, or courier traveling to the destination country. See, e.g., Bendixen Survey 24 (estimating about 12% of Latin American migrants' transfers from the United States to their families are sent through mail, courier, or friends traveling abroad).

### **C. Consumer Choice, Pricing, and Disclosure**

Research suggests that consumers choose a particular remittance transfer provider or product over another for a number of reasons. Significant factors include price, trust in the provider, security, reliability (*i.e.*, having specified funds available at the specified time), and convenience, particularly in markets with limited locations for recipients to pick up funds.<sup>41</sup> The relative importance of these factors can vary. For instance, some studies indicate that consumers are willing to pay higher prices to ensure that recipients receive the entire amount promised at the promised delivery time, and that consumers also tend to continue using a service provider once it proves reliable.<sup>42</sup> Though the available information is limited, similar factors may also affect some consumers' decisions about whether to send money at all, or how much money to send. For instance, one study showed that small decreases in fees charged led to significant increases in the number of transfers made by migrant consumers sending remittances to their home countries.<sup>43</sup>

In recent years, studies suggest that increasing competition and other factors have contributed to downward market pressure on prices in some remittance markets.<sup>44</sup> One study shows that the average price for sending \$200 transfers to Latin America dropped by nearly half

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<sup>41</sup> Marianne A. Hilgert, Jeanne M. Hogarth, et al. "Banking on Remittances: Extending Financial Services to Immigrants." 15 Partners No. 2 at 18 (2005); Competition and Remittances at 25; May 2011 Proposed Rule, 76 FR 29905 (summarizing results of consumer research conducted by the Board in connection with development of the proposed rule).

<sup>42</sup> GAO Report at 8; May 2011 Proposed Rule, 76 FR 29905. See also Appleseed, The Fair Exchange: Improving the Market for International Remittances 7 (Apr. 2007).

<sup>43</sup> Dean Yang, "Migrant Remittances," Journal of Economic Perspectives, Vol. 25, No. 3 (Summer 2011) at 129-152.

<sup>44</sup> Manuel Orozco, Inter-American Dialogue, International Flow of Remittances: Cost, Competition and Financial Access in Latin America and the Caribbean –Toward an Industry Scorecard 4 (2006), available at: [www.iadb.org/news/docs/internationalflows.pdf](http://www.iadb.org/news/docs/internationalflows.pdf) (Technology may also be a driving factor). See also, The World Bank, Global Economic Prospects: Economic Implications of Remittances and Migration 137-38 (2006), available at: [http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/11/14/000112742\\_20051114174928/Rendered/PDF/343200GEP02006.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/11/14/000112742_20051114174928/Rendered/PDF/343200GEP02006.pdf).

between 2001 and 2008, although prices have risen slightly since.<sup>45</sup> Furthermore, a recent survey of Latin American immigrants in the United States indicated that a majority were satisfied with the ease of use, inexpensiveness, and exchange rate and fee transparency of the companies that they used to send money, though fewer than half were satisfied with those companies' overall value.<sup>46</sup>

However, this information is limited, in both its scope and its applicability. For instance, not all remittance transfer markets are as competitive as the market for modest-sized transfers to Latin America. Furthermore, across markets, a number of concerns with regard to the clarity and reliability of information provided to consumers have been identified.<sup>47</sup>

First, pricing for remittance transfers is complex. The overall price of the transaction depends on three components (fees, taxes, and exchange rates). As a result, determining what amount of funds will actually be received and which provider offers the lowest price requires arithmetic that can be challenging for consumers.<sup>48</sup>

Second, pricing models can vary widely and change frequently, making it even more difficult for consumers to compare transfer options. Fees may be charged to senders up front or deducted from the principal amount. Because wholesale currency markets can fluctuate constantly over the course of the day, the exchange rates applied to individual remittance transfers may also change over the course of the day, depending on how frequently remittance

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<sup>45</sup> Scorecard at 2, 13 (price includes upfront fee plus spread between exchange rate applied to the transfer and the wholesale exchange available at the time); see also Inter-American Development Bank, Multilateral Investment Fund, Ten Years of Innovation in Remittances: Lessons Learned and Models for the Future 8 (2010).

<sup>46</sup> Scorecard at 10.

<sup>47</sup> See generally S. Rep. 111-176, at 179-80 (2010); Remittances: Regulation and Disclosure in a New Economic Environment, Hearing Before House Subcomm. on Fin. Insts. and Cons. Credit, House Comm. on Fin. Servs., No. 111-39 (June 3, 2009) (“2009 House Hearing”); Remittances: Access, Transparency, and Market Efficiency—A Progress Report, Hearing Before House Subcomm. on Domestic and Int’l Monetary Policy, Trade, and Technology, House Comm. on Fin. Servs., No. 110-32 (May 17, 2007) (“2007 House Hearing”).

<sup>48</sup> See, e.g., Bureau 2011 Report at 17-20; Testimony of Annette LoVoi, Appleseed, 2009 House Hearing at 8-9, 13, 24; Testimony of Manuel Orozco, Inter-American Dialogue, 2009 House Hearing at 61-63; Testimony of Mark A. Thompson, The Western Union Company, 2009 House Hearing at 20; Testimony of Beatriz Ibarra, National Council of La Raza, 2007 House Hearing at 41.

transfer providers update their retail rates. Remittance transfer providers may also vary their exchange rates and fees charged based on a range of factors, such as the sending and receiving locations, and size and speed of the transfer.<sup>49</sup> Taxes may vary depending on the type of remittance transfer provider, the type of recipient institution, and various other factors.<sup>50</sup> These variations can also make it difficult for consumers to compare prices across providers or among remittance products.

Third, disclosure practices have varied in the absence of a consistent Federal regime. In the last decade, the number of states that require provision of post-transaction receipts stating fees and/or exchange rates has increased, and several class action lawsuits against large money transmitters also resulted in settlement agreements requiring disclosure of certain pricing information. However, the legal requirements vary and coverage is limited. Moreover, many of the State requirements do not require pre-transaction disclosures or disclosure of the amount of foreign currency to be received.<sup>51</sup>

Finally, the reliance of many remittance senders on foreign languages can further complicate consumers' ability to obtain and understand transaction information from various remittance transfer providers.<sup>52</sup>

Congressional hearings prior to enactment of the Dodd-Frank Act focused on the need for standardized and reliable pre-payment disclosures, suggesting that disclosure of the amount of

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<sup>49</sup> See, e.g., Bureau 2011 Report at 13-14, 17-20; Testimony of Tom Haider, MoneyGram International, 2007 House Hearing at 14.

<sup>50</sup> Okla. Stat. §63-2-503.1j; Letter from Bobi Shields-Farrelly, United Nations Federal Credit Union, to Board of Governors of the Federal Reserve System, June 29, 2011.

<sup>51</sup> Bureau 2011 Report at 14-16; see also Testimony of Annette LoVoi, Appleseed, 2007 House Hearing at 19; Testimony of Beatriz Ibarra, National Council of La Raza, 2007 House Hearing at 42.

<sup>52</sup> See generally, Catalina Amuedo-Dorantes, Cynthia Bansak, and Susan Pozo, "On the Remitting Patterns of Immigrants: Evidence from Mexican Survey Data," Economic Review (First Quarter 2005) 37-58 at 41, CPSS Principles at 3.

money to be received by the designated recipient is particularly critical.<sup>53</sup> As discussed above, research suggests that consumers place a high value on reliability to ensure that the promised amount is made available to recipients.<sup>54</sup> In addition, the amount to be received can facilitate cost comparisons because it factors in both the exchange rate used and charges deducted from the principal amount to be transferred.<sup>55</sup> Consumer advocates also argued that requiring error resolution mechanisms where funds are not received as expected is also important.<sup>56</sup> Industry advocates emphasized the need for consistency, arguing that the current patchwork of regulatory approaches leads to unnecessary administrative costs that make remittances more expensive for consumers.<sup>57</sup>

### **III. Summary of Statute and Rulemaking Process**

#### **A. Overview of the Statute**

The Dodd-Frank Act creates a comprehensive system of consumer protections across various types of remittance transfers. The statute: (i) mandates disclosure of the exchange rate and the amount to be received, among other things, by the remittance transfer provider prior to and at the time of payment by the consumer for the transfer; (ii) provides for Federal rights

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<sup>53</sup> See, e.g., S. Rep. 111-176, at 179-80 (2010); Testimony of Annette LoVoi, Appleseed, 2009 House Hearing at 8-9, 13, 24; Testimony of Mark A. Thompson, The Western Union Company, 2009 House Hearing at 20; Testimony of Tom Haider, MoneyGram, 2007 House Hearing at 9; Testimony of Annette LoVoi, Appleseed, 2007 House Hearing at 3, 49; Testimony of James C. Orr, Microfinance International Corporation, 2007 House Hearing at 59.

<sup>54</sup> See also, e.g., Testimony of Annette LoVoi, Appleseed, 2009 House Hearing at 8 (“[C]onsumers value, above all, understanding the amount of money that will be delivered to their family member upon pick-up.”); Testimony of Annette LoVoi, Appleseed, 2007 House Hearing at 3, 21 (“[P]redictability of transfer is of paramount importance. The senders want to know how much money will be received in a foreign country.”); Testimony of Tom Haider, MoneyGram, 2007 House Hearing at 9 (describing the amount of local currency to be received as “most important to the consumer” among other items disclosed).

<sup>55</sup> Testimony of Mark A. Thompson, The Western Union Company, 2009 House Hearing at 20; Testimony of James C. Orr, Microfinance International Corporation, 2007 House Hearing at 59.

<sup>56</sup> Testimony of Annette LoVoi, Appleseed, 2009 House Hearing at 9, 48, 49; Testimony of Annette LoVoi, Appleseed, 2007 House Hearing at 51; Testimony of Beatriz Ibarra, National Council of La Raza, 2007 House Hearing at 5, 43, 44; see also S. Rep. 111-176, at 179-80 (2010).

<sup>57</sup> Testimony of Tom Haider, MoneyGram, 2007 House Hearing at 8, 32-33; see also Testimony of Mark A. Thompson, The Western Union, 2007 House Hearing at 11, 67 (arguing that legislation should not create an unlevel playing field between different types of providers).

regarding consumer cancellation and refund policies; (iii) requires remittance transfer providers to investigate disputes and remedy errors regarding remittance transfers; and (iv) establishes standards for the liability of remittance transfer providers for the acts of their agents and authorized delegates. The statute also contains other provisions to encourage provision and use of low-cost remittance transfers, including directing the Bureau and other agencies to assist in the execution of a national financial empowerment strategy, as it relates to remittances.

The requirements apply broadly. Congress defined “remittance transfer” to include all electronic transfers of funds to designated recipients located in foreign countries that are “initiated by a remittance transfer provider” upon the request of consumers in the United States; only very small dollar transfers are excepted by the statute. The statute thus expands the scope of the EFTA, which has historically focused on electronic fund transfers involving “accounts” held at financial institutions, which include depository institutions, credit unions, and other companies that directly or indirectly hold checking, savings, or other assets accounts. The remittance transfer provisions, in contrast, apply regardless of whether the consumer holds an account with the remittance transfer provider or whether the remittance transfer is also an “electronic fund transfer” as defined under the EFTA.

Congress also provided a specific accommodation for depository institutions and credit unions, in apparent recognition of the fact they would need time to improve communications with foreign financial institutions that conduct currency exchanges or impose fees on certain open network transactions. The statute creates a temporary exception to permit insured depository institutions and credit unions to provide “reasonably accurate estimates” of the amount to be received where the remittance transfer provider is “unable to know [the amount], for reasons beyond its control” at the time that the sender requests a transfer to be conducted

through an account held with the provider. The exception sunsets five years from the date of enactment of the Dodd-Frank Act (i.e., July 21, 2015), but the statute authorizes the Bureau to extend that date for no more than five years if it determines that termination of the exception would negatively affect the ability of depository institutions and credit unions to send remittances to locations in foreign countries.

Thus, once the temporary exception expires, the statute will generally require all remittance transfer providers to disclose the actual amounts to be received by designated recipients. The statute creates a permanent exception authorizing the Bureau to issue rules to permit use of reasonably accurate estimates where the Bureau determines that a recipient nations' laws or the methods by which transfers are made to a recipient nation do not permit remittance transfer providers to know the amount of currency to be received.

The statute further mandates that all remittance transfer providers investigate and remedy errors that are reported by the sender within 180 days of the promised date of delivery, specifically including situations in which the amount of currency designated in the disclosures was not in fact made available to the designated recipient in the foreign country. Under the statute, senders may designate whether funds should be refunded to them or made available to the designated recipient at no additional cost, or any other remedy determined by the Bureau. The statute also directs the Bureau to issue rules concerning appropriate cancellation and refund policies, as well as appropriate standards or conditions of liability for providers with regard to the acts of agents and authorized delegates.

## **B. Outreach and Consumer Testing**

Both the Board and the Bureau have conducted extensive outreach and research on remittances issues in preparation for the rulemaking process. Starting in fall 2010, Board staff



conducted outreach with various parties regarding remittances and implementation of the statute. Board staff met with representatives from a variety of money transmitters, financial institutions, industry trade associations, consumer advocates, and other interested parties to discuss current remittance transfer business models, consumer disclosure and error resolution practices, operational issues, and specific provisions of the statute.<sup>58</sup>

In addition, the Board engaged a testing consultant, ICF Macro (Macro), to conduct focus groups and one-on-one interviews regarding remittance transfers. Participants were all consumers who had made at least one remittance transfer and represented a range of ages, education levels, amount of time lived in the United States, and country or region to which remittances were sent. In December 2010, Macro conducted a series of six focus groups with eight to ten participants each, to explore current remittance provider practices and attitudes about remittance disclosures. Three focus groups were held in the Washington, D.C. metro area (specifically Bethesda, Maryland), and three were held in Los Angeles, California. At each location, two of the three focus groups were conducted in English, and the third in Spanish. In early 2011, Macro conducted a series of one-on-one interviews in New York City, Atlanta, Georgia, and the Washington, D.C. metro area (Bethesda, Maryland), with nine to ten participants in each city. During the interviews, participants were given scenarios in which they completed hypothetical remittance transfers and received one or more disclosure forms. For each scenario, participants were asked specific questions to test their understanding of the information presented in the disclosure forms.

The Bureau has also conducted additional outreach and research on remittances issues. Section 1073 of the Dodd-Frank Act required the Bureau to provide a report regarding the

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<sup>58</sup> Summaries of these meetings are available on the Board's website at: [http://www.federalreserve.gov/newsevents/reform\\_consumer.htm](http://www.federalreserve.gov/newsevents/reform_consumer.htm).

feasibility of and impediments to the use of remittance history in the calculation of a consumer's credit score, and recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers may be accomplished.<sup>59</sup> The Bureau has also conducted further outreach on remittance transfers with representatives from industry and consumer groups after closing of the comment period on the Board proposal and transfer of the rulewriting authorities.<sup>60</sup> The Bureau also held multiple meetings with appropriate Federal agencies to consult with them regarding the May 2011 Proposed Rule and the January 2012 Proposed Rule, as discussed further below.

### **C. Summary of the Board's Proposal**

The Board published the May 2011 Proposed Rule to amend Regulation E and the official staff commentary to implement the Dodd-Frank Act remittance transfer provisions.<sup>61</sup> Under the May 2011 Proposed Rule, a remittance transfer provider was generally required to provide a written pre-payment disclosure to a "sender," as defined in the statute and the proposed regulation, containing information about the specific transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. The remittance transfer provider was also generally required to provide a written receipt at the time the sender pays for the remittance transfer. The receipt would have included the information provided on the pre-payment disclosure, as well as the date of availability, the recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Alternatively, the May 2011 Proposed Rule permitted remittance transfer providers to provide senders a single written pre-payment disclosure containing all of the information required on the

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<sup>59</sup> See Bureau 2011 Report. The Bureau is currently engaged in quantitative research to explore further the potential relationships between consumers' remittance histories and credit scores.

<sup>60</sup> Summaries of these meetings are available at: <http://www.regulations.gov>.

<sup>61</sup> 76 FR 29902 (May 23, 2011).

receipt. Consistent with the statute, the May 2011 Proposed Rule would have required that these disclosures generally be provided in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at a particular office.<sup>62</sup>

The May 2011 Proposed Rule also contained provisions to implement two statutory exceptions to permit disclosure of reasonably accurate estimates of the amount of currency to be received. The first proposed exception would have implemented the temporary exception for insured depository institutions and credit unions to estimate exchange rates or fees that are determined by persons with which the financial institution has no correspondent banking relationship. The proposed rule stated that the exception would expire on July 21, 2015, as specified in the statute. The second proposed exception defined the circumstances in which providers could use estimates because the amount of currency to be received could not be determined due to: (i) the laws of a recipient country; or (ii) the method by which transactions are made in the recipient country.

Additionally, the May 2011 Proposed Rule included error resolution standards, including recordkeeping standards, similar to those that currently apply to a financial institution under Regulation E with respect to errors involving electronic fund transfers. The proposal also would have provided a one business day period for consumers to cancel their transactions and obtain a full refund. Finally, the May 2011 Proposed Rule set forth two alternative approaches for implementing the standards of liability for remittance transfer providers that act through an agent. Under the first proposed alternative, a remittance transfer provider would have been liable

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<sup>62</sup> Pursuant to EFTA section 919(a)(6), the Board in the months prior to issuing the proposal studied whether requiring storefront and Internet notices would facilitate the ability of consumers to compare prices and understand the types and amounts of fees or costs imposed on remittance transfers. Based on the results of this analysis, the Board decided not to propose rules that would require posting of such notices.

for violations by an agent when such agent acts for the provider. Under the second proposed alternative, a remittance transfer provider would have been liable for violations by an agent acting for the provider, unless the provider established and maintained policies and procedures for agent compliance, including appropriate oversight measures, and the provider corrected any violation reported by a particular consumer, to the extent appropriate.

#### **D. Overview of Public Comments**

The Board received more than 60 comment letters on the May 2011 Proposed Rule. These comment letters were received by the Board and subsequently transferred to the Bureau. The majority of the comment letters were submitted by industry commenters, including banks, credit unions, money transmitters, and industry trade associations. In addition, letters were submitted by individual consumers and academics, consumer groups, State banking and money transmitter regulators, two Federal Reserve Banks, and two members of Congress.<sup>63</sup>

Many industry commenters, particularly financial institution commenters, argued that the scope of the May 2011 Proposed Rule was overbroad and would have unintended consequences. Many commenters asserted that the regulation should not apply to transfers where the originating institution does not control the transfer from end to end, such as international wire transfers and international ACH transfers. Commenters stated that compliance with the disclosure requirements, particularly the disclosure of fees charged by intermediary institutions handling the transfer and taxes levied in the recipient country, would be difficult or impossible for open network transfers. Commenters suggested that subjecting open network transfers to these requirements would cause financial institutions to withdraw from the market or restrict where such transfers may be sent, which would either decrease consumer access or increase costs to

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<sup>63</sup> While some commenters addressed their comments to the Board, the Bureau is assuming that all comments regarding this rulemaking are directed to the Bureau.

consumers. Commenters asserted that the Bureau should extend the temporary exception allowing use of estimates to 2020 or that the Bureau had and should use exception authority to make the exemption provision permanent. Several commenters also asserted that remittances to businesses and large-value consumer transactions should be exempted from the rule.

Consumer group commenters, on the other hand, supported the May 2011 Proposed Rule as faithfully implementing the statutory mandates, asserting that Congress had specifically intended the disclosure regime to change business practices by depository institutions and credit unions that allow undisclosed exchange rates and fees. The commenters urged the Bureau not to extend the sunset date for the temporary exception allowing depository institutions and credit unions to use estimates under certain circumstances, and to publish a list of countries in which the laws or transfer methods prevent remittance transfer providers from determining the amount to be provided in order to prevent the exception from being abused. Furthermore, consumer group commenters asserted that the required disclosures would provide information that consumers currently lack about the foreign exchange rate, fees, and the date of delivery associated with a transfer. However, the commenters criticized the proposed disclosures as providing inadequate information regarding error resolution rights and failing to make clear when pricing information was estimated. They also urged the Bureau to reject combined disclosure forms because they did not provide clear proof that a contract had been formed and payment rendered.

Regarding the proposed foreign language disclosure requirements, industry commenters recommended that the rule provide limits on the number or type of languages in which disclosures must be provided. These commenters stated that the May 2011 Proposed Rule would provide a disincentive for remittance transfer providers to provide a wide range of foreign

language services to customers. Consumer group commenters and a Congressional commenter believed that the proposed foreign language provisions were appropriate and that the final rule should ensure that non- and limited-English speaking consumers have access to meaningful remittance transaction disclosures.

Industry commenters also generally objected to proposed error resolution provisions that place liability on remittance transfer providers for errors caused by parties other than the provider. These commenters believed that these provisions inappropriately shifted liability to remittance transfer providers that did not err or control the circumstances that caused the error. Some commenters suggested that remittance transfer providers may not have the ability to recover funds from third parties involved in the transfer and that the financial impact of losses experienced by the provider as a result of errors by another party could be significant enough for remittance transfer providers to exit the market. Furthermore, industry commenters generally did not agree with the proposed refund and cancellation provisions, arguing, among other things, that the proposed cancellation period was too long. Consumer group commenters generally supported the proposed error resolution and refund and cancellation provisions, though some consumer group commenters also suggested that the cancellation period could be shortened.

Finally, with respect to agent liability, consumer group commenters, State regulator commenters, and a Federal Reserve Bank commenter supported proposed Alternative A under the May 2011 Proposed Rule. This alternative would make the remittance transfer provider liable for violations by an agent, when such agent acts for the provider. Industry commenters, on the other hand, supported proposed Alternative B. This alternative would impose liability on a remittance transfer provider for violations by an agent acting for the provider, unless the provider

established and maintained policies and procedures for agent compliance, including appropriate oversight measures, and the provider corrected any violation, to the extent appropriate.

#### **IV. Summary of Final Rule and Concurrent Proposal**

##### **A. Introduction**

As described in more detail below, the final rule implements the Dodd-Frank Act by largely adopting the proposal as published in May 2011, with several amendments and clarifications based on commenters' suggestions and further analysis by the Bureau. In the concurrent proposal, the Bureau is seeking public comment and data that would permit the Bureau to develop clearer and more appropriately tailored standards for: (i) setting a specific numeric threshold as a safe harbor for determining which providers of remittance services are excluded from compliance with the new requirements because they do not provide remittance transfers "in the normal course of business"; and (ii) applying the disclosure and cancellation requirements where senders request one or more transfers several days in advance of the transfer date.

The Bureau takes seriously concerns raised by commenters, particularly implementation challenges in the open network context.<sup>64</sup> The Bureau believes that a number of providers likely do not currently possess or have easy access to the information needed to satisfy the new disclosure requirements for every transaction. For these providers, as well as their operating partners, compliance may require modification of current systems, protocols, and contracts. Nevertheless, the Bureau believes that it would be premature to make a determination about extending the temporary exception allowing depository institutions and credit unions to estimate disclosure information. The statute specifies a very narrow role for the Bureau by according it

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<sup>64</sup> The analyses below under section 1022 of the Dodd-Frank Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act detail the Bureau's attempts to assess various categories of benefits, costs, and impacts upon various categories of stakeholders .

discretion only to extend the exception for a limited time period upon a specific finding regarding the ability of depository institutions and credit unions to send remittance transfers. Forecasting how the market will evolve in response to the final rule is difficult prior to the rule's release and more than three years in advance of the sunset date set by the statute. It is not clear how providers, and in particular small companies and companies that send remittance transfers only infrequently, may react to the new requirements and potential implementation costs. Nor is it clear what new models and systems may be developed to enable these and other companies to comply more easily with the statutory and regulatory requirements. The remittances market has already undergone significant evolution over the last two decades, in response to increasing transaction flows, new technology, new business models, and other factors. New products and partnerships have been developing, and may be further spurred by implementation of the Dodd-Frank Act requirements.

The final rule therefore generally tracks the language and structure of the Dodd-Frank Act and the May 2011 Proposed Rule, with some additional tailoring to provide guidance on complying with the requirements in particular circumstances such as transactions conducted by mobile applications or text message and transactions in which a sender preauthorizes remittance transfers to recur at substantially regular intervals. Going forward, the Bureau expects to develop a small business compliance guide, engage in a dialogue with both industry and consumer groups to monitor implementation issues, and consider what data will be useful to monitor the effect of the new regime on consumer access and market competition over time.

## **B. Summary of the Final Rule**

The final rule incorporates the definitions of “remittance transfer,” “sender,” “remittance transfer provider,” and “designated recipient” generally as set forth in the statute. As in the May



2011 Proposed Rule, remittance transfer is defined broadly to include international wire and ACH transfers, consistent with the statutory language. In response to commenters' comments, the final rule also provides guidance for assessing whether a company qualifies as a "remittance transfer provider" under the statute by providing remittance transfers in the "normal course of its business." Further guidance is also provided to describe the circumstances in which loading funds to a prepaid card may be considered a remittance transfer.

Consistent with the statute and the May 2011 Proposed Rule, the final rule requires a remittance transfer provider to provide a written pre-payment disclosure to a sender containing information about the specific transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. Under the final rule, the remittance transfer provider is also generally required to provide a written receipt when payment is made. The receipt must include the information provided on the pre-payment disclosure, as well as additional information, such as the date of availability, the recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Alternatively, the final rule permits remittance transfer providers to give senders a single written disclosure prior to payment containing all of the information required on the receipt, so long as the provider also provides proof of payment such as a stamp on the earlier document.

The final rule generally requires that these disclosures be provided in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at a particular office. Language in the model disclosure forms has been modified slightly to clarify and provide additional detail that may be useful to consumers, as well as to reflect substantive changes in the final rule regarding the period to exercise cancellation rights. The final rule also contains additional guidance on how the required

disclosures may be provided when the remittance transfer is made using text message or a mobile application. Moreover, in light of the timing and disclosure challenges for preauthorized remittance transfers, which are authorized in advance to recur at substantially regular intervals, the final rule sets forth alternative disclosure requirements for such transfers. In particular, while the disclosures requirements for the first transfer in a preauthorized remittance transfer are the same as for single remittance transfers, for subsequent transfers in a series of preauthorized remittance transfers, a provider must provide a pre-payment disclosure 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.

The final rule also implements the two statutory exceptions that permit a remittance transfer provider to disclose an estimate of the amount of currency to be received, rather than the actual amount. As discussed above, the final rule provides that the first exception, which applies to insured depository institutions and insured credit unions that cannot determine certain disclosed amounts for reasons beyond their control, expires on July 21, 2015. The second exception applies when the provider cannot determine certain amounts to be disclosed because of: (i) the laws of a recipient country; or (ii) the method by which transactions are made in the recipient country. The Bureau expects to issue a safe harbor list of countries to which the second exception applies prior to the effective date of the final rule and to update it periodically thereafter to facilitate compliance and enforcement. The final rule also provides clarification on use of particular estimate methodologies.

Consistent with the May 2011 Proposed Rule, the error resolution procedures for remittance transfers set forth in the final rule are similar to those that currently apply to financial institutions under Regulation E with respect to errors involving electronic fund transfers. The

Bureau is adopting certain modifications to the proposed error resolution provisions in response to commenters' concerns, including defining additional circumstances that would not be considered errors. The final rule also provides senders specified cancellation and refund rights. In response to commenters' concerns, the Bureau is reducing the cancellation period from one business day to 30 minutes. Furthermore, the Bureau is adopting a different cancellation and refund procedure for any remittance transfer scheduled by the sender at least three business days before the date of the transfer. For these transfers scheduled in advance, senders may generally cancel the transfer as long as the request to cancel is received by the provider at least three business days before the scheduled date of the remittance transfer. Finally, the Bureau is adopting a standard of liability under which a remittance transfer provider will be liable for violations by an agent, when such agent acts for the provider.

### **C. Summary of Concurrent Proposal**

The Bureau is also issuing a concurrent proposal (January 2012 Proposed Rule), published elsewhere in today's Federal Register. This proposal has two parts. First, it seeks comment on the addition of a possible safe harbor to the definition of the term "remittance transfer provider" to make it easier to determine when certain companies are excluded from the statutory scheme because they do not provide remittance transfers in "the normal course of business." Second, it seeks comment on a possible safe harbor and other refinements to disclosure and cancellation requirements for certain transfers scheduled in advance, including "preauthorized" remittance transfers that are scheduled in advance to recur at substantially regular intervals. The Bureau believes that further tailoring of the final rule may be warranted both to reduce compliance burden for providers and to increase the benefits of the disclosure and

cancellation requirements to consumers. The Bureau believes that these issues would benefit from further public comment.

Regarding the first part of the January 2012 Proposed Rule, the Bureau is soliciting comment on 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.” Under the proposed safe harbor, if a person makes no more than 25 remittance transfers in the previous calendar year, the person would not be deemed to be providing remittance transfers in the normal course of business for the current calendar year if it provides no more than 25 remittance transfers in the current calendar year. The Bureau is soliciting comment on whether the threshold number for the safe harbor should be higher or lower than 25 transfers, such as 10 or 50 transfers.

Regarding the second part of the January 2012 Proposed Rule, the Bureau is also seeking comment on a possible safe harbor and other refinements to disclosure and cancellation requirements for certain transfers scheduled in advance, including preauthorized remittance transfers. Specifically, the proposal solicits comment whether use of estimates should be permitted in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized in the following two circumstances: (i) a consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized; or (ii) a consumer enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary and the consumer does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The January 2012 Proposed Rule is also requesting comment on whether a provider that uses estimates in the pre-payment disclosure and receipt given at the time of the transfer is requested and authorized in the

two situations described above should be required to provide a second receipt disclosure with accurate information within a reasonable time prior to the scheduled date of the transfer.

The January 2012 Proposal Rule also solicits comment on possible refinements to the disclosure rules applicable to subsequent preauthorized remittance transfers. Specifically, the Bureau is soliciting comment on two alternative approaches to the disclosures rules for subsequent preauthorized remittance transfers: (i) whether the Bureau should retain the requirement that a provider give a pre-payment disclosure for each subsequent transfer, and should provide a safe harbor interpreting the “within a reasonable time” standard for providing this disclosure; or (ii) whether the Bureau instead should eliminate the requirement to provide a pre-payment disclosure for each subsequent transfer.

The January 2012 Proposed Rule also seeks comment on possible changes to the cancellation requirements for certain remittance transfers that a sender schedules in advance, including preauthorized remittance transfers. The January 2012 Proposed Rule solicits comment on whether the three-business-day deadline to cancel such remittances transfers in the final rule should be changed to be earlier or later than three business days. Furthermore, the January 2012 Proposed Rule solicits comment on three issues related to the disclosure of the deadline to cancel as set forth in the final rule: (i) whether the three-business-day deadline to cancel transfers scheduled in advance should be disclosed more clearly to consumers, such as requiring a provider to disclose in the receipt the specific date the deadline to cancel will expire; (ii) whether a provider should be allowed on a receipt to describe both the three-business-day and 30 minute deadline-to-cancel time frames and either describe to which transfers each deadline to cancel is applicable, or alternatively, use a check box or other method to indicate which deadline is applicable to the transfer; and (iii) whether the disclosure of the deadline to cancel should be

disclosed in the pre-payment disclosure for each subsequent transfer, rather than in the receipt given for each subsequent transfer.

## **V. 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 provides for specific error resolution procedures. The Act directs the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies. EFTA section 919(d). Finally, EFTA section 919 requires the Bureau to establish standards of liability for remittance transfer providers, including those that act through agents. EFTA section 919(f). Except as described below, the remittance transfer rule is finalized 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 in the **SUPPLEMENTARY INFORMATION**, the following provisions are adopted in part or in whole pursuant to the Bureau's authority in EFTA sections 904(a) and 904(c) include: §§ 1005.30(e)(2)(ii), 1005.31(a)(2), (a)(5), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(1)(vi), (b)(2)(i), (b)(3), (e)(2), (g)(1)(ii), (g)(2), 1005.32(a) and (b), 1005.33(c)(1), and 1005.36.<sup>65</sup> The proposed Model Forms in Appendix A are also adopted pursuant to EFTA section 904(a).<sup>66</sup>

## **VI. Section-by-Section Analysis**

### **Section 1005.1 Authority and Purpose**

Section 1005.1(b) addresses the purpose of Regulation E, which is to carry out the purpose of the EFTA. The Dodd-Frank Act revised EFTA section 902(b) to state in part that the purpose of the EFTA is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems....” (emphasis added). Accordingly, the final rule makes a technical amendment to § 1005.1(b) to incorporate this revision. Furthermore, because remittance transfers can be offered by persons other than financial institutions, the final rule also makes a technical amendment to § 1005.1(b) to include a reference to other persons.

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<sup>65</sup> Throughout the **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 one of the authorities may be sufficient.

<sup>66</sup> The consultation and economic impact analysis requirement previously contained in EFTA sections 904(a)(1)-(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.

### **Section 1005.2 Definitions**

Section 1005.2 generally sets forth the definitions that apply to Regulation E. One commenter suggested that the Bureau clarify the applicability of the definitions contained in § 1005.2, which have been placed in a new subpart A, to the remittance provisions in subpart B. Section 1005.2 is prefaced with: “For purposes of this part...” “This part” refers to the entirety of part 1005, including all subparts. Therefore, except as modified or limited by subpart B (which modifications or limitations apply only to subpart B), the definitions in § 1005.2 apply to all of Regulation E, including subpart B. The final rule adopts comment 30-1 to clarify the applicability of the definitions contained in § 1005.2 to subpart B. The final rule also amends § 1005.2 to cross reference subpart B to make clear that the definitions in § 1005.2 apply to subpart B unless otherwise provided in subpart B.

### **Section 1005.3 Coverage**

Currently, § 1005.3(a) states that Regulation E generally applies to financial institutions. Section 1005.3(a) is revised to state that the requirements of subpart B apply to remittance transfer providers. The revision reflects the fact that the scope of the Dodd-Frank Act’s remittance transfer provisions is not limited to financial institutions. Specifically, EFTA section 919(g)(3) defines a remittance transfer provider as “any person that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person” (emphasis added). Thus, subpart B applies to non-financial institutions, such as non-bank money transmitters, that send remittance transfers. This revision is adopted as proposed.



## **Section 1005.30 Remittance Transfer Definitions**

EFTA section 919(g) sets forth several definitions applicable to the remittance transfer provisions in subpart B. As discussed in more detail below, many commenters requested clarification on specific definitions, and also urged the Bureau to consider a number of revisions and exemptions to limit the application of the rule to different types of transactions. Final § 1005.30 incorporates the statutory definitions generally as proposed, with additional interpretations and clarifications in response to specific concerns raised by commenters. The final rule revises the definition of “business day” in § 1005.30(b) to more closely track the definition of “business day” in § 1005.2(d) of Regulation E. In addition, the final rule adds a new definition of “preauthorized remittance transfer.”

### **30(a) Agent**

Proposed § 205.30(a) stated that an “agent” means an agent, authorized delegate, or person affiliated with a remittance transfer provider under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider. The final rule adopts the definition as proposed in renumbered § 1005.30(a).

EFTA section 919 does not use consistent terminology concerning agents of remittance transfer providers. For example, EFTA section 919(f)(1) uses the phrase “agent, authorized delegate, or person affiliated with a remittance transfer provider,” when that person “acts for that remittance transfer provider,” while other provisions use the phrase “agent or authorized delegate” (EFTA section 919(f)(2)) or simply “agent” (EFTA section 919(b)). The Bureau does not believe that these statutory wording differences are intended to establish different standards across the rule. Therefore, the rule generally refers to “agents,” as defined in § 1005.30(a), to provide consistency across the rule.

Commenters suggested that the Bureau provide further clarity on the definition of “agent,” including clarifying that financial institutions’ relationships with intermediary and correspondent institutions are not agency relationships unless an agreement creates such a relationship as a matter of law. The final rule does not contain these suggested clarifications. The Bureau believes that because the concept of agency has historically been defined by common law, it is appropriate for the definition to defer to applicable law regarding agents, including with respect to what creates or constitutes an agency relationship.

### **30(b) Business Day**

Several provisions in the final rule use the term “business day.” See, e.g., §§ 1005.31(e)(2) and 1005.33(c)(1). Because the definition of “business day” in § 1005.2(d) of Regulation E applies only to financial institutions and includes inapt commentary, the Board proposed an alternative definition of “business day” applicable to remittance transfer providers. The proposed rule stated that “business day” means any day on which a remittance transfer provider accepts funds for sending remittance transfers.

Commenters generally objected to the proposed definition. In particular, financial institution commenters expressed concern that the date on which an institution “accepts funds” is unclear, because it could be interpreted either as the date on which funds are deposited into an account, or when the institution accepts a sender’s order to transfer funds. Other commenters suggested replacing the proposed definition with a definition closer to the definition of “business day” in § 1005.2(d) Regulation E. Upon further review, and for greater consistency among definitions, the Bureau is adopting a revised “business day” definition in renumbered § 1005.30(b) as explained in related commentary that more closely tracks the general definition

of “business day” in § 1005.2(d), but that is tailored to the particular aspects of remittance transfers.

Specifically, § 1005.30(b) states that “business day” means any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions. Similar to proposed comment 30(b)-1, final comment 30(b)-1 clarifies that with respect to subpart B, a business day includes the entire 24-hour period ending at midnight, and a notice given under any section of subpart B is effective even if given outside of normal business hours. However, comment 30(b)-1 states that a remittance transfer provider is not required under subpart B to make telephone lines available on a 24-hour basis.

Comment 30(b)-2 explains that “substantially all business functions” include both the public and the back-office operations of the provider. For example, if the offices of a provider are open on Saturdays for customers to request remittance transfers, but not for performing internal functions (such as investigating errors), then Saturday is not a business day for that provider. In this case, Saturday does not count toward the business-day standard for subpart B for purposes of determining the number of days for resolving errors, processing refunds, etc.

Comment 30(b)-3 clarifies that a provider may determine, at its election, whether an abbreviated day is a business day. For example, if a provider engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day. Finally, comment 30(b)-4 states that if a provider makes a telephone line available on Sundays for cancelling the transfer, but performs no other business functions, Sunday is not a business day under the “substantially all business functions” standard.

### **30(c) Designated Recipient**

EFTA section 919(g)(1) provides that “designated recipient” means “any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of [the EFTA].” Proposed § 205.30(c) implemented EFTA section 919(g)(1), with several edits for clarity. First, the Board proposal noted that a remittance transfer provider will generally only know the location where funds are to be sent, rather than where a designated recipient is physically located. For instance, although the sender may indicate that funds are to be sent to the recipient in Mexico City, the recipient could actually be in the United States at the time of the transfer. Thus, the Board stated that the statutory reference to a “person located in a foreign country” should be read with a view to the location where funds are to be sent. Additionally, the statute references a remittance transfer “to be made by a remittance transfer provider.” As discussed below, the definition of “remittance transfer” requires that it be sent by a remittance transfer provider, so this language is unnecessary. Accordingly, proposed § 205.30(c) stated that a designated recipient is any person specified by the sender as an authorized recipient of a remittance transfer to be received at a location in a foreign country. The final rule adopts the proposed rule as proposed in renumbered § 1005.30(c), but with additional explanatory commentary to address issues raised by commenters.

Proposed comment 30(c)-1 stated that a designated recipient can be either a natural person or a business. Several commenters argued that transfers to entities other than natural persons should be excluded, so that the rule would cover only consumer-to-consumer transfers. However, the statute clearly anticipates covering consumer-to-business transfers, as it defines

“designated recipient” to include transfers to “persons,” and does not limit its application to consumer recipients. See 15 U.S.C. 1693p(g)(1). The EFTA defines “consumer” to mean a natural person, but does not define the term “person.” Nonetheless, the EFTA uses the term “person” in many provisions, and the context of how the term “person” is used in those EFTA provisions indicates that it includes entities that are natural persons, as well as organizations. For example, the EFTA defines the term “financial institution” to mean “a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.” (emphasis added). As a result, Regulation E has long defined “person” to mean a natural person or an organization. See § 1005.2(j). The Bureau believes that the statute by using the term “person” intended to cover remittance transfers sent by consumers not just to family members, but also directly to businesses abroad to pay tuition, mortgage, medical, utilities, or other bills or to fulfill other obligations. Accordingly, the final rule does not generally exclude consumer-to-business transfers where a remittance transfer provider is acting as an electronic intermediary. Instead, the Bureau is adopting comment 30(c)-1 to state that a designated recipient can be either a natural person or an organization, such as a corporation.

Proposed comment 30(c)-2 explained that a remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any State.<sup>67</sup> One money transmitter commenter noted that it may know the country to which a transfer is being sent, but not the specific payout location. The comment was intended to address the receipt of funds at a foreign location in the general sense; that is, any location that is outside of a State. Thus, the final comment, adopted as renumbered comment 30(c)-2.i., clarifies that a sender need not designate a specific pick-up location.

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<sup>67</sup> The term “State” is defined in 12 CFR 1005.2(l).

In addition, commenters requested further clarification for determining whether there is a designated recipient when a transfer is made to an account. For example, in a wire transfer transaction, commenters stated that the consumer requesting the transfer may only identify the recipient of funds by an account number or the location or routing number of the receiving institution. Other commenters argued that transfers to an account associated with an institution in a State should not be viewed as transfers to a designated recipient, even if a person in a foreign country has exclusive access to the account.

New comment 30(c)-2.ii. provides further guidance to address these issues. For transfers to a designated recipient's account, comment 30(c)-2.ii. states that whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country.

The Bureau concurs with the Board's statement that the statutory reference to a "person located in a foreign country" should be read with a view to the location where funds are to be sent, and believes that comment 30(c)-2.ii. is consistent with this approach. Thus, the Bureau agrees that transfers to domestic accounts should not be considered transfers to a location in a foreign country. The Bureau also agrees that providers may not always know where a recipient is physically located at the time a consumer requests a transfer to be sent, and believes that directing providers to look to the location of the account, rather than the location of the individual recipient, creates an appropriate bright line that will facilitate compliance with the final rule, ease compliance burden, and most effectively accomplish the purpose of the statute to apply the provisions to transfers to foreign countries.

One commenter suggested revising the definition of "designated recipient" to exclude senders, such that transfers made by a sender to a sender's separate account abroad would be

excluded. However, nothing in the statute indicates that the definition of “designated recipient” should exclude transfers to a foreign-based account of the sender. The Bureau believes that a sender would also benefit from disclosures indicating the ultimate amount to be received in a transfer, particularly where an exchange rate is applied. The final rule adopts comment 30(c)-3 to clarify that a sender may also be a designated recipient, such as where a sender requests that a provider send an electronic transfer of funds from the sender’s checking account in a State to the sender’s checking account located in a foreign country.

The Board solicited comment on whether there could be instances where a remittance provider may receive a recipient’s email address but no other information to determine the location where funds are to be received. Several commenters affirmed this could happen. For example, one commenter stated that consumers can provide a recipient’s email address to use its transfer service; while recipients must register with the provider to access the transferred funds, it is possible that the provider would not know whether the transferred funds will be received at a location in a foreign country until the funds are claimed.

Final comment 30(c)-2.iii. addresses this scenario. Where the sender does not specify information about a recipient’s account, but instead just provides information about the recipient, a remittance transfer provider must determine whether the funds will be received at a location in a foreign country based on information that is provided by the sender, and other information the provider may have, at the time the transfer is requested. For example, if a consumer gives a provider the recipient’s email address, and the provider has no other information about whether the funds will be received by the recipient at a location in a foreign country, then the provider may determine that funds are not to be received at a location in a foreign country. However, if the provider has additional information at the time the transfer is requested indicating that funds

are to be received in a foreign country, such as where the recipient's email address is registered with the provider and associated with a foreign account, then the provider has sufficient information to conclude that the remittance transfer is to be received at a location in a foreign country.

Commenters also noted that, with regard to prepaid cards, the provider may not know at the time the prepaid card is purchased whether the funds will be received at a location physically outside of any State. These commenters stated that where general-purpose reloadable prepaid cards or payroll cards are issued to two persons – one person in a State and another person in a foreign country – and both cards access the same funds, the provider may not be able to ascertain at the time of the request for the cards that funds will be received at a location physically outside of any State. In this case, the issuer does not know at the time of the request the ultimate recipient of the funds.

The Bureau notes that funds that can be accessed by a prepaid card are generally not considered to be an “account” as defined in § 1005.2(b) of Regulation E. Thus, where the funds that can be accessed by a prepaid card are held does not determine whether a prepaid card is being issued to a designated recipient. The Bureau believes when a participant in a prepaid card program, such as a prepaid card issuer or a prepaid card program manager, issues prepaid cards, the participant in the prepaid card program must look to where it or another participant in the prepaid card program sends the prepaid cards, to determine whether the prepaid card funds will be received in a foreign country. Likewise, when a participant in a prepaid card program adds additional funds at the sender's direct request to prepaid cards that it or any other participant previously issued, the participant in the prepaid card program must look to where it or another participant in the prepaid card program has sent the cards to determine whether the prepaid card



funds will be received in a foreign country. The Bureau does not believe that it is appropriate for a participant in the prepaid card program to determine whether the funds will be received in a foreign country based on where the participants have decided to hold the funds the cards access. The Bureau believes that such a rule would allow participants in the prepaid card program to circumvent the remittance transfer rules by holding the funds in a State. Under such an approach, participants in the prepaid card program would not be required to comply with the remittance transfer rules if the funds are located in a State even where prepaid cards that access the funds are sent only to recipients located in a foreign country.

In the case where two prepaid cards are issued to two persons – one person in a State and another person in a foreign country – and both cards access the same funds, the Bureau believes that the provider has sufficient information to determine that the funds will be received in a foreign country because it has sent one of the prepaid cards to a person in a foreign country. Proposed comment 30(d)-3 suggested that in this situation, the transfer would not be to a designated recipient because the sender retained the ability to draw down the funds on the prepaid card. Proposed comment 30(d)-3 is not adopted. The Bureau is concerned that if it adopted a rule that the transfer is not to a designated recipient in this case, a provider that sends prepaid cards abroad with the intent of providing a service where funds loaded in a State are intended to be accessed in a foreign country could circumvent the remittance transfer rules by always automatically providing a second prepaid card to the sender, even if the sender did not request a second card.

Thus, final comment 30(c)-2.iii. clarifies that if a consumer in a State purchases a prepaid card, the provider has sufficient information to conclude that the funds are to be received in a foreign country if the remittance transfer provider sends a prepaid card to a specified recipient in

a foreign country, even if a person located in a State, including the sender, retains the ability to access funds on the prepaid card. In this case, the prepaid issuer knows at the time of the request that a prepaid card has been sent to a recipient located in a foreign country. In contrast, if the provider provides the card directly to the consumer, the provider may conclude that funds are not to be received in a foreign country, because the provider does not know whether the consumer will subsequently send the prepaid card to a recipient in a foreign country.

### **30(d) Preauthorized Remittance Transfer**

In the May 2011 Proposed Rule, the Board requested comment on the treatment of preauthorized bill payments under the definition of “remittance transfer.” This issue, and its resolution, are discussed in more detail below in the discussions of § 1005.30(e) and new § 1005.36.

The term “preauthorized electronic fund transfer” is currently defined under 12 CFR 1005.2(k) to mean an “electronic fund transfer authorized in advance to recur at substantially regular intervals.” Because subpart B applies to more than just EFTs, the final rule includes a new definition of “preauthorized remittance transfer” in § 1005.30(d). The definition tracks the definition in § 1005.2(k), but revises its applicability to “remittance transfers authorized in advance to recur at substantially regular intervals.” Similarly, the final rule adopts a new comment 30(d)-1 that tracks existing comment 2(k)-1, but with references to remittance transfers replacing references to EFTs.

### **30(e) Remittance Transfer**

#### **30(e)(1) General Definition**

EFTA section 919(g)(2)(A) defines a “remittance transfer” as an “electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.

7007 et seq. [(“E-Sign Act”)]) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider.” The statute further specifies that such a transaction is a remittance transfer whether or not the sender holds an account with the remittance transfer provider and whether or not the remittance transfer is also an electronic fund transfer, as defined in EFTA section 903. The statute thus brings within the scope of the EFTA certain transactions that have traditionally been outside the scope of the EFTA, if those transactions meet the elements of the definition of “remittance transfer.” Such transactions include cash-based remittance transfers sent through a money transmitter as well as consumer wire transfers and international ACH transactions. Proposed § 205.30(d) incorporated the definition of “remittance transfer” in EFTA section 919(g)(2), with revisions for clarity. The Board also proposed commentary to provide further guidance on the definition, as well as examples of transactions that are and are not remittance transfers under the rule.

Proposed § 205.30(d)(1) set forth the general definition in EFTA section 919(g)(2)(A). Proposed § 205.30(d)(1) stated that a remittance transfer means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. Proposed § 205.30(d)(1) further stated that the term applies regardless of whether the sender holds an account with the remittance transfer provider and regardless of whether the transfer is also an electronic fund transfer, as defined in Regulation E. Section 1005.30(e)(1) of the final rule incorporates the definition generally as proposed, with additional revisions to the commentary for clarity.

Industry commenters, particularly financial institution commenters, opposed the definition of “remittance transfer” as overly broad. These commenters argued that the definition should not apply to open network transactions, such as international wire transfers and ACH

transactions, or alternatively, that a separate rule tailored to these transactions should be adopted. Citing to legislative history, these commenters argued that the statute was intended only to address traditional cash-based, low-dollar-value remittances. Industry commenters argued that based on the difficulty with complying with the rule's disclosure requirements, as discussed below in connection with § 1005.31, including open network transactions in the remittance transfer definition could have unintended consequences. These commenters maintained that providers would withdraw from the market or restrict where transfers may be sent if the final rule were applied to international wire transfers and ACH transactions, and that this would either decrease consumer access to remittance transfers or increase costs to consumers. Thus, these commenters argued that the Bureau should exercise its authority under EFTA section 904(c) to exempt these transactions from the definition of "remittance transfer." Industry commenters also urged the Bureau to adopt other exclusions and limitations to the "remittance transfer" definition, which are addressed below in the discussion of § 1005.30(e)(2). In contrast, consumer group commenters supported the proposed definition of "remittance transfer," including its inclusion of open network transactions. These commenters argued that the proposed definition is consistent with the language of the statute and the purpose of the statute's provisions.

The Bureau acknowledges the compliance challenges raised by the inclusion of open network transactions. Nevertheless, the Bureau believes the unambiguous language of the statute requires coverage of these transactions, such as wire transfers. The statute is broad in scope, specifically covering transactions that are account-based and that are not electronic fund transfers. The Bureau finds no statutory language to support excluding open network transactions – indeed, quite the contrary: The statute includes a temporary exception for certain insured institutions permitting estimates to be used in providing disclosures under specified

circumstances in EFTA section 919(a)(4)(A). There would be no need for such an exception if open network transactions were not covered by the statute. Congress specifically recognized that it would be difficult for financial institutions to meet certain disclosure requirement with regard to open network transactions and tailored a specific accommodation to allow use of reasonably accurate estimates for an interim period until financial institutions can develop methods to determine exact disclosures, such as fees and taxes charged by third parties. Therefore, the Bureau does not believe it should exercise its exception authority under EFTA section 904(c) to exclude open network transactions from the definition of “remittance transfer.”

Proposed comments 30(d)-1 through 30(d)-4 provided further guidance on each of the elements of the proposed definition of “remittance transfer.” Proposed comment 30(d)-1 provided that there must be an electronic transfer of funds. The term “electronic” has the meaning given in section 106(2) of the E-Sign Act. There may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer. However, the proposed comment explained that where a sender mails funds directly to a recipient, or provides funds to a courier for delivery to a foreign country, there has not been an electronic transfer of funds, and thus no remittance transfer.

Citing the electronic book entry comment, one commenter suggested that the Bureau should expressly exclude the sale or issuance of checks, money orders, or other paper instruments from the “remittance transfer” definition. The Bureau agrees that issuing a paper check, draft, money order, or other paper instrument to be mailed abroad generally does not constitute an electronic transfer of funds. For clarity, the final comment, adopted as comment 30(e)-1, notes that where a provider issues a check, draft, or other paper instrument to be mailed

abroad, there is not an electronic transfer of funds, except as described below with respect to online bill payments.

A few commenters suggested that with respect to online bill payments, a consumer does not request an electronic transfer of funds. Instead, commenters stated that the consumer requests only that an amount be paid out of an account, and the payment method is generally left up to the institution. Thus, these commenters argued, there is no specific sender request to send a remittance transfer. The final rule adopts an approach that is consistent with the treatment of online bill payment services as an EFT under Regulation E in § 1005.3(b). Specifically, comment 3(b)(1)-1.vi. makes clear that an EFT includes “a payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer’s account, and the payee or payees that will be paid in this manner are identified to the consumer.”

Accordingly, final comment 30(e)-1 provides that an electronic transfer of funds occurs for a payment made by a provider under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer’s account to be mailed abroad, and the payee or payees that will be paid in this manner are identified to the consumer. Thus, with respect to such a bill-payment service, if a provider provides a check, draft or similar paper instrument drawn on a consumer’s account to be mailed abroad for a payee that is not identified to the consumer as described above, this payment by check, draft or similar payment instrument will be

considered an electronic transfer of funds. In this case, the sender has requested the transfer using a bill-payment service available to a consumer via computer or other electronic means and would expect the transfer to be conducted electronically because the terms of the bill-payment service have not explicitly stated that payments to the particular payee will be solely by a check, draft, or similar paper instrument drawn on the consumer's account to be mailed abroad. In this case, the Bureau believes that it not appropriate to allow a provider to avoid providing the disclosures required by § 1005.31 at the time of the sender's request, simply because the payee may ultimately be paid by a check, draft or similar paper instrument drawn on the consumer's account mailed abroad.

Proposed comment 30(d)-2 provided that the definition of "remittance transfer" requires a specific sender to request a remittance transfer provider send a remittance transfer. The proposed comment explained that a deposit by a consumer into a checking or savings account does not itself constitute such a request, even if a person in a foreign country is an authorized user on that account, where the consumer retains the ability to withdraw funds in the account. This comment is not adopted in the final rule, as inconsistent with guidance adopted in comment 30(c)-2.ii. As discussed above under the section-by-section analysis to § 1005.30(c), when a sender requests that a remittance transfer provider send an electronic transfer of funds to a recipient's account, the location of the account determines whether the transfer is made to a designated recipient and thus is a remittance transfer. If the recipient's account is located in a State, the transfer will not be a remittance transfer because the transfer will not be received at a location in a foreign country, and thus the recipient would not be a "designated recipient." By contrast, if the recipient's account is located in a foreign country, the transfer will be a remittance transfer, even if the sender has the ability to withdraw funds in the account, because the transfer

will be received at a location in a foreign country, and the recipient would be a “designated recipient.” See comment 30(c)-2.ii.

Proposed comment 30(d)-3 provided that the definition of “remittance transfer” also requires that the transfer be sent to a designated recipient. As noted above, the definition of “designated recipient” requires a person to be identified by the sender as the authorized recipient of a remittance transfer to be sent by a remittance transfer provider. Proposed comment 30(d)-3 explained that there is no designated recipient unless the sender specifically identifies the recipient of a transfer. Proposed comment 30(d)-3 specified that there would be a designated recipient if, for example, the sender instructs a remittance transfer provider to send a prepaid card to a specified recipient in a foreign country, and the sender does not retain the ability to draw down funds on the prepaid card. In contrast, proposed comment 30(d)-3 specified that there would be no designated recipient where the sender retains the ability to withdraw funds, such as when a person in a foreign country is made an authorized user on the sender’s checking account, because the remittance transfer provider cannot identify the ultimate recipient of the funds. As discussed in more detail in the section-by-section analysis to § 1005.30(c), both examples are not adopted, as inconsistent with guidance in comment 30(c)-2.ii. and iii.

Proposed comment 30(d)-4 provided that the definition of “remittance transfer” requires that the remittance transfer must be sent by a remittance transfer provider. The proposed comment explained that this means that there must be an intermediary actively involved in sending the electronic transfer of funds. Examples in the proposed comment included a person (other than the sender) sending an instruction to an agent in a foreign country to make funds available to a recipient; executing a payment order pursuant to a consumer’s instructions;



executing a consumer's online bill payment request; or otherwise engaging in the business of accepting or debiting funds for transmission to a recipient and transmitting those funds.

However, the proposed comment explained that a payment card network or other third party payment service that is functionally similar to a payment card network does not send a remittance transfer when a consumer designates a debit or credit card as the payment method to purchase goods or services from a foreign merchant. For example, in such a case, the payment card network or third party payment service is not directly engaged with the sender to send a transfer of funds to a person in a foreign country; rather, the network or third party payment service is only providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the remittance transfer provider, rather than on behalf of the sender. Similarly, where a consumer provides a checking or other account number directly to a merchant as payment for goods or services, the merchant is not acting as a remittance transfer provider when it submits the payment information for processing.

Commenters generally supported the proposed comment. One commenter suggested that the Bureau should revise the discussion about the use of a payment card network using a debit or credit card as a payment method to include the use of a payment card network using a prepaid card for consistency with other provisions of the rule.

The final comment is adopted as comment 30(e)-2, and is revised. As with the proposed comment, the final comment provides that the definition of "remittance transfer" requires that the remittance transfer must be sent by a remittance transfer provider. The final comment explains that this means that there must be an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient. The final comment clarifies that a payment card network or other third party payment service that is

functionally similar to a payment card network does not send a remittance transfer when a consumer provides a debit, credit, or prepaid card directly to a foreign merchant as the payment method to purchase goods or services. In such a case, the payment card network or third party payment service is not directly engaged with the sender to send a transfer of funds to a person in a foreign country; rather, the network or third party payment service is merely providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the card issuer, rather than on behalf of the sender. The final comment in 30(e)-2 also clarifies that in such a case, the card issuer also is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the card issuer provides payment to the merchant. Similarly, where a consumer provides a checking or other account number, or a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services, the final comment clarifies that the merchant is not acting as an intermediary that sends a transfer of funds on behalf of the sender when it submits the payment information for processing. The Bureau notes that this comment applies only for purposes of this rule. In other contexts, a person may act as a provider even when it is not directly engaged with the consumer to provide a consumer financial product or service.

Finally, comment 30(e)-2 also discusses the situation where a card issuer or a payment card network is an intermediary that is directly engaged with the sender to obtain funds using the sender's debit, prepaid or credit card and to send those funds to a recipient's checking account located in a foreign country. In this case, the final comment clarifies that the card issuer or payment card network is an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender, and this transfer of funds is a remittance transfer because it is made to a designated recipient. See also comment 30(c)-2.ii.

As noted in the proposal, some transactions that have not traditionally been considered remittance transfers will fall within the scope of the rule. In contrast, other transfer methods specifically marketed for use by a consumer to send money abroad, but that do not meet all elements of the definition of “remittance transfer,” may fall outside the scope of the rule (e.g., a prepaid card where the participants in the prepaid card program do not send a card to a designated recipient in a foreign country). While the Board stated that it believed the proposed definition of “remittance transfer” in § 205.30(d) implemented the broad statutory definition, the Board solicited comment on whether it should exempt online bill payments made through the sender’s institution, including preauthorized bill payments, from the rule, as it could be challenging for institutions to provide timely disclosures.

Most industry commenters urged the Bureau to exempt online bill payments from the rule, including preauthorized bill payments, given the challenges associated with providing disclosures for transfers that occur in the future. Commenters stated that the disclosures for such payments would be burdensome and would provide only marginal benefits to consumers, particularly given that Regulation E already addresses online bill payments. Commenters also noted that different coverage would apply to payments initiated through a financial institution, which would be covered, versus payments initiated directly with a billing party, which would not be covered. With respect to preauthorized bill payments, commenters stated that it would be impracticable to provide pre-payment disclosures when the request is made for transactions that could be scheduled months in advance.

Overall, the Bureau believes the protections afforded by the statute favor the inclusion of online bill payments in the rule, as well as other types of transfers that a sender schedules in advance. subpart A of Regulation E applies to EFTs from an account at a financial institution

and provides certain protections to consumers. However, the subpart A provisions do not require disclosures regarding the exchange rate to be applied at transfer or certain other items that must be disclosed under EFTA section 919 and this rule (although related up-front fees would be disclosed in or with the account agreement). In addition, the Bureau also understands that there are non-bank money transmitters not covered by existing provisions in Regulation E that offer international bill payment services.

Moreover, some of the disclosure challenges raised by commenters are similar to those that have been raised in connection with other remittance transfer methods that are included in the rule, for example, where the exchange rate is not necessarily known at the time of transfer. The Bureau recognizes that the rule's coverage differs depending on whether a foreign payee is paid through a remittance transfer provider or paid directly by a consumer. However, this difference arises due to the EFTA's definition of "remittance transfer." As discussed above, for a transfer to be considered a "remittance transfer," the transfer must involve an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient. A foreign merchant is not acting as an intermediary that sends a transfer of funds on behalf of the sender when it processes a payment paid to it directly by the sender. In addition, in this case, the financial institution is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the institution provides payment to the merchant. The Bureau believes this is different from the situation where an institution offers online international bill payment services to consumers. In this circumstance, the institution is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient. Thus, the final rule does not exclude online bill payments from the definition. As a result, under the final rule, providers will generally need to

provide pre-payment disclosures and receipts for these types of transfers in accordance with § 1005.31.

However, in light of the timing challenges noted above, the final rule sets forth tailored disclosure and cancellation requirements with respect to certain remittance transfers that a sender schedules in advance, including preauthorized remittance transfers (defined and discussed above in § 1005.30(d)), in a new § 1005.36. In addition, the Bureau is issuing the January 2012 Proposed Rule, published elsewhere in today's Federal Register, soliciting comment on alternative disclosure and cancellation requirements with respect to these transfers. These are discussed in more detail below in the discussion of § 1005.36.

Proposed comment 30(d)-5 provided a non-exclusive list of examples of transactions that are, and are not, remittance transfers. The list addressed online bill payments in the examples in 30(d)-5.i.E. and 30(d)-5.ii.C. However, electronic transfers of funds to be sent abroad can also be scheduled through other means, such as over the telephone, and such scheduled transfers may not necessarily relate specifically to the payment of bills. Thus, while the final comment, renumbered as comment 30(e)-3, does not contain an exhaustive list of examples, in order to clarify the rule's application, the online bill payment examples in the final comment have been revised to more generally address transfers that senders can schedule in advance, including preauthorized remittance transfers.

#### 30(e)(2) Exceptions

EFTA section 919(g)(2)(B) states that a remittance transfer does not include a transfer described in EFTA section 919(g)(2)(A) "in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a)" of the EFTA. EFTA section 906(a) addresses the requirements for electronic

terminal receipts. The Board previously determined by rule that financial institutions are not subject to the requirement to provide electronic terminal receipts for small-value transfers of \$15 or less. See § 1005.9(e). Proposed § 205.30(d)(2) incorporated this exception for small-value transfers by providing that remittance transfers do not include transfer amounts of \$15 or less. The final rule adopts the small-value exception in § 1005.30(e)(2)(a). The \$15 exception refers to the amount that will be transferred to the designated recipient in the currency in which the transfer will be funded, as described in § 1005.31(b)(1)(i).

Industry commenters urged the Bureau to adopt a variety of additional exceptions to the rule, in addition to exempting wire transfers and other open network transactions. Most industry commenters argued that the Bureau should exclude wire transfers and ACH transactions above a certain dollar amount, generally ranging from \$500 to \$1,000. These commenters argued that the average value of consumer transfers from the United States is lower than the dollar thresholds that they advocated for, so these thresholds would capture most traditional remittances, while excluding higher-dollar transfers that they argued were not intended to be captured in the statute. Several commenters also presented data that many wire transfers exceed the suggested dollar amount, and thus, such an exclusion would limit the costs and risks of the proposal, including fraud risks; would mitigate risks associated with the loss of UCC Article 4A coverage for wire transfers (as described in more detail below); and would more properly focus the final rule on traditional remittance transfers.

The final rule does not contain an exclusion for remittance transfers above a specified dollar amount. The Bureau believes that consumers who choose to transfer funds less frequently but in higher dollar amounts or who send relatively large remittance transfers to pay tuition, medical, and other larger bills should receive the same protections as frequent, low-value

senders. Indeed, given the amounts involved, such consumers may stand to benefit even more from the disclosures and error resolution rights afforded by the rule to ensure that the proper amount is received by the recipient. Accordingly, the Bureau believes that an exception based solely on a dollar amount would not be consistent with the purposes of the statute. Finally, the dollar amounts suggested by the commenters did not account for variations in average transfer amounts by destination region or type of transfer, some of which exceed the thresholds proposed by commenters.<sup>68</sup>

Similarly, the Bureau does not believe that the rule should exclude remittance transfers requested by high net-worth consumers, as urged by one commenter. Again, there is no indication that Congress intended such an exclusion. Further, a high net-worth consumer has an interest in knowing the amount that will be received by a recipient, and the applicable exchange rate, just as a consumer who does not have a high net worth. A high net-worth consumer also has a similar stake in the resolution of any errors.

The final rule does contain one new exclusion. Several commenters argued that the final rule should exclude from the definition of “remittance transfer” any transfers the primary purposes of which is the purchase or sale of securities or commodities as described in § 1005.3(c)(4). Section 1005.3(c)(4) exempts from the definition of “electronic fund transfer” any transfer of funds the primary purposes of which is the purchase or sale of a security or commodity where the security or commodity is: (i) regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission; (ii) purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or (iii) held in book-entry form by a Federal Reserve Bank or Federal agency. To effectuate the purposes of the

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<sup>68</sup> Chishti, supra note 6.

EFTA and facilitate compliance, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to adopt a new § 1005.30(e)(2)(ii) to exclude from the definition of “remittance transfer” any transfer that is excluded from the definition of “electronic fund transfer” under § 1005.3(c)(4). This exception is narrow in that it only exempts transfers of funds the primary purposes of which is the purchase or sale of certain securities or commodities, as discussed above. The Bureau believes that use of its authority under EFTA sections 904(a) and (c) in this circumstance is appropriate so as not to impact the purchase or sale of securities or commodities.

#### Application of the EFTA; Relationship to Uniform Commercial Code

As described above, the statute applies to remittance transfers whether or not they are electronic fund transfers. This raises certain issues with respect to traditional cash-based remittance transfers sent through money transmitters, which have not previously been covered by the EFTA or Regulation E, as well as international wire transfers, which are not EFTs.

The statute outlines the application of the EFTA to remittance transfers that are not electronic fund transfers. Specifically, EFTA section 919(e)(1) states that a remittance transfer that is not an electronic fund transfer is not subject to any of the provisions of EFTA sections 905 through 913. For example, a money transmitter sending a remittance transfer (that is not an EFT) is not subject to the requirement in EFTA section 906(b), as implemented in § 1005.9(b), to provide periodic statements to consumers. The transmitter will, however, generally be subject to other provisions of the EFTA, including provisions on liability under EFTA sections 916 through 918. EFTA section 919(e)(2)(A) also clarifies that a transaction that will not otherwise be an electronic fund transfer under the EFTA, such as a wire transfer, does not become an electronic fund transfer because it is a remittance transfer under EFTA section 919.



Until the Dodd-Frank Act provisions become effective, wire transfers are entirely exempt from the EFTA and Regulation E and instead are governed by State law through State enactment of Article 4A of the Uniform Commercial Code. UCC Article 4A primarily governs the rights and responsibilities among the commercial parties for wire transfers, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders.

UCC Article 4A-108 provides that UCC Article 4A does not apply “to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act” (emphasis added). When EFTA section 919, as implemented by this rule, becomes effective, wire transfers sent on a consumer’s behalf that are remittance transfers will be governed in part by the EFTA. As noted in the proposal, EFTA section 919(e)(1) explicitly applies the EFTA to remittance transfers that are not electronic fund transfers, except for certain enumerated provisions. Further, the disclosure and error resolution requirements for remittance transfers are set forth in the EFTA. As a result, by operation of UCC Article 4A-108, the Bureau believes UCC Article 4A will no longer apply to such international consumer wire transfers.<sup>69</sup>

Many commenters, including the Office of the Comptroller of the Currency (OCC), argued that this outcome creates legal uncertainty that will disrupt the long-standing legal framework governing the allocation of risks among financial institutions of wire transfers. Industry commenters urged the Bureau to preempt any provision of State law that prevents a remittance transfer from being treated as a funds transfer under UCC Article 4A based solely upon the inclusion of the remittance transfer provisions in EFTA section 919. Specifically, commenters urged the Bureau to preempt UCC Article 4A-108. Under this suggested approach, the error resolution provisions of EFTA section 919(b)(1) would govern remittance transfers as

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<sup>69</sup> Commercial wire transfers are not affected because a “sender” must be a consumer.

between a sender and a remittance transfer provider, but the remaining provisions in UCC Article 4A would continue to govern the allocation of risk of loss as between the remittance transfer provider and another financial institution that carries out part of the transfer (to the extent not otherwise inconsistent with the rule).

Under EFTA section 922 and § 1005.12, the Bureau may determine whether a State law relating to, among other things, electronic fund transfers is preempted by the EFTA or Regulation E. However, the statutory preemption provisions states that a State law may be preempted only if the State law is inconsistent with the EFTA or Regulation E and then only to the extent of the inconsistency. 15 U.S.C. 1693s. Moreover, the statute and regulation provide that a State law is not inconsistent with any provision if it is more protective of consumers. The Bureau does not believe that UCC Article 4A-108 is inconsistent with the EFTA. No provision of the EFTA conflicts with UCC Article 4A-108, and UCC Article 4A-108 does not require or permit a practice prohibited by the EFTA. See, e.g., § 1005.12(b)(2)(i). Rather, UCC Article 4A-108 provides when State law applies to fund transfers, including consumer wire transfers, and specifically states that UCC Article 4A does not apply if the EFTA “governs” the transaction. The amendments to the EFTA under the Dodd-Frank Act address consumer wire transfers, but do not address the application of State law to those transfers. Applying the EFTA preemption provisions to effectively require the application of more State laws than would apply in the absence of such action is simply not what the EFTA preemption standard provides.

In the May 2011 Proposed Rule, the Board noted that Congress amended the EFTA’s preemption provision to include a specific reference to State gift card laws when it enacted new EFTA protections for gift cards as part of the Credit Card Accountability Responsibility and

Disclosure Act of 2009 (Credit Card Act).<sup>70</sup> By contrast, Congress did not amend the EFTA's preemption provision with respect to State laws relating to remittance transfers, including those that are not electronic fund transfers, when it enacted the Dodd-Frank Act.<sup>71</sup> In response, some commenters argued that Sections 1041(a) and (b) of the Dodd-Frank Act, which discusses the relationship between Title X of the Dodd-Frank Act and State law, separately permit the Bureau to preempt UCC Article 4A-108. These provisions may be invoked, however, only if the Bureau finds an inconsistency between Title X and State law. The Bureau does not believe that such an inconsistency exists. Moreover, Section 1041(b) of the Dodd-Frank Act specifically provides, with one exception not relevant here, that no provision of Title X "shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law."

Several commenters suggested that the Bureau incorporate UCC Article 4A, or a similar framework in place of UCC Article 4A, into Regulation E. The Bureau does not believe it is appropriate to incorporate UCC Article 4A into Regulation E. The EFTA and the UCC generally focus on different relationships. Under EFTA section 902(b), the primary purpose of the EFTA is the provision of individual consumer rights. In contrast, UCC Article 4A is primarily intended to govern the rights and responsibilities among the commercial parties to a funds transfer, that is, the financial institution that accepts a payment order for a funds transfer and any other financial institutions that may be involved in carrying out the transfer.

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<sup>70</sup> See Credit Card Act § 402, P.L. 111-24, 123 Stat. 1734 (2009). The preemption provision was amended to describe how certain State gift card laws may be preempted, to the extent that those laws are inconsistent with the EFTA, in the same manner as State EFT laws.

<sup>71</sup> Several commenters noted that EFTA section 920 is excluded from the list of "enumerated consumer laws" under section 1002(12)(c) of the Dodd-Frank Act. Prior to the Dodd-Frank Act, EFTA section 920 addressed the EFTA's relation to State laws. Section 1075 of the Dodd-Frank Act created a new EFTA section 920 relating to debit interchange fees, which is the provision excluded under Dodd-Frank section 1002(12)(c). The relation to State laws provision is now contained in EFTA section 922.

Consumers currently receive some protections under UCC Article 4A in the event the wire transfer is not completed, or in the event of errors in execution of the transfer, or in connection with an unauthorized transfer. Nonetheless, although consumers who request wire transfers that are remittance transfers may no longer have the protections set forth in UCC Article 4A, these consumers will receive error resolution, refund and cancellation rights and other protections for these transfers as set forth in §§ 1005.33 and 1005.34.

In addition, the Bureau does not believe it is appropriate to incorporate UCC Article 4A into Regulation E because while UCC Article 4A is a uniform code, it may be adopted differently in the various states. Incorporation of UCC Article 4A (presumably, without a similar provision as UCC Article 4A-108) on its own could have the unintended consequence of the Bureau choosing one State's version of the UCC over another. There could also be a lag between updates and revisions to the UCC among the states and the version incorporated into Regulation E, which could create confusion and potential operational conflicts for those institutions that use the same systems to send commercial and consumer wire transfers.

The Bureau recognizes that one consequence of covering remittance transfers under the EFTA could be legal uncertainty under the UCC for certain remittance transfer providers. Specifically, to the extent that providers of international wire transfers were previously able to rely on UCC Article 4A's rules governing the rights and responsibilities among the parties to a wire transfer, they may no longer be able to do so. However, given the factors discussed above, the Bureau believes that the best mechanisms for resolving this uncertainty rests with the states, which can amend their respective versions of UCC Article 4A, with the purveyors of rules applicable to specific wire transfer systems, which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts. In

addition, the Bureau recommends that Congress adopt legislation to help resolve the legal uncertainty under the UCC for remittance transfers, so parties engaged in remittance transfers will be able to continue to rely on UCC Article 4A, notwithstanding the implementation of these final rules.

The final rule will be effective one year from the date of publication of the rule in the Federal Register. Thus, before the final rule becomes effective, states have the opportunity to amend UCC Article 4A to the extent needed or appropriate to address its application to consumer international wire transfers and wire transfer systems have the opportunity to amend their operating rules to incorporate UCC Article 4A, and participants in wire transfer transactions have the opportunity to enter into contracts incorporating UCC Article 4A. For example, the Board has recently issued a proposal to revise its Regulation J, 12 CFR part 210, to ensure the continued application of UCC Article 4A to remittance transfers carried out through Fedwire.<sup>72</sup> In addition, Congress would have an opportunity to enact legislation to help resolve the legal uncertainty under the UCC for remittance transfers, so parties engaged in remittance transfers will be able to continue to rely on UCC Article 4-A, notwithstanding the implementation of these final rules. The Bureau will continue to monitor developments in this area to evaluate whether these issues are being effectively dealt with by the states, Congress or through private contractual arrangements.

#### Application of the EFTA; Relationship to Regulations Implementing the Bank Secrecy Act

The Bureau also recognizes that regulations issued by the Financial Crimes Enforcement Network (FinCEN) to implement the Bank Secrecy Act also contain references to the EFTA. These regulations generally set certain requirements applicable to a “funds transfer” and

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<sup>72</sup> 76 FR 64259 (Oct. 18, 2011).

“transmittal of funds.” The definitions of “funds transfer” and “transmittal of funds” in FinCEN’s regulations exclude any funds transfers governed by the EFTA. See 31 CFR 1010.100(w) and (ddd), respectively. When EFTA section 919, as implemented by this rule, becomes effective, certain transactions that have traditionally been outside the scope of the EFTA will be governed by the EFTA, such as consumer-initiated wire transfers. The Bureau has had discussions with FinCEN about the importance of FinCEN amending its rules so that they continue to apply to remittance transfers after the effective date of this rule. The OCC also stated that it will be imperative that FinCEN act quickly to amend their rules. The Bureau does not believe, however, that it can fill the gap by incorporating FinCEN’s regulations into Regulation E. The Bureau believes consolidating the requirements of the Bank Secrecy Act and the EFTA in Regulation E would be impracticable under the respective authorities of two agencies.

### **30(f) Remittance Transfer Provider**

Proposed § 205.30(e) incorporated the definition of “remittance transfer provider” from EFTA section 919(g)(3). Proposed § 205.30(e) stated that a 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. To eliminate redundancy, the proposed rule revised statutory references to “any person or financial institution” to “any person,” because the term “person” under Regulation E includes financial institutions. Proposed comment 30(e)-1 clarified that an agent is not deemed to be a remittance transfer provider by merely providing remittance transfer services on behalf of the remittance transfer provider. The proposed regulation is adopted generally as proposed in renumbered § 1005.30(f). Comment 30(f)-1 is revised for clarity to state that a person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on

behalf of a remittance transfer provider. New comments 30(f)-2 and -3 are added as described below. The Bureau notes that this comment applies only for purposes of this rule. In other contexts, a person may act as a provider when it performs activities on behalf of a provider.

#### Normal Course of Business

The Board solicited comment on whether guidance should be adopted interpreting the phrase “normal course of business” based on the number of remittance transfers in a given year. Many industry commenters argued that the final rule should provide for a de minimis exception based on the number of remittance transfers sent in a given time period, although one credit union commenter stated that it could be difficult to track numbers. Suggestions ranged from 1,200 or fewer transfers annually to 2,400 transfers annually, per method (i.e., 2,400 wire transfers plus 2,400 international ACH transfers).

The commenters did not provide any data on the overall distribution and frequency of remittance transfers across various providers to support treating such high numbers of transactions as being outside the normal course of business. Nor did they suggest other means of determining when remittance transfer providers are engaging in transfers merely as an accommodation to occasional consumer requests rather than part of a business of payment services. Absent significant additional information, the Bureau is skeptical that Congress intended to exclude companies averaging 100 or more remittance transfer providers per month from the statutory scheme. Based on the data presented by commenters, such a range would appear to exclude the majority of providers of open network transfers, such as international wire transfers and ACH transactions, from the rule. For example, one trade association commenter stated that most respondents to an information request said that they make fewer than 2,400 international transactions per year. As discussed above, the Bureau believes that the statute

clearly covers open network transfers, such as wire transfers and ACH transactions. Providing an exception based on the ranges suggested by these commenters would allow many financial institutions that arguably regularly and in the normal course of business provide remittance transfers to not be subject to the regulation. The Bureau believes in general that the term “normal course of business” covers remittance transfer activities at a level significantly lower than the ranges suggested by these commenters.

In other contexts, regulatory coverage is triggered by a relatively small number of transactions. For example, under Regulation Z, 12 CFR part 1026, a creditor is a person who regularly extends consumer credit under specified circumstances. A person regularly extends consumer credit when it extends consumer credit more than 25 times in the preceding calendar year or in the current year (and five times for transactions secured by a dwelling, or even one time for certain high-cost mortgages).<sup>73</sup> See 12 CFR 1026.2(a)(17). Under State law, a single money transmission may trigger a requirement to register as a money transmitter.

The Bureau does not believe it has sufficient information on the frequency with which entities engage in remittance transfers to set a specific numerical threshold based on the current administrative record. Accordingly, the final rule adopts a new comment 30(f)-2 addressing “normal course of business.” Comment 30(f)-2 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. For example, if a financial institution generally does not make international consumer wire transfers available to customers, but sends a couple of international consumer wire transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the

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<sup>73</sup> The Bureau notes that it has issued a separate notice of request for information in which the Bureau requests comment on whether it should revise these threshold numbers in Regulation Z. See 76 FR 75825 (Dec. 5, 2011).



normal course of business. In contrast, if a financial institution makes international consumer wire transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers multiple times per month, the institution provides remittance transfers in the normal course of business.

While the final comment does not include a numerical threshold for "normal course of business," the Bureau recognizes that a bright-line number may ease compliance. Thus, in the January 2012 Proposed Rule, published elsewhere in the Federal Register today, the Bureau is soliciting further comment on a potential safe harbor threshold.

#### Multiple Remittance Transfer Providers

New comment 30(f)-3 provides guidance where more than one remittance transfer provider is involved in providing a remittance transfer. The Bureau recognizes that in some situations more than one remittance transfer provider may be involved in providing a remittance transfer. For example, prepaid card programs may involve, among others: (i) a program sponsor that establishes the program relationships, identifies and procures the necessary parties and sets contractual terms and conditions; (ii) a program manager which functions as a day-to-day operations "control center" for the program; and (iii) an issuing bank whose contractual involvement is required to invoke the payment network and which also may serve as the holder of funds that have been prepaid and are awaiting instructions to be disbursed. Any and all of these entities may be a "remittance transfer provider" if they meet the definition as set forth in § 1005.30(f).

Comment 30(f)-3 provides that if the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary

to comply with the requirements that subpart B imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.

### **30(g) Sender**

Proposed § 205.30(f) incorporated the definition of “sender” from EFTA section 919(g)(4) with minor edits for clarity. Specifically, proposed § 205.30(f) defined “sender” to mean “a consumer in a state who requests a remittance transfer provider to send a remittance transfer to a designated recipient.” The final rule adopts the definition largely as proposed in renumbered § 1005.30(g), with additional clarifications and a new explanatory comment.

Several commenters suggested that the Bureau limit remittance transfers to those sent for personal, family, or household purposes. Although Regulation E’s applicability is generally limited to such consumer-purpose transactions, the limitation is contained in the definition of “account” in § 1005.2(b). However, the remittance transfer rule applies to more than just account-based transfers. As a result, these commenters stated that an individual who requests a transfer for business purposes could arguably be a “sender” under the rule.

To address these concerns, the Bureau is revising the definition of “sender” in § 1005.30(g) to clarify that a sender is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient. This revision is consistent with § 1005.2(b) and clarifies that the final rule does not apply to business-to-consumer or business-to-business transactions or to transactions

that are not for personal, family or household purposes. For example, a transfer requested by a sole proprietor on behalf of his or her company would not be covered by the rule.

As with the definition of “designated recipient,” some commenters requested guidance as to how they should determine whether a consumer is located in a State for account-based transfers. Commenters also requested clarification on how to determine where a consumer is located if the transfer request is made electronically or by telephone, and where the consumer’s presence is not readily apparent. To address these questions, new comment 30(g)-1 clarifies that for transfers from an account, whether a consumer is located in a State depends on where the consumer’s account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of “sender” in § 1005.30(g), notwithstanding comment 3(a)-3. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State on information that is provided by the consumer and on any records associated with the consumer that it might have, such as an address provided by the consumer.

One commenter asked the Bureau to clarify the application of Regulation E’s comment 3(a)-3 to subpart B. Comment 3(a)-3 addresses the foreign applicability of Regulation E with respect to EFTs. The proposed definition of “sender” and the proposed commentary did not address how comment 3(a)-3 would apply with respect to remittance transfers that are EFTs, such as international ACH transfers from an account. The statutory definition of “sender,” and thus the definition in § 1005.30(g), does not turn on a consumer’s residency; rather, the definition only requires that there be a consumer in a State requesting a remittance transfer. As with the definition of “designated recipient,” the Bureau believes that directing providers to look to the location of the account as a proxy for the location of the sender will create a bright line

that will facilitate compliance with the final rule and ease compliance burden. Thus, as discussed above, under the final rule, for remittance transfers from an account, providers must look to the location of the account to determine whether there is a sender, and not the residency of the consumer requesting the transfer. Accordingly, final comment 30(g)-1 clarifies that the provider should make its determination notwithstanding comment 3(a)-3.

### **Section 1005.31 Disclosures**

Section 1073 of the Dodd-Frank Act imposes several disclosure requirements relating to remittance transfers. Among these, EFTA sections 919(a)(2)(A) and (B) require a remittance transfer provider to provide two sets of disclosures to a sender in connection with a remittance transfer. A remittance transfer provider must generally provide a written pre-payment disclosure to a sender when a sender requests a transfer. This disclosure provides information about the sender's remittance transfer, such as the exchange rate, fees, and the amount to be received by the designated recipient. A remittance transfer provider must also provide a written receipt to the sender when payment is made. This disclosure includes the information provided on the pre-payment disclosure, as well as additional information, such as the promised date of delivery, contact information for the designated recipient, and information regarding the sender's error resolution rights.

EFTA section 919(a)(5) provides the Bureau with certain exemption authority, including the authority to permit a remittance transfer provider to provide a single written disclosure to a sender, in lieu of providing both a pre-payment disclosure and receipt. This single disclosure must be provided to the sender prior to payment for the remittance transfer and must accurately disclose all of the information required on both the pre-payment disclosure and the receipt. See EFTA section 919(a)(5)(C). EFTA section 919(b) also provides that disclosures under EFTA

section 919 must be made in English and in each foreign language principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office. The Board proposed § 205.31 to implement the content and formatting requirements for these disclosures, and the Bureau is finalizing these requirements in § 1005.31, as discussed below.

Section 1005.31(a) sets forth the requirements for the general form of disclosures required under subpart B. Sections 1005.31(b)(1) and (2) implement the pre-payment disclosure and receipt requirements of EFTA section 919(a)(2)(A) and (B). Section 1005.31(b)(3) sets forth the requirements for providing a combined disclosure, as permitted by EFTA section 919(a)(5)(C). Section 1005.31(b)(4) contains disclosure requirements relating to a sender's error resolution and cancellation rights. Section 1005.31(c) addresses specific format requirements for subpart B disclosures, including grouping, proximity, prominence and size, and segregation requirements. Section 1005.31(d) sets forth the disclosure requirements for providing estimates, to the extent they are permitted by § 1005.32. Section 1005.31(e) generally implements the timing requirements of EFTA sections 919(a)(2) and 919(a)(5)(C). Section 1005.31(f) clarifies that, except as provided in § 1005.36(b), disclosures required by § 1005.31 must be accurate when a sender makes payment for the remittance transfer, except to the extent permitted by § 1005.32. Finally, § 1005.31(g) contains the requirements for providing foreign language disclosures in certain circumstances.

## **31(a) General Form of Disclosures**

### **31(a)(1) Clear and Conspicuous**

Proposed § 205.31(a) set forth the requirements for the general form of disclosures required under proposed subpart B. Pursuant to EFTA sections 919(a)(3)(A) and (a)(5)(C),<sup>74</sup> proposed § 205.31(a)(1) provided that the disclosures required by subpart B must be clear and conspicuous. Proposed comment 31(a)(1)-1 clarified that disclosures are clear and conspicuous for purposes of subpart B if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. The proposed comment stated that oral disclosures, to the extent permitted, are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them.

One industry trade association commenter supported the proposal, but suggested that the Bureau should also establish a reasonable person standard in determining whether a disclosure is clear and conspicuous. The Bureau believes the proposed comment, as well as the font and other formatting requirements provided in § 1005.31(c), below, provide remittance transfer providers with the guidance necessary to determine if disclosures are clear and conspicuous. Therefore, the clear and conspicuous standard is adopted as proposed in § 1005.31. Proposed comment 31(a)(1)-1 is also adopted substantially as proposed.

Proposed § 205.31(a)(1) also provided that disclosures required by subpart B may contain commonly accepted or readily understandable abbreviations or symbols. Proposed comment 31(a)(1)-2 clarified that using abbreviations or symbols such as “USD” to indicate currency in U.S. dollars or “MXN” to indicate currency in Mexican pesos would be permissible. The Bureau did not receive comment regarding the use of commonly accepted or readily understandable

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<sup>74</sup> EFTA section 919(a)(5)(C) incorporates the requirements of EFTA section 919(a)(3)(A) by reference, including the clear and conspicuous requirement.

abbreviations or symbols. Therefore, this aspect of proposed § 205.31(a)(1) is adopted as proposed in renumbered § 1005.31(a)(1). Comment 31(a)(1)-2 is also adopted as proposed.

#### 31(a)(2) Written and Electronic Disclosures

Proposed § 205.31(a)(2) set forth the requirements for written and electronic disclosures under subpart B. Proposed § 205.31(a)(2) stated that disclosures required by subpart B generally must be provided to the sender in writing. However, the proposal permitted a pre-payment disclosure under proposed § 205.31(b)(1) to be provided to the sender in electronic form, if the sender electronically requests the remittance transfer provider to send a remittance transfer. In such a case, proposed comment 31(a)(2)-1 explained that a pre-payment disclosure could be provided to the sender without complying with the consumer consent and other applicable provisions of the E-Sign Act. The proposed comment also clarified that if a sender electronically requests the remittance transfer provider to send a remittance transfer, the receipt required by proposed § 205.31(b)(2) also could be provided to the sender in electronic form, but only if the provider complies with the consumer consent and other applicable provisions of the E-Sign Act.

Consumer group commenters and one industry commenter supported the requirement that disclosures must be provided in writing and the exception for pre-payment disclosures to be provided electronically if a sender initiates the transaction electronically. Some industry commenters, however, argued that the pre-payment disclosures should be permitted to be provided on a computer screen or orally, if a transaction is conducted in person. One industry commenter suggested that pre-payment disclosures could be provided on a screen similar to those used at a point-of-sale to authorize payment card transactions. Industry commenters asked the Bureau to also permit the combined disclosures to be disclosed electronically without obtaining E-Sign consent.

As discussed in the proposal, the statute generally requires disclosures under subpart B to be in writing, see EFTA sections 919(a)(2), (a)(5)(C), and (d)(1)(B)(iv), and generally requires compliance with E-Sign in conjunction with electronic transactions, see EFTA section 919(a)(3)(B). Because EFTA section 919(a)(5)(D) specifically allows the Bureau to waive E-Sign requirements only with regard to pre-payment disclosures where the sender initiates the transaction electronically and the provider provides the pre-payment disclosure in an electronic form that the consumer may keep, the Bureau believes that provision of combined disclosures and receipts must be in compliance with E-Sign as specified in 919(a)(3)(B). Similarly, the Bureau believes that pre-payment disclosures provided when a sender conducts a transaction in person must be provided in writing. Thus, the Bureau believes it would not be consistent with the statute to permit the pre-payment disclosure or the combined disclosure to be provided orally or to be shown to a sender on a computer screen at the point-of-sale prior to payment for point-of-sale transactions.

One industry commenter argued that remittance transfer providers that are broker-dealers should be permitted to comply with guidance published by the Securities and Exchange Commission regarding electronic disclosures, rather than being required to obtain E-Sign consent. To the extent that transfers made in connection with securities transactions have been exempted from the rule, as discussed above in § 1005.30(e)(2)(ii), the commenter's concerns should be mitigated.

Therefore, the Bureau is adopting as proposed the provisions regarding written and electronic disclosures in § 1005.31(a)(2) of the final rule. The Bureau is also adopting comment 31(a)(2)-1 in the final rule substantially as proposed.



Proposed comment 31(a)(2)-2 clarified that written disclosures may be provided on any size paper, as long as the disclosures are clear and conspicuous. The proposed comment stated that disclosures may be provided, for example, on a register receipt or on an 8.5 inch by 11 inch sheet of paper, consistent with current practices in the industry. The Bureau did not receive comment regarding proposed comment 31(a)(2)-2, and it is finalized as proposed.

Proposed § 205.31(a)(2) also provided that the written and electronic disclosures required by subpart B must be made in a retainable form. In the proposal, the Board requested comment on how the requirement to provide electronic disclosures in a retainable form could be applied to transactions conducted via mobile application or text message. Consumer group commenters stated that disclosures sent through text were not likely made in a form the sender can keep because mobile phone carriers regularly delete text message data or limit the size of texts. These commenters argued that the Bureau should not permit disclosures to be provided solely through mobile application or text message until technology allowed them to be retainable. These commenters stated that receipts should not be provided through mobile application or text message because they would not provide a sender with meaningful, consumer-friendly disclosures in a retainable form. Instead, consumer group commenters suggested that the Bureau should permit receipts for mobile telephone transactions to be provided through other electronic forms or written mailed receipts.

Industry commenters, in contrast, argued that the final rule should provide sufficient flexibility to accommodate disclosures relating to remittance transfers sent via mobile application or text message. Some commenters stated that the Bureau should permit remittance transfer providers to provide disclosures through the provider's preferred method, including by mobile application or text message, so long as the sender is capable of receiving disclosures

through that method. Another industry commenter argued that the retainability requirement should only apply to the receipt and not to the pre-payment disclosures for transactions conducted via mobile application or text message. One industry commenter stated that for a remittance transfer initiated by mobile telephone, the Bureau should allow disclosures to be provided on the telephone if accompanied by the delivery of a retainable version of the same disclosure through the internet, since mobile telephones typically do not allow for printing.

As discussed below regarding § 1005.31(a)(5), the Bureau is permitting the pre-payment disclosures required by § 1005.31(b)(1) to be disclosed orally or via mobile application or text message if the transaction is conducted entirely by telephone via mobile application or text message. The Bureau understands that given current technical limitations, in many cases, disclosures provided via mobile application or text message could not be provided in a retainable form or in a manner that satisfies formatting requirements. The Bureau notes, however, that the statute expressly permits the pre-payment disclosures to be provided orally for transfers conducted entirely by telephone. Thus, if a transaction is conducted entirely by telephone via mobile application or text message, a provider may give the pre-payment disclosure orally. Because oral disclosures are not retainable, the Bureau does not believe senders would be less protected by receiving pre-payment disclosures via mobile application or text message that are also not retainable. Moreover, in some cases, disclosures provided via mobile application or text message may be better than oral disclosures. For example, a disclosure provided by text message stored in a mobile telephone could be viewed by the sender for a period of time after the transaction is complete or forwarded to an email or other savable file. Therefore, § 1005.31(a)(2) provides that written and electronic disclosures required by subpart B generally must be made in a retainable form. However, to effectuate the purposes of the EFTA and

facilitate compliance, the Bureau believes it is necessary and proper to use its authority under ETFA sections 904(a) and (c) to provide in the final rule that for transfers conducted entirely by telephone via mobile application or text message, the pre-payment disclosures may be provided via mobile application or text message in accordance with § 1005.31(a)(5) and need not be retainable. The Bureau is also adding a new comment 31(a)(2)-4 to clarify that disclosures provided electronically to a mobile telephone that are not provided via mobile application or text message must be retainable. For example, disclosures provided via email must be retainable, even if a sender accesses them by mobile telephone.

Proposed comment 31(a)(2)-3 clarified that a remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an online disclosure in a format that is capable of being printed. The proposed comment clarified that electronic disclosures cannot be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

Consumer group commenters generally supported these retainability requirements. Industry commenters suggested that the Bureau revise or clarify the rules regarding the provision of electronic disclosures. Industry commenters stated that the Bureau should permit a remittance transfer provider to provide disclosures by sending a hyperlink to the sender or to permit the provider to make a disclosure available on its website where disclosures can be viewed. One commenter suggested that the Bureau should clarify that disclosures are retainable as long as they may be saved or stored on a computer. This commenter stated that a disclosure would be retainable if, for example, a sender could save a screen shot or download a file that could be saved.

The Bureau believes proposed comment 31(a)(2)-3 appropriately addressed how disclosures may be provided in a retainable format when disclosed electronically. The proposed comment sets forth general principles for providing electronic disclosures that can be applied to various scenarios in which electronic disclosures are provided. For example, a provider could determine that a screen shot or downloadable file complies with the retainability requirement if those formats are also capable of being printed. The proposed comment is also consistent with other of the Bureau's electronic disclosure provisions that ensure that senders are provided with disclosures, rather than permitting disclosures to simply be made available to them.<sup>75</sup> Therefore, comment 31(a)(2)-3 is adopted as proposed.

#### 31(a)(3) Oral Disclosures for Oral Telephone Transactions

Relying upon authority in EFTA section 919(a)(5)(A), proposed § 205.31(a)(3) permitted the pre-payment disclosures to be provided orally if the transaction was conducted entirely by telephone and if the remittance transfer provider complied with the foreign language disclosure requirements of proposed § 205.31(g)(2), discussed below. One industry commenter opposed the oral disclosure authorization for telephone transactions, arguing that the length of time to process a transfer made by telephone would increase significantly due to the number of items that must be disclosed orally. Because the Bureau believes the statute intends for senders to receive pre-payment disclosures regardless of the format of the transaction, the Bureau is permitting oral pre-payment disclosures in certain circumstances in § 1005.31(a)(3) of the final rule. Moreover, as discussed below, the Bureau is permitting in § 1005.31(a)(5) the pre-payment disclosures required by § 1005.31(b)(1) to be disclosed orally or via mobile application or text message for transactions conducted entirely by telephone via mobile application or text message. Therefore, the final rule is limiting the application of § 1005.31(a)(3) to transactions conducted

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<sup>75</sup> See for example, § 1005.20(c)(2) and § 1026.5a(a)(2).

through oral conversations. Therefore, § 1005.31(a)(3)(i) is amended to clarify that § 1005.31(a)(3) only applies if the transaction is conducted orally and entirely by telephone. The final rule also adds comment 31(a)(3)-2 to clarify that § 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone.

The final rule also adds another condition for providers to be permitted to disclose pre-payment disclosures orally, in addition to the requirements that the transaction be conducted entirely by telephone and that the provider comply with the foreign language disclosure requirements of § 1005.31(g)(2). The Bureau believes that for oral telephone transactions, senders should be informed of their cancellation rights before the cancellation period has passed. Because a receipt may be mailed to a sender for telephone transactions, see § 1005.31(e)(2), the sender would not receive the abbreviated statement about the sender's cancellation rights required by § 1005.31(b)(2)(iv) until after the cancellation period had passed. Therefore, the Bureau is requiring in § 1005.31(a)(3) that a provider disclose orally 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) in order to disclose the pre-payment disclosures orally for oral telephone transactions.

Proposed comment 31(a)(3)-1 stated that, for transactions conducted partially by telephone, disclosures may not be provided orally. For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated phone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, the proposed comment clarified that all disclosures must be provided in writing. Proposed comment 31(a)(3)-1 clarified that for such a transaction, a provider may comply with the disclosure

requirements by providing the written pre-payment disclosure in person prior to the sender's payment for the transaction, and the written receipt when payment is made for the remittance transfer.

Industry commenters argued that the Bureau should permit oral pre-payment disclosures for these hybrid transactions. For example, one industry commenter stated that providing the information to senders at the time the sender is speaking with the remittance transfer provider would enable the sender to discuss the disclosed fees or currency delivery options. This commenter stated that it would be difficult to continue providing remittance transfers using a provider's dedicated telephone in a retail store if pre-payment disclosures could not be provided orally.

The Bureau believes that by allowing oral disclosures only for transactions performed entirely by telephone, Congress did not intend to permit providers to satisfy the disclosure requirements orally for transactions conducted partially by telephone. See EFTA section 919(a)(5)(A). Therefore, comment 31(a)(3)-1 is adopted substantially as proposed, with a revision to more precisely state that providing the information required by § 1005.31(b)(1) to a sender orally does not fulfill the requirement to provide the disclosures required by § 1005.31(b)(1). The Bureau notes that nothing prohibits a provider from stating orally the information required to be disclosed by § 1005.31(b)(1) to a sender, even though this would not fulfill a provider's pre-payment disclosure requirements.

#### 31(a)(4) Oral Disclosures for Certain Error Resolution Notices

Proposed § 205.31(a)(4) permitted a remittance transfer provider to provide an oral report of the results of an investigation of a notice of error, if the remittance transfer provider determined that an error occurred as described by the sender, and if the remittance transfer

provider complied with the foreign language disclosure requirements of proposed § 205.31(g)(2). The Bureau did not receive comment on proposed § 205.31(a)(4), and it is adopted substantially as proposed as § 1005.31(a)(4).

#### 31(a)(5) Disclosures for Mobile Application or Text Message Transactions

In the May 2011 Proposed Rule, the Board noted that retainability and formatting requirements could pose challenges for providing disclosures in transactions conducted via mobile application or text message. As discussed above, many industry commenters argued that the Bureau should change or provide for tailored retainability or formatting requirements for transactions conducted via mobile application or text message to ensure that senders would continue to have access to these services. Several industry commenters noted that they offered or were developing technology to permit senders to send a remittance transfer via a mobile telephone. The commenters believed that such services were evolving rapidly and urged the Bureau to provide flexibility in the final rule.

As discussed above, because remittance transfers sent via mobile application or text message on a telephone are “conducted entirely by telephone,” the Bureau believes that 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. Because oral disclosures are not retainable, the Bureau does not believe senders would be less protected by receiving pre-payment disclosures via mobile application or text message that is also not retainable. Moreover, in some cases, senders receiving disclosures via mobile application or text message may be informed of the cost of their transaction in a manner that is better than oral disclosures. For example, a disclosure provided by text message stored in

a mobile telephone could be viewed by the sender for a period of time after the transaction is complete or forwarded to an email or other savable file.

Therefore, to effectuate the purposes of the EFTA and facilitate compliance, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to add in the 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). The final rule also adds comment 31(a)(5)-1 to illustrate how a provider could provide pre-payment disclosures for mobile application and text message transactions. The comment states that, for example, if a sender conducts a transaction via text message on a mobile telephone, the remittance transfer provider may call the sender and orally provide the required pre-payment disclosures. Alternatively, the provider may provide the required pre-payment disclosures via text message. The comment also clarifies that § 1005.31(a)(5) applies only to transactions conducted entirely by mobile telephone via mobile application or text message.

### **31(b) Disclosures**

Proposed section 205.31(b) set forth substantive disclosure requirements for remittance transfers. EFTA sections 919(a)(2)(A) and (B) require a remittance transfer provider to provide to a sender: (i) a written pre-payment disclosure with information applicable to the sender's remittance transfer – specifically, the exchange rate, the amount of transfer and other fees, and the amount that would be received by the designated recipient; and (ii) a written receipt that



includes the information provided on the pre-payment disclosure, plus the promised date of delivery, contact information for the designated recipient, information regarding the sender's error resolution rights, and contact information for the remittance transfer provider and applicable regulatory agencies. EFTA section 919(a)(5)(C) also authorizes the Bureau to permit a remittance transfer provider to provide a single written disclosure to a sender, instead of a pre-payment disclosure and receipt, that accurately discloses all of the information required on both the pre-payment disclosure and the receipt. Sections 1005.31(b)(1) and (2) finalize these substantive disclosure requirements for pre-payment disclosures and receipts, respectively. The final rule also permits the use of a combined disclosure, in lieu of the pre-payment disclosure and receipt, subject to the requirements in § 1005.31(b)(3).

As discussed below, consumer group commenters opposed the combined disclosures, but otherwise generally supported the disclosures as proposed. These commenters stated that senders currently lack the information about exchange rate, fees, and timing that is required in the disclosures. Many industry commenters generally opposed the proposed disclosures. One industry commenter stated that the Board's consumer testing demonstrated that senders were satisfied with remittance transfer providers' existing disclosures, and that the new requirements would impose significant costs without commensurate benefits to senders.

Many industry commenters further argued that compliance with the disclosure requirements was not possible for wire transfers and international ACH transactions. Specifically, industry commenters opposed the requirements to disclose the exchange rate, fees and taxes imposed by a person other than the provider, and the date of funds availability. One money transmitter commenter stated that these disclosure requirements could also be problematic for some money transmitters, where an international wire transfer is part of the

transaction, such as when a sender conducts an account-to-account remittance transfer through a money transmitter.

As discussed below, the Bureau understands the unique compliance challenges for institutions that send remittance transfers via wire transfer or ACH. However, as previously noted, the statute specifically applies the disclosure requirements in EFTA sections 919(a)(2)(A) and (B) to both open network and closed network transactions and provides a specific accommodation to address the compliance challenges faced for open network transactions. As such, the final rule requires all remittance transfer providers to provide either the pre-payment disclosure and a receipt, or a combined disclosure, except to the extent estimates are permitted by § 1005.32.

Pursuant to EFTA section 919(a)(2), information on a pre-payment disclosure and a receipt need only be provided to the extent applicable to the transaction. Similarly, the information required on a combined disclosure need only be provided as applicable because the combined disclosure is simply a consolidation of the pre-payment disclosure and the receipt. See EFTA section 919(a)(2)(A) and (B). Proposed comment 31(b)-1 clarified that a remittance transfer provider could choose to omit an inapplicable item provided in proposed § 205.31(b). Alternatively, a remittance transfer provider could disclose a term and state that an amount or item is “not applicable,” “N/A,” or “None.” The proposed comment provided examples of when certain disclosures may not be applicable. For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures about fees and taxes generally required by proposed § 205.31(b)(1)(ii) and (vi). Similarly, a website need not be disclosed if the provider does not maintain a website. The proposed comment also

included an example of instances in which exchange rate information was not required on the disclosures for transactions that are both funded and received in U.S. dollars.

One industry trade association commenter argued that dollar-to-dollar transactions should be completely excluded from the disclosure requirements. The Bureau believes, however, that fee and tax information should be disclosed to senders, even if there is no exchange rate applied to the transfer. The final rule does not exclude dollar-to-dollar transactions from the disclosure requirements, but clarifies that the exchange rate disclosure is not required for such transactions.

Comment 31(b)-1 is adopted substantially as proposed, with clarifying revisions providing that an exchange rate is not required to be disclosed if an exchange rate is not applied to the transfer, even if it is not a dollar-to-dollar transaction. As such, the final comment states that a provider need not provide the exchange rate disclosure required by § 1005.31(b)(1)(iv) if a recipient receives funds in the currency in which the remittance transfer is funded, or if funds are delivered into an account denominated in the currency in which the remittance transfer is funded. For example, if a sender in the United States transfers funds from an account denominated in Euros to an account in France denominated in Euros, no exchange rate would need to be provided. Similarly, if a sender funds a remittance transfer in U.S. dollars and requests that a remittance transfer be delivered to the recipient in U.S. dollars, a provider need not disclose an exchange rate.

Proposed comment 31(b)-2 addressed the requirements in proposed § 205.31(b) that certain disclosures be described either using the terms set forth in § 205.31(b) or substantially similar terms. As discussed in the May 2011 Proposed Rule, the Board developed and selected the terms used in proposed § 205.31(b) through consumer testing to ensure that senders could understand the information disclosed to them. However, the May 2011 Proposed Rule provided

remittance transfer providers with flexibility in developing their disclosures, both for disclosures in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfers, either orally or in writing, at that office. See § 1005.31(g) below.

The Bureau did not receive comment regarding proposed comment 31(b)-2, and it is finalized substantially as proposed. In the final rule, comment 31(b)-2 states that terms may be more specific than the terms used in the final rule. For example, a remittance transfer provider sending funds to Colombia may describe a tax disclosed under § 1005.31(b)(1)(vi) as a “Colombian Tax” in lieu of describing it as “Other Taxes.” Foreign language disclosures required under § 1005.31(g) must contain accurate translations of the terms, language, and notices required by § 1005.31(b).

#### 31(b)(1) Pre-Payment Disclosures

Pursuant to EFTA section 919(a)(2)(A), proposed § 205.31(b)(1) stated that a remittance transfer provider must make specified pre-payment disclosures to a sender, as applicable. The disclosures are discussed below.

#### 31(b)(1)(i) Transfer Amount

Proposed § 205.31(b)(1)(i) provided that the remittance transfer provider must disclose the amount that will be transferred to the designated recipient using the term “Transfer Amount” or a substantially similar term. Under the proposal, the transfer amount would have to be disclosed in the currency in which the funds will be transferred because the Board believed the disclosure of the transfer amount would help demonstrate to a sender how a provider calculates the total amount of the transaction, discussed below.

Consumer group commenters agreed that the disclosure of the transfer amount as a separate line item would help senders understand the total amount to be paid in order to send the requested amount of currency to a recipient. Industry commenters asked the Bureau to clarify how to make a disclosure in the currency in which funds will be transferred. These commenters asked if this requirement only applied where a remittance transfer provider performed the conversion. These commenters suggested that the final rule should clarify that the disclosures should be provided in the denomination of the account used to fund the transfer or in the currency submitted by the sender for the transfer.

The Bureau believes that the transfer amount should be disclosed as proposed in order to help demonstrate the cost of the transfer to a sender. Therefore, to effectuate the purposes of the EFTA, the Bureau deems it necessary and proper to use its authority under EFTA sections 904(a) and (c) to finalize this requirement in § 1005.31(b)(1)(i). For clarity, the final rule provides that the transfer amount must be disclosed in the currency in which the remittance transfer is funded, rather than the currency in which funds will be transferred. The Bureau believes that disclosing the transfer amount in the currency in which the remittance transfer is funded – whether the sender pays with cash, with currency in an account, or by other means – will, when combined with the other required disclosures, help senders calculate the effect of the exchange rate on the transaction, if there is a currency exchange. For example, if the funds will be exchanged from U.S. dollars to Mexican pesos, the transfer amount required by § 1005.31(b)(1)(i) must be disclosed in U.S. dollars. Therefore, § 1005.31(b)(1)(i) provides that the remittance transfer provider must disclose the amount that will be transferred to the designated recipient, in the currency in which the remittance transfer is funded, using the term “Transfer Amount” or a substantially similar term.

### 31(b)(1)(ii) Fees and Taxes Imposed by the Provider

Proposed § 205.31(b)(1)(ii) required that a remittance transfer provider disclose any fees and taxes that are imposed on the remittance transfer by the remittance transfer provider, in the currency in which the funds will be transferred. The proposal stated that the disclosure must be described using the term “Transfer Fees,” “Transfer Taxes,” or “Transfer Fees and Taxes,” or a substantially similar term. These disclosures were proposed pursuant to EFTA section 919(a)(2)(A)(ii), which requires a remittance transfer provider to disclose the amount of transfer fees and any other fees charged by the remittance transfer provider for the remittance transfer.

Proposed comment 31(b)(1)-1.i. clarified that taxes imposed by the remittance transfer provider include taxes imposed on the remittance transfer by a State or other governmental body. The proposed comment also provided guidance applicable to the disclosure of both fees and taxes imposed on the remittance transfer by the provider, as well as fees and taxes imposed on the remittance transfer by a person other than the provider, which are discussed in detail below. See § 1005.31(b)(1)(vi), below. The proposed comment addressed the requirement that a remittance transfer provider only disclose fees or taxes as applicable. The proposed comment also stated that if both fees and taxes are imposed, the fees and taxes may be disclosed as one disclosure or as separate, itemized disclosures.

Consumer group commenters and an industry commenter argued that the Bureau should require itemized fees and tax disclosures. They believed itemized disclosures would help senders understand what costs are fixed, such as taxes, and what costs may vary depending on the provider, such as fees. However, another industry commenter stated that disclosing fees and taxes together provided senders with adequate information on the total cost of the transaction.

The Bureau agrees that separately listing the fees and taxes on disclosures provides better information to the sender about fixed and variable costs of the transaction, and the final rule provides that fees and taxes must be disclosed separately. Section 1005.31(b)(1)(ii) also clarifies that the fees and taxes must be disclosed in the currency in which the remittance transfer is funded. See § 1005.31(b)(1)(i), above. Therefore, § 1005.31(b)(1)(ii) states that a remittance transfer provider must disclose any fees and taxes imposed on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms “Transfer Fees” for fees and “Transfer Taxes” for taxes or substantially similar terms. Comment 31(b)(1)-1.i. in the final rule is changed from the proposal to state that if both fees and taxes are imposed, the fees and taxes must be disclosed as separate, itemized disclosures. For example, a provider would disclose all transfer fees using the term “Transfer Fees” or a substantially similar term and would separately disclose all transfer taxes as “Transfer Taxes” or a substantially similar term.

One industry commenter argued that because a tax is imposed by the government, and not by the remittance transfer provider, EFTA section 919(a)(2)(A)(ii) does not require taxes to be disclosed and, as such, the rule should not require disclosure of taxes. The Bureau believes the statute intended to require the disclosure of all charges imposed on the remittance transfer that would affect the cost of a remittance transfer to the sender. To the extent taxes imposed on the remittance transfer by a State or other governmental body are charged to the sender by the remittance transfer provider, the Bureau believes they are required to be disclosed under EFTA section 919(a)(2)(A)(ii), which requires a remittance transfer provider to disclose transfer fees and any other fees charged by the remittance transfer provider for the remittance transfer. Even if EFTA section 919(a)(2)(A)(ii) did not require that such taxes be disclosed to senders, the Bureau believes that disclosing the taxes imposed on the remittance transfer will demonstrate to

the sender the calculation of the total amount that the sender pays for the transfer and how this amount relates to amount that will be received by the designated recipient and is therefore necessary and proper to effectuate the purposes of the EFTA. As such, to the extent necessary, the Bureau is also requiring these taxes to be disclosed pursuant to its authority under EFTA sections 904(a) and (c). Therefore, as proposed, comment 31(b)(1)-1.i. in the final rule clarifies that taxes imposed on the remittance transfer by the remittance transfer provider include taxes imposed on the remittance transfer by a State or other governmental body.

Finally, as proposed, comment 31(b)(1)-1.i. addresses the disclosure of fees and taxes that are applicable to the transfer. The comment in the final rule states that a provider need only disclose fees or taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees.

Proposed comment 31(b)(1)-1.ii. distinguished between the fees and taxes imposed on the remittance transfer by the provider and the fees and taxes imposed on the remittance transfer by a person other than the provider. This proposed comment is addressed in the discussion regarding fees and taxes imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi), below.

#### 31(b)(1)(iii) Total Amount of the Transaction

Proposed § 205.31(b)(1)(iii) required the disclosure of the total amount of the transaction. Although this total is not required by the statute, the Board proposed to require the disclosure of the total amount of the transaction to further the purposes of the EFTA by enabling a sender to understand the total amount to be paid out-of-pocket for the transaction. The Bureau did not



receive comment on the proposed provision. Therefore, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to adopt § 205.31(b)(1)(iii) as proposed in § 1005.31(b)(1)(iii). The final rule requires a remittance transfer provider to disclose the total amount of the transaction, which is the sum of § 1005.31(b)(1)(i) and (ii), in the currency in which the remittance transfer is funded, using the term “Total” or a substantially similar term.

#### 31(b)(1)(iv) Exchange Rate

Proposed § 205.31(b)(1)(iv) required the disclosure of any exchange rate used by the provider for the remittance transfer, rounded to the nearest 1/100<sup>th</sup> of a decimal point, consistent with EFTA section 919(a)(2)(A)(iii). The proposed rule stated that the exchange rate must be described using the term “Exchange Rate” or a substantially similar term. The proposed rule did not permit floating rates, where the exchange rate is set when the designated recipient claims the funds.

Consumer group commenters strongly supported the prohibition of unknown or floating exchange rates. Many industry commenters, however, urged that the final rule should accommodate floating rates and other circumstances in which an exchange rate may not be known at the time the sender requests the remittance transfer. A few industry commenters argued that the statute does not require the disclosure of an exchange rate set by institutions other than the remittance transfer provider. The commenters stated that by requiring the disclosure of the exchange rate to be used by the remittance transfer provider for the remittance transfer, EFTA section 919(a)(2)(A)(iii) only requires disclosure of an exchange rate that the remittance transfers provider itself set for the remittance transfer.

For example, industry commenters stated that most credit unions offering international transfers do not perform currency conversions themselves, but instead rely on correspondent banks or other business partners to do so. Some industry commenters also stated that most credit unions offering international transfers work with currency providers in real time to contract for exchange rates. The commenters argued that this allows the credit unions to provide their members with the most competitive exchange rates. However, in such an arrangement the exchange rate that will be applied is only known at the time the contract is accepted, and would not be known at the time disclosures are provided to the senders. Similarly, other industry commenters stated that with their current processes and systems, they would know an exchange rate once a remittance transfer is processed, but not when the remittance transfer is requested.

Some industry commenters also stated the exchange rate cannot be determined at the time of the request when a sender designates the receipt of a transaction in one currency, but the receiving account is denominated in another currency. In those cases, the receiving institution must convert the funds into another currency in order to complete the transfer. One industry commenter stated that its customers sometimes request remittance transfers to be sent to their foreign accounts in U.S. dollars. These senders, however, have arrangements with the recipient institutions holding their foreign accounts to convert the funds to the currencies of the accounts either at the spot rates available at the time the accounts are credited or at rates pre-arranged by contracts between the senders and the recipient institutions. One industry commenter stated that, in some countries, a recipient may choose to be paid in one of multiple currencies. The commenter also stated that it permits consumers to change the designated country for pick up. In these cases, the currency in which funds will be received may change at the option of the recipient.

A Federal Reserve Bank commenter, as well as industry commenters, argued that requiring a fixed exchange rate for purposes of providing an exchange rate disclosure would result in less favorable exchange rates for senders. These commenters stated that if providers are required to fix the exchange rate, they will increase the spread they use in order to minimize the risks associated with rate volatility, so the cost of sending remittance transfers would increase for senders. One money transmitter commenter argued that requiring a disclosure of a fixed rate could also lead remittance transfer providers to stop providing services to some locations in which they have historically used floating rates. This commenter noted that such a requirement would require it to renegotiate its contracts with approximately 100 foreign agents representing about 10,000 locations that currently offer only floating rates. This commenter stated that this change would affect about a half million customers annually.

One industry commenter believed that a remittance transfer provider should instead be permitted to disclose that the exchange rate will be changed at the rate set by a daily central bank or other official rate plus or minus a fixed offset, such as a commission. Other industry commenters suggested permitting disclosure of an estimated exchange rate, as long as the provider also discloses that the rate is subject to change. A Federal Reserve Bank commenter believed that floating exchange rate products should be exempted from the disclosure provisions in the rule.

The Bureau interprets the statute to require a remittance transfer provider to disclose to the sender the exchange rate to be used for the remittance transfer to the sender, both at the time the sender requests the remittance transfer and when the sender pays for the transfer. This interpretation is based on several factors. First, the fact that the exchange rate may be set by another institution involved in the remittance transfer does not change the fact that it will be used

by the remittance transfer provider in effectuating the sender's request. Second, the statute specifically requires disclosure of the amount to be received by the designated recipient, using the values of the currency into which the funds will be exchanged. This disclosure requires a provider to determine the exchange rate to be used to effectuate the transfer, whether that rate is set by the remittance transfer provider or a third party.

The purpose of the statute supports the same conclusion. As discussed in the May 2011 Proposed Rule, the disclosure was intended to provide senders with certainty regarding the exchange rate and the amount of currency their designated recipients would receive. Senders would not be able to tell, for example, whether the funds they transmit are sufficient to pay household expenses and other bills where remittance products are based on floating rates.

The Bureau understands, however, that there may be instances in which a sender will request funds to be delivered in a particular currency, but the funds are later converted into another currency due to facts that cannot be known to the provider. In these circumstances, the Bureau believes the remittance transfer provider complies with the requirement to disclose the exchange rate when it discloses information based on the request of the sender, even if the funds are ultimately received in a different currency. If the sender does not know the currency in which the funds will be received or requests funds to be received in the currency in which the remittance transfer is funded, the Bureau believes that the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded. See also comment 31(b)(1)(vi)-1, below.

Section 1005.31(b)(iv) of the final rule requires disclosure of the exchange rate used by the provider for the remittance transfer, as proposed. Comment 31(b)(1)(iv)-1 clarifies that if the designated recipient will receive funds in a currency other than the currency in which the

remittance transfer is funded, a remittance transfer provider must disclose the exchange rate to be used by the provider for the remittance transfer. An exchange rate that is estimated must be disclosed pursuant to the requirements of § 1005.32, discussed below. A remittance transfer provider may not disclose, for example, that an exchange rate is “unknown,” “floating,” or “to be determined.”

Comment 31(b)(1)(iv)-1 further clarifies that if a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender’s representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is actually denominated in Mexican pesos and the funds are converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded. The Bureau notes that if a provider does not independently have specific knowledge of the currency in which funds will be received, the provider may rely on the sender’s representation as to the currency in which funds will be received. For example, the rule does not impose on providers a duty to inquire about this information with a third party.

Some industry commenters also argued that the exchange rate should be permitted to include more than two decimal places, consistent with their current disclosure practices. One industry commenter stated that providing exchange rates that include more than two decimal places provides senders with more accurate and detailed exchange rate information.

The Bureau agrees that it may be appropriate for some providers to disclose an exchange rate that includes more than two decimal places, because a provider may determine that the disclosure would provide a sender with a more accurate representation of the remittance transfer's cost, based on the particular type of transaction or type of currency being used. However, the Bureau also believes that some providers may determine that rounding to fewer digits may sufficiently inform senders of the cost of the exchange. The Bureau is also mindful that a disclosure that includes a long string of numbers could confuse some senders. The Bureau believes it is appropriate to permit a remittance transfer provider to disclose an exchange rate rounded to a number of decimal places that best reflects the cost to the sender, within a range that will not potentially confuse the sender.

Therefore, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to exercise its EFTA sections 904(a) and (c) authority in § 1005.31(b)(1)(iv) to permit the exchange rate to be rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places. The exchange rate must be disclosed using the term "Exchange Rate" or a substantially similar term. Comment 31(b)(1)(iv)-2 of the final rule is revised to reflect the more flexible rounding requirements. Comment 31(b)(1)(iv)-2 clarifies that the exchange rate disclosed by the provider for the remittance transfer is required to be rounded. The provider may round to two, three, or four decimal places, at its option. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider may disclose that the U.S. dollar exchanges for 11.9484 Mexican pesos. The provider may alternatively disclose, for example, that the U.S. dollar exchanges for 11.948 pesos or 11.95 pesos. On the other hand, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, the provider may disclose that "US\$1= 11.9 MXN" in lieu of, for example, "US\$1=11.90 MXN."

Though the Bureau is permitting flexibility for rounding exchange rate disclosures, the Bureau believes that each provider should disclose its exchange rates in a consistent manner. The Bureau believes that if a provider were permitted to round exchange rates for a particular currency on a transaction-by-transaction basis, a provider could round exchange rates differently in order to make the exchange rate appear to be more favorable. For example, the Bureau does not believe a provider that typically rounds to four decimal places for a specific currency (e.g., the U.S. dollar exchanges for 0.7551 Euros) should be permitted to round to two decimal places for some of those currency transactions (e.g., the U.S. dollar exchanges for 0.76 Euros). Comment 31(b)(1)(iv)-2 thus clarifies that the exchange rate disclosed for the remittance transfer must be rounded consistently for each currency. For example, a provider may not round to two decimal places for some transactions exchanged into Euros and round to four decimal places for other transactions exchanged into Euros.

As discussed above, a provider may use an exchange rate that is not necessarily set by the provider itself. The final rule adds a new comment 31(b)(1)(iv)-3 to clarify that the exchange rate used by the provider and applied to the remittance transfer need not be set by that provider. For example, an exchange rate set by an intermediary institution and applied to the remittance transfer would be the exchange rate used for the remittance transfer and must be disclosed by the provider.

Consumer group commenters and an industry trade association asked the Bureau to clarify how the exchange rate requirements would apply when a remittance transfer involves a prepaid card. These commenters asked how disclosures, such as the exchange rate, could be provided in accordance with the timing provisions in the May 2011 Proposed Rule when a provider would not know when the recipient would withdraw funds abroad or how much the

recipient would withdraw. To the extent a prepaid card is covered by the rule, see § 1005.30(e), the funds that will be received by the designated recipient are those that are loaded on to the prepaid card by the sender at the time of the transaction. Often a prepaid card is both funded and loaded in U.S. dollars, and funds remain on the card in U.S. dollars until a cardholder withdraws funds in a foreign country. In these instances, a provider need not provide the exchange rate disclosure required by § 1005.31(b)(1)(iv), because a recipient will receive the currency in the currency in which the remittance transfer is funded. See comment 31(b)-1.

Finally, a Federal Reserve Bank commenter noted that the exchange rate cannot be determined when a sender initiates payment on a recurring basis. The Bureau recognizes the unique challenges relating to recurring payments, and the final rule provides alternative provisions for these circumstances in § 1005.36, discussed below.

#### 31(b)(1)(v) Transfer Amount

Proposed § 205.31(b)(1)(v) generally required providers to repeat the disclosure of the transfer amount in proposed § 205.31(b)(1)(i). Proposed § 205.31(b)(1)(v), however, required the transfer amount to be disclosed in the currency in which the funds will be received by the designated recipient to demonstrate to the sender how third party fees or taxes imposed under proposed § 205.31(b)(1)(vi), which are also required to be disclosed in the currency in which the funds will be received, would reduce the amount received by the designated recipient. Proposed § 205.31(b)(1)(v), however, only required this repeat disclosure if third party fees or taxes are imposed under proposed § 205.31(b)(1)(vi), because it would not otherwise be necessary to demonstrate a reduction of the transfer amount by third party fees and taxes. The proposed disclosure was required to be described using the term “Transfer Amount” or a substantially similar term. Both the transfer amount required to be disclosed by proposed § 205.31(b)(1)(i)



and the transfer amount required to be disclosed by proposed § 205.31(b)(1)(v) were proposed to effectuate the purposes of the EFTA.

The Bureau did not receive comment on the requirement to disclose the transfer amount in proposed § 205.31(b)(1)(v). Therefore, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to finalize this requirement as proposed in § 1005.31(b)(1)(v). The Bureau received comments regarding concerns about making disclosures in the currency in which the funds will be received by the designated recipient. These comments, and a clarification regarding the currency in which the funds will be received by the designated recipient, are discussed below. See comment 31(b)(1)(vi)-1.

Proposed comment 31(b)(1)-2 provided more guidance on the requirement to repeat the transfer amount disclosure in some circumstances, and it is adopted substantially as proposed. The comment reflects the clarification in the final rule that disclosure under § 1005.31(b)(1)(i) must be disclosed in the currency in which the remittance transfer is funded. Comment 31(b)(1)-2 clarifies that two transfer amounts are required to be disclosed by § 1005.31(b)(1)(i) and (v). First, a provider must disclose the transfer amount in the currency in which the remittance transfer is funded to show the calculation of the total amount of the transaction. Typically, the remittance transfer is funded in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if remittance transfer is funded, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros.

Second, a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese

yen. However, the comment also clarifies that this second transfer amount need not be disclosed if fees and taxes are not imposed for the remittance transfer under § 1005.31(b)(1)(vi). As discussed above, in such cases, there is no consumer benefit to the additional information if the transferred amount is not reduced by other fees and taxes.

Section 1005.31(b)(1)(v) also requires a remittance transfer provider to use the term “Transfer Amount” or a substantially similar term to describe the disclosure required under this paragraph. Comment 31(b)(1)-2 clarifies, as proposed, that the terms used to describe each transfer amount should be the same.

Finally, the Bureau believes that the rounded exchange rate required to be disclosed under § 1005.31(b)(1)(iv) is intended only to ensure that senders are not overwhelmed by a disclosure of an exchange rate with many numbers following the decimal point. The Bureau does not believe it is intended to constrain the number of decimal places involved in calculating other disclosures. Therefore, § 1005.31(b)(1)(v) adds the clarification that the exchange rate used to calculate the transfer amount in § 1005.31(b)(1)(v) is the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. Comment 31(b)(1)-3 provides examples to demonstrate the exchange rate that must be used to calculate not only the transfer amount in § 1005.31(b)(1)(v), but also the fees and taxes imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi) and the amount received in § 1005.31(b)(1)(vii). For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to § 1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos. Similarly, if a provider estimates pursuant to § 1005.32 that one U.S. dollar exchanges for 11.9483 Mexican

pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to § 1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.95 Mexican pesos (Estimated). If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures. For example, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, a provider must calculate these disclosures using this exchange rate.

#### 31(b)(1)(vi) Fees and Taxes Imposed by a Person Other than the Provider

Proposed § 205.31(b)(1)(vi) stated that a remittance transfer provider must disclose any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient. Such fees and taxes could include lifting fees charged in connection with an international wire transfer, a fee charged by a recipient institution or agent, or a tax imposed by a government in the designated recipient's country. Because such fees and taxes affect the amount ultimately received by the designated recipient, the Board proposed the disclosure of other fees and taxes to effectuate the purposes of the EFTA.

Consumer group commenters supported the disclosure of third party fees and taxes to senders of remittance transfers, stating that such a disclosure would be consistent with the language and purpose of the statute, and would best inform the sender of the amount the recipient would ultimately receive. In contrast, industry commenters opposed the disclosure. Most industry commenters argued that compliance with the proposed disclosure requirement would be burdensome, if not impossible. Commenters stated that financial institutions sending wire transfers and international ACH transactions only have control over the delivery to the next institution, and in some cases do not have a relationship with all of the subsequent intermediary institutions involved in a transfer or with the recipient institution. The originating institution

may, in some cases, know the routing, but in other cases have no legal or technological means to control routing of a transaction once the transfer has been initiated and, therefore, it cannot know what institutions might be imposing fees or taxes on the remittance transfer. One industry commenter suggested that providing the disclosures may be possible for repeat wire transfers, because fee and tax information is known from the previous transfers, but not for new wire transfers.

Industry commenters and a Federal Reserve Bank commenter argued that third party fees and taxes may not be known at the time of the transaction, which could result in the remittance transfer provider providing misleading information to the sender. Industry commenters also argued that smaller institutions do not have the resources to obtain or monitor information about foreign tax laws or fees charged by unrelated financial institutions that may be involved in the transfer. Some commenters noted that intermediary financial institutions, both inside and outside of the United States, are not required to disclose their fees. Moreover, some industry commenters argued, the sharing of fee information among financial institutions could violate privacy and competition laws. Industry commenters stated that no comprehensive information is available regarding foreign tax laws. Because an institution may not have resources to track tax laws in every foreign country to which it sends a remittance transfer, the commenters argued that some providers would limit the locations to which they send remittance transfers.

Further, some industry commenters noted that a recipient may enter into an agreement with a recipient institution that permits the institution to impose fees for an international payment received by the institution and applied to the recipient's account. The commenters stated that remittance transfer providers would not know whether the recipient has agreed to pay such fees or how much the recipient may have agreed to pay. The commenters argued that such fees

charged to a recipient by a third party pursuant to an agreement between the recipient and a third party should not be required to be disclosed.

Some industry commenters argued that the statute did not intend for third party fees and taxes to be included in the disclosure of the total amount that will be received by the designated recipient. For example, one industry commenter argued that the statute only intended to include in the calculation of the amount of currency to be received the elements specifically required to be disclosed under EFTA section 919(a)(2)(A)(ii) and (iii) (i.e., the amount of transfer fees and any other fees charged by the remittance transfer provider, and any exchange rate to be used by the remittance transfer provider for the remittance transfer). Another industry commenter argued that State laws that require a remittance transfer provider to disclose to a sender the total amount to be received by the designated recipient do not require disclosure of third party fees and taxes that may be imposed on the remittance transfer. Instead, the commenters argued, State laws only require the remittance transfer provider to disclose the amount of currency to be received after application of the exchange rate. Therefore, the commenters stated that fees or taxes set by a party other than the remittance transfer provider are not required to be included in the disclosure of the total amount received and, therefore, should not be required to be disclosed separately.

Overall, many industry commenters stated that the proposed disclosure requirements would cause financial institutions to withdraw from the market or restrict the locations to which wire transfers will be sent. The commenters also stated that the proposed requirements would increase costs to senders, and some argued that the proposed requirements would delay transactions while financial institutions determined the required information in order to make disclosures. Some industry commenters argued that the requirements put financial institutions at a competitive disadvantage compared to money transmitters, which, they argued, are typically

able to know the required disclosures due to their closed network structure. Further, they argued that the proposed requirements could deter foreign financial institutions from agreeing to process U.S.-originated remittance transfers.

Generally, industry commenters urged the Bureau to exempt financial institutions that provide remittance transfers through correspondent relationships from the requirement to disclose third party fees or require different disclosures for these types of transactions. Industry commenters and a Federal Reserve Bank commenter also suggested that the final rule should incorporate a good faith standard with respect to these fee and tax disclosures. Some industry commenters further argued that the Bureau should not require foreign taxes to be provided, regardless of whether a remittance transfer was sent through a correspondent relationship. Industry commenters alternatively suggested that the Bureau only require a disclosure that the amount received may be subject to foreign taxes. A Federal Reserve Bank commenter suggested that the Bureau should provide a safe harbor for the foreign tax disclosure for providers that disclosed current or historical information available to the provider through reasonable efforts.

Commenters also suggested that the Bureau assist industry with determining unknown fees and taxes, particularly to help ease the disclosure burden on small providers. One industry commenter believed the Bureau should require correspondent institutions to publish the fees and taxes that are charged. Industry and consumer group commenters suggested that the Bureau should maintain a resource that provides relevant foreign taxes.

As discussed in the introduction above, the Bureau recognizes the challenges for remittance transfer providers to determining fees and taxes imposed by third parties. However, the plain language of the statute requires disclosure of the amount of currency that will be received by the designated recipient. The Bureau believes this requires remittance transfer

providers to determine the costs specifically related to the remittance transfer that may reduce the amount received by the designated recipient. Congress specifically recognized that these determinations would be difficult with regard to open network transactions by financial institutions and tailored a specific accommodation to allow use of reasonably accurate estimates for an interim period until financial institutions can develop methods to determine exact disclosures, such as fees and taxes charged by third parties.

This disclosure provides consumer benefits by making senders aware of the impact of these fees and taxes, which is essential to fulfill the purpose of the statute. Providing a total to recipient that reflects the impact of third party fees and taxes, and separately disclosing those fees and taxes, will provide senders with a greater transparency regarding the cost of a remittance transfer. For many senders and recipients, disclosure of the amount of third party fees and taxes that may be deducted could be crucial to knowing whether the amount transferred will be sufficient to pay important household expenses and other bills. Senders also need to know the amount of such fees and taxes to determine whether to use the same provider for any future transfers. Without such information, it would be difficult for a sender to determine the costs of the transfer that would enable the sender to choose the most cost-effective method of sending remittance transfers. Moreover, as discussed below, the cost of third party taxes may vary depending on the types of institutions involved in the transmittal route, and disclosure of these taxes will assist senders comparing costs between providers. While the Bureau understands that tax information may not be readily available to a provider, the provider is in the best position to obtain the information to comply with the disclosure requirements. Because a provider will be engaged in sending remittance transfers to certain countries and, in some cases, will have

relationships with entities in those countries, the Bureau believes the provider itself is in the best position to determine foreign tax information.

Therefore, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to require in § 1005.31(b)(vi) of the final rule the disclosure of any fees and taxes imposed on the remittance transfer by a person other than the provider, using the terms “Other Fees” for fees and “Other Taxes” for taxes, or substantially similar terms.<sup>76</sup> As discussed above, fees and taxes must be disclosed separately from one another in order to show which costs are fixed and which costs are variable. See comment 31(b)(1)-1.i. As discussed above, the Bureau believes that the rounded exchange rate required to be disclosed under § 1005.31(b)(1)(iv) is not intended to constrain the number of decimal places involved in calculating other disclosures. Therefore, § 1005.31(b)(1)(vi) adds the clarification that the exchange rate used to calculate the fees and taxes in § 1005.31(b)(1)(vi) is the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. As discussed above, comment 31(b)(1)-3 provides examples to demonstrate the exchange rate that must be used to calculate the fees and taxes imposed on the remittance transfer by a person other than the provider.

As noted above, proposed comment 31(b)(1)-1.ii. distinguished between the fees and taxes imposed by the provider, discussed above in § 1005.31(b)(1)(ii), and the fees and taxes imposed by a person other than the provider. The proposed comment provided examples of each

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<sup>76</sup> Due to a scrivener’s error, § 205.31(b)(vi) in the proposed rule had stated that these fees and taxes must be disclosed using the term “Other Transfer Fees,” “Other Transfer Taxes,” or “Other Transfer Fees and Taxes,” or a substantially similar term (emphasis added). The model forms as proposed, however, used the term “Other Fees and Taxes.” The terms set forth in § 1005.31(b)(vi) are adopted without the word “transfer” in order to more concisely describe the fees and taxes required to be disclosed in § 1005.31(b)(vi). The terms used in the final rule conform to the language used in the model forms, which participants in consumer testing generally understood to mean fees and taxes charged by a person other than the provider.



of these types of fees and taxes. Proposed comment 31(b)(1)-1.ii. also clarified that the terms used to describe each of these types of fees and taxes must differentiate between such fees and taxes and provided an example to illustrate this differentiation.

Industry commenters requested clarification regarding the types of fees imposed on the remittance transfer by a person other than the provider. For example, an industry commenter and a Federal Reserve Bank commenter asked the Bureau to clarify that these fees and taxes do not include fees and taxes that banks and other parties charge one another for handling a remittance transfer, so long as the fees do not affect the amount of the transfer. Another industry commenter asked whether funds deducted from the amount received in a remittance transfer by a recipient institution exercising its rights of set-off would be required to be disclosed as a fee to a sender.

Comment 31(b)(1)-1.ii. of the final rule clarifies that the fees and taxes required to be disclosed include only those that are charged to the sender or designated recipient and are specifically related to the remittance transfer. The Bureau does not believe that any fee or tax is required to be disclosed solely because it is charged at the same time that a remittance transfer is sent, because such fees and taxes are not necessarily “imposed on the remittance transfer.” For example, an overdraft fee charged by a bank at the same time that a remittance transfer is sent or received in an account is not imposed on the remittance transfer. In order to further clarify what charges should be disclosed to senders, the comment in the final rule provides examples of the types of fees that are not required to be disclosed under this provision, in addition to the examples of the types of fees that should be included that were included in the May 2011 Proposed Rule.

Specifically, comment 31(b)(1)-1.ii. states that the fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) include all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any State taxes imposed on the remittance transfer. In contrast, the fees and taxes required to be disclosed by § 1005.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider. Fees and taxes imposed on the remittance transfer by a person other than the provider include only those fees and taxes that are charged to the sender or designated recipient and are specifically related to the remittance transfer. For example, a provider must disclose fees imposed on a remittance transfer by the receiving institution or agent at pick-up for receiving the transfer, fees imposed on a remittance transfer by intermediary institutions in connection with an international wire transfer, and taxes imposed on a remittance transfer by a foreign government.

However, the comment states that a provider need not disclose, for example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt, because these charges are not specifically related to the remittance transfer. Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not charged to the sender or designated recipient. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer need not be disclosed. The comment also clarifies that the terms used to describe the fees or taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi) must differentiate between such fees and taxes.

For example, the terms used to describe fees disclosed under § 1005.31(b)(1)(ii) and (b)(1)(vi) may not both be described solely as “Fees.”

Proposed comment 31(b)(1)(vi)-1 clarified how a provider must disclose fees and taxes in the currency in which funds will be received. Industry commenters expressed concern that a remittance transfer provider may not know the currency in which the funds will be received. As discussed above in comment 31(b)(1)(iv)-1, if a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender’s representations as to the currency in which funds will be received.

Comment 31(b)(1)(vi)-1 is adopted substantially as proposed, with an added clarification regarding reliance on a sender’s representation regarding the currency in which the funds will be received. The Bureau is also revising the comment to reflect the clarification that disclosures that require an exchange rate to be applied should use the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate.

Comment 31(b)(1)(vi)-1 states that § 1005.31(b)(1)(vi) requires the disclosure of fees and taxes in the currency in which the funds will be received by the designated recipient. A fee or tax described in § 1005.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider must calculate the fee or tax to be disclosed using the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. For example, an intermediary institution in an international wire transfer may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient’s account in Euros. In this case, the provider would disclose the fee to the sender

expressed in Euros, calculated using the exchange rate used by the provider for the remittance transfer.

The comment further states that for purposes of § 1005.31(b)(1)(v), (vi), and (vii), if a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider may provide the disclosures required in § 1005.31(b)(1)(v), (vi), and (vii) in U.S. dollars, even if the account is denominated in Mexican pesos and the funds are subsequently converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

The final rule also adds a new comment 31(b)(1)(vi)-2 to address situations where the information needed to determine the foreign taxes that apply to a transaction is not known to the provider and not publically available. Some industry commenters stated that foreign taxes may depend on variables other than the country to which the remittance transfer is sent, such as by the specific tax status of the sender and receiver, account type, or type of financial institution. The commenters stated that a sender may not be aware of the information needed to determine the tax obligation that applies to the transaction.

The Bureau believes that when these types of variables affect the foreign taxes that apply to the transaction, providers may have to rely on representations made by the sender. If the sender does not know the information, and the provider does not otherwise have specific knowledge of the information, the Bureau believes it is necessary to provide a reasonable mechanism by which the provider may disclose the foreign tax. The Bureau believes it is

appropriate in these instances to disclose the highest tax that could be imposed with respect to a particular variable, so the sender is not surprised that the amount received is reduced by more taxes than what is disclosed.

Comment 31(b)(1)(vi)-2 states that the amount of taxes imposed by a person other than the provider may depend on the tax status of the sender or recipient, the type of accounts or financial institutions involved in the transfer, or other variables. For example, the amount of tax may depend on whether the receiver is a resident of the country in which the funds are received or the type of account to which the funds are delivered. If a provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables, pursuant to § 1005.31(b)(1)(vi). If a sender does not know the information relating to the variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed for the remittance transfer with respect to any unknown variable.

The Bureau notes that if a provider does not independently have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider, the provider may rely on the sender's representations regarding these variables. For example, the rule does not impose on providers a duty to inquire about this information with a third party. The Bureau also notes that a provider may continue to rely on the sender's representations in any subsequent remittance transfers, unless the provider has specific knowledge that information relating to such variables has changed.

### 31(b)(1)(vii) Amount Received

Proposed § 205.31(b)(1)(vii) stated that a remittance transfer provider must disclose to the sender the amount that will be received by the designated recipient, in the currency in which the funds will be received. See EFTA section 919(a)(2)(A)(i). The proposed rule stated that the disclosures should be described using the term “Total to Recipient” or a substantially similar term. The proposed rule provided that the disclosure must reflect all charges that would affect the amount to be received.

For the reasons discussed above, industry commenters objected to the proposal because, they argued, costs that are required to be known to disclose the amount received, such as the exchange rate and third party fees and taxes, cannot be known at the time the pre-payment disclosure and receipt are required to be disclosed. As discussed above, an industry commenter argued that the statute only intended the amount of currency that will be received by the designated recipient to reflect the other elements that are required to be disclosed separately under EFTA section 919(a)(2)(A)(ii) and (iii). Other industry commenters argued that the disclosure should only reflect the exchange rate, fees, and taxes set by the remittance transfer provider itself, and not those set or charged by persons other than the provider. Some industry commenters believed the amount that will be received by the designated recipient should be subject to a good faith standard, should be permitted to be estimated, or should include a statement that the total amount is subject to change.

EFTA section 919(a)(2)(A)(i) requires a remittance transfer provider to disclose the amount received by the designated recipient using the values of the currency into which the funds will be exchanged. The Bureau interprets the amount to be received by the designated recipient as the amount net of all fees and taxes that will be paid for the transfer. An exchange

rate, if one is applied, is just one of the factors that could affect the actual amount received by the designated recipient. Providing a total amount to be received that does not take into account all cost elements would not be consistent with the statute's goal of providing disclosures of the total costs of a remittance transfer.

The Bureau is not persuaded that the amount to be received by the designated recipient should only reflect those elements that are separately required to be disclosed under the statute. Under the plain language of EFTA section 919(a)(2)(A)(i), the amount of funds that will be received by the designated recipient must be disclosed to the sender. The Bureau believes this amount must reflect all fees and taxes specifically related to the remittance transfer, regardless of the entity that charges them. Moreover, the Bureau believes that the exchange rate to be used to calculate the total to recipient is the exchange rate that is used for the remittance transfer, whether or not the remittance transfer provider itself sets the exchange rate or merely applies an exchange rate set by another entity to the transaction. Absent this approach, providers could disclose different amounts received depending only on whether the provider itself or a different institution applies the exchange rate. The Bureau believes such a result would be inconsistent with the statutory goal of providing the sender with the actual amount that will be received by the designated recipient.

Therefore, proposed § 205.31(b)(1)(vii) is adopted substantially as proposed in renumbered § 1005.31(b)(1)(vii), with an addition to clarify the appropriate exchange rate that must be used to calculate the amount received, discussed below. Comment 31(b)(1)(vii)-1 is also adopted substantially as proposed to clarify the charges that must be reflected in the amount received. The comment is amended to clarify that the disclosed amount received must be reduced by the amount of any fee or tax, whether the fee or tax is imposed on the remittance

transfer by the remittance transfer provider or by a person other than the remittance transfer provider. The comment clarifies that the fees and taxes that must be disclosed are those fees and taxes that are imposed on the remittance transfer. See comment 31(b)(1)-1-ii. Specifically, comment 31(b)(1)(vii)-1 states that the disclosed amount to be received by the designated recipient must reflect all charges imposed on the remittance transfer that affect the amount received, including the exchange rate and all fees and taxes imposed on the remittance transfer by the remittance transfer provider, the receiving institution, or any other party in the transmittal route of a remittance transfer. The disclosed amount received must be reduced by the amount of any fee or tax that is imposed on the remittance transfer by any person, even if that amount is imposed or itemized separately from the transaction amount.

Finally, § 1005.31(b)(1)(vii) revises proposed § 205.31(b)(1)(vii) to clarify the exchange rate that should be used in calculating the amount received. One industry commenter stated that using a rounded exchange rate may add some de minimis value to the amount received. For some currencies, this may result in a transaction amount being disclosed in a foreign currency for which no coins are available to complete the transaction. The commenter recommended a de minimis exemption for error resolution triggered based on rounding. As discussed above, the Bureau believes that the rounded exchange rate required to be disclosed under § 1005.31(b)(1)(iv) is not intended to constrain the number of decimal places involved in calculating other disclosures. Therefore, § 1005.31(b)(1)(vii) adds the clarification that the exchange rate used to calculate the amount received in § 1005.31(b)(1)(vii) is the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. As discussed above, comment 31(b)(1)-3



provides examples to demonstrate the exchange rate that must be used to calculate the amount received.

#### 31(b)(2) Receipt

Proposed § 205.31(b)(2) provided that a remittance transfer provider must disclose a written receipt to a sender when payment is made for the remittance transfer. As with the proposed pre-payment disclosure, the disclosures required on the receipt could be omitted if not applicable. The required disclosures are discussed below.

#### 31(b)(2)(i) Pre-Payment Disclosures on Receipt

Proposed § 205.31(b)(2)(i) provided that the same disclosures included in the pre-payment disclosure must be disclosed on the receipt, pursuant to EFTA section 919(a)(2)(B)(i)(I). As discussed above, the Bureau is requiring providers to disclose some information in the pre-payment disclosure, such as the transfer amount, that is not specifically required by EFTA section 919(a)(2)(A). The Bureau did not receive comment regarding the requirement to provide the same pre-payment disclosures on the receipt. Therefore, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to finalize that requirement in renumbered § 1005.31(b)(2)(i), as proposed.

#### 31(b)(2)(ii) Date Available

Proposed § 205.31(b)(2) also provided for the disclosure of additional elements on the receipt. EFTA section 919(a)(2)(B)(i)(II) requires the disclosure of the promised date of delivery to the designated recipient on a receipt. The Board stated its belief that the statute requires disclosure of the date the currency will be available to the designated recipient, not the date the funds are physically picked up by the designated recipient, because the recipient may not pick up

the funds for some period of time after the funds are available. Thus, proposed § 205.31(b)(2)(ii) stated that a remittance transfer provider must disclose the date of availability of funds to the designated recipient, using the term “Date Available” or a substantially similar term. Proposed comment 31(b)(2)-1 provided further guidance on this disclosure.

In the proposal, the Board recognized that in some instances, it may be difficult to determine the exact date on which a remittance transfer will be available to a designated recipient. For example, an international wire transfer may pass through several intermediary institutions prior to becoming available at the institution of a designated recipient, and the time it takes to pass through these intermediaries may be difficult to determine. As a result, the Board recognized that remittance transfer providers would likely disclose the latest date on which the funds would be available, even if funds are often available sooner. Thus, proposed § 205.31(b)(2)(ii) permitted a provider to include a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term “may be available sooner” or a substantially similar term. The Board had tested various terms in consumer testing for communicating the fact that funds may be available earlier than the date disclosed. Participants generally understood the meaning of the statement that funds “may be available sooner” better than other terms.

Consumer group commenters supported the disclosure of the date funds will be available. Many industry commenters argued, however, that it would be difficult or impossible to determine when funds would be made available to a recipient in an open network system, such as where transfers are made to an account at a financial institution with which the provider does not have a correspondent relationship. Industry commenters argued that even if the date of receipt by a recipient financial institution is known, there could be a delay in depositing the funds into a

recipient account due to delays at intermediary financial institutions or at the recipient institution. One industry trade association stated that infrastructure deficiencies in some countries may make it impossible to determine the actual date on which funds will be available.

An industry commenter supported the flexibility provided by the term “may be available sooner,” but stated that dates still may be unpredictable for reasons beyond a provider’s control. One industry trade association argued that in order to mitigate compliance risks, some remittance transfer providers will disclose a date well past a reasonable estimate of the date funds will be made available, which would render the disclosure meaningless.

Due to these factors, some industry commenters urged the Bureau to permit an estimated date of availability, including an estimate of the date that funds may be available to a recipient institution, and not the recipient. One commenter suggested that the disclosure could state that a transfer may be delayed by intermediaries or other factors beyond the provider’s control.

As stated in the proposal, EFTA section 919(a)(2)(B)(i)(II) requires disclosure of a single, promised date of delivery of the funds. Neither EFTA section 919(a)(4) nor EFTA section 919(c) permit a remittance transfer provider to provide an estimate of this promised date, despite the fact that the statute permits estimates in other circumstances. Moreover, because the statute requires a remittance transfer provider to provide a disclosure of the promised date of delivery to the designated recipient, the Bureau believes that permitting a provider to disclose the date that funds will be made available to the recipient institution would not comply with the statute.

The Bureau believes that by permitting the provider to disclose a date by which funds will certainly be delivered, but also stating that funds “may be available sooner,” a provider can comply with the disclosure requirement. The Bureau recognizes that providers may overestimate

the disclosed date on which funds will be available to mitigate compliance risks. However, the Bureau believes that competitive pressures will give providers an incentive to provide as accurate a date as possible.

Therefore, § 1005.31(b)(2)(ii) is finalized substantially as proposed.

Section 1005.31(b)(2)(ii), however, clarifies in the rule, rather than the commentary, as proposed, that a provider must disclose the date in the foreign country on which funds will be available to the designated recipient. This clarification is included to account for instances where time zone differences result in a date in the United States being different from the date in the country of the designated recipient.

The final rule also adopts comment 31(b)(2)-1 substantially as proposed. The comment clarifies that a remittance transfer provider may not provide a range of dates that the remittance transfer may be available, nor an estimate of the date on which funds will be available. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. For example, if funds may be available on January 3, but are not certain to be available until January 10, then a provider complies with § 1005.31(b)(2)(ii) if it discloses January 10 as the date funds will be available. However, a remittance transfer provider may also disclose that funds “may be available sooner” or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed. For example, the provider may disclose “January 10 (may be available sooner).”

#### 31(b)(2)(iii) Recipient

Proposed § 205.31(b)(2)(iii) provided that a remittance transfer provider must disclose the name and, if provided by the sender, the telephone number and/or address of the designated

recipient. The proposed rule stated that the remittance transfer provider must describe the disclosure using the term “Recipient” or a substantially similar term. The Bureau did not receive comment on proposed § 205.31(b)(2)(iii), which is adopted as proposed in renumbered § 1005.31(b)(2)(iii).

#### 31(b)(2)(iv) Rights of Sender

As discussed in more detail below regarding §§ 1005.33 and 1005.34, EFTA section 919(d) provides the sender with substantive error resolution and cancellation rights. EFTA section 919(a)(2)(B)(ii)(I) requires a remittance transfer provider to provide a statement containing information about the rights of the sender regarding the resolution of errors on the receipt or combined disclosure. EFTA section 919(d)(3) requires the Bureau to issue final rules regarding appropriate cancellation and refund policies for senders. The Board stated its belief that providing a lengthy disclosure to the sender each time the sender makes a remittance transfer could be ineffective at conveying the most important information that a sender would need to resolve an error or cancel a transaction. However, the Board also stated that a sender should have access to a complete description of the sender’s error resolution and cancellation rights in order to effectively exercise those rights. As a result, the Board proposed § 205.31(b)(2)(iv) in conjunction with a long form error resolution notice in proposed § 205.31(b)(4). The two disclosures were intended to balance the interest in providing a sender a concise disclosure with the sender’s ability to obtain a full explanation of those rights.

Proposed § 205.31(b)(2)(iv) stated that a remittance transfer provider must disclose to a sender an abbreviated statement about the sender’s error resolution and cancellation rights using language set forth in Model Form A-37 of Appendix A or substantially similar language. The proposed statement included a brief disclosure of the sender’s error resolution and cancellation

rights, as well as a notification that a sender may contact the remittance transfer provider for a written explanation of these rights.

Consumer group commenters argued that the abbreviated disclosure in proposed § 205.31(b)(2)(iv) should provide more comprehensive information to a sender. These commenters also suggested that the abbreviated disclosure would not comply with the statute. One of the consumer group commenters stated that all of the senders' rights should be disclosed on the receipt, instead of a shorter disclosure, because senders of remittance transfers may be less educated or less likely to have access to phone and internet compared to other consumers.

The Bureau agrees that education of senders about the consumer protections created by EFTA section 919 is an important statutory and policy goal. However, the Bureau believes EFTA section 919(a)(2)(B)(ii)(I) does not require a remittance transfer provider to enumerate a sender's error resolution rights. Rather, the statute requires the provider to disclose information about the rights of the sender under EFTA section 919 regarding the resolution of errors, and the Bureau believes the proposed language satisfies this requirement. Moreover, consumer testing participants understood and responded positively to the concise, abbreviated disclosure and favorably compared the statement against current error resolution disclosures with which they had experience and which they noted could be long and in "fine print." Thus, the Bureau is finalizing the abbreviated disclosure requirement in renumbered § 1005.31(b)(2)(iv). See also § 1005.31(b)(4), below. The Bureau, however, is amending the language in the abbreviated statement about senders' error resolution rights on Model Form A-37 to include a more explicit statement informing senders that they have such rights. The Bureau is also adding a requirement in § 1005.31(b)(2)(iv) to account for the alternative cancellation requirements in § 1005.36(c) for remittance transfers scheduled by the sender at least three business days before the date of the

transfer, as discussed below. Section 1005.31(b)(2)(iv), therefore, also provides that for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the statement about the rights of the sender regarding cancellation must instead reflect the requirements of § 1005.36(c).

#### 31(b)(2)(v) Contact Information of the Provider

EFTA section 919(a)(2)(B)(ii)(II) generally requires that the remittance transfer provider disclose appropriate contact information for the remittance transfer provider, its State regulator, and the Bureau. The Board stated that appropriate contact information includes the name, telephone number, and website of these entities, so that senders would have multiple options for addressing any issues that may arise with respect to a remittance transfer provider. Proposed § 205.31(b)(2)(v) provided for the disclosure of the name, telephone number, and website of the remittance transfer provider. The Bureau did not receive comment on proposed § 205.31(b)(2)(v), and the Bureau is finalizing it substantially as proposed in renumbered § 1005.31(b)(2)(v). The final rule adds language to allow providers to disclose more than one telephone number to account for circumstances, for example, where a provider maintains a separate TTY/TDD telephone number.

#### 31(b)(2)(vi) Agency Contact Information

Proposed § 205.31(b)(2)(vi) provided for disclosure of a statement that the sender can contact the State agency that regulates the remittance transfer provider and the Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A-37 of Appendix A or substantially similar language. The proposed statement included contact information for these agencies, including the toll-free telephone number of the Bureau established under section 1013 of the Dodd-Frank Act.

The Board requested comment on several aspects of proposed § 205.31(b)(2)(vi). First, the Board solicited comment on whether and how a remittance transfer provider should be required to disclose information regarding a State agency that regulates the provider for remittance transfers conducted through a toll-free telephone number or online and, if so, what would be the appropriate State agency to disclose to a sender. Some commenters believed the disclosure of Bureau contact information would be sufficient. Several industry commenters argued that the Bureau should not require a remittance transfer provider to disclose the State agency that regulates the remittance transfer. These commenters believed the requirement would create operational hurdles for providers that operate in multiple states and would provide negligible consumer protection benefit.

One money transmitter commenter stated that it would be difficult to tailor State regulator disclosures to each individual agent, and that managing State-specific receipts and forms would be costly. This commenter stated that agents that provide services in multiple states often distribute forms to their locations as part of their chain of distribution. Requiring these agents to manage State-specific forms, the commenter argued, would be a significant change in distribution processes and could create liability risk for the remittance transfer provider. This commenter believed remittance transfer providers would thus create a multi-State disclosure form, which would provide senders with superfluous information.

Another money transmitter commenter noted that many states already have guidance regarding the prominence and placement of contact information on a remittance transfer provider's website and in storefront locations. The commenter stated that many states prefer senders to contact the remittance transfer provider before contacting a State agency for questions and complaints. The commenter believed that the Bureau should instead require a statement that



would refer to other sources, such as a website or toll-free number, to obtain contact information for the appropriate State agency, and that the Bureau should maintain contact information for State agencies, so that senders could contact the Bureau for appropriate State agency information.

EFTA section 919(a)(2)(B)(ii)(II) requires a remittance transfer provider to provide appropriate contact information for the State agency that regulates the remittance transfer provider. The Bureau does not believe that providing contact information for an alternative source that maintains a list of State agencies would satisfy the statutory requirement. The Bureau recognizes that remittance transfer providers that have locations in multiple states, or that provide remittance transfers online or by telephone, will have to determine the appropriate State agency to disclose on a receipt. The Bureau believes that due to segregation and other formatting requirements, discussed below, a remittance transfer provider may not disclose contact information for agencies in other states. Therefore, the final rule maintains the requirement to disclose information regarding a State agency that regulates the remittance transfer provider.

However, several changes are made in the final rule to clarify which State agency should be disclosed, because a remittance transfer provider may be regulated by more than one agency in a particular State. The Bureau believes that the statute is meant to provide senders a resource for addressing problems regarding a particular remittance transfer and that the State agency that licenses or charters the remittance transfer provider is the appropriate State agency to provide such assistance to senders. Thus, in § 1005.31(b)(2)(vi), the final rule adds the clarification that the disclosure must disclose the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer.

Second, the Board requested comment on whether a remittance transfer provider should be required to disclose the contact information for the Bureau, including the toll-free telephone number, in cases where the Bureau is not the primary Federal regulator for consumer complaints against the remittance transfer provider. The Board also requested comment on whether it would be appropriate to instead require the contact information of the primary Federal regulator of the remittance transfer provider for consumer complaints.

Consumer group commenters and an industry commenter stated that the Bureau's contact information should be included on the receipt. These commenters stated that listing the Bureau's contact information, rather than the primary Federal regulator, would ensure that consumer complaints about remittance transfer provider were centralized in one Federal agency. The commenter suggested that even if the Bureau does not directly regulate a remittance transfer provider, the Bureau could track complaints and launch an investigation if a pattern and practice of non-compliance emerges.

The Bureau agrees that it is appropriate to provide the Bureau's contact information, even in instances where the Bureau is not the provider's primary Federal regulator, as required by EFTA section 919(a)(2)(B)(ii)(II)(bb). The Bureau believes that providing a single Federal agency as the appropriate contact for senders will assist in tracking complaints. The Bureau is not requiring a separate disclosure of a primary Federal regulator in the final rule, because the disclosure of multiple Federal agencies could confuse senders. Instead, the Bureau believes consumers are better served by contacting the Bureau, which can direct senders to the appropriate Federal agency as necessary. Therefore, § 1005.31(b)(2)(vi) in the final rule requires a remittance transfer provider to disclose the contact information for the Bureau, including the toll-free telephone number.

Finally, the Board requested comment on whether financial institutions that are primarily regulated by Federal banking agencies, such as national banks, should be required to disclose State regulatory agency information. The Board requested comment regarding the circumstances in which it might be appropriate to disclose such a State regulatory agency.

Some industry commenters stated that the rule should only require Federally-chartered depository institutions to provide contact information for their primary Federal regulator. One industry commenter argued that providing information regarding State regulators would be confusing and ineffective, since its primary Federal regulator already has an established procedure for addressing errors.

The Bureau believes the final rule sufficiently accounts for circumstances in which an institution may not be licensed or chartered by a State agency. Under the final rule, the provider must disclose the State agency that licenses or charters the remittance transfer provider. However, disclosures must only be disclosed as applicable. Consequently, if no State agency licenses or charters a particular provider, then no State agency is required to be disclosed.

The Bureau is also adding several other changes to § 1005.31(b)(2)(vi) in the final rule for clarity. The final rule adds language to allow providers to disclose more than one telephone number for the State agency that licenses or charters the provider and the Bureau to account for circumstances, for example, where these agencies maintain separate TTY/TDD telephone numbers. The provision also adds the requirement that a remittance transfer provider must disclose the name of both the State agency that licenses or charters the remittance transfer provider and the Bureau, in addition to the telephone number(s) and website of each agency.

Section 1005.31(b)(2)(vi) of the final rule states that a remittance transfer must provide 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. The statement must use the language set forth in Model Form A-37 of Appendix A to this part or substantially similar language. The disclosure also 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.

Comment 31(b)(2)-2 has been added to the final rule to clarify that a remittance transfer provider must only disclose information about a State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer, as applicable. For example, if a financial institution is solely regulated by a Federal agency, and not licensed or chartered by a State agency, then the institution need not disclose information about a State agency and would solely disclose information about the Bureau, whether or not the Bureau is the provider's primary Federal regulator.

The final rule also adds comment 31(b)(2)-3 to clarify that a remittance transfer provider must only disclose information about one State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer, even if other State agencies also regulate the remittance transfer provider. For example, a provider may disclose information about the State agency which granted its license. If a provider is licensed in multiple states, and the State agency that licenses the provider with respect to the remittance transfer is determined by a sender's location, a provider may make the determination as to the State in which the sender is located based on information that is provided by the sender and on any records associated with the sender. For example, if the State agency that licenses the provider with respect to an online

remittance transfer is determined by a sender's location, a provider could rely on the sender's statement regarding the State in which the sender is located and disclose the State agency that licenses the provider in that State. A State-chartered bank must disclose information about the State agency that granted its charter, regardless of the location of the sender.

### 31(b)(3) Combined Disclosure

EFTA section 919(a)(5)(C) grants the Bureau authority to permit a remittance transfer provider to provide to a sender a single written disclosure instead of the pre-payment disclosure and receipt, if the information disclosed is accurate at the time at which payment is made. The combined disclosure must include the content provided in the pre-payment disclosure and the receipt under EFTA sections 919(a)(2)(A) and (B). As discussed above, the Bureau is also requiring providers to disclose some information in the pre-payment disclosure and receipt, such as the transfer amount, that is not specifically required by EFTA section 919(a)(2)(A) or (B). The Board determined through consumer testing that participants understood the information provided on the combined disclosure, and about half of the participants stated that they would prefer to receive the single, combined disclosure rather than a pre-payment disclosure and a separate receipt. Therefore, proposed § 205.31(b)(3) generally permitted a remittance transfer provider to provide the disclosures described in proposed § 205.31(b)(1) and (2) in a single disclosure prior to payment, as applicable, as an alternative to providing the two disclosures described in proposed § 205.31(b)(1) and (2).

Consumer group commenters urged the Bureau not to permit combined disclosures. One consumer group commenter stated that requiring both a pre-payment disclosure and a receipt would permit consumers to audit the transaction and ensure that providers do not impose hidden fees. This commenter noted that the combined disclosure would not likely reduce compliance

burdens for providers because State laws may already mandate a post-transaction receipt.

Another consumer group commenter argued that two disclosures were necessary to perform two different legal functions. This commenter stated that a pre-transaction disclosure serves as an offer that provides terms of written contract, and a receipt indicates that the contract has been agreed upon. This commenter believed a combined disclosure would be too confusing to senders and that the proposed rule did not address how the combined disclosure will ensure information is accurate. Some industry commenters argued that the Bureau should permit the combined disclosure, but maintained that it should be permitted to be provided after payment is made. See also § 1005.31(e), discussed below.

Some consumer testing participants stated that they would prefer to receive a pre-payment disclosure and a receipt because they were concerned that the combined disclosure would not provide proof of payment for the remittance transfer. Therefore, in the proposal, the Board solicited comment on whether proof of payment should also be required for remittance transfer providers using the combined disclosure and, if so, solicited comment on appropriate methods of demonstrating proof of payment for the combined disclosure. Consumer group commenters contended that methods for providing proof of payment could not be adequately set forth in the final rule. An industry commenter argued against requiring proof of payment for the combined disclosure, based on the challenges posed by the required timing of combined disclosures. Another industry commenter maintained that senders were satisfied with the existing proof of payment provided to them.

The Bureau believes a combined disclosure has benefits. Based on the Board's consumer testing, the Bureau believes that senders will understand the combined disclosures provided to them and that some senders will prefer to receive disclosures in a combined format. As

discussed with respect to § 1005.31(f), below, the provider must ensure that the combined disclosure is accurate when payment is made. Moreover, the Bureau believes that the combined disclosure could reduce the compliance burden for some providers because the provider would only be required to provide one disclosure, rather than two, with mandated content in a specified format. Therefore, the Bureau believes it is appropriate to permit this alternative disclosure.

However, the Bureau also believes that senders need to be able to confirm that they have completed the transaction. A proof of payment enables senders to demonstrate that the combined disclosure they received was part of a completed transaction. A proof of payment would also help remittance transfer providers determine which transfers have actually been completed, so that a sender cannot assert error resolution rights based on a combined disclosure, where a sender has not made payment for the transfer. Thus, the Bureau is adding a proof of payment requirement to the final rule.

Accordingly, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to finalize the combined disclosure requirement. Section 1005.31(b)(3) states that as an alternative to providing the disclosures described in § 1005.31(b)(1) and (2), a remittance transfer provider may provide the disclosures described in § 1005.31(b)(2), as applicable, in a single disclosure pursuant to the timing requirements of § 1005.31(e)(1). 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. The final rule also adds new comment 31(b)(3)-1, which clarifies that the combined disclosure must be provided to the sender when the sender requests the

remittance transfer, but prior to payment for the transfer, pursuant to § 1005.31(e)(1), and the proof of payment must be provided when payment is made for the remittance transfer. The comment also clarifies that the proof of payment for the transaction may be provided on the same piece of paper as the combined disclosure or on a separate piece of paper. For example, a provider may feed a combined disclosure through a computer printer when payment is made to add the date and time of the transaction, a confirmation code, and an indication that the transfer was paid in full. A provider may also provide this additional information to a sender on a separate piece of paper when payment is made.

The Bureau notes that the use of the term “proof of payment” does not suggest or establish an evidentiary standard. The requirement to provide a sender with proof of payment is only intended to convey to a sender that payment has been received. To this end, new comment 31(b)(3)-1 also clarifies that a remittance transfer provider does not comply with the requirements of § 1005.31(b)(3) by providing a combined disclosure with no further indication that payment has been received.

#### 31(b)(4) Long Form Error Resolution and Cancellation Notice

Proposed § 205.31(b)(4) stated that a remittance transfer provider must provide a notice to the sender describing the sender’s error resolution and cancellation rights under proposed §§ 205.33 and 205.34 upon the sender’s request. As discussed above, consumer group commenters argued that comprehensive error resolution and cancellation rights should be stated on the receipt or combined disclosure in lieu of an abbreviated disclosure, and not only upon request by a sender. The Bureau is retaining the abbreviated disclosure in the final rule. However, the Bureau also believes that a sender must have access to a complete description of the sender’s error resolution and cancellation rights.



The requirement to provide a long form error resolution and cancellation notice is adopted substantially as proposed in renumbered § 1005.31(b)(4). The final rule adds the requirement that the notice must be provided promptly to the sender. The Bureau believes that adding a timing requirement to the provision will ensure that providers do not delay in providing the notice to a sender, and the requirement to provide notices promptly is consistent with other provisions in Regulation E. See, e.g., § 1005.11(d)(1). Therefore, § 1005.31(b)(4) states that, upon the sender's request, a remittance transfer provider must promptly provide to the sender a notice describing the sender's error resolution and cancellation rights, using language set forth in Model Form A-36 of Appendix A to this part or substantially similar language. As discussed above with respect to § 1005.31(b)(2)(iv), the Bureau is adding a requirement in § 1005.31(b)(4) to account for the alternative cancellation requirements in § 1005.36(c) for remittance transfers scheduled by the sender at least three business days before the date of the transfer, as discussed below. Therefore, § 1005.31(b)(4) also provides that for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a description of the rights of the sender regarding cancellation must instead reflect the requirements of § 1005.36(c).

### **31(c) Specific Format Requirements**

Proposed § 205.31(c) set forth specific format requirements for the written and electronic disclosures required by this section. Proposed § 205.31(c)(1) and (2) contained grouping and proximity requirements for certain disclosures required under proposed § 205.31. Proposed § 205.31(c)(3) set forth prominence and size requirements for disclosures required by subpart B. Proposed § 205.31(c)(4) contained segregation requirements for disclosures provided under subpart B, with certain specified exceptions.

In the proposal, the Board recognized that the specific formatting requirements set forth in proposed § 205.31(c) were more prescriptive than other disclosures required under Regulation E. The Board requested comment on whether certain requirements in proposed § 205.31(c) could be less prescriptive, while still ensuring that senders are provided with clear and conspicuous disclosures. The Board also solicited comment on how the formatting requirements in proposed § 205.31 could be applied to transactions conducted via mobile application or text message.

The Bureau received comments regarding each of the proposed format requirements, which are discussed in turn below. Additionally, one industry commenter suggested that the formatting requirements in the final rule should accommodate State law disclosures. The Bureau believes it is appropriate to establish formatting requirements tailored to the elements required to be disclosed under the statute. Providers can separately comply with each State's formatting requirements, to the extent that they meet or exceed the requirements set forth in the final rule. The Bureau believes that the proposed formatting requirements will ensure that disclosures are clear and conspicuous as required under EFTA section 919(a)(3)(A) and will thereby help senders understand the costs of remittance transactions. As discussed in the proposal, the formatting requirements demonstrate to senders the mathematical relationship between one line item and another, in part by presenting the required information in a logical sequence. Therefore, the Bureau is generally adopting the formatting requirements as proposed.

Commenters also raised concerns regarding the proposed formatting requirements as applied to disclosures provided via mobile application or text message. Industry commenters argued that prescriptive formatting requirements conducive to paper disclosures may not easily apply to new methods of conducting remittance transfers, and that the proposed rule could make

compliance difficult as new technologies arise. These commenters urged the Bureau to provide flexibility for formatting requirements for disclosures provided via mobile application or text message. These commenters noted that formatting may be constrained by data and character limits, and that a remittance transfer provider does not necessarily control formatting when disclosures are sent through these methods.

Industry commenters also noted that senders using mobile applications or text messages could incur additional costs due to the formatting requirements. For example, additional data charges may apply for disclosures provided via mobile application or text message to accommodate formatting requirements. These charges could make senders reluctant to make transfers via mobile application or text message and, therefore, create a disincentive for providers to make remittance transfers available through these alternative methods. They argued that the provider should have the flexibility to provide disclosures using various methods – such as text message, mobile application, email, internet, or mail – as long as the sender is capable of receiving the disclosures.

As discussed above in the supplementary information to § 1005.31(a)(5), remittance transfer providers can provide oral pre-payment disclosures for transactions conducted by mobile application or text message. The Bureau does not believe senders would be less protected by receiving disclosures via mobile application or text message than if they received oral disclosures, even if the mobile applications and text messages are not subject to standard formatting requirements.

Therefore, the Bureau is generally not requiring in the final rule that pre-payment disclosures provided via mobile application or text message comply with the grouping, proximity, font size, and segregation requirements of the final rule. Though these disclosures are

not subject to these formatting requirements in the final rule, the Bureau expects that providers will provide mobile application or text message disclosures in a logical sequence to demonstrate to senders the mathematical relationship between one line item and another in order to disclose the information clearly and conspicuously. Moreover, pre-payment disclosures provided via mobile application or text message must be provided in equal prominence to each other, as required in § 1005.31(c)(3), discussed below.

### 31(c)(1) Grouping

Proposed § 205.31(c)(1) provided that the information about the transfer amount, fees and taxes imposed by the provider, and total amount of transaction must be grouped together. The purpose of this grouping requirement was to make clear to the sender that the total amount charged is comprised of the transfer amount plus any transfer fees and taxes. Proposed § 205.31(c)(1) also provided that the information about the transfer amount in the currency to be made available to the designated recipient, fees and taxes imposed by a person other than the provider, and amount received by the designated recipient must be grouped together. The purpose of this grouping requirement was to make clear to the sender how the total amount to be transferred to the designated recipient, in the currency to be made available to the designated recipient, would be reduced by fees or taxes charged by a person other than the remittance transfer provider.

The Bureau did not receive comments on the proposed grouping requirements beyond the general comments about the proposed formatting requirements, discussed above. Thus, the Bureau is adopting the proposed requirement substantially as proposed in renumbered § 1005.31(c)(1), with revisions to address the applicability of the grouping requirements to mobile applications and text messages. Section 1005.31(c)(1) states that the information

required by § 1005.31(b)(1)(i), (ii), and (iii) generally must be grouped together. The information required by § 1005.31(b)(1)(v), (vi), and (vii) generally must be grouped together. Disclosures provided via mobile application or text message, to the extent permitted by § 1005.31(a)(5), need not be grouped together.

Comment 31(c)(1)-1 is also adopted substantially as proposed. The comment clarifies that information is grouped together for purposes of subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total amount of the transaction, and the amount that will be received by the designated recipient. Proposed Model Forms A-30 through A-35 in Appendix A, discussed in more detail below, illustrate how information may be grouped to comply with the rule. The proposed comment also clarifies that a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation.

#### 31(c)(2) Proximity

Proposed § 205.31(c)(2) provided that the exchange rate must be disclosed in close proximity to the other disclosures on the pre-payment disclosure. The Board stated in the May 2011 Proposed Rule that disclosing the exchange rate in close proximity to both the calculations that demonstrate the total transaction amount, as well as the total amount the recipient would receive, would help a sender understand the effect of the exchange rate on the transaction. Proposed § 205.31(c)(2) also provided that error resolution and cancellation disclosures must be disclosed in close proximity to the other disclosures on the receipt. The Board determined in consumer testing that providing a brief statement regarding error resolution and cancellation rights located near the other disclosures effectively communicated these rights to a sender.

Therefore, the Board provided that the error resolution and cancellation disclosures should be closely proximate to the other disclosures on the receipt to prevent such disclosures from being overlooked by a sender.

The Bureau did not receive comment on the proposed proximity requirements beyond the general comments addressing the proposed formatting requirements discussed above. Thus, the Bureau is adopting the proposed requirement substantially as proposed in renumbered § 1005.31(c)(2), with revisions to address the applicability of the proximity requirements to mobile applications and text messages. Section 1005.31(c)(2) states that the exchange rate disclosure required by § 1005.31(b)(1)(iv) generally must be disclosed in close proximity to the other information required by § 1005.31(b)(1). The abbreviated statement about the sender's error resolution and cancellation rights required by § 1005.31(b)(2)(iv) generally must be disclosed in close proximity to the other information required by § 1005.31(b)(2). Disclosures provided orally or via mobile application or text message, to the extent permitted by § 1005.31(a)(5), need not comply with the proximity requirements of § 1005.31(c)(2).

#### 31(c)(3) Prominence and Size

Proposed § 205.31(c)(3) set forth the requirements regarding the prominence and size of the disclosures required under subpart B. The proposed rule provided that written and electronic disclosures required by subpart B must be made in a minimum eight-point font. The Board solicited comment on whether a minimum font size should be required and, if so, whether an eight-point font size is appropriate.

One industry commenter supported the eight-point font requirement. However, other industry commenters urged the Bureau to eliminate the eight-point font requirement. These commenters argued that the font requirement would add unnecessary compliance costs that did

not have a corresponding consumer benefit. Industry commenters argued that the font requirement may not create the desired consistency in disclosures, because, for example, fonts may display differently on different screens and printers. Rather, these commenters believed the Bureau should only require that the disclosures be subject to either a clear and conspicuous or clear and readily understandable standard.

The Bureau believes that disclosures should be disclosed in at least an eight-point font, as proposed. As discussed in the proposal, the disclosures that the Board developed for consumer testing used eight-point font, consistent with the font size typically used in register receipts. Participants in the Board's consumer testing generally found that the disclosures were readable, and they were able to locate the different disclosure elements during testing. The Bureau agrees with the Board that disclosures provided in a smaller font could diminish the readability and noticeability of the disclosures. Therefore, the eight-point font requirement is generally retained in the final rule. However, given the particular concerns raised above with respect to mobile disclosures, the final rule does not apply the font requirement to disclosures made by mobile application or text message, to the extent permitted by § 1005.31(a)(5).

Proposed § 205.31(c)(3) further provided that written disclosures required by subpart B must be on the front of the page on which the disclosure is printed. The proposed paragraph also provided that each of the written and electronic disclosures required under proposed § 205.31(b) must be in equal prominence to each other. One industry commenter asked the Bureau to clarify how written and electronic disclosures should be disclosed in equal prominence to each other. As discussed in the proposal, disclosures that must be equally prominent to each other should be displayed in the same font and type size.

The Bureau is adopting the prominence and size requirement substantially as proposed in renumbered § 1005.31(c)(3), with revisions to address the applicability of the font size requirement to mobile applications and text messages and revisions to better clarify that only disclosures provided in writing or electronically must be provided in equal prominence to each other and in eight-point font. Section 1005.31(c)(3) states that written disclosures required by subpart B must be provided on the front of the page on which the disclosure is printed. Disclosures required by subpart B that are provided in writing or electronically must be in a minimum eight-point font, except for disclosures provided via mobile application or text message to the extent permitted by § 1005.31(a)(5). Disclosures required by § 1005.31(b) that are provided in writing or electronically must be in equal prominence to each other.

#### 31(c)(4) Segregation

Proposed § 205.31(c)(4) provided that written and electronic disclosures required by subpart B must be segregated from everything else and contain only information that is directly related to the disclosures required under subpart B. Proposed comment 31(c)(4)-1 clarified how a remittance transfer provider could segregate disclosures. Proposed comment 31(c)(4)-2 identified information that would be considered directly related to the required disclosures, for purposes of determining what information must be segregated from the required disclosures.

The Board proposed the segregation of required disclosures from other information to avoid overloading the sender with information that could distract from the required disclosures. In permitting directly related information to be included with the required disclosures, the Board recognized that certain information not required by the statute or regulation could be integral to the transaction. The Board stated that remittance transfer providers should be able to communicate this information, such as the confirmation code that a designated recipient must



provide in order to receive the funds, to a sender. The Board requested comment on the proposed segregation requirement and whether additional information should be permitted to be included with the required segregated disclosures.

Industry commenters requested further guidance on the segregation requirement, including clarification regarding how disclosures presented on a computer screen could be segregated, and whether disclosures would be considered segregated in a variety of mailing scenarios, including when disclosures are mailed on or with a periodic statement. The Bureau believes proposed comment 31(c)(4)-1 provides sufficient guidance to enable providers to determine whether the disclosures are segregated in a variety of scenarios. For example, the comment requires segregated disclosures to be set off from other information, such as disclosures required by states, but does not require the information to be displayed on a separate sheet of paper. The comment also explains that disclosures may be set off from other information on a notice by outlining them in a box or series of boxes, with bold print dividing lines or a different color background, or by using other means. A provider could apply this guidance to develop, for example, segregated disclosures set off in a box on a periodic statement or set off with a different color background on a computer screen. Therefore, the Bureau is finalizing comment 31(c)(4)-1 substantially as proposed, but adds another example for clarity.

Industry commenters also suggested that certain additional information should be deemed “directly related” to the required disclosures, such that it would not have to be segregated from the required disclosures. Suggested additions included information regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before the funds are returned to the sender, and a statement that a provider makes money from foreign currency exchange. The Bureau agrees that this information is directly related to the required disclosures

and need not be segregated from them. Therefore, the Bureau is adding these to the list of “directly related” items in comment 31(c)(4)-2.

The Bureau is adopting the segregation requirement substantially as proposed in renumbered § 1005.31(c)(4), with revisions to address the applicability of the requirement to mobile applications and text messages and revisions to better clarify that only disclosures provided in writing or electronically must be segregated. Section 1005.31(c)(4) states that except for disclosures provided via mobile application or text message, to the extent permitted by § 1005.31(a)(5), disclosures required by subpart B that are provided in writing or electronically must be segregated from everything else and must contain only information that is directly related to the disclosures required under subpart B. Comment 31(c)(4)-1 of the final rule clarifies that disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on a notice by outlining them in a box or series of boxes, with bold print dividing lines or a different color background, or by using other means.

Comment 31(c)(4)-2 in the final rule clarifies that, for purposes of § 1005.31(c)(4), the following is directly related information: (i) the date and time of the transaction; (ii) the sender’s name and contact information; (iii) the location at which the designated recipient may pick up the funds; (iv) the confirmation or other identification code; (v) a company name and logo; (vi) an indication that a disclosure is or is not a receipt or other indicia of proof of payment; (vii) a designated area for signatures or initials; (viii) a statement that funds may be available sooner, as permitted by § 1005.31(b)(2)(ii); (ix) instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and (x) a statement that the provider makes money from foreign currency exchange.

### **31(d) Estimates**

Proposed § 205.31(d) provided that estimated disclosures may be provided to the extent permitted by proposed § 205.32. See proposed § 205.32, adopted as § 1005.32, below. The proposed rule provided that such disclosures must be described as estimates, using the term “Estimated,” or a substantially similar term, in close proximity to the estimated term or terms described. As discussed in the proposal, consumer testing participants generally understood that where the term “estimated” was used in close proximity to the estimated term or terms, the actual amount could vary (for example, the amount of currency to be received could be higher or lower than the amount disclosed). Proposed comment 31(d)-1 provided examples of terms that may be used to indicate that a disclosed amount is estimated. For instance, a remittance transfer provider could describe an estimated disclosure as “Estimated Transfer Amount,” “Other Estimated Fees and Taxes,” or “Total to Recipient (Est.)” A member of Congress and consumer group commenters agreed that the Bureau should require disclosures to be labeled as estimates when estimates are used. Therefore, proposed § 205.31(d) and proposed comment 31(d)-1 are adopted substantially as proposed in renumbered § 1005.31(d) and comment 31(d)-1.

### **31(e) Timing**

Proposed § 205.31(e) set forth the timing requirements for the disclosures required by proposed § 205.31.

#### **31(e)(1) Timing of Pre-Payment and Combined Disclosures**

Proposed § 205.31(e)(1) provided that a pre-payment disclosure required by § 205.31(b)(1) or a combined disclosure provided under § 205.31(b)(3) must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the remittance transfer.

Consumer group commenters strongly supported requiring these disclosures to be provided before payment, stating that providing pre-payment disclosures was a centerpiece of the statute. One consumer group commenter stated that pre-payment disclosures were necessary to facilitate shopping.

Several industry commenters, however, opposed the requirement to provide disclosures before payment. One industry trade association commenter argued that the disclosure would provide negligible benefits, citing the fact that some participants in the Board's consumer testing stated that they did not want a disclosure prior to payment. One industry commenter suggested that the pre-payment disclosures would confuse or irritate customers who would not understand why disclosure was being provided at that time. Another industry commenter stated that the pre-payment disclosures created needless compliance costs, which would be passed on to senders. As discussed above, some industry commenters urged that if pre-payment disclosures were required, that they be permitted to be disclosed orally or on a screen, even when the transaction is conducted in person, to reduce compliance costs and delays for the sender.

A few industry commenters argued that the combined disclosure should be permitted to be provided after payment is made. One industry commenter noted that EFTA section 919(a)(5)(C) only requires combined disclosure to be accurate at the time payment is made. This commenter stated that providing a document similar to a receipt prior to payment is not possible because such a disclosure could not provide accurate information regarding the date and time of the transaction, the amount paid, and the transaction number, which are elements that help establish proof of payment. Therefore, this commenter argued that the rule should permit the combined disclosure to be provided after payment, if a pre-payment disclosure is provided orally or on a screen at the point-of-sale. This commenter maintained that allowing oral or electronic

disclosures would be appropriate in the context of EFTA section 919(a)(5) authority to permit combined disclosures and in light of the Bureau's duty to consider the final rule's costs and benefits. At minimum, this commenter believed the Bureau should permit this method of disclosure for senders who have used the provider's service in the past.

Another industry commenter stated that it currently only had the capability of providing information to senders on a register receipt after payment. This commenter believed that requiring a combined disclosure to be provided prior to payment would require printing a pre-payment disclosure in the middle of a sales transaction.

The Bureau recognizes the operational challenges associated with providing pre-payment and particularly combined disclosures to senders prior to payment. However, although current practice generally is to provide written disclosures after payment is made, the statute clearly requires certain disclosures to be provided prior to payment and other disclosures to be provided when payment is made for the remittance transfer. The Bureau also believes that the statute precludes combined disclosures from being provided to senders after payment or in a non-written format. EFTA section 919(a)(5)(C) affirmatively requires that the combined disclosure be accurate at the time at which payment is made (emphasis added). Such a requirement would be superfluous if the combined disclosure could be provided after payment because a disclosure provided after payment must accurately reflect the terms of the completed transaction pursuant to EFTA section 919(a)(2)(B). Accordingly, the Bureau believes the statute requires both the pre-payment disclosure and the combined disclosure be given prior to payment.

As discussed below in § 1005.36, special timing rules have been adopted for preauthorized remittance transfers to account for the particular challenges associated with providing disclosures for transfers that may occur far in the future. Therefore, proposed

§ 205.31(e)(1) is adopted substantially as proposed in renumbered § 1005.31(e)(1), with modifications to reference new § 1005.36. Section 1005.31(e)(1) states that except as provided in § 1005.36(a), a pre-payment disclosure required by § 1005.31(b)(1) or a combined disclosure required by § 1005.31(b)(3) must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer.

Proposed comment 31(e)-1 clarified when a sender has requested a remittance transfer, for purposes of determining when a pre-payment or combined disclosure must be provided. The proposed comment is adopted substantially as proposed, with a reference to the provisions for preauthorized remittance transfers in new § 1005.36. Comment 31(e)-1 states that, except as provided in § 1005.36(a), pre-payment and combined disclosures are required to be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer. The comment clarifies that whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and that provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. For example, a sender who asks the provider to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested the remittance transfer provider to send a remittance transfer. In contrast, a consumer who solely inquires about that day's rates and fees to send to Mexico has not requested the remittance transfer provider to send a remittance transfer.

#### 31(e)(2) Timing of Receipts

EFTA section 919(a)(2)(B) requires that a receipt be provided to a sender at the time the sender makes payment in connection with the remittance transfer. Proposed § 205.31(e)(2) provided that a receipt must be provided to the sender when payment is made for the transaction.

The Bureau did not receive comment on this proposed provision. Under the final rule, a receipt required to be provided by § 1005.31(b)(2) generally must be provided to the sender when payment is made for the remittance transfer, except for preauthorized remittance transfers as provided in § 1005.36(a). The Bureau notes that the final rule does not require the receipt to be provided at an exact moment when the sender, for example, hands cash or a credit card to an agent to pay for the transfer. Rather, the Bureau believes that payment for a remittance transfer is a process that may involve several steps. For example, payment for a transfer by credit card could involve a sender handing a credit card to an agent, the agent asking the sender for identification, the agent sending the credit card authorization request, the card authorization being approved, the agent requesting signature on a credit card receipt, and the sender signing the credit card receipt.

Proposed comment 31(e)-2 provided examples of when a remittance transfer provider may provide the sender a receipt. The Bureau did not receive comment on the proposed comment, which is adopted substantially as proposed. Comment 31(e)-2 in the final rule, however, adds a reference to the special timing rules for preauthorized remittance transfers in § 1005.36. The comment also adds a clarification regarding when a payment is made for purposes of the final rule, including an example stating that, for purposes of subpart B, payment is made when a sender authorizes a payment. The Bureau believes that, for purposes of subpart B, payment is made when a sender authorizes payment because a receipt will be most useful to a sender at that time. Otherwise, if payment is considered to be made when the funds actually leave the sender's account due to delays in processing a payment, a receipt may not be provided to a sender for a day or more. Furthermore, it is not clear how a sender's cancellation right

would operate in this scenario. For example, because a sender does not know when funds leave an account, a sender would be unable to know when the cancellation right would be triggered.

Comment 31(e)-2 in the final rule states that except as provided in § 1005.36(a), a receipt required by § 1005.31(b)(2) must be provided to the sender when payment is made for the remittance transfer. For example, a remittance transfer provider could give the sender the disclosures after the sender pays for the remittance transfer in person, but before the sender leaves the counter. A provider could also give the sender the disclosures immediately before the sender pays for the transaction. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

Proposed § 205.31(e)(2) further stated that if a transaction is conducted entirely by telephone, a written receipt may be mailed or delivered to the sender no later than one business day after the date on which payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider, the written receipt may be provided on or with the next regularly scheduled periodic statement. See EFTA section 919(a)(5)(B). In some circumstances, a provider conducting such a transfer from the sender's account held by the provider is not required to provide a periodic statement under other laws. The Board believed that in such circumstances, it would be appropriate to permit the provider to provide a written receipt within a similar period of time as a periodic statement. Therefore, pursuant to EFTA section 904(c), the Board also proposed in § 205.31(e)(2) that the written receipt may be provided within 30 days after payment is made for the remittance transfer if a periodic statement is not required. Under the proposal, in order for the written receipt to be mailed or delivered to a sender conducting a transaction



entirely by telephone at these later times, the remittance transfer provider was required to comply with the foreign language requirements of proposed § 205.31(g)(3).

One industry commenter argued that the Bureau should include a timing exception in circumstances where a receipt is required to be provided to a sender shortly before a periodic statement is produced. This commenter stated that a remittance transfer provider may not be able to provide the required disclosures to a sender for a remittance transfer that occurs at the end of a billing cycle in time to include in the statement. The commenter suggested that in such circumstances, the Bureau should permit the receipt to be provided by the later of the next periodic statement date or 30 days after payment. The Bureau believes the final rule gives providers sufficient time to provide a receipt to a sender after a remittance transfer is sent; thus, no accommodation for transfers made at the end of a billing cycle is included in § 1005.31(e)(2). Because periodic statements must include certain information that occurs during a cycle, see § 1005.9(b), the Bureau expects that, for purposes unrelated to this rule, providers already delay sending a periodic statement for a short time after a cycle ends to ensure that all activity occurring within a cycle is included in the appropriate statement.

Accordingly, to effectuate the purposes of the EFTA and to facilitate compliance, the Bureau believes it is necessary and proper to use its authority under EFTA section 904(a) and (c) to adopt the provisions regarding mailing a receipt in proposed § 205.31(e)(2) as § 1005.31(e)(2) with revisions. Section 1005.31(e)(2) in the final rule eliminates the requirement to comply with proposed § 205.31(g)(3), because the provision has been eliminated in the final rule, as discussed in further detail below. Section 1005.31(e)(2) is also revised to state that if a transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider, the receipt may be provided within 30 days after payment is made for the

remittance transfer if a periodic statement is not provided, rather than if a periodic statement is not required. In some circumstances, a provider may provide a sender with a periodic statement even if one is not required to be provided. In these circumstances, the Bureau believes a provider should instead disclose the receipt on or with the periodic statement and that the provision allowing a provider to give a receipt 30 days after payment is made should not apply.

Section 1005.31(e)(2) is further revised to account for circumstances in which a provider discloses the statement about the rights of the sender regarding cancellation required by § 1005.31(b)(2)(iv), in order to use the telephone exceptions pursuant to § 1005.31(a)(3)(iii) or (a)(5)(iii). In those circumstances, the Bureau does not believe a provider should be required to repeat the statement about the rights of the sender regarding cancellation on a receipt when it has already been disclosed to the sender. Thus, pursuant to the Bureau's authority under EFTA section 919(d)(3), § 1005.31(e)(2) states that the statement about the rights of the sender regarding cancellation required by § 1005.31(b)(2)(iv) may, but need not, be disclosed pursuant to the timing requirements of § 1005.31(e)(2) if a provider discloses this information pursuant to § 1005.31(a)(3)(iii) or (a)(5)(iii). The Bureau also adds comment 31(e)(2)-5 to clarify that even though the statement about the rights of the sender regarding cancellation need not be disclosed pursuant to the timing requirements of § 1005.31(e)(2), the statement about the rights of the sender regarding error resolution required by § 1005.31(b)(2)(iv) must be disclosed pursuant to the timing requirements of § 1005.31(e)(2).

Proposed comment 31(e)-3 provided further clarification regarding circumstances where a sender transfers funds from his or her account, as defined by § 205.2(b) (currently § 1005.2(b)), that is held by the remittance transfer provider. The Bureau did not receive comment on proposed comment 31(e)-3, which is adopted substantially as proposed.

The Bureau is providing further guidance in the final rule regarding the timing of receipts for remittance transfers made via mobile application or text message. As discussed above, because remittance transfers sent via mobile application or text message are conducted entirely by mobile telephone, the Bureau believes that EFTA section 919(a)(5)(A) permits pre-payment disclosures to be provided orally for such transfers. Similarly, the Bureau believes that that EFTA section 919(a)(5)(B) permits receipts for transfers sent entirely by telephone via mobile application or text message to be provided in accordance with the mailing rules provided for transactions conducted entirely by telephone in § 1005.31(e)(2) or § 1005.36(a). Therefore, the final rule adds a new comment 31(e)-4 to clarify that if a transaction is conducted entirely by telephone via mobile application or text message, a receipt required by § 1005.31(b)(2) may be mailed or delivered to the sender pursuant to the timing requirements in § 1005.31(e)(2) or § 1005.36(a). For example, if a sender conducts a transfer entirely by telephone via mobile application, a remittance transfer provider may mail or deliver the disclosures to a sender pursuant to the timing requirements in § 1005.31(e)(2) or § 1005.36(a).

Finally, several industry commenters requested that the Bureau specifically permit remittance transfer providers to provide receipts for transactions conducted via mobile application or text message by email or through a provider's website. The Bureau notes that written receipts provided in accordance with § 1005.31(e)(2) or § 1005.36(a) may be provided electronically, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. See comment 31(a)(2)-1.

### **31(f) Accurate When Payment is Made**

Proposed § 205.31(f) provided that the disclosures required by proposed § 205.31(b) must be accurate when a sender pays for the remittance transfer, except when estimates are

permitted by proposed § 205.32. Proposed comment 31(f)-1 clarified that a remittance transfer provider did not have to guarantee the terms of the remittance transfer in the disclosures required by § 205.31(b) for any specific period of time. However, if any of the disclosures required by proposed § 205.31(b) are not accurate when a sender pays for the remittance transfer, a provider would be required to give new disclosures before receiving payment for the remittance transfer. For example, a sender at a retail store may be provided a pre-payment disclosure under proposed § 205.31(b)(1) at a customer service desk, but the sender may decide to leave the desk to go shopping. Upon the sender's return to the customer service desk an hour later, the sender would have to be provided a new pre-payment disclosure if any of the information had changed. However, the sender would not need to be provided a new disclosure if the information had not changed.

Consumer group commenters supported the requirement that disclosures must be accurate when payment is made. An industry trade association commenter asked the Bureau to permit remittance transfer providers to include a statement in the disclosures clarifying that changes to the disclosures may occur between the time of payment and the time a transaction clears. However, the Bureau notes that under the proposed rule, only disclosures provided before payment is made would not be guaranteed and thus subject to change. Disclosures provided on receipts generally would be guaranteed, and thus not subject to change, except where estimates are permitted.

Proposed § 205.31(f) is adopted substantially as proposed in renumbered § 1005.31(f). The final rule, however, provides that the requirements of § 1005.31(f) and comment 31(f)-1 do not apply to preauthorized remittance transfers, which are subject to separate accuracy requirements in § 1005.36(a).

### **31(g) Foreign Language Disclosures**

EFTA section 919(b) provides that disclosures required under EFTA section 919 must be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office. The Board proposed § 205.31(g)(1) to implement EFTA section 919(b) for written or electronic disclosures generally, with some modifications as discussed in the May 2011 Proposed Rule. In addition, the Board proposed § 205.31(g)(2) and (3) to exempt from the general foreign language disclosure requirements oral disclosures and written receipts for telephone transactions. The Bureau is adopting § 205.31(g) in renumbered § 1005.31(g) generally as proposed with some changes in response to suggestions from commenters, as discussed in detail below.

#### **31(g)(1) General**

Proposed § 205.31(g)(1) provided that disclosures required under subpart B, other than oral disclosures and written receipts for telephone transactions, must be made in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office. Alternatively, proposed § 205.31(g)(1) provided that these disclosures may be made in English, and, if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to proposed § 205.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office.

As discussed in the May 2011 Proposed Rule, proposed § 205.31(g)(1) contained certain exceptions and clarifications to the requirements of EFTA section 919(b). Specifically, the Board proposed: (i) to apply the provisions only to written or electronic disclosures and address oral disclosures separately in proposed § 205.31(g)(2); (ii) to simplify the statutory language in EFTA section 919(b) by removing the term “or its agents;” (iii) to include electronic advertising, soliciting or marketing as a trigger to the foreign language disclosure requirements, in addition to oral and written advertisements, solicitations, or marketing; (iv) to limit the trigger to foreign language advertisements, solicitations, or marketing of remittance transfer services, and to exclude from the trigger foreign language advertisements, solicitations, or marketing of other products or services; and (v) to permit, under its EFTA section 904(c) authority, a remittance transfer provider to fulfill its obligations by providing the sender with disclosures in English and, if applicable, the one triggered foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error in lieu of providing disclosures in each of the triggered foreign languages.

Commenters did not object to these specific proposed modifications. However, several industry commenters stated that the foreign language disclosure requirements generally would provide a disincentive for remittance transfer providers to provide a wide range of foreign language services to customers. Some of these commenters suggested that if remittance transfer providers were to offer fewer foreign language services, this would drive some customers to use illicit operators who provide the foreign-language services discontinued by legitimate remittance transfer providers. Another commenter suggested that the disclosures should only be provided in English because the foreign language requirement would impose costs that would be passed on to consumers who might not derive any benefit from such services.

Consumer group commenters and a member of Congress, however, thought the rule should ensure that non- and limited-English speaking consumers have access to meaningful remittance transfer disclosures. The Congressional commenter also agreed with the Board's proposal to extend the advertising, soliciting, or marketing trigger to electronic advertisements, solicitations, and marketing.

EFTA section 919(b) requires disclosures to be provided in certain foreign languages, and the Bureau believes the Board's proposed modifications to the statutory requirements alleviates burden on remittance transfer providers. The Bureau believes that proposed § 205.31(g)(1) reflects a proper balancing of interests in providing non- and limited-English speaking consumers with disclosures in a language with which they are familiar with the burden on remittance transfer providers of providing multilingual disclosures in implementing EFTA section 919(b). The statute and the implementing regulation seek to ensure that if remittance transfer providers make a concerted effort to reach out to potential remittance transfer customers through advertisements, solicitations, and marketing in a foreign language in a particular office, then such providers should also be required to provide important disclosures in that language when such customers come to that office to purchase remittance transfer services from that provider or assert an error.

Furthermore, the Bureau agrees with the Board's proposed modifications and clarifications to the statutory language for the reasons discussed in the May 2011 Proposed Rule, and commenters did not object to such modifications and clarifications. Therefore, to effectuate the purposes of the EFTA and facilitate compliance, the Bureau believes it is necessary and proper to use its authority under EFTA section 904(a) and (c) to adopt proposed § 205.31(g)(1) in renumbered § 1005.31(g)(1), with the removal of a reference to proposed § 205.31(g)(3)

regarding written receipts for telephone transactions, which is further discussed below, and other minor technical and clarifying amendments. Most notably, the Bureau is changing the references to “that office” in the proposed rule to the “the office in which a sender conducts a transaction or asserts an error” for clarity.

### Principally Used

Proposed comment 31(g)(1)-1 clarified when a foreign language is principally used. As the Board stated in the May 2011 Proposed Rule, the statute indicates that more than one foreign language may be principally used. Consequently, the Board’s interpretation of the term “principally used” was not limited to the one foreign language used most frequently by the remittance transfer provider. Instead, proposed comment 31(g)(1)-1 adopted a facts-and-circumstances approach to determining when a foreign language is principally used. Under proposed comment 31(g)(1)-1, factors contributing to whether a foreign language is principally used would include: (i) the frequency with which the remittance transfer provider advertises, solicits, or markets remittance transfers in a foreign language at a particular office; (ii) the prominence of such advertising, soliciting, or marketing in that language at that office; and (iii) the specific foreign language terms used to advertise, solicit, or market remittance transfer services at that office. Proposed comment 31(g)(1)-1 also included examples to illustrate when a foreign language is principally used and when there is incidental use of the language. As discussed in the May 2011 Proposed Rule, the Board also considered an objective standard based on whether a foreign language meets a certain percentage threshold of a remittance transfer provider’s advertisements at a particular office. However, the Board rejected such a standard based on the fact that the standard may be arbitrary, may be difficult to administer, and may inappropriately exclude instances where a foreign language is principally used to advertise,



solicit or market remittance transfers, even if the number of advertisements in the foreign language is nominally low.

Some industry commenters suggested that there be further clarification on the term “principally used,” but did not specifically state what kind of guidance would be helpful. A consumer group commenter agreed with the proposed facts-and-circumstances approach for determining foreign languages principally used in advertising, soliciting, or marketing remittance transfer services. A member of Congress agreed with the Board’s interpretation that the statutory provision contemplated that more than one foreign language could be principally used.

The Bureau agrees with the Board’s reasoning in proposing comment 31(g)(1)-1. Because the Bureau believes the particular facts and circumstances surrounding the use of a foreign language to advertise, solicit, or market remittance transfers will determine whether a foreign language is “principally used” to advertise, solicit, or market at a particular office, the Bureau does not believe further general statements would be helpful. However, the Bureau is amending one of the illustrative examples in comment 31(g)(1)-1 to provide a more clear example of when a remittance transfer provider would be considered to be principally using a foreign language to advertise, solicit, or market remittance transfers at an office.

#### Advertise, Solicit, or Market

Neither the EFTA nor Regulation E defines “advertising,” “soliciting,” or “marketing.”<sup>77</sup> However, the general concept of advertising, soliciting, or marketing is explained in other regulations administered by the Bureau. See, e.g., Regulation Z, 12 CFR 1026.2(a)(2) and

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<sup>77</sup> Regulation E contains some guidance on whether a card, code, or other device is “marketed or labeled as a gift card or gift certificate” or “marketed to the general public” for purposes of the requirements pertaining to gift cards. See comments 20(b)(2)-2, 20(b)(2)-3, and 20(b)(4)-1. However, that guidance focuses on a narrow set of circumstances and does not address more broadly what actions generally constitute advertising, soliciting, or marketing.

associated commentary; Regulation DD, 12 CFR 1030.2(b) and 1030.11(b) and associated commentary.

The Board proposed comment 31(g)(1)-2 to provide positive and negative examples of advertising, soliciting, or marketing in a foreign language. These examples were based on examples from the commentary to other regulations (specifically, renumbered §§ 1026.2(a)(2) and 1030.2(b)) regarding the definition of “advertisement,” as well as examples related to the promotion of overdrafts under § 1030.11(b). Some industry commenters asked whether the terms “market” and “solicit” mean something different than “advertise” and requested definitions for “market” or “solicit” if they are meant to have different meanings. The Bureau believes, that for purposes of subpart B of Regulation E, the terms “advertise,” “solicit” and “market” have the same general meaning, and comment 31(g)(1)-2 is adopted substantially as proposed.

#### At the Office

Under EFTA section 919(b) and proposed § 205.31(g)(1), foreign language disclosures would be required when the foreign language is principally used to advertise, solicit, or market “at that office.” As discussed above, the Bureau is changing the reference in § 1005.31(g)(1) from “that office” to “the office in which a sender conducts a transaction or asserts an error” for clarity in the final rule. The Board proposed comment 31(g)(1)-3 to clarify the meaning of “office.” As discussed in the May 2011 Proposed Rule, proposed 31(g)(1)-3 reflected the Board’s belief that an office includes both physical and non-physical locations where remittance transfer services are offered to consumers, including any telephone number or website through which a consumer can complete a transaction or assert an error. The Board further noted that a telephone number or website that provides general information about the remittance transfer provider, but through which a consumer does not have the ability to complete a transaction or

assert an error, is not an office. Proposed comment 31(g)(1)-3 also clarified that a location need not exclusively offer remittance transfer services in order to be considered an office for purposes of § 1005.31(g)(1) (proposed as § 205.31(g)(1)), and included an example to illustrate this point.

Some industry commenters requested clarification on whether a website targeted to consumers outside of the United States could be an “office” for purposes of the foreign language disclosure requirements. In response, the Bureau is revising comment 31(g)(1)-3 to clarify that because a consumer must be located in a State to be considered a “sender” under § 1005.30(g), a website is not an “office,” even if the website can be accessed by consumers that are located in the United States, unless a sender may conduct a remittance transfer on the website or may assert an error for a remittance transfer on the website. Therefore, a website that is targeted to people outside of the United States will not be deemed to be an “office” for purposes of § 1005.31(g) so long as senders cannot conduct a remittance transfer on the website or assert an error for a remittance transfer on the website.

The Board also proposed comment 31(g)(1)-4 to provide guidance on the phrase “at that office.” Proposed comment 31(g)(1)-4 stated that advertisements, solicitations, or marketing posted, provided, or made at a physical office, on a website of a remittance transfer provider, or during a telephone call with the remittance transfer provider would constitute advertising, soliciting, or marketing at an office of a remittance transfer provider. The proposed comment also clarified that for error resolution disclosures, the relevant office would be the office in which the sender first asserts the error and not the office where the remittance transfer was conducted.

One industry commenter requested clarification on a number of situations where the remittance transfer provider may be engaging in general advertising, marketing, or soliciting that is not intended to be made at a particular office, but due to the nature of such advertising,

marketing, or soliciting, it happens to occur at a particular office. The Bureau agrees that such a clarification is appropriate and has revised comment 31(g)(1)-4 to state that an advertisement, solicitation, or marketing that is considered to be made at an office does not include general advertisements, solicitations, or marketing that are not intended to be made at a particular office. The proposed comment includes an example to illustrate this concept. Specifically, if an advertisement for remittance transfers in Chinese appears in a Chinese newspaper that is being distributed at a grocery store in which the agent of a remittance transfer provider is located, such advertisement would not be considered to be made at that office.

The Bureau is also amending comment 31(g)(1)-4 to provide that advertisements, soliciting, or marketing posted, provided, or made via mobile application or text message would also be considered advertising, soliciting, or marketing at an office of a remittance transfer provider. The amendment is consistent with the Bureau's other revisions in the final rule clarifying that transfers through mobile application or text message are considered to be transfers conducted by telephone. See § 1005.31(a)(5). The Bureau is also making other minor amendments to comment 31(g)(1)-4 for additional clarity, including changing "that office" to "the office in which a sender conducts a transaction or asserts an error" to be consistent with the change the Bureau is adopting in § 1005.31(g)(1). Based on this change, comment 31(g)(1)-4 also contains a clarification that for disclosures required under § 1005.31, the relevant office would be the office in which the sender conducts the transaction.

#### 31(g)(2) Oral, Mobile Application or Text Message Disclosures

In the May 2011 Proposed Rule, the Board proposed to use its authority under EFTA section 904(c) to exempt oral disclosures from the foreign language requirement under EFTA section 919(b). In proposed § 205.31(g)(2), the Board proposed to use its authority under EFTA

section 919(a)(5)(A) to permit oral disclosures for transactions conducted entirely by telephone, subject to the requirement that they be made in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Proposed § 205.31(g)(2) also provided that disclosures permitted to be provided orally under proposed § 205.31(a)(4) for error resolution purposes must be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

Some industry commenters thought that the rule should not require disclosures in any foreign language that is not principally used to advertise, solicit, or market remittance transfers. These commenters suggested that such a requirement could hurt consumers by reducing the number of languages that a remittance transfer provider would be willing to use to conduct a transaction.

However, as the Board explained in the May 2011 Proposed Rule, if a foreign language must be principally used by the remittance transfer provider to advertise, solicit, or market remittance transfers in order to trigger the foreign language requirement for oral disclosures, a sender conducting a transaction or asserting an error in a foreign language on the telephone that did not meet the foreign language advertising trigger may only receive required oral disclosures in English. Consequently, if the remittance transfer provider conducted the actual transaction or communicated with the sender regarding the alleged error in a foreign language, a remittance transfer provider could then switch to English to orally disclose the required information under such a rule. The Bureau believes that senders would benefit from having the required oral disclosures provided in the same language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert the error, regardless of whether the language meets the foreign language advertising trigger. Failure to include this modification from the

general foreign language requirement for oral disclosures could lead to consumers not understanding the required disclosures, which would be contrary to the goals and purposes of the statute.

Furthermore, the Bureau agrees with the Board's reasoning in the May 2011 Proposed Rule that disclosures provided orally under § 1005.31(a)(3) and (4) should be provided only in the language primarily used to conduct the transaction or assert the error. Otherwise, under EFTA section 919(b), a sender conducting a telephone transaction orally or receiving the results of an error investigation orally could be given disclosures in English and in every foreign language triggered by the regulation, which would likely lead to consumer confusion. While the Bureau recognizes that this rule might reduce the languages in which a remittance transfer provider would be willing to conduct a transaction, the Bureau believes that applying the general foreign language disclosure rule to oral disclosures would be harmful to consumers for the reasons set forth above.

Moreover, as discussed above, the Bureau is adopting § 1005.31(a)(5) to permit disclosures to be provided orally or via mobile application or text message for transactions conducted entirely by telephone via mobile application or text message. Therefore, to effectuate the purposes of the EFTA and facilitate compliance, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to adopt proposed § 205.31(g)(2) in renumbered § 1005.31(g)(2) with amendments to include a reference to transactions conducted entirely by telephone via mobile application or text message and other minor, non-substantive amendments.

### Written Receipt for Telephone Transactions

The Board also proposed § 205.31(g)(3), which provided that written receipts for transactions conducted entirely by telephone must be made in English and, if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction, regardless of whether such foreign language is primarily used by the remittance transfer provider to advertise, solicit, or market remittance transfers. The Board, however, requested comment on whether the general rule proposed in § 205.31(g)(1) (adopted as § 1005.31(g)(1) above) should apply to the written receipt provided for transactions conducted entirely by telephone. Adopting the general rule proposed in § 205.31(g)(1) for written receipts provided for transactions conducted entirely by telephone would mean that a remittance transfer provider would not be obligated to provide the written receipt in a foreign language, even if such foreign language was used to conduct the telephone transaction, unless the foreign language was principally used to advertise, solicit, or market remittance transfers during the telephone call.

As noted above, some industry commenters thought that the rule should not require disclosures in any foreign language that is not principally used to advertise, solicit, or market remittance transfers because this might cause remittance transfer providers to reduce the number of languages they would be willing to use to conduct a remittance transfer. Another industry commenter stated that in its experience, consumers can understand written English even though they may prefer to conduct a transaction orally in their native language for the fluency, ease, and speed at which the transaction may be conducted when speaking in one's native language.

The Bureau believes that applying the general rule under § 1005.31(g)(1) to written receipts provided to senders after payment would not cause the same type of consumer confusion as it would for pre-payment disclosures provided orally in transactions conducted entirely by

telephone. Although some senders may not have enough familiarity with English to feel comfortable speaking with the remittance transfer provider in English, the same pressure to comprehend and respond quickly does not exist with written disclosures. Unlike with oral disclosures, senders have sufficient time to review written disclosures and, if necessary, find resources to help understand the disclosure.

Furthermore, the Bureau notes that in the Board's outreach with industry, remittance transfer providers generally stated that providing written disclosures in a foreign language can be more costly and burdensome than providing oral disclosures in a foreign language. The Bureau also notes that a remittance transfer provider may have employees or agents that happen to speak a certain foreign language for which the provider does not have written disclosures. The Bureau would not want providers to discourage such employees or agents from using their foreign language skills to help senders with their remittance transfer transactions in order to avoid having to provide written disclosures in the language spoken by the employee or agent. In order to minimize the potential unintended consequence of having remittance transfer providers reduce the number of foreign languages they may offer for telephone transactions, the Bureau is not adopting proposed § 205.31(g)(3). Therefore, written receipts required to be provided to the sender after payment for transactions conducted entirely by telephone are subject to the general rule under § 1005.31(g)(1).

#### General Clarifications

The Board also proposed additional commentary in the May 2011 Proposed Rule to provide general guidance on issues that affect each of the subsections of proposed § 205.31(g) (adopted as § 1005.31(g)) discussed above. EFTA section 919(b) does not limit the number of languages that may be used on a single disclosure. However, proposed comment 31(g)-1



suggested that a single written or electronic document containing more than three languages is not likely to be helpful to a consumer. Since the proposed commentary was not a strict limit, the Board solicited comment on whether the regulation should strictly limit the number of languages that may be contained in a single written or electronic disclosure. The Board also sought comment on whether three languages is an appropriate suggested limit to the number of languages in a single written or electronic document.

One industry commenter suggested that the rule cap the number of languages a remittance transfer provider would be required to disclose to three languages. The commenter also stated that requiring English, Spanish, and French would cover the vast majority of the languages used in transfers they send from the United States. This commenter also noted that other regulators that have required foreign language disclosures have typically limited the languages that must be disclosed to either English and Spanish, or a small subset of languages such as Spanish, Chinese, Tagalog, Vietnamese, and Korean. A consumer group commenter recommended that rather than adopting a ceiling on the number of languages that may appear on a disclosure, the Bureau should create guidelines that ensure disclosures with multiple foreign languages are easy to understand.

The Bureau does not believe that limiting the foreign languages that may be used by a remittance transfer provider best effectuates the goals of the statute. In the Bureau's view, if a remittance transfer provider principally uses a foreign language to advertise, solicit, or market remittance transfers at an office, the remittance transfer provider is deliberately reaching out to consumers speaking that foreign language, and the required disclosures should be provided in that foreign language, regardless of whether it is a language that is commonly used for remittance transfers originating in the United States. Furthermore, while too many languages on

a single written document may diminish a consumer's ability to read and understand the disclosures, the Bureau believes that remittance transfer providers may find ways to present the information in a number of foreign languages that are clear and conspicuous to senders, and that imposing a definitive limit on the number of languages that may appear on a single disclosure may be too inflexible. Moreover, the Bureau believes that the formatting requirements in § 1005.31(c), as discussed above, may help to ensure that senders can find and understand the information that is most important to them with respect to the remittance transfer. The Bureau is amending comment 31(g)-1 to note that disclosures must be clear and conspicuous pursuant to § 1005.31(a)(1) without suggesting a specific limit on the number of languages in a single disclosure.

Proposed comment 31(g)-1 also clarified that the remittance transfer provider may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language. The Board also proposed several examples in comment 31(g)-1 to illustrate the application of this concept.

Some industry commenters thought that senders should be able to designate the language in which they prefer to receive disclosures, provided it is a language that is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfers, instead of providing disclosures in both English and the applicable foreign language. The Bureau notes that EFTA section 919(b) requires disclosures to be provided in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market at that office. This means that regardless of which office a sender chooses to conduct a remittance transfer, he or she will always obtain written or electronic disclosures in English, even if the disclosure in a foreign language is not consistent among different offices because such

disclosure will depend on whether the foreign language meets the foreign language disclosure trigger at that office. The Bureau believes that always disclosing in English is important to allow senders to compare disclosures received at different provider locations and for different providers. Therefore, the final rule requires remittance transfer providers to provide disclosures in English in all cases. This is fully consistent with EFTA section 919(b). Comment 31(g)-1 is adopted as proposed with some technical and clarifying amendments, including to remove references to § 205.31(g)(3), consistent with the Bureau's decision regarding written receipts for telephone transactions, as discussed above.

The Board also proposed comment 31(g)-2 to clarify when a language is primarily used by the sender with the remittance transfer provider to conduct a transaction and assert an error. A remittance transfer provider must determine the language that is primarily used by the sender with the remittance transfer provider to conduct a transaction or assert an error if the provider chooses to provide written or electronic disclosures in English and the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or to assert an error. Furthermore, under § 1005.31(g)(2), a remittance transfer provider is required to provide oral disclosures in the language that is primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error.

Specifically, proposed comment 31(g)-2 clarified that the language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used to convey the information necessary to complete the transaction. Proposed comment 31(g)-2 also stated that the language primarily used by the sender with the remittance transfer provider to assert an error is the primary language used by the sender with the remittance transfer provider

to provide the information required by § 1005.33(b) to assert an error. The proposed comment also provided examples to clarify this concept.

One industry commenter suggested that the foreign language disclosure requirement should relate to the language used by the remittance transfer provider, rather than the language used by the sender. Some industry commenters recommended that the Bureau provide further clarification of the term “primarily used” without specifying what type of guidance would be helpful. The Bureau notes that proposed comment 31(g)-2 specifies that the relevant foreign language is the foreign language primarily used by the sender with the remittance transfer provider to conduct a transaction or assert an error, and the examples show that a foreign language must be used by both the sender and the remittance transfer provider to be primarily used by the sender with the remittance transfer provider to conduct a transaction or assert an error. The Bureau believes the proposed commentary is clear on this point. However, as additional clarification, the Bureau is including a new example in comment 31(g)-2 to illustrate when a sender primarily uses a foreign language with a remittance transfer provider in the internet context.

### **Storefront and Internet Disclosures**

EFTA section 919(a)(6)(A) states that the Bureau may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts. The provision states that such a notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged. EFTA section 919(a)(6)(A) also states that the Bureau may require the notice prescribed to be displayed in every physical storefront location owned or controlled by the remittance transfer provider. Further, EFTA section 919(a)(6)(A)

states that the Bureau shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the internet to provide a notice, comparable to the storefront notice described in the statute, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

EFTA section 919(a)(6)(B) states that, prior to proposing rules under EFTA section 919(a)(6)(A), appropriate studies and analyses must be performed to determine whether a storefront notice or internet notice facilitates the ability of a consumer to: (i) compare prices for remittance transfers, and (ii) understand the types and amounts of any fees or costs imposed on remittance transfers. The studies and analyses must be consistent with EFTA section 904(a)(2), which requires an economic impact analysis that considers the costs and benefits of a regulation to financial institutions, consumers, and other users. These costs and benefits include the extent to which additional paperwork would be required, the effects upon competition in the provision of services among large and small financial institutions, and the availability of services to different classes of consumers, particularly low income consumers.<sup>78</sup>

Consistent with EFTA section 919(a)(6)(B), the Board reviewed and analyzed the statute and a variety of independent articles, studies, and Congressional testimony; conducted outreach with industry and consumer advocates; and held focus groups with consumers who send remittance transfers. Based on its findings, summarized below, the Board concluded in the May 2011 Proposed Rule that the statutory notice would not facilitate a consumer's ability to compare prices or to understand the fees and costs imposed on remittance transfers.<sup>79</sup>

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<sup>78</sup> As discussed below, the Board performed an analysis in the proposed rule consistent with EFTA section 904(a)(2), as it existed prior to any amendments in the Dodd-Frank Act. Section 904(a)(2), however, did not apply and was not amended by the Dodd-Frank Act to apply to the Bureau. Regardless, the Board's analysis from the proposal is unchanged, and the Bureau concurs with the Board's analysis.

<sup>79</sup> A complete discussion of the Board's findings is available at 76 FR at 29924-29927.

The notice described by the statute illustrates only the exchange rate offered by that remittance transfer provider for the particular model transfer amount. In addition to the exchange rate, however, the total cost of a remittance transfer includes fees charged by the remittance transfer provider, any intermediary in the transfer, and the receiving entity. The total cost also includes any taxes that may be charged in the sending and receiving jurisdictions. Thus, the Board determined the statutory storefront notice would not present a complete picture to the consumer of all potential fees and costs for a remittance transfer.

In the proposal, the Board considered two alternatives to the type of notice described in the statute that could more effectively communicate costs to a sender. The Board considered requiring the posting of transfer fee information for model send amounts, but believed that this alternative notice would have many of the same limitations as the statutory notice. The Board also considered requiring a notice that would reflect all the costs of a transfer. A notice with this alternative content could help consumers to obtain a better understanding of the total cost of a remittance transfer, but the length and complexity of such notices could limit their utility.

The analysis conducted by the Board identified other limitations with both the statutory and alternative storefront disclosures. First, most consumers would be unable to apply the information provided by the statutory notice to their own transfers. The fees, exchange rate, and taxes for a remittance transfer can vary based upon the amount sent, transfer corridor (i.e., the sending location to the receiving location), speed of transfer (e.g., the next day, the same day, or in one hour), method of delivery (e.g., an electronic deposit into a bank account or a cash disbursement), and type of receiving entity (e.g., a bank or a money transmitter's payout partner). For example, some remittance transfer providers offer a discount on their exchange rate spread for large send amounts. Therefore, even if the consumer's transfer were identical to the

model transfer posted in the storefront notice except for the send amount, the consumer still may be unable to determine the exchange rate that would apply to the consumer's transfer based on the storefront notice.

Moreover, a consumer could be overwhelmed by the amount of data appearing in a long, complex storefront notice posted by these providers and, therefore, might not use it. A storefront notice for sending a specified amount to a single country could contain multiple rows of information to account for differences in pricing based on the transfer method, timing option, receipt location, and cost permutations described above. Many providers offer remittance transfers to multiple countries, and several locations within each country, which would multiply the number of data points on the notice.

Finally, frequent fluctuations in exchange rates could result in disclosures being inaccurate for a period of time. Remittance transfer providers would have to update the storefront notice for each send location several times a week, or as frequently as several times a day, to account for the fluctuations in exchange rates. These rates could also be different at a single provider's different send locations. Remittance transfer providers would need to distribute the updated notices to each send location, and each send location would need to replace the outdated notice just as frequently. Non-exclusive send locations that offer the services of two or more money transmitters would have to post and update the storefront notices for each remittance transfer provider. As a result, a storefront notice could be unhelpful and even misleading to consumers, while creating unnecessary legal risks for remittance transfer providers.

The analysis also identified potential effects that the storefront notice requirement would have on competition and costs to the consumer. The work involved in posting and updating

storefront notices could cause some agents to stop offering remittance transfers. Further, credit unions and small banks that infrequently conduct transfers could find the burden and cost of producing storefront notices prohibitive and discontinue the service. Given the costs and risks associated with posting and updating the storefront notices contemplated by the statute, some providers could decide to exit the market, which could reduce competition among providers and increase costs for consumers.

Because the Board did not propose a rule mandating the posting of storefront notices, it did not propose a rule mandating the posting of internet notices. Since the proposal did not require a storefront notice, there could be no “comparable” internet notice. Moreover, the Board’s study of model internet notices indicated that consumers using internet remittance transfer providers to request remittance transfers would be less likely to use a model transfer notice than those using providers at a physical location. Many internet providers currently disclose transaction-specific information prior to the consumer’s payment for a transfer, and § 1005.31(b)(1), discussed above, makes this practice a regulatory requirement.

Industry commenters supported the findings that the storefront notice and internet notice would not be useful to consumers. One consumer group commenter believed that the Bureau should require any storefront advertising to be in a storefront disclosure format prescribed by the Bureau. The commenter argued that the storefront disclosure should include the amount a sender pays to a remittance transfer provider and the amount to be received by a recipient for at least two sample amounts. The commenter suggested that disclosures could be based on the cost at a certain time, such as the previous business day, to alleviate the concerns about disclosures needing to be updated more frequently.



The Bureau agrees with the Board's analysis, and believes that the storefront and internet disclosures described in EFTA section 919(a)(6)(A) would not accomplish the statutory goals of facilitating the ability of consumers to compare prices for remittance transfers and to understand the types and amounts of any fees or costs imposed on remittance transfers. The disclosures would not provide a complete disclosure of all of the costs of a remittance transfer. Even if all costs were provided in the disclosures, consumers would be unable to extrapolate from a storefront disclosure the cost of their particular transaction, because the cost could depend on other variables. The Bureau also recognizes the burden on remittance transfer providers could be significant and could lead some providers to no longer provide remittance services. The burden on providers would be substantial even if the disclosures were only required to be updated daily. Moreover, requiring less frequent updating would result in the disclosures being inaccurate for a period of time.

Because the cost to providers could be substantial, and the benefit of the storefront and internet disclosures would be minimal, the final rule does not require the posting of model remittance transfer notices at a storefront or on the internet.

### **Section 1005.32 Estimates**

The statute provides two exceptions to the requirement to disclose the amount of currency that will be received by the designated recipient. The first exception is in EFTA section 919(a)(4). It provides that, subject to rules prescribed by the Bureau, disclosures by insured depository institutions or credit unions regarding the amount of currency that will be received by the designated recipient will be deemed to be accurate in certain circumstances so long as the disclosure provides a reasonably accurate estimate of the amount of currency to be received. Under the statute, a remittance transfer provider may use this exception only if: (i) it is an

insured depository institution or insured credit union (collectively, an “insured institution” as described in more detail below) conducting a transfer from an account that the sender holds with it; and (ii) the insured institution is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient. See EFTA section 919(a)(4). This exception (the “temporary exception”) expires five years after the enactment of the Dodd-Frank Act, on July 21, 2015. If the Bureau determines that expiration of the exception would negatively affect the ability of insured institutions to send remittances to foreign countries, the Bureau may extend the exception to not longer than ten years after enactment (i.e., to July 21, 2020). See EFTA section 919(a)(4)(B).

The second exception is in EFTA section 919(c). It provides that if the Bureau determines that a recipient country does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Bureau may prescribe rules addressing the issue. EFTA section 919(c) further states that if rules are prescribed, they must include standards for the remittance transfer provider to provide: (i) a receipt that is consistent with EFTA sections 919(a) and (b); and (ii) a reasonably accurate estimate of the currency to be received. The second exception (the “permanent exception”) does not have a sunset date.

The Board proposed § 205.32 to implement the two exceptions in EFTA sections 919(a)(4) and (c). Proposed § 205.32 generally permitted a remittance transfer provider to disclose estimates if it cannot determine exact amounts for the reasons specified in the statute. The Bureau is adopting § 205.32 generally as proposed in renumbered § 1005.32, with clarifications and revisions in response to comments received, as discussed in detail below. In

addition, the Bureau is adopting new comment 32-1 to provide additional guidance on the circumstances when estimates may be provided. Specifically, new comment 32-1 states that estimates as permitted in § 1005.32(a) and (b) 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 (2).

### **32(a) Temporary Exception for Insured Institutions**

Proposed § 205.32(a)(1) provided a temporary exception for remittance transfer providers, which permits them to disclose estimates of the exchange rate, the transfer amount, other fees and taxes, and total to recipient if: (i) a remittance transfer provider cannot determine exact amounts for reasons beyond its control; (ii) a remittance transfer provider is an insured institution; and (iii) the remittance transfer is sent from the sender's account with the insured institution.

Most industry commenters generally supported permitting insured institutions to disclose estimates. For example, one commenter stated that restricting the use of estimates could discourage innovation and increase costs to offset risk. Consumer group commenters generally supported the proposed use of estimates but requested that the temporary exception not be extended. Some industry commenters, however, objected to permitting estimates to be disclosed because estimates could lead to inaccurate or misleading disclosures which would disservice consumers.

The Bureau believes permitting estimates, as provided by the temporary exception, is consistent with the statutory language and purpose of EFTA section 919(a)(4). The statute

specifically provides that, subject to the Bureau's rules, an insured institution may use a reasonably accurate estimate of the amount of currency received under certain circumstances. Section 1005.32(a)(1) implements the temporary exception generally as proposed, as discussed below.

EFTA section 919(a)(4) only addresses estimates for the amount of currency that will be received by a designated recipient. Nonetheless, proposed § 205.32(a)(1) also permitted disclosure of an estimate for the exchange rate, the transfer amount in the currency made available to the designated recipient, the fees imposed by intermediaries in the transmittal route, and taxes imposed in the recipient country that are a percentage of the amount transferred to the designated recipient to the extent those amounts are not known for reasons beyond the insured institution's control. In the May 2011 Proposed Rule, the Board stated its belief that, by permitting an estimate of the amount that will be received, Congress must have intended to permit estimates of the components that determine that amount. The inability to determine the exact amount of one or more of these additional items is the reason why the amount of currency that will be received by the designated recipient must be estimated. Furthermore, the Board stated that permitting estimates of these additional items would help consumers to understand why the amount of currency to be received is displayed as an estimate. The Bureau did not receive any comments on this aspect of the proposal. The Bureau concurs with the Board's reasoning, and believes that to effectuate the purposes of the EFTA and facilitate compliance, it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to allow an estimate of the exchange rate, transfer amount, and other fees and taxes disclosures in § 1005.32(a)(1). To not exercise the Bureau's authority in this way would render the statutory

exemption essentially meaningless, and the Bureau believes that result could not be intended by the statutory exemption for estimating the amount of currency received.

In the proposed rule, the Board also stated that EFTA section 919(a)(4) only addresses the use of an estimate of the amount of foreign currency that will be received by a designated recipient. However, the proposed rule permitted an estimate of the currency that will be received, whether it is in U.S. dollars or foreign currency. The Bureau understands that senders may send remittance transfers to be paid to the designated recipient in U.S. dollars. When an insured institution sends a remittance transfer via international wire transfer, fees are sometimes deducted by intermediary institutions in the transmittal route with which the sending institution has no correspondent relationship. Although the insured institution may not know the total amount of these fees in advance, it must disclose them to the sender under § 1005.31(b)(1)(vi). The amount that will be received by the designated recipient, whether that currency is U.S. dollars or foreign currency, will be an estimate if fees imposed by intermediaries are disclosed as estimates. Therefore, to effectuate the purposes of EFTA and to facilitate compliance, the Bureau believes it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to allow an estimate of the amount of currency that will be received, even if that currency is in U.S. dollars.

The proposed commentary to § 205.32(a)(1) provided further guidance on the temporary exception. Specifically, proposed comment 32(a)(1)-1 clarified that an insured institution cannot determine exact amounts “for reasons beyond its control” when: (i) the exchange rate required to be disclosed under proposed § 205.31(b)(1)(iv) is set by a person with which the insured institution has no correspondent relationship after the insured institution sends the remittance transfer; or (ii) fees required to be disclosed under proposed § 205.31(b)(1)(vi) are imposed by

intermediary institutions along the transmittal route and the insured institution has no correspondent relationship with those institutions.

One industry commenter requested clarification regarding instances when an insured institution has a correspondent relationship but may not control or know what exchange rate the correspondent will use. For example, a remittance transfer provider may send a remittance transfer in U.S. dollars and a correspondent institution may be responsible for exchanging to the currency in which funds will be received. Similarly, other industry commenters noted that an insured institution may not know the taxes or fees imposed by a correspondent institution. Although the Bureau acknowledges that some insured institutions currently may not receive certain exchange rate, tax, or fee information from a correspondent institution, the Bureau believes that such information can be obtained through contractual arrangements in a correspondent relationship. The Bureau notes that the statutory exception is only available for circumstances beyond remittance transfer providers' control, and the Bureau believes that adjusting contractual arrangements with correspondent banks to provide for better information relay is within the control of remittance transfer providers. Accordingly, comment 32(a)(1)-1 is adopted substantially as proposed with clarifying revisions and an example.

Proposed comment 32(a)(1)-2 provided examples of scenarios that qualify for the temporary exception. The Bureau did not receive significant comment on the examples provided in the proposed comment. Comment 32(a)(1)-2 is adopted substantially as proposed with clarifying revisions. Comment 32(a)(1)-2.i. clarifies that an insured institution cannot determine the exact exchange rate to disclose for an international wire transfer if the insured institution does not set the exchange rate, and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution with which the insured institution

does not have a correspondent relationship. The insured institution will not know the exchange rate that the recipient institution will apply when the funds are deposited into the recipient's account. Comment 32(a)(1)-2.ii. provides that an insured institution cannot determine the exact fees to disclose under § 1005.31(b)(1)(vi) if an intermediary institution or the designated recipient's institution, with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee. Finally, comment 32(a)(1)-2.iii. states that an insured institution cannot determine the exact taxes to disclose under § 1005.31(b)(1)(vi) if the insured institution cannot determine the applicable exchange rate or other fees, as described in proposed comments 32(a)(1)-2.i. and 32(a)(1)-2.ii., and the recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees.

Proposed comment 32(a)(1)-3 provided several examples of when an insured institution would not qualify for the exception in proposed § 205.32(a). In each case, the insured institution could determine the exact amount for the relevant disclosure. The proposed examples illustrated that if an insured institution can determine the exact exchange rate, fees, and taxes required to be disclosed under § 1005.31(b)(1)(iv) and (vi), it can determine the exact amounts to be derived from calculations involving them.

The Bureau did not receive significant comment on the proposed provision, which is adopted substantially as proposed. Comment 32(a)(1)-3.i. explains that an insured institution can determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. Comment 32(a)(1)-3.ii. states that an insured institution can determine the exact fees required to be disclosed under § 1005.31(b)(1)(vi) if it has negotiated specific fees with a correspondent institution, and the correspondent institution is the only institution in the

transmittal route to the designated recipient's institution, which itself does not impose fees. Finally, comment 32(a)(1)-3.iii. clarifies that an insured institution can determine the exact taxes required to be disclosed under § 1005.31(b)(1)(vi) if the recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees, and the insured institution can determine the exact amount of the applicable exchange rate and other fees. Similarly, the insured institution can determine these taxes if the recipient country imposes a specific sum tax that is not tied to the amount transferred.

Proposed § 205.32(a)(2) provided that the temporary exception expires on July 20, 2015, consistent with the five-year term set forth in EFTA section 919(a)(4)(B). EFTA section 919(a)(4)(B) gives the Bureau authority to extend the application of the temporary exception to July 21, 2020, if it determines that termination of the exception would negatively affect the ability of insured institutions to send remittances to foreign countries. The Bureau understands that this exception was intended to avoid an immediate disruption of remittance transfer services by insured institutions using international wire transfers. The exception gives these institutions time to reach agreements and modify systems to provide accurate disclosures.

Industry commenters argued that the temporary exception for insured institutions should be made permanent, or in the alternative, be extended to ten years after the date of enactment of the Dodd-Frank Act, which is July 21, 2020. The OCC also noted the ability of the Bureau to extend the temporary exception for insured institutions to ten years after the date of enactment of the Dodd-Frank Act and urged the Bureau to consider the impact of these standards on community banks. In contrast, consumer groups supported the five-year sunset of the temporary exception and requested that the Bureau indicate that the temporary exception will not be extended.



The Bureau notes that the sunset of the temporary exception is statutory. In addition, the Bureau believes that there is no basis at this time to assess whether allowing the exception to expire in accordance with the statute would have negative effects where the final rule is just now being issued, initial implementation is expected to take a year, and the market has not yet had a chance to respond to the regulatory requirements. Therefore, the Bureau declines to extend the temporary exception at this time. Finally, the Bureau notes that in the May 2011 Proposed Rule, proposed § 205.32(a)(2) stated July 20, 2015 as the sunset date for the temporary exception provided in § 205.32(a)(1). The final rule includes a technical edit to clarify that the sunset date for the temporary exception is July 21, 2015 in order to avoid potential confusion and promote consistency among references to the date of enactment of the Dodd-Frank Act. Accordingly, proposed § 205.32(a)(2) is adopted as proposed in renumbered § 1005.32(a)(2), with a technical edit to reflect the change in date to July 21, 2015.

For purposes of the temporary exception, proposed § 205.32(a)(3) provided that the term “insured institution” included insured depository institutions as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and insured credit unions as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752). Industry commenters generally requested clarification on the application of the temporary exception to uninsured institutions. In particular, these commenters requested that the temporary exception should also include uninsured depository institutions, such as certain U.S. branches and agencies of foreign banks. They also argued that uninsured U.S. branches of foreign banks also process retail international wire transfers in the same manner as insured institutions, and would face similar compliance challenges as other insured institutions.

The Bureau believes that including uninsured U.S. branches of foreign banks in the term “insured institution” is consistent with the purposes of the statutory exception and will prevent disruption in remittance transfer services. The Bureau notes that Section 3(c)(3) of the Federal Deposit Insurance Act provides that for certain purposes, the term “insured depository institution” includes any uninsured U.S. branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank. Therefore, the Bureau believes including uninsured U.S. branches and agencies of foreign banks in the term “insured institution” is consistent with the statutory exception and Section 3 of the Federal Deposit Insurance Act. Accordingly, proposed § 205.32(a)(3) is adopted with clarification in renumbered § 1005.32(a)(3).

Similarly, one commenter argued that registered broker-dealers should be covered by the temporary exception because they may process international wire transfers. However, as discussed above, the Bureau is clarifying that, for the purposes of this rule, fund transfers in connection with securities transactions are not remittance transfers. Therefore, the Bureau believes further clarification in the rule with respect to this comment is not necessary.

### **32(b) Permanent Exception for Transfers to Certain Countries**

Proposed § 205.32(b) contained the permanent exception set forth in EFTA section 919(c). Under EFTA section 919(c), if the Bureau determines that a recipient nation does not legally allow, or the method by which transactions are made to the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received, the Bureau may issue rules to permit the remittance transfer provider to provide a reasonably accurate estimate. The Board’s proposal specifically noted that there is at least one recipient

country where a particular method of remittances do not allow remittance transfer providers to know the amount of currency that will be received.<sup>80</sup>

In light of that determination, the proposed rule allowed estimates to be provided for amounts required to be disclosed under proposed § 205.31(b)(1)(iv) through (vii) for transfers to certain countries. Like the temporary exception in EFTA section 919(a)(4), the permanent exception in EFTA section 919(c) only addresses estimates for the amount of currency that will be received by a designated recipient. For the reasons described above with respect to the temporary exception, proposed § 205.32(b) also permitted disclosure of estimates for the exchange rate, the transfer amount in the currency made available to the designated recipient, and taxes imposed in the recipient country that are a percentage of the amount transferred to the designated recipient. The Bureau did not receive any comments on this aspect of the proposal. For the reasons set forth above with regard to the temporary exception and to effectuate the purposes of EFTA and facilitate compliance, the Bureau believes it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to adopt this proposed permanent exception in § 1005.32(b).

#### 32(b)(1)(i) Laws of Recipient Country

Proposed § 205.32(b)(1) allowed estimates to be provided for the exchange rate, transfer amount, other fees and taxes, and total to recipient disclosures (adopted as § 1005.31(b)(1)(iv) through (vii) above), if a remittance transfer provider cannot determine exact amounts because the laws of the recipient country do not permit such a determination.

Industry commenters raised concerns about whether remittance transfer providers have the resources to determine whether this exception applies. Consumer group commenters argued that the statute requires the Bureau to determine which recipient countries qualify for the

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<sup>80</sup> See 76 FR 29923.

permanent exception, rather than leaving the determination to individual market participants.

Both industry and consumer group commenters recommended that the Bureau maintain a list of countries or a database, updated annually, to which the permanent exception based on the laws of a recipient country would apply.

The Bureau believes that it is appropriate for remittance transfer providers to identify and comply with a recipient country's currency laws. The Bureau also believes that remittance transfer providers and their correspondents generally are able to obtain this information because they are engaged in the business of remittance transfers to recipient countries and must comply with any applicable law that prevents the remittance transfer provider from determining exchange rates or exact amounts. Nonetheless, in response to comments received and upon further consideration, the Bureau is revising proposed § 205.32(b) to facilitate compliance by providing a safe harbor list of countries which qualify for the permanent exception.

Accordingly, the Bureau is renumbering proposed § 205.32(b) as § 1005.32(b)(1) and adopting new § 1005.32(b)(2) to provide a safe harbor. New § 1005.32(b)(2) states that a remittance transfer provider may rely on the list of countries published by the Bureau to determine whether estimates may be provided under the permanent exception, 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.

In addition, the Bureau is adopting commentary on new § 1005.32(b)(2). New comment 32(b)-5 provides guidance on the safe harbor list published by the Bureau. New comment 32(b)-6 provides further guidance on reliance on the Bureau-provided list of countries that qualify for the permanent exception. New comment 32(b)-7 addresses circumstance where there is a change in laws of the recipient country.

Proposed comment 32(b)(1)-1 clarified that the “laws of the recipient country” do not permit a remittance transfer provider to determine exact amounts 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 chooses to claim the funds. Comment 32(b)(1)-1 is adopted substantially as proposed, but renumbered as comment 32(b)-1 for organizational purposes.

One commenter requested clarification about whether proposed comment 32(b)(1)-1 covered instances where the local currency is thinly traded and the laws of a recipient country require an authorized dealer to set the exchange rate when the remittance transfer is received. The Bureau believes that the proposed comment already covers such circumstances because the government of the recipient country, acting through an authorized dealer, sets the exchange rate after the remittance transfer has been sent. In addition, the transfer may also qualify for the permanent exception if the exchange rate is required by law to be set by the authorized dealer when the recipient claims the funds.

Proposed comments 32(b)(1)-2.i. and 32(b)(1)-2.ii. provided examples illustrating the application of the exception. Proposed comment 32(b)(1)-2.i. explained that the laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under proposed § 205.31(b)(1)(iv) (adopted as § 1005.31(b)(1)(iv) above) when, for example, the government of the recipient country sets the exchange rate daily 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. Under such circumstances, an

estimate for the exchange rate would be permitted because the remittance transfer provider cannot determine a rate that a foreign government has yet to set.

In contrast, proposed comment 32(b)(1)-2.ii. explained that the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under proposed § 205.31(b)(1)(iv) (adopted as § 1005.31(b)(1)(iv) above) if, for example, the government of the recipient country ties the value of its currency to the U.S. dollar. The Bureau did not receive significant comment on comment 32(b)(1)-2. This comment is adopted substantially as proposed, but renumbered as comment 32(b)-2 for organizational purposes.

32(b)(1)(ii) Method by which Transactions are Made in the Recipient Country

Proposed § 205.32(b)(2) allowed estimates to be provided for the exchange rate, transfer amount, other fees and taxes, and total to recipient disclosures (adopted as § 1005.31(b)(1)(iv) through (vii) above), if a remittance transfer provider cannot determine exact amounts because the method by which transactions are made in the recipient country does not permit such a determination.

Based on the Board's outreach and interpretation of the statute, the Board stated its belief that the exception for methods by which transactions are made in the recipient country under proposed § 205.32(b)(2) was intended to permit estimates for certain international ACH transactions. Specifically, the Board interpreted the exception under § 205.32(b)(2) to apply to remittances sent via international ACH on terms negotiated by the government of the United States and the government of a recipient country where the exchange rate is set after the transfer is sent. Accordingly, proposed comment 32(b)(2)-1 stated that the "method by which transactions are made in the recipient country" does not permit a remittance transfer provider to

determine exact amounts 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 set by the recipient country's central bank after the provider sends the remittance transfer.

Industry commenters argued that the Bureau should adopt a broader reading of the statute, and that international wire transfers should be covered by the permanent exception. These commenters argued that international wire transfers are a method by which transactions are made in a recipient country that does not allow the remittance transfer provider to know the amount of currency that will be received by a designated recipient and should thus qualify for the permanent exception. One industry commenter stated that the permanent exception is helpful for certain international ACH transactions; however, the benefit is limited by the number of recipient countries that participate in the Federal Reserve System's FedGlobal ACH program. Other industry commenters requested that all international ACH transfers be covered by the permanent exception and that the exception should not be limited to those that are sent on terms negotiated between the United States government and the recipient country's government. These commenters noted that all cross-border ACH transfers, regardless of how the exchange rate is set, are subject to similar difficulties as certain international ACH transfers that qualify for the permanent exception. Consumer group commenters supported the proposal's application of the permanent exception based on the method to certain international ACH transfers.

In each case, the Bureau agrees with the Board's interpretation. The Bureau believes that extending the permanent exception to international wire transfers and all international ACH transactions would be inconsistent with the statutory language and purpose of the provision, which specifically refers to methods of transfer in a recipient country (emphasis added). The

Bureau must give meaning to this phrase, and does not believe that the interpretation urged by commenters is dependent on a method of transfer in a particular country.

The Bureau does not believe that the permanent exception in EFTA section 919(c) applies to international wire transfers because wire transfers are not a method that is particular to a specific country or group of countries. Rather, compliance challenges may arise due to the international wire transfer business model, which is based on a chain of correspondents and two-party contractual relationships.

In addition, the application of the permanent exception to international wire transfers and ACH transactions generally would make the temporary exception superfluous. As discussed above, the statute is broad in scope, specifically covering transactions that are account-based and that are not electronic fund transfers, and therefore, covers open network transactions. Further, as described above with regard to the temporary exception, the statute specifically permits the use of estimates by depository institutions and credit unions for certain account-based transactions. If all open network transactions were included in the permanent exception, there would be no need for the temporary exception because nearly all, if not all, the types of transfers that qualify for the temporary exception would be covered by the permanent exception. The Bureau does not believe the temporary exception is superfluous. Therefore, it would not be appropriate to extend the permanent exception to these transactions.

One commenter argued that the permanent exception for method of transfer should also include instances when the remittance transfer provider and the sender agree to have the exchange rate set at some point in the future (i.e., floating rate products). As with wire transfers, such an agreement is not a method by which a transaction is made that is particular to a specific country or group of countries. Therefore, the Bureau also believes that this circumstance would



not be eligible for the permanent exception. The Bureau notes, however, that the remittance transfer provider that is party to such an agreement may provide estimates of the exchange rate if the remittance transfer provider qualifies for the temporary exception in § 1005.32(a). For the reasons discussed above, proposed § 205.32(b)(2) is adopted as proposed in renumbered § 1005.32(b)(1)(ii). Proposed comment 32(b)(2)-1 is adopted substantially as proposed with clarifying revision, but renumbered as comment 32(b)-3 for organizational purposes.

Proposed comment 32(b)(2)-2 provided examples illustrating the application of the permanent exception. The comment is adopted substantially as proposed, but renumbered as comment 32(b)-4 for organizational purposes. Comment 32(b)-4.i. provides an example of when a remittance transfer would qualify for the exception. The Bureau notes that some comments received indicate that there may be confusion as to the application of the permanent exception provided in § 1005.32(b)(1)(ii) to any transfer sent via international ACH. However, comment 32(b)-4.i. explains that a transfer would only qualify for the exception when 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 on the business day after the provider has sent the remittance transfer. Under such circumstances, the provider cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv). Thus, remittance transfers sent via Directo a México currently would qualify for the permanent exception in § 1005.32(b)(1)(ii). Accordingly, proposed comment 32(b)-4.i. is adopted substantially as proposed.

Proposed comments 32(b)(2)-2.ii. and -2.iii. provided examples of when a remittance transfer would not qualify for the permanent exception in § 1005.32(b)(1)(ii). The Bureau did not receive significant comment on the proposed comments, which are adopted substantially as

proposed, with technical and clarifying edits, in renumbered comments 32(b)-4.ii. and 32(b)-4.iii. Comment 32(b)-4.ii. explains that a remittance transfer provider is not permitted to provide estimates under the permanent exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity 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. In this case, transactions are made using a method negotiated between the United States and a private entity. Nonetheless, remittance transfers sent using such a method may qualify for the temporary exception in § 1005.32(a). Comment 32(b)-4.iii. explains that a remittance transfer provider does not qualify for the permanent exception if, for example, it sends transfers 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. In such a case, the remittance transfer provider can determine the exchange rate required to be disclosed.

### **32(c) Bases for Estimates**

If a remittance transfer qualifies for either the temporary exception in EFTA section 919(a)(4) or the permanent exception in EFTA section 919(c), the statute permits the provider to disclose a reasonably accurate estimate to the sender. Proposed § 205.32(c) stated that estimates provided pursuant to the exceptions in proposed § 205.32(a) and (b) (adopted as § 1005.32(a) and (b) above) must be based on an approach listed in the regulation for the required disclosure.

Proposed § 205.32(c) further stated that if a remittance transfer provider bases an estimate on an approach that is not listed, the provider complies with proposed § 205.32(c) so long as the designated recipient receives the same, or greater, amount of currency that it would

have received had the estimate been based on a listed approach. Thus, use of an approach other than one listed in the proposed rule is compliant with the regulation if the sender is not harmed by such use.

Industry commenters generally requested greater flexibility in estimating exchange rates and fees. For example, commenters recommended less prescriptive approaches, such as permitting remittance transfer providers to base estimates on reasonably available information, adopting a reasonably accurate standard, or adopting a safe harbor for good faith estimates within a specified tolerance. The Bureau generally concurs with the Board's reasoning in the May 2011 Proposed Rule that providing a list of approaches for calculating estimates would be more helpful to remittance transfer providers and consumers than a less specific standard for calculating estimates. The Bureau believes that requiring estimates be provided based on an approach listed in the regulation will facilitate compliance with the final rule. However, in response to comments received, the Bureau is clarifying proposed § 205.32(c). The safe harbor in proposed § 205.32(c) was intended to provide greater flexibility and to facilitate compliance for remittance transfer providers that may base an estimate on an approach that is not listed in the rule. However, the Bureau notes that under the proposal, the provider would have been required to compare any estimate based on its own approach with an estimate based on a listed approach in order to determine whether the sender would be harmed by such use. The Bureau believes that this comparison would unnecessarily increase the burden of using an unlisted approach and render the safe harbor meaningless. Therefore, the Bureau revises proposed § 205.32(c) to state that if a provider bases an estimate on an approach not listed in the rule, the provider is deemed to be in compliance with the rule so long as the designated recipient receives the same, or greater, amount of funds that the remittance transfer provider disclosed as required under

§ 1005.31(b)(1)(vii). The Bureau believes that this clarification also ensures that the sender is not harmed because the amount of funds received by the designated recipient will be the same or greater than the estimated total amount received as required to be disclosed under § 1005.32(b)(1)(vii). Accordingly, the Bureau is adopting proposed § 205.32(c) as § 1005.32(c) with amendment.

#### 32(c)(1) Exchange Rate

Proposed § 205.32(c)(1) set forth the approaches that a remittance transfer provider may use as the basis of an estimate of the exchange rate required to be disclosed under § 1005.31(b)(1)(iv). The final rule adopts the proposed rule as § 1005.32(c)(1), with modifications and additional commentary to address issues raised in comments.

The approach in proposed § 205.32(c)(1)(i) stated that for remittance transfers qualifying for the § 1005.32(b)(1)(ii) exception, the estimate must be based on the most recent exchange rate set by the recipient country's central bank and reported by a Federal Reserve Bank. Proposed comment 32(c)(1)(i)-1 clarified that if the exchange rate for a remittance transfer sent via international ACH that qualifies for the proposed § 205.32(b)(2) exception is set the following business day, the most recent exchange rate available for a transfer will be the exchange rate set for the day that the disclosure is provided, i.e., the current business day's exchange rate. Consumer group commenters generally supported proposed § 205.32(c)(1)(i) and its commentary. Other commenters believed that the application of the proposed § 205.32(b)(2) exception should be broadened generally, as discussed above. Accordingly, proposed § 205.32(c)(1)(i) is adopted as proposed in renumbered § 1005.32(c)(1)(i). Comment 32(c)(1)(i)-1 is adopted substantially as proposed, but renumbered as comment 32(c)(1)-1 for organizational purposes.

The approach in proposed § 205.32(c)(1)(ii) provided that, for other transfers, the estimate must be based on the most recent publicly available wholesale exchange rate. Industry commenters argued that the wholesale interbank exchange rate would not be the rate actually applied to a consumer's remittance transfer, so using the wholesale exchange rate as an estimate would be misleading to consumers. For instance, basing an estimate on only the wholesale rate could consistently overestimate the amount of currency received by a recipient because the wholesale rate does not account for any spread applied to the rate for a sender's remittance transfer to a particular country. One commenter noted that estimates of exchange rates may be based on information from foreign exchange dealers as well as rates available in the marketplace.

Based on comments received and upon further analysis, the Bureau is adopting a revised basis for estimates in renumbered § 1005.32(c)(1)(ii) and its related commentary to address concerns regarding the proposed use of a wholesale exchange rate. Specifically, § 1005.32(c)(1)(ii) provides that, in disclosing the exchange rate as required under § 1005.31(b)(1)(iv), an estimate must be based on the most recent publicly available wholesale rate and, if applicable, the spread typically applied to such a rate by the remittance transfer provider or its correspondent to the wholesale rate for remittance transfers for a particular currency. The Bureau believes the revised subsection will result in an estimated exchange rate that better approximates the "retail" rate that will apply to a sender's remittance transfer.

New comment 32(c)(1)-3 provides guidance on applying any spread to the estimate of an exchange rate based on the wholesale exchange rate. If a remittance transfer provider uses the most recent wholesale exchange rate as a basis for an estimate of an exchange rate, the exchange rate estimate must also reflect any spread that is typically applied to such a rate for remittance transfers for a particular currency. For example, assume a remittance transfer provider (or its

correspondent) typically applies a spread, such as a fixed percentage, to a wholesale rate in order to determine the exchange rate offered to a sender for remittance transfers for a particular currency. If the provider must estimate an exchange rate for another remittance transfer for the same currency, the remittance transfer provider must estimate the exchange rate by applying the same spread (i.e., fixed percentage) to the most recent publicly available wholesale rate.

Proposed comment 32(c)(1)(ii)-1 provided that publicly available sources of information containing the most recent wholesale exchange rate for a currency include, for example, U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times; a recipient country's national news service; and a recipient country's central bank or other government agency. The Bureau did not receive any comments on this aspect of the proposal. One industry commenter, however, noted that for currency exchange rates not listed by a U.S. news service, remittance transfer providers could rely on the basis for estimates provided under proposed § 205.32(c)(1)(iii). Accordingly, proposed comment 32(c)(1)(ii)-1 is adopted substantially as proposed, but renumbered as comment 32(c)(1)-2 for organizational purposes.

Industry commenters, however, stated that it was unclear which most recent publicly available wholesale exchange rate should apply because rates may fluctuate throughout the day and may be published on a website in addition to the rate that may be available in a news service publication. Based on these comments, the Bureau is adopting new comment 32(c)(1)-4 to provide guidance when an exchange rate for a currency is published or provided multiple times within a day. Specifically, comment 32(c)(1)-4 clarifies that if the exchange rate for a currency is published or provided multiple times throughout the day because the exchange rate fluctuates throughout the day, a remittance transfer provider may use any exchange rate available on that day for the purposes of determining the “most recent” exchange rate.

The approach in proposed § 205.32(c)(1)(iii) permitted the use of the most recent exchange rate offered by the person making funds available directly to the designated recipient as the basis for providing an estimate. However, in some instances the exchange rate used for a transfer may be set by other institutions, such as a foreign ACH counterpart or an intermediary institution in a transmittal route that is not a correspondent institution. For example, the first intermediary institution in the transmittal route that is in the recipient country may set the exchange rate and conduct the currency exchange before transmitting the remittance transfer to the recipient institution, which then makes the funds available to the designated recipient. Therefore, upon further consideration, proposed § 205.32(c)(1)(iii), in renumbered § 1005.32(c)(1)(iii), is revised to state that an estimate may be also based on the most recent exchange rate offered or used by the person in the transmittal route setting the exchange rate. The Bureau notes that § 1005.32(c)(1)(iii), as revised, addresses circumstances in which the local currency is infrequently traded or when wholesale exchange rates would not have been publicly available.

#### 32(c)(2) Transfer Amount in the Currency Made Available to the Designated Recipient

Proposed § 205.32(c)(2) stated that, in disclosing the transfer amount in the currency made available to the designated recipient, as required under § 1005.31(b)(1)(v), an estimate must be based upon the estimated exchange rate provided in accordance with § 1005.32(c)(1). The Bureau did not receive comment on proposed § 205.32(c)(2), which is adopted with revision for consistency with § 1005.31(b)(1)(v) in renumbered § 1005.32(c)(2).

#### 32(c)(3) Other Fees

Proposed § 205.32(c)(3) provided that one of two approaches must be used to estimate the fees imposed by intermediary institutions in connection with an international wire transfer

required to be disclosed under § 1005.31(b)(1)(vi). Under the first approach, an estimate must be based on the remittance transfer provider's most recent transfer to an account at the designated recipient's institution. Under the second approach, an estimate must be based on the representations of the intermediary institutions along a representative route identified by the remittance transfer provider that the requested transfer could travel.

Proposed comment 32(c)(3)(ii)-1 clarified that a remittance transfer from a sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. Proposed comment 32(c)(3)(ii)-1 further clarified that, in providing an estimate of the fees required to be disclosed under proposed § 205.31(b)(1)(vi) pursuant to the temporary exception, an insured institution may rely upon the representations of the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

Industry commenters argued that insured institutions do not know what other fees an intermediary institution or the designated recipient's institution may charge. For example, a remittance transfer provider may not know the fees a receiving institution may charge its own customers for receiving a remittance transfer. Another commenter suggested that some small insured institutions may be unaware of the number of intermediary institutions involved in the transmittal route. Commenters also argued that it would be difficult to obtain sufficient information to be able to disclose any estimates, and that the requirement would impose operational burden on insured institutions, particularly on insured institutions that do not send international wire transfers frequently or are unable to obtain representations of intermediary institutions.



As discussed above, the Bureau believes that, consistent with the statute, it is appropriate to require remittance transfer providers to disclose fees imposed by intermediary institutions or the designated recipient's institution in order to determine the amount of currency received by the recipient. The Bureau further believes that the rule provides sufficient flexibility to facilitate compliance and that representative transmittal routes are readily determinable. In addition, the Bureau notes that a remittance transfer provider may be required to estimate other fees as required by § 1005.32(b)(1)(vi) in other circumstances. For example, if a remittance transfer provider estimates the exchange rate under the § 1005.32(b) permanent exception, a provider may be required to estimate other fees that are imposed as a percentage of the amount transferred to the designated recipient. Therefore, the Bureau believes it is appropriate to provide additional clarification. Accordingly, the Bureau is adopting a new § 1005.32(c)(3)(i) to provide that for other fees that are imposed as a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with § 1005.32(c)(1), prior to any rounding of the estimated exchange rate. Furthermore, the Bureau is adopting § 205.32(c)(3) with a technical revision in renumbered § 1005.32(c)(3)(ii). Comment 32(c)(3)(ii)-1 is adopted substantially as proposed, but is renumbered as comment 32(c)(3)-1 for organizational purposes.

#### 32(c)(4) Other Taxes Imposed in the Recipient Country

Proposed § 205.32(c)(4) stated that, in disclosing taxes imposed in the recipient country as required under § 1005.31(b)(1)(vi) that are a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with § 1005.32(c)(1) and the estimated fees imposed by institutions that act as intermediaries in connection with an international wire transfer provided in accordance with

§ 1005.32(c)(3). Proposed comment 32(c)(4)-1 clarified that proposed § 205.32(c)(4) permits a provider to give an estimate only when the taxes imposed in a recipient country are a percentage of the amount transferred to the designated recipient. In other contexts where taxes may be imposed, a remittance transfer provider can determine the exact amount, such as in the case of a tax of a specific amount. The Bureau did not receive comments on this aspect of the proposal. Accordingly, proposed § 205.32(c)(4) is adopted in renumbered § 1005.32(c)(4) with revisions for consistency with amended §§ 1005.31(b)(1)(vi) and 1005.32(c)(3). The Bureau is revising comment 32(c)(4)-1 to clarify that a remittance transfer provider can determine the exact amount of other taxes that are a percentage of the amount transferred if the provider can determine the exchange rate and the exact amount of other fees imposed on the remittance transfer. Accordingly, comment 32(c)(4)-1 is adopted with clarification.

#### 32(c)(5) Amount of Currency that will be Received by the Designated Recipient

Proposed § 205.32(c)(5) stated that, in disclosing the amount of currency that will be received by the designated recipient as required under § 1005.31(b)(1)(vii), an estimate must be based on the estimates provided in accordance with § 1005.32(c)(1), (c)(3), and (c)(4), as applicable. The Bureau did not receive significant comment on proposed § 205.32(c)(5), however, the Bureau clarifies that in disclosing an amount under § 1005.31(b)(1)(vii), an estimate must be based on estimates provided in accordance with § 1005.32(c)(1) through (c)(4). Accordingly, proposed § 205.32(c)(5) is adopted in renumbered § 1005.32(c)(5) with this clarification.

### **Section 1005.33 Procedures for Resolving Errors**

EFTA section 919(d) addresses procedures for resolving errors in connection with remittance transfers, and allows a sender to provide notice of an error within 180 days of the

promised date of delivery of a remittance transfer. The sender's notice triggers a remittance transfer provider's duty to investigate the claim and correct any error within 90 days of receiving the notice. The statute generally does not define what types of transfers and inquiries constitute errors and gives the Bureau the authority to define "error." The Board proposed § 205.33 to implement the new error resolution requirements for remittance transfers that adapted many of the same error resolution procedures that currently apply to a financial institution under § 1005.11. The Bureau adopts proposed § 205.33 as § 1005.33 with several changes based on recommendations from commenters, as discussed in detail below.

### **33(a) Definition of Error**

#### Definition of Error Generally

Proposed § 205.33(a)(1) defined the term "error" for purposes of the remittance transfer error resolution provisions. Proposed § 205.33(a)(2) listed types of transfers or inquiries that do not constitute errors. The proposed commentary provided additional guidance illustrating errors under the rule.

Many industry commenters generally believed the proposed error definitions were overly broad because they would subject a remittance transfer provider to liability for errors caused by parties outside the control of the provider. Some of these commenters suggested that requiring providers to assume responsibility for errors when the provider has not erred nor controlled the circumstances that caused the error would undermine the safety and soundness of these transfer systems and could lead some financial institutions to eliminate remittance transfer services.

Other industry commenters predicted that the financial impact of losses experienced as a result of errors caused by another party could be significant enough for providers to exit the market.

The Bureau is amending certain error definitions in response to these comments, as discussed below. In general, under a number of financial consumer protection laws, the regulated entity has the responsibility to investigate errors asserted by consumers and generally assumes much of the liability when an error has occurred even where neither the regulated entity nor the consumer are at fault. See, e.g., 15 U.S.C. 1693f and 1693g; 15 U.S.C. 1643; 12 CFR 1005.11; and 12 CFR 1026.13. Thus, consistent with other error resolution procedures in Federal financial consumer protection laws, the Bureau believes that where neither a sender nor a remittance transfer provider are necessarily at fault, a provider generally is in a better position than a sender to identify, and possibly recover from, the party at fault.

Furthermore, placing liability with the remittance transfer provider in these instances aligns the remittance transfer provider's incentives with those of the sender. Remittance transfer providers are likely better able to work with parties in the remittance transfer system or government entities to reduce errors to remittance transfers overall. Placing responsibility on providers increases the incentives of providers to develop such policies, procedures, and controls. As a result, the Bureau does not believe that whether a particular circumstance constitutes an error should necessarily depend on whether a provider is at fault. The Bureau further notes that this is similar to the approach taken in defining "errors" under § 1005.11 for EFTs where something may be considered an "error" even if the financial institution did not cause the error.

#### 33(a)(1) Types of Transfers or Inquiries Covered

Proposed § 205.33(a)(1) listed the types of transfers or inquiries that would constitute "errors." Each type of transfer or inquiry that constitutes an "error" is discussed below.

### 33(a)(1)(i) Incorrect Amount Paid by Sender

Proposed § 205.33(a)(1)(i) defined “error” to include an incorrect amount paid by a sender in connection with a remittance transfer. This element of the definition is similar to the error described in § 1005.11(a)(1)(ii) of an incorrect EFT to or from a consumer’s account. The Board also proposed comment 33(a)-1 to clarify that proposed § 205.33(a)(1)(i) was intended to cover circumstances in which the amount paid by the sender differs from the total amount of the transaction stated in the receipt or the combined disclosure. Proposed comment 33(a)-1 also stated that an error under § 205.33(a)(1)(i) covered incorrect amounts paid by a sender regardless of the form or method of payment tendered by the sender for the transfer, including when a debit, credit, or prepaid card is used to pay an amount in excess of the amount of the transfer requested by the sender plus applicable fees.

Commenters did not specifically address proposed § 205.33(a)(1)(i) or proposed comment 33(a)-1. The Bureau adopts proposed § 205.33(a)(1)(i) substantially as proposed in renumbered § 1005.33(a)(1)(i). The Bureau also adopts comment 33(a)-1 substantially as proposed.

### 33(a)(1)(ii) Computational or Bookkeeping Error

Under proposed § 205.33(a)(1)(ii), an “error” also included “a computational or bookkeeping error made by a remittance transfer provider relating to a remittance transfer.” This provision is similar to an existing computational or bookkeeping error provision for EFTs in § 1005.11(a)(iv). In implementing this provision of Regulation E, the Board noted that § 1005.11(a)(iv) (formerly § 205.11(a)(iv)) is intended to include “arithmetical errors, posting errors, errors in printing figures, and figures that were jumbled due to mechanical or electronic malfunction.” See 44 Fed. Reg. 59480 (Oct. 15, 1979). Proposed § 205.33(a)(1)(ii) was meant

to cover similar types of errors with respect to remittance transfers, such as circumstances in which a remittance transfer provider fails to reflect all fees that will be imposed in connection with the transfer or misapplies the applicable exchange rate in calculating the amount of currency that will be received by the designated recipient. As noted in the May 2011 Proposed Rule, notwithstanding that the designated recipient may receive the amount of currency stated on the receipt or combined disclosure, an error could be asserted because the provider incorrectly calculated the amount that should have been received. The Bureau did not receive any comments on proposed § 205.33(a)(1)(ii). The Bureau adopts this provision as proposed in renumbered § 1005.33(a)(1)(ii).

33(a)(1)(iii) Incorrect Amount Received by the Designated Recipient

The Board proposed § 205.33(a)(1)(iii) to provide that an “error” generally included the failure by a remittance transfer provider to make available to a designated recipient the amount of currency identified in the receipt or combined disclosure given to the sender, unless the disclosure provided an estimate made in accordance with proposed § 205.32 (adopted as § 1005.32 above). The Board also proposed guidance in comment 33(a)-2 regarding the scope of the error under proposed § 205.33(a)(1)(iii). Furthermore, proposed comment 33(a)-3 provided examples illustrating circumstances in which an incorrect amount of currency may be received by a designated recipient.

One industry commenter recommended that the exclusion of estimated disclosures made pursuant to § 1005.32 from the definition of “error” under renumbered § 1005.33(a)(1)(iii) should be applied to other errors listed in § 1005.33(a)(1). The Bureau notes, however, that none of the other errors in § 1005.33(a)(1) rely on the difference between what may be disclosed as an estimate and the actual amount. For example, suppose a remittance transfer is permitted to

estimate disclosures under § 1005.32. If the remittance transfer provider fails to deliver any funds to the designated recipient, the sender should be able to assert an error even though the provider disclosed an estimate. As a result, the Bureau declines to make the requested change, and the exclusion of estimated disclosures made pursuant to § 1005.32 is adopted as renumbered § 1005.33(a)(1)(iii)(A).

In addition, the Bureau has added language to clarify that the exception in § 1005.33(a)(1)(iii)(A) from the definition of “error” applies if the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts. This clarification prevents a remittance transfer provider from relying on the exception for estimates if it makes available to the designated recipient an amount that is completely unrelated to the amount calculated using the actual exchange rate, fees, and taxes. For example, if the remittance transfer provider estimated the amount to be received pursuant to § 1005.32 as 1200 pesos in the receipt or combined disclosure, and the amount calculated using the applicable actual exchange rate, fees, and taxes is 1150 pesos, the provider cannot use the § 1005.33(a)(1)(iii)(A) exception to claim that there is no error if it made only 100 pesos available to the designated recipient.

As discussed in more detail below, several industry commenters requested expansion of the exception to the error defined in § 1005.33(a)(1)(iv) for extraordinary circumstances outside the remittance transfer provider’s control that could not have been reasonably anticipated. The Bureau believes that it is appropriate to provide this exception for an error involving an incorrect amount received by the designated recipient. For example, suppose a foreign government in the country where a remittance transfer is to be delivered imposes an emergency tax on the transfer that was not in effect nor could have been reasonably anticipated at the time the provider was required to give the sender the receipt or combined disclosure. The failure to make available to

the designated recipient the amount of currency identified in the receipt or combined disclosure given to the sender, which did not reflect the emergency tax, should not constitute an error if the designated recipient received the disclosed amount of currency less the emergency tax.

As a result, new § 1005.33(a)(1)(iii)(B) provides that the failure to make the amount of currency stated in the receipt or combined disclosure is not an error if the failure resulted from extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Furthermore, the Bureau adopts new comment 33(a)-4 to provide guidance on what types of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated qualify for the exception. The comment is similar to the comment adopted as comment 33(a)-6 below, which describes extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated for purposes of the error for failure to make funds available by the disclosed date of availability in § 1005.33(a)(1)(iv).

Proposed comment 33(a)-2 is adopted with a change to clarify that if a provider rounds the exchange rate used to calculate the amount received consistent with § 1005.31(b)(1)(iv) and comment 31(b)(1)(iv)-2 for the disclosed rate, there is no error if the designated recipient receives an amount of currency that results from applying the exchange rate used, prior to any rounding of the exchange rate, to calculate fees, taxes, and the amount received rather than the disclosed rate. The change is intended to be consistent with the Bureau's general approach to rounding exchange rates as described above in the supplementary information to comment 31(b)(1)(vii)-2. Proposed comment 33(a)-3 is adopted substantially as proposed.



### 33(a)(1)(iv) Failure to Make Funds Available by Date of Availability

Proposed § 205.33(a)(1)(iv) generally defined an “error” to include a remittance transfer provider’s failure to make funds in connection with a remittance transfer available to the designated recipient by the date of availability stated on the receipt or combined disclosure, subject to two specified exceptions, discussed below. The Board proposed comment 33(a)-4 to provide examples of the circumstances that would have been considered errors under proposed § 205.33(a)(1)(iv). These circumstances included: (i) the late delivery of a remittance transfer after the stated date of availability or non-delivery of the transfer; (ii) the deposit of a remittance transfer to the wrong account; (iii) retention of the transferred funds by a recipient agent or institution after the stated date of availability, rather than making the funds available to the designated recipient; and (iv) the fraudulent pick-up of a remittance transfer in a foreign country by a person other than the person identified by the sender as the designated recipient of the transfer. Fraudulent pick-up, however, did not include circumstances in which a designated recipient picks up a remittance transfer from the provider’s agent as authorized, but subsequently the funds are stolen from the recipient.

Several industry commenters objected to the inclusion of fraudulent pick-up as an error. These commenters suggested that the remittance transfer provider should not be responsible for fraud that results in the pick-up of a remittance transfer by a person other than the designated recipient where the provider is unlikely to know or have control over all the intermediary institutions involved in the transfer or the final institution that will make the funds available to the designated recipient. Other commenters, including the OCC, suggested that this error might result in “friendly fraud” where a sender claims the amount was not an authorized pick-up when the pick-up was actually legitimate. The OCC was also concerned that the exposure to

remittance transfer providers for this error may be aggravated in situations involving large dollar remittances and because of the long period of time that a sender could assert this error.

One industry commenter noted that while there may be certain instances when fraudulent pick-up should be considered an error, there may be other circumstances when fraudulent pick-up should not be an error. In particular, this commenter suggested that where the name of the person picking up the funds does not match the name of the designated recipient set forth in the receipt, the sender should be able to assert an error. However, if an individual presents fake identification in the name of the designated recipient, this commenter stated that this fraudulent pick-up is outside of the remittance transfer provider's control and therefore, should not be considered an error. Industry commenters also believed that a remittance transfer provider should not be liable for a fraudulent pick-up when a provider and its agent has complied with fraud and risk management policies and procedures.

As the Board noted in the May 2011 Proposed Rule, treating fraudulent pick-up of a remittance transfer as an error is consistent with the scope of unauthorized EFTs under § 1005.2(m), which includes unauthorized EFTs initiated through fraudulent means. See comment 2(m)-3. Although identity theft can present a challenge to remittance transfer providers, financial institutions face similar challenges with respect to unauthorized EFTs and bear most of the risk. Moreover, similar to remittance transfers, the entity in the best position to verify the identity of the person initiating the EFT (for example, the merchant at a store who initiates an EFT using a debit card) may not be known or controlled by the financial institution, though such entities may have agreed to abide by system rules (e.g., payment card network rules, ACH system rules). However, under current laws governing EFTs, whether the financial institution knows or has control over that entity (e.g., a merchant) does not affect whether an

EFT could be an unauthorized EFT. Similarly, the Bureau believes that whether a fraudulent pick-up should be considered an error should not be affected by the relationship between the remittance transfer provider and the entity distributing the remittance transfer to the designated recipient.

Furthermore, the Bureau agrees with the Board's reasoning in the May 2011 Proposed Rule that it is appropriate to treat these circumstances as errors because the remittance transfer provider, rather than the sender, is in the best position to ensure that a remittance transfer is picked up only by the person designated by the sender. For example, in some models, remittance transfer providers could require or contract with the entity distributing the funds, if it is not the remittance transfer provider itself, to request and examine identification from the person picking up the funds. The Bureau believes that including fraudulent pick-up as an error would better align the remittance transfer provider's incentives to prevent this occurrence with the interests of the sender.

One industry commenter suggested that a sender be required to inform the remittance transfer provider if the confirmation number or receipt is lost or stolen. For some remittance transfer providers, a designated recipient is required to give the confirmation number, which is generally printed on the receipt, in order to obtain access to the funds in a remittance transfer. The commenter suggested that this approach would be similar to the approach taken with respect to a lost or stolen access device in § 1005.6(b) with respect to unauthorized EFTs, where a consumer's liability for unauthorized EFTs is dependent on how quickly the consumer reports the lost or stolen access device to the account-holder financial institution.

The Bureau notes, however, the risk for a lost or stolen confirmation number is not the same as for a lost or stolen access device for EFTs. A lost or stolen access device could

potentially be used to initiate an EFT by a person who is not the account holder immediately without an accomplice and without identification matching the name associated with the access device. By contrast, where a confirmation number given to the sender is lost or stolen, an unauthorized person who gains access to the number would not be able to take advantage of it unless he or she were located or had an accomplice in the recipient country. Furthermore, because access to funds sent by a remittance transfer provider is often limited to those with identification matching the designated recipient on the receipt, an unauthorized person who gains access to a lost or stolen confirmation number may be deterred from taking advantage of it. Consequently, the Bureau does not believe that a sender's liability should depend on whether he or she reports a confirmation number or receipt as lost or stolen.

Moreover, under § 1005.6(b), a consumer's liability for unauthorized EFTs is dependent on how quickly the consumer reports the lost or stolen access device because the speed with which a consumer reports the lost or stolen access device may be critical to preventing further unauthorized EFTs and further losses, and the possibility of increased liability provides incentives for a consumer to report quickly. In contrast, a lost or stolen confirmation number would not result in losses other than the specific remittance transfer in question. Therefore, the Bureau also does not believe that a sender's liability should depend on how quickly a sender reports a lost or stolen confirmation number.

The Bureau is adopting comment 33(a)-4, renumbered as comment 33(a)-5, generally as proposed. Specifically, the Bureau is including a statement to clarify that if only a portion of the funds were made available by the disclosed date of availability, then § 1005.33(a)(1)(iv) does not apply, but § 1005.33(a)(1)(iii) may apply instead.

### Exceptions to the Failure to Make Funds Available by Date of Availability

As noted above, the proposed rule provided two exceptions to the definition of “error” in proposed § 205.33(a)(1)(iv). Under proposed § 205.33(a)(1)(iv)(A), the failure to make funds from a remittance transfer available by the stated date of availability did not constitute an error if the failure resulted from circumstances outside the remittance transfer provider’s control. Under proposed § 205.33(a)(1)(iv)(B), the failure to make funds from a remittance transfer available on the stated date of availability did not constitute an error if it was caused by the sender providing incorrect information in connection with the remittance transfer to the provider, so long as the provider gives the sender the opportunity to correct the information and resend the transfer at no additional cost. The Bureau adopts these two exceptions with changes to respond to commenters’ concerns, as discussed below. The Bureau is also adopting two additional exceptions to the definition of “error” in proposed § 205.33(a)(1)(iv).

#### Exception for Extraordinary Circumstances Outside of the Remittance Transfer Provider’s Control

Proposed § 205.33(a)(1)(iv)(A) provided that the failure to make funds from a remittance transfer available by the stated date of availability did not constitute an error if the failure resulted from circumstances outside the remittance transfer provider’s control. Proposed comment 33(a)-5 clarified that the exception was limited to circumstances that are generally referred to under contract law as force majeure, or uncontrollable or extraordinary circumstances that cannot be reasonably anticipated by the remittance transfer provider and that prevent the provider from delivering a remittance transfer, such as war, civil unrest, or a natural disaster. The proposed comment also provided that the exception for circumstances beyond a provider’s control covered government actions or other restrictions that occur after the transfer has been

sent but that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or the garnishment or attachment of funds.

Many industry commenters stated that the proposed comment limiting the circumstances beyond the provider's control to instances of force majeure or to other uncontrollable or extraordinary circumstances was too narrow. Several industry commenters recommended that the exception should be more broadly interpreted to exclude errors caused by acts of a third party beyond a remittance transfer provider's control. Consumer group commenters believed the approach in the proposed rule was a reasonable limitation and recommended that the commentary specifically state that mistakes by a recipient institution do not fall under the exception to the error to deliver funds by the date of delivery. Other consumer group commenters suggested that the final rule limit the circumstances even further to only include acts of war or terrorism or natural disaster.

As discussed above, the Bureau does not believe that whether a particular circumstance constitutes an error or not should necessarily depend on whether a provider is at fault. Even if the error is caused by a third party beyond the remittance transfer provider's control, the Bureau believes that the remittance transfer provider is often in a better position to identify and recover the loss from the third party than a sender, especially when there are multiple intermediary institutions involved in a transfer. Accordingly, the Bureau believes that with respect to third-party errors, the circumstances in proposed § 205.33(a)(1)(iv)(A) should include only a narrow category of third-party errors caused by uncontrollable or extraordinary circumstances that cannot be reasonably anticipated by the remittance transfer provider and that prevent the provider from delivering a remittance transfer.

Furthermore, the Bureau believes the proposed comment is appropriately narrow in interpreting the limited set of circumstances for which the failure to make funds available by the disclosed date of delivery should not be an error. Therefore, proposed comment 33(a)-5 is adopted substantially as proposed in comment 33(a)-6. The Bureau is adopting proposed § 205.33(a)(1)(iv)(A) generally as proposed in renumbered § 1005.33(a)(1)(iv)(A). However, the Bureau is adding language to § 1005.33(a)(1)(iv)(A) to more accurately reflect the descriptions of the types of circumstances listed in comment 33(a)-6. Specifically, § 1005.33(a)(1)(iv)(A) provides that a failure to make funds available by the disclosed date of delivery is not an error if the failure resulted from extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated.

#### Exception for Sender Providing Incorrect or Insufficient Information

Proposed § 205.33(a)(1)(iv)(B) provided that the failure to make funds from a remittance transfer available on the stated date of availability did not constitute an error if it was caused by the sender providing incorrect information in connection with the remittance transfer to the provider, so long as the provider gives the sender the opportunity to correct the information and resend the transfer at no additional cost. Proposed comment 33(a)-6 clarified that if the failure to make funds from a transfer available by the stated date of availability occurred due to the provider's miscommunication of information necessary for the designated recipient to pick up the transfer, such as providing the incorrect location where the transfer may be picked up or providing the wrong confirmation number or code for the transfer, such failure would have been treated as an error under proposed § 205.33(a)(1)(iv).

Many industry commenters objected to the requirement that the remittance transfer provider absorb the costs of amending and resending a transfer when the sender is at fault. These

commenters noted that modifying transfers can be expensive and that the proposed rule would, in effect, require the remittance transfer provider and other senders, through higher fees, to bear the responsibility for a sender's mistake.

The Bureau agrees with commenters that a sender's mistake should not obligate a remittance transfer provider to bear all the costs for resending the remittance transfer. However, the Bureau believes that while the remittance transfer provider should not bear all the costs in these circumstances, the failure should still be considered an error such that the error resolution procedures apply. Therefore, the Bureau is moving the concept in proposed § 205.33(a)(1)(iv)(B) to a new § 1005.33(c)(2)(ii)(A)(2), and proposed comment 33(a)-6 to renumbered comment 33(c)-2, as discussed further below.

#### Additional Exceptions

In the final rule, the Bureau is adding two additional exceptions to the definition of "error" in § 1005.33(a)(1)(iv) based on a consideration of comments received. New § 1005.33(a)(1)(iv)(B) provides that delays in making funds available to a designated recipient that are related to a provider's fraud screening procedures or in accordance with the Bank Secrecy Act (BSA), 31 U.S.C. 5311 et seq., Office of Foreign Assets Control (OFAC) requirements, or similar laws or requirements would not constitute an error. Several industry commenters and the OCC noted that for fraud screening, BSA, or OFAC purposes, a remittance transfer provider may have further communications with the sender to ensure the legitimacy or the legality of a remittance transfer. This, in turn, may cause delays in making the funds available to a designated recipient. The Bureau believes it is appropriate to exclude these situations from the definition of "error" in order to encourage remittance transfer providers to continue to engage in activities that benefit the safety of the transfer system as a whole. The



Bureau understands that under current procedures, these types of delays are generally infrequent, relative to the number of remittance transfers typically conducted by remittance transfer providers.

The Bureau is also adopting a new § 1005.33(a)(1)(iv)(C) in response to industry commenters' and the OCC's concerns about "friendly fraud." Consequently, consistent with the definition of "unauthorized electronic fund transfer" under § 1005.2(m), and as suggested by the OCC to address its concerns regarding the error of fraudulent pick-up, § 1005.33(a)(1)(iv)(C) provides an exception to the "error" definition for remittance transfers made with fraudulent intent by the sender or any person in concert with the sender. Therefore, if a sender is involved in a scheme to defraud the remittance transfer provider, for example, by fraudulently claiming that the designated recipient did not pick up funds that the designated recipient in fact did pick up, such action would not be considered an "error" under § 1005.33(a)(1)(iv)(C).

#### 33(a)(1)(v) Sender's Request for Documentation

Finally, under proposed § 205.33(a)(1)(v), an error included a sender's request for documentation provided in connection with a remittance transfer or additional information or clarification concerning a remittance transfer. This provision is similar to an existing provision in § 1005.11(a)(1)(vii) for EFTs. As the Board noted in the May 2011 Proposed Rule, an error under proposed § 205.33(a)(1)(v) would also cover a sender's request for information to determine whether an error exists. The Bureau did not receive any comments on proposed § 205.33(a)(1)(v). The Bureau adopts proposed § 205.33(a)(1)(v) substantially as proposed in renumbered § 1005.33(a)(1)(v).

### 33(a)(2) Types of Inquiries and Transfers Not Covered

Proposed § 205.33(a)(2) listed circumstances that would not constitute errors. In particular, proposed § 205.33(a)(2)(i) provided that an inquiry about a transfer of \$15 or less does not constitute an error, since these small-value transfers do not fall within the scope of the definition of “remittance transfer.” See § 1005.30(e)(2), discussed above. Under proposed § 205.33(a)(2)(ii), an inquiry about the status of a remittance transfer – for example, if the sender calls to ask whether the funds have been made available in the foreign country – would also not be an error (unless the funds have not been made available by the disclosed date of availability). Finally, similar to § 1005.11(a)(2)(ii) for EFTs, a sender’s request for information for tax or other recordkeeping purposes would not constitute an error under proposed § 205.33(a)(2)(iii).

The Bureau notes that because transfers of \$15 or less are not “remittance transfers” under § 1005.30(e)(2), such transfers are not covered under the remittance transfer provisions in subpart B. Therefore, the Bureau believes it is not necessary to state that an inquiry involving a transfer of \$15 or less is not an error, and is not adopting proposed § 205.33(a)(2)(i). A Federal Reserve Bank commenter noted that for certain assertions of error that exceed the \$15 threshold, providers may still not have the ability to investigate the assertion because they are less than the minimum amount traceable in a foreign country. In order to ensure that senders are protected with respect to errors related to remittance transfers other than truly de minimis amounts, however, the Bureau is not inclined to create another threshold amount above the \$15 coverage threshold for which an inquiry is not an error. The Bureau did not receive comments on proposed § 205.33(a)(2)(ii) or (iii). These provisions are adopted as proposed in renumbered § 1005.33(a)(2)(i) and (ii), respectively.

In the final rule, the Bureau is adopting provisions describing two other circumstances that do not constitute errors in response to comments received. Section 1005.33(a)(2)(iii) provides that a change requested by the designated recipient is not an error. Comment 33(a)-7 clarifies new § 1005.33(a)(2)(iii) by providing that the exception is available only if the change is made solely because the designated recipient requested the change. The comment also includes an illustrative example. The example explains that if a sender requests a remittance transfer provider to send US\$100 to a designated recipient at a designated location, but the designated recipient requests the amount in a different currency (either at the sender-designated location or another location requested by the recipient) and the remittance transfer provider accommodates the recipient's request, the change does not constitute an error.

The Bureau understands that as a service to the recipient, a remittance transfer provider may offer to provide the remittance transfer in a different currency or permit the transfer to be picked up at a location different than originally requested by the sender. In such cases, the Bureau believes that this type of customer service should be preserved. The Bureau, however, is concerned that remittance transfer providers may try to provide the remittance transfer to the designated recipient in a different currency simply because the provider or its agent do not have sufficient amounts of the sender-requested currency on hand. Therefore, the Bureau believes that this exception should only be available if the change is made solely because the designated recipient requested the change.

Section 1005.33(a)(2)(iv) is also new and provides that an error does not include a change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) if the remittance transfer provider relied on information provided by the sender as permitted by the

commentary accompanying § 1005.31 in making such disclosure. As discussed above, a remittance transfer provider may rely on the sender's representations in making certain disclosures. For example, a remittance transfer provider can rely on the representations of the sender regarding the currency that can be provided in the remittance transfer.

New comment 33(a)-8 elaborates on the exclusion by providing two illustrative examples. Under one example, a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error pursuant to § 1005.33(a)(2)(iv). Similarly, if the remittance transfer provider relies on the sender's representations regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the change in the amount of currency the designated recipient actually receives due to the taxes actually imposed does not constitute an error pursuant to § 1005.33(a)(2)(iv).

### **33(b) Notice of Error from Sender**

Proposed § 205.33(b) set forth the timing and content requirements for a notice of error provided by a sender in connection with a remittance transfer. Consistent with EFTA section 919(d)(1)(A), proposed § 205.33(b)(1)(i) stated that a sender must provide a notice of error orally or in writing to the remittance transfer provider no later than 180 days after the date of availability of the remittance transfer stated in the receipt or combined disclosure. Under proposed § 205.33(b)(1)(ii), such notice of error must enable the remittance transfer provider to identify: the sender's name and telephone number or address; the recipient's name, and if known,

the telephone number or address of the recipient; and the remittance transfer to which the notice of error applies. Proposed § 205.33(b)(1)(iii) stated that the notice must also indicate why the sender believes the error exists and include to the extent possible the type, date, and amount of the error, except in the case of requests for documentation, additional information, or clarification under proposed § 205.33(a)(1)(v).

Several industry commenters suggested that the time period for senders to assert an error is too long. Some industry commenters recommended that the time period be shortened to 60 days, similar to the time period that consumers have to assert errors for EFTs. See § 1005.11(b)(3). Other industry commenters suggested 30 days. The Bureau notes that the 180-day time period for senders to assert an error is expressly stated in the statute. Given the international nature of remittance transfers, the additional time a sender may need to communicate with persons abroad, and the lack of information about problems associated with this time period, the Bureau does not believe that using its authority under EFTA sections 904(a) and (c) to change this time period is currently warranted.

Industry commenters also requested that the sender be required to assert an error in writing at a centralized address. The Bureau believes that requiring senders to assert an error in writing would have a chilling effect on the error resolution process, especially given that some senders may not feel comfortable writing in English. Although in some cases, a sender may have the ability to assert the error in a foreign language and be assured a response in that language, that ability may depend on the foreign languages used at the office of the remittance transfer provider where the error is asserted to advertise, solicit, or market remittance transfers under § 1005.31(g), as discussed above. Moreover, the current error resolution process for EFTs does

not require a consumer to assert an error in writing.<sup>81</sup> Therefore, the Bureau declines to make the requested change, and proposed § 205.33(b)(1) is adopted substantially as proposed in renumbered § 1005.33(b)(1).

Proposed § 205.33(b)(2) provided that when a notice of error was based on documentation, additional information, or clarification that the sender had previously requested under § 1005.33(a)(1)(v), the sender's notice of error would be timely if it were received by the provider no later than 60 days after the provider sends the requested documentation, information, or clarification. As the Board explained in the May 2011 Proposed Rule, the proposed 60-day time frame for the sender to provide a new notice of error following the sender's receipt of documentation, information, or clarification from the remittance transfer provider is consistent with the 60-day time frame established for similar circumstances under the general error resolution provisions in Regulation E, § 1005.11(b)(3).

The Bureau agrees with the Board's reasoning that under these circumstances, 60 days, rather than the 180-day error resolution time frame generally applicable to remittance transfers, provides sufficient time for a sender to review the additional information provided by the remittance transfer provider and determine whether an error occurred in connection with a transfer. The Bureau did not receive any comments on this issue. However, the Bureau believes it is appropriate to clarify that a sender always has the original 180 days after the disclosed date of availability to assert an error. Consequently, the Bureau is amending proposed § 205.33(b)(2), renumbered as § 1005.33(b)(2), to provide that when a notice of error is based on documentation, additional information, or clarification that the sender had previously requested under § 1005.33(a)(1)(v), the sender's notice of error is timely if received by the remittance transfer

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<sup>81</sup> See § 1005.11(b). Although a financial institution may request that a consumer assert the error in writing, a consumer's failure to do so does not cancel the error resolution process, but gives the financial institution 45 days to investigate the error without having to provide provisional credit. See §§ 1005.11(b)(2) and (c)(2).

provider the later of 180 days after the disclosed date of availability of the remittance transfer or 60 days after the provider sent the documentation, information, or clarification requested.

The Board also proposed commentary to clarify proposed § 205.33(b). Proposed comment 33(b)-1 clarified that the error resolution procedures for remittance transfers apply only when a notice of error is received from the sender of the transfer. Thus, a notice of error provided by the designated recipient would not trigger the remittance transfer provider's error resolution obligations. As the Board explained in the May 2011 Proposed Rule, this interpretation is consistent with EFTA section 919(d)(1)(A), which establishes error resolution obligations for a remittance transfer provider only when a notice is received from the sender.<sup>82</sup> Proposed comment 33(b)-1 also clarified that the error resolution provisions do not apply when the remittance transfer provider itself discovers and corrects an error. The Bureau did not receive any comments on the proposed comment, which the Bureau adopts as proposed.

The Board proposed comment 33(b)-2 to provide that a notice of error is effective so long as the remittance transfer provider is able to identify the remittance transfer in question. As explained in the May 2011 Proposed Rule, a sender could provide in the notice of error the confirmation number or code given to the sender for the pick-up of a remittance transfer to identify the particular transfer in their tracking systems and records, or any other identification number or code supplied by the provider in connection with the remittance transfer, if such number or code is sufficient to enable the provider to identify the transfer.

One industry commenter requested that, for an account-based remittance transfer, the final rule require senders to include the account number in the notice of error. The Bureau notes that under comment 11(b)(1)-1 for EFTs, consumers are not required to provide their account

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<sup>82</sup> See also EFTA section 919(g)(1) (providing that a designated recipient “shall not be deemed to be a consumer for purposes of this Act”).

numbers and need only provide sufficient information to enable the financial institution to identify the account. Similarly, the Bureau believes that a sender need not provide the account number, but must provide enough information such that the remittance transfer provider can identify the account and the transfer in question. The Bureau adopts comment 33(b)-2 with this clarification, and also makes other clarifying changes to comment 33(b)-2 to make the comment consistent with § 1005.33(b)(1).

Proposed comment 33(b)-3 provided that a remittance transfer provider may request, or the sender may provide, an email address of the sender or the designated recipient, as applicable, instead of a physical address if the email address would be sufficient to enable the provider to identify the remittance transfer to which the notice applies. Proposed comment 33(b)-4 provided that if the sender fails to provide a timely notice of error within 180 days from the stated date of delivery, the remittance transfer provider would not be required to comply with the error resolution requirements set forth in the rule. As the Board noted in the May 2011 Proposed Rule, proposed comment 33(b)-4 is similar to comment 11(b)(1)-7 for EFTs. The Bureau did not receive any comments on these proposed comments. Therefore, the Bureau adopts comment 33(b)-3 substantially as proposed.

However, given that a sender may provide a second notice of error based on documentation, additional information, or clarification that the sender requested pursuant to § 1005.33(b)(2), as discussed above, the Bureau is revising comment 33(b)-4 to include the time periods relevant to § 1005.33(b)(2). Consequently, comment 33(b)-4 provides that, if applicable, a remittance transfer provider is not required to comply with the error resolution requirements for any notice of error from a sender that is received by the provider more than 60 days after a



provider sent documentation, additional information, or clarification requested by the sender, provided such date is later than 180 days after the disclosed date of availability

The Board proposed comment 33(b)-5 to provide that a notice of error from a sender received by a remittance transfer provider's agent is deemed to be received by the provider for purposes of the 180-day time frame for reporting errors under § 1005.33(b)(1)(i). Some industry commenters suggested that senders should only be permitted to assert an error at a centralized address or telephone number. These commenters noted that because remittance transfers are not the primary business for most or all of the agents of a remittance transfer provider, relying on an agent to properly forward disputes and relevant supporting documents to the remittance transfer provider would impose unnecessary costs on agents. Commenters also argued that introducing agents into the error resolution process would increase the likelihood that disputes would not be handled and resolved in a timely way.

As the Board noted in the May 2011 Proposed Rule, a sender that has a problem or issue with a particular remittance transfer may contact the agent location that the sender used to send the transfer to resolve the problem or issue, rather than notifying the provider directly. The Bureau agrees with the Board that because in many cases, for transfers sent through money transmitters, it will be the agent with whom the sender has a direct relationship, and not the provider, it is appropriate to treat a notice of error given to the agent as notice to the provider. This approach also ensures that a sender does not lose his or her error resolution rights merely because the sender was unaware of a need to directly notify the provider. This is consistent with the approach the Bureau is taking with respect to a sender asserting his or her right to cancel, as discussed in further detail below in comment 34(a)-4. Moreover, the Bureau notes that the comment does not require the agent to perform the error resolution procedures. Remittance

transfer providers may require their agents to pass on any error notice they receive to the remittance transfer providers, who can then fulfill the requirements of § 1005.33. Therefore, the Bureau adopts proposed comment 33(b)-5 substantially as proposed.

Finally, proposed comment 33(b)-6 cross-referenced the disclosure requirements in § 205.31 to reiterate that a remittance transfer provider must include an abbreviated notice of the consumer's error resolution rights on the receipt under § 205.31(b)(2) or combined disclosure under § 205.31(b)(3), as applicable. In addition, the proposed comment provided that the remittance transfer provider must make available to a sender upon request, a notice providing a full description of error resolution rights that is substantially similar to the model error resolution and cancellation notice set forth in Appendix A of this regulation (Model Form A-36). The Bureau did not receive any comments on the proposed comment. The Bureau adopts comment 33(b)-6 substantially as proposed.

### **33(c) Time Limits and Extent of Investigation**

The Board proposed § 205.33(c) to implement the statutory time frame for investigating errors and set forth the procedures for resolving an error, including the applicable remedies. The Bureau is adopting proposed § 205.33(c) in renumbered § 1005.33(c) with the changes discussed below.

#### **33(c)(1) Time limits for investigation and report to consumer of error**

Consistent with EFTA section 919(d)(1)(B), proposed § 205.33(c)(1) provided that a remittance transfer provider must promptly investigate a notice of error to determine whether an error occurred within 90 days of receiving the sender's notice. Some industry commenters suggested that the time to investigate a notice of error should be extended. One industry trade association commenter stated that for one of its member banks, while international wire

“exceptions” (including non-timely delivery) averaged less than 1% of its international wire transfers, more than 15% of these exceptions took longer than 90 days to resolve.

The Bureau notes that the 90-day time period is set by the statute. Furthermore, compared to the time period to resolve errors for EFTs (including those a consumer may have initiated abroad), which can be either 10 business days or 45 calendar days, 90 days is twice the length of the longest allowable time period. See § 1005.11(c). Although a longer period than the one available for EFTs may be justified given the international nature of these transactions, the Bureau believes that senders should have errors resolved in a timely manner. Consequently, the Bureau does not believe use of its authority under EFTA sections 904(a) and (c) to extend the statutorily-imposed 90-day period is warranted.

To effectuate the purposes of the EFTA, the Board also proposed to include in proposed § 205.33(c)(1) a requirement that the remittance transfer provider report the results to the sender within three business days after completing its investigation. As the Board explained in the May 2011 Proposed Rule, this timing is consistent with the time frame for reporting the results of an error investigation under Regulation E, § 1005.11(c)(2)(iv). In addition, under proposed § 205.33(c)(1), the report or notice of results would have to alert the sender of any remedies available for correcting any error that the provider determines has occurred.

EFTA section 919(d)(1) does not expressly require a notice to be provided to the sender when the provider determines that an error has occurred. However, the Board proposed to require that a notice be given in these circumstances to alert the sender of the results of the investigation, as well as to inform the sender of available remedies. In proposing this requirement, the Board did not propose that the notice to a sender that an error occurred as asserted had to be in writing because such a requirement could unnecessarily delay a sender’s

ability to receive an appropriate remedy. Accordingly, the Board proposed comment 33(c)-1 to clarify that if the error occurred as described by the sender, the provider may inform the sender of its findings either orally or in writing. If the error did not occur as described, however, the remittance transfer provider would have to provide a written notice of its findings under § 1005.33(d), as discussed below. The Bureau agrees with the Board's reasoning in proposing both § 205.33(c)(1) and comment 33(c)-1. Accordingly, to effectuate the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to adopt these provisions substantially as proposed in renumbered § 1005.33(c)(1) and comment 33(c)-1, respectively.

Consumer group commenters also requested that the Bureau specify that the burden of proof should be on the remittance transfer provider so that if a sender presents evidence that there has been an error, the burden should unequivocally shift to the remittance transfer provider to show that there was not an error. The Bureau notes that the EFTA establishes various burdens of proof. For example, under EFTA section 909(b), in any action involving a consumer's liability for an unauthorized EFT, the burden of proof is upon the financial institution to show that the EFT was authorized. However, under EFTA section 910(b), a financial institution is not liable for an incorrect or delayed EFT if it can show by a preponderance of the evidence that its action or failure to act resulted from an act of God or other circumstance beyond its control or a technical malfunction known to the consumer at the time the consumer attempted to initiate the EFT. Section 1073 of the Dodd-Frank Act did not amend the EFTA to adopt a specific burden of proof for errors related to remittance transfers that are not EFTs. Therefore, the Bureau does not believe it is appropriate to address this issue.

### 33(c)(2) Remedies

The Board proposed § 205.33(c)(2) to establish the procedures and remedies for correcting an error. Proposed § 205.33(c)(2)(i) and (ii) included the two remedies that are specified in EFTA section 919(d)(1)(B). Under proposed § 205.33(c)(2), the sender may designate the preferred remedy in the event of an error, consistent with EFTA section 919(d)(1)(B). Thus, under proposed § 205.33(c)(2)(i), the sender could choose to obtain a refund of the amount tendered in connection with the remittance transfer that was not properly transmitted, or an amount appropriate to resolve the error. Alternatively, under proposed § 205.33(c)(2)(ii), the sender could choose to have the remittance transfer provider send to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or the designated recipient. The Bureau did not receive any comments objecting to these remedies. Therefore, the statutory remedies set forth in proposed § 205.33(c)(2)(i) and (ii) are adopted substantially as proposed in renumbered § 1005.33(c)(2)(i)(A) and (B), respectively, for errors under § 1005.33(a)(1)(i) through (a)(1)(iii), and § 1005.33(c)(2)(ii)(A)(1) and (2), respectively, for an error under § 1005.33(a)(1)(iv). Thus, the final rule clarifies that these remedies do not apply to a sender's request for documentation or for additional information or clarification under § 1005.33(a)(1)(v), where the appropriate remedy is the requested documentation, information, or clarification. See § 1005.33(c)(2)(iii) as discussed below.

However, as discussed above with respect to proposed § 205.33(a)(1)(iv)(B), the Bureau believes that if the failure to make funds from a remittance transfer available on the disclosed date of availability is caused by the sender providing incorrect information in connection with the remittance transfer to the provider, the sender's mistake should not obligate a remittance transfer provider to bear all the costs for resending the remittance transfer. As noted above,

many industry commenters objected to the requirement that the remittance transfer provider absorb the costs of amending and resending a transfer when the sender is at fault because doing so would require the remittance transfer provider and other senders, through higher fees, to bear the responsibility for a sender's mistake.

Therefore, § 1005.33(c)(2)(ii)(A)(2) does not require that providers send to the designated recipient the amount appropriate to resolve the error at no additional cost to the sender or the designated recipient if the sender provided incorrect information in connection with the remittance transfer to the provider. Instead, § 1005.33(c)(2)(ii)(A)(2) provides that if the sender provided incorrect information to the remittance transfer provider in connection with the remittance transfer, third party fees may be imposed for resending the remittance transfer with the corrected information. Section 1005.33(c)(2)(ii)(A)(2) permits third party fees and taxes that were actually incurred in the earlier transmission attempt to be imposed for the resend, but does not permit remittance transfer providers to charge senders a second time for the provider's own fees.

The Bureau is making this distinction in order to apply the rule without requiring complicated individualized analyses and allocations of the expenses actually incurred in connection with a failed transaction. The Bureau believes this approach strikes a more appropriate balance between the interests of providers and senders than the proposed rule of not permitting any fees to be imposed for the resend, given that third party fees and taxes are not controlled by the provider and are simply being passed on from other actors. Furthermore, the Bureau believes that affiliates of remittance transfer providers, like providers themselves, should not assess fees for resending a remittance transfer with corrected information.

The Bureau also believes that if a sender provides insufficient information to enable the remittance transfer provider to complete the transfer as requested, third party fees should be permitted to be imposed for resending the remittance transfer with the additional information. For example, a sender may only provide a partial name for the designated recipient such that the entity distributing the funds cannot determine whether the person picking up the funds or the name associated with the account is the intended designated recipient. Therefore, § 1005.33(c)(2)(ii)(A)(2) provides that if the sender provided insufficient information to the remittance transfer provider in connection with the remittance transfer, third party fees may be imposed for resending the remittance transfer with the additional information

The Bureau is also adopting a new comment 33(c)-2 to clarify § 1005.33(c)(2)(ii)(A)(2). The comment generally incorporates proposed comment 33(a)-6 to clarify that if the failure to make funds from a transfer available by the disclosed date of availability occurred due to the provider's miscommunication of information necessary for the designated recipient to pick up the transfer, such as providing the incorrect location where the transfer may be picked up or providing the wrong confirmation number or code for the transfer, such failure would not be treated as a failure caused by the sender providing incorrect or insufficient information in connection with the remittance transfer to the provider. The comment also clarifies that while third party fees may be imposed for resending the remittance transfer with the corrected or additional information, the remittance transfer provider may not require the sender to provide the principal transfer amount again.

Furthermore, if funds were not exchanged in the first unsuccessful attempt of the remittance transfer, the provider must use the exchange rate it is using for such transfers on the date of the resend. The Bureau recognizes that this approach is different from the approach

adopted for other errors, where the provider must apply the exchange rate stated in the receipt or combined disclosure. See comment 33(c)-3, discussed below. For errors where the failure was not caused by the sender providing incorrect or insufficient information, the Bureau believes that it is appropriate for the remedy to reflect what was promised to the sender. In contrast, when the failure is caused by the sender providing incorrect or insufficient information, the Bureau believes it is appropriate to generally put the provider and the sender in the same position as if the first unsuccessful attempt of the remittance transfer had never occurred.

For example, if a sender instructs a remittance transfer provider to send US\$100 to a designated recipient in a foreign country in local currency, for which the remittance transfer provider charges a transfer fee of US\$10, and the sender provided incorrect or insufficient information that resulted in non-delivery of the remittance transfer, the remittance transfer provider may not require the sender to provide another US\$100 to the remittance transfer provider to send or charge the sender another US\$10 transfer fee. If the funds were not exchanged in the first unsuccessful attempt of the remittance transfer, the provider must use the exchange rate it is using for such transfers on the date of the resend.

Based on this rule, if a remittance transfer is deposited in an account that does not belong to the designated recipient named in the receipt because the sender provided the wrong account number for the designated recipient, the provider may charge the sender for resending the remittance transfer, but may not have the sender provide the principal transfer amount again in the event that the remittance transfer provider is unable to have the funds extracted from the wrong account. The Bureau believes that this approach will encourage providers and other parties involved in the remittance transfer to develop security procedures to limit the risk of funds being deposited in an account when the name of the designated recipient named in the



receipt does not match the name associated with the account number. The Bureau notes that remittance transfer providers will be supplied with both the name, and if provided by the sender, the telephone number and/or address of the designated recipient, which the provider must disclose on the receipt under § 1005.31(b)(2)(iii).

New comment 33(c)-2 clarifies that although third party fees may be imposed on the sender for resending the remittance transfer with the corrected or additional information, third party fees that were not incurred during the first unsuccessful remittance transfer attempt may not be imposed again for resending the remittance transfer. For example, suppose a sender instructed the remittance transfer provider to send US\$100 to a designated recipient in a foreign country, for which a remittance transfer provider charges a transfer fee of US\$10 and an intermediary institution charges a lifting fee of US\$5, such that the designated recipient is expected to receive only US\$95, as indicated in the receipt. If the sender provided incorrect or insufficient information that resulted in non-delivery of the remittance transfer and the US\$5 lifting fee was incurred in the first attempt, the sender may choose to provide an additional amount to offset the US\$5 lifting fee deducted in the first unsuccessful remittance transfer attempt and ensure that the designated recipient receives US\$95 or may choose to resend the US\$95 amount with the understanding that another fee may be deducted by the intermediary institution, as indicated in the receipt. Otherwise, if the US\$5 lifting fee was not incurred in the first attempt, then the remittance transfer provider must send the original US\$100 for the resend, and the sender may expect a US\$5 lifting fee to be imposed by the intermediary institution, as indicated in the receipt. Comment 33(c)-2 also reminds providers that a request to resend a remittance transfer is a request to send a remittance transfer. Therefore, a provider must provide the disclosures required by § 1005.31 for a resend of a remittance transfer.

In addition, the Board proposed to add a separate, cumulative remedy that would apply if the transfer was not made available to the designated recipient by the disclosed date of availability under § 1005.33(a)(1)(iv). This additional remedy was proposed pursuant to the Board's authority under EFTA section 919(d)(1)(B) to provide "such other remedy" as the Board determines appropriate "for the protection of senders." Under proposed § 205.33(c)(2)(iii), if the remittance transfer was not sent or delivered to the designated recipient by the stated date of availability, the remittance transfer provider would be required to refund all fees charged or imposed in connection with the transfer, even if the consumer asks the provider to send the remittance transfer to the designated recipient as the preferred remedy. If the funds have already been delivered to the recipient, however, even if on an untimely basis, the sole remedy in such case would be the refund of fees.

Several industry commenters objected to the remedy to refund all fees associated with the remittance transfer. As the Board explained in the May 2011 Proposed Rule, requiring the provider to refund all fees imposed in connection with the remittance transfer, including the transfer fee, is appropriate under such circumstances because the sender did not receive the contracted service, specifically the availability of funds in connection with the transfer by the disclosed date. Furthermore, the Board noted that in some cases, the sender may have paid an additional fee for expedited delivery of funds.

Based on some industry comments, the Bureau believes there may be some confusion regarding when the proposed remedy of refunding fees associated with the remittance transfer may be available. As stated in proposed § 205(c)(2)(iii), the remedy is only available in the case of an error asserted under proposed § 205.33(a)(1)(iv) (adopted as § 1005.33(a)(1)(iv) above). Accordingly, if the remittance transfer provider finds that the error that occurred is, for example,

an incorrect amount paid by a sender in connection with a remittance transfer under proposed § 205.33(a)(1)(i) (adopted as § 1005.33(a)(1)(i) above), the provider would be under no obligation to refund the fees associated with the remittance transfer to a sender. Instead, the only remedies required to be available to a sender would be a refund of the amount appropriate to resolve the error under proposed § 205(c)(2)(i) (adopted as § 1005(c)(2)(i)(A) above) or to have the amount appropriate to resolve the error sent to the designated recipient, at no additional cost to the sender or the designated recipient under proposed § 205.33(c)(2)(ii) (adopted as § 1005(c)(2)(i)(B) above).

The Bureau agrees with the Board that the remedy of refunding all fees imposed for the remittance transfer is appropriate if the remittance transfer was not made available to the designated recipient by the disclosed date of availability.

Furthermore, the Bureau believes that taxes should also be refunded. One industry commenter noted that for certain jurisdictions, the remittance transfer provider may be prohibited by law from refunding taxes. Therefore, the Bureau adopts proposed § 205.33(c)(2)(iii) in renumbered § 1005.33(c)(2)(ii)(B) with the additional requirement to refund taxes to the extent not prohibited by law.

Moreover, consistent with § 1005.33(c)(2)(ii)(A)(2), which provides that third party fees may be imposed for resending the remittance transfer if the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer, § 1005.33(c)(2)(ii)(B) provides that the provider need not refund fees imposed for the remittance transfer if the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer. The Bureau is also adopting new § 1005.33(c)(2)(iii) to clarify that in the case of an error asserted under § 1005.33(a)(1)(v), which

is a request for documentation, additional information or clarification concerning a remittance transfer, the appropriate remedy is providing the requested documentation, information, or clarification.

Proposed § 205.33(c)(2) also provided that the remittance transfer provider must correct the error within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy. The Board explained that the proposed rule would provide additional flexibility to address the limited circumstances where the particular method of sending a remittance transfer may present practical impediments to a provider's ability to correct an error within one business day. For example, it may not be practicable for a wire transfer that goes through several intermediary institutions before reaching the designated recipient to make the amount in error available to the recipient within one business day in accordance with a sender's request. The Bureau agrees with the Board's rationale in requiring the remittance transfer provider to correct the error within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy. The Bureau retains this aspect of proposed § 205.33(c)(2) in renumbered § 1005.33(c)(2) and also includes other clarifying, non-substantive changes.

Proposed comment 33(c)-2 clarified that the remittance transfer provider may request that the sender designate the preferred remedy at the time the sender provides notice of error. As the Board explained in the May 2011 Proposed Rule, permitting such requests may enable providers to process error claims more expeditiously without waiting for the sender's subsequent instructions after notifying the sender of the results of the investigation. If the sender does not indicate the desired remedy at the time of providing notice of error, the proposed comment provided that the remittance transfer provider must notify the sender of any available remedies in

the report provided under proposed § 205.33(c)(1) (adopted as § 1005(c)(1) above) after determining an error occurred. Proposed comment 33(c)-2 is adopted as comment 33(c)-3.

However, the Board recognized in the May 2011 Proposed Rule that by giving the sender the ability to choose the remedy, the statute, and thus the rule, may make it impossible for a remittance transfer provider to promptly correct an error if the consumer fails to designate an appropriate remedy either at the time of providing the notice of error or in response to the provider's notice informing the consumer of its error determination and available remedies. The Board therefore requested comment on whether remittance transfer providers should be permitted to select a default method of correcting errors.

Both industry and consumer group commenters agreed that there should be a default method of correcting errors. Industry commenters suggested that the remittance transfer provider should be permitted to select the default remedy. Consumer group commenters, however, recommended that the Bureau should set the default remedy of refunding to the sender the appropriate amount.

Based on the comments received, the Bureau adopts a new comment 33(c)-4 to permit a remittance transfer provider to select a default remedy that the provider will use if the sender does not designate a remedy within a reasonable time after the sender receives the report provided under § 1005.33(c)(1). The Bureau believes that providing for a default remedy after a sender has had a reasonable opportunity to choose a remedy would balance the statute's aim to provide a sender the chance to choose his or her preferred remedy with the goal of promptly resolving the sender's outstanding error claim. Furthermore, allowing remittance transfer providers to select the default remedy reduces burden on providers without consumer harm

because providers have the ability to provide a preferred remedy without compromising a sender's opportunity to choose.

In addition, new comment 33(c)-4 provides a safe harbor for the amount of time that would be considered reasonable after the report under § 1005.33(c)(1) is provided. Specifically, comment 33(c)-4 states that a provider that permits a sender to designate a remedy within 10 days after the provider has sent the report provided under § 1005.33(c)(1) before selecting the default remedy is deemed to have provided the sender with a reasonable time to designate a remedy. In selecting the 10-day time frame as a safe harbor, the Bureau notes the existence of a similar provision under Regulation Z. Under the commentary to 12 CFR 1026.5(b)(1)(i), a creditor that provides an account-opening disclosure in connection with a balance transfer may effectuate the balance transfer if the consumer has not withdrawn the balance transfer request within 10 days after the creditor has sent the account-opening disclosure. See comment 5(b)(1)(i)-5 under Regulation Z. New comment 33(c)-4 also clarifies that in the case a default remedy is provided, the remittance transfer provider must correct the error within one business day, or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed.

Consumer group commenters also suggested that the Bureau adopt guidance on how to handle cases where a sender cannot be contacted after an error is discovered by the provider, sender, or recipient. These commenters recommended that three phone calls or emails should constitute a good faith effort to contact the sender. The Bureau notes that the error resolution procedures only apply if the sender asserts an error. See comment 33(b)-1 adopted above. A notice of error from a sender must contain information to enable the provider to identify the sender's name and telephone number or address. See § 1005.33(b)(1)(ii)(A) adopted above.

Therefore, the Bureau believes that remittance transfer providers will have valid contact information from the sender when the sender asserts the error and that remittance transfer providers will make a reasonable effort to contact senders to fulfill their error resolution requirements.

Some industry commenters requested that the final rule clarify the meaning of “amount appropriate to resolve the error.” The Bureau agrees that clarification of this term would be helpful. New comment 33(c)-5 provides that for the purposes of the remedies set forth in § 1005.33(c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii)(A)(1), and (c)(2)(ii)(A)(2), the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. New comment 33(c)-5 further clarifies that the amount appropriate to resolve the error does not include consequential damages.

Consumer group commenters requested further guidance on the form a refund may take. In particular, commenters were concerned that remittance transfer providers not be permitted to provide store credit in the refund amount. The Bureau agrees that the form of any refund provided under § 1005.33(c)(2)(i)(A) should generally be the same as the form of payment for the remittance transfer. The Bureau also believes that a provider should also be permitted to provide a refund in cash. Therefore, the Bureau adopts new comment 33(c)-6 to clarify that a remittance transfer provider may, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. The comment is similar to comment 34(b)-1, discussed below, regarding the form of refund after a cancellation.

The Bureau is, however, amending comment 34(b)-1 in one respect, which is also reflected in new comment 33(c)-6. Specifically, the Bureau recognizes that if a sender provided

cash to the remittance transfer provider for the remittance transfer, there may be instances when a cash refund may not be possible or convenient to the sender. Generally, it is undesirable for a provider to mail cash, and agents may be prohibited from providing cash to consumers. Even if agents were permitted to provide cash refunds, it may be inconvenient to the sender to return to the remittance transfer provider or agent location to pick up the cash refund. Consequently, comments 33(c)-6 and 34(b)-1 state that a provider may issue a refund by check if a sender initially provided cash for the remittance transfer. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

Consumer group commenters also suggested that the Bureau consider emphasizing that remittance transfer providers should comply with applicable State escheat laws if the sender cannot be contacted to receive a refund. The Bureau believes that such clarification is unnecessary. Furthermore, the Bureau is concerned that an explicit reference to State escheat laws in this instance may imply that other State laws (for example, State disclosure requirements for money transmitters) do not apply. Consequently, the Bureau declines to adopt this suggestion.

Proposed comment 33(c)-3 provided additional guidance regarding the appropriate remedies where the sender has paid an excess amount to send a remittance transfer. Under that circumstance, the sender may request a refund of the amount paid in excess or may request that the remittance transfer provider make that excess amount available to the designated recipient at no additional cost. The Bureau did not receive any comments on the proposed comment. The Bureau adopts proposed comment 33(c)-3 substantially as proposed in comment 33(c)-7.



Under proposed comment 33(c)-4, fees that must be refunded to a sender for a failure to make funds from a remittance transfer available by the stated date of availability under § 1005.33(a)(1)(iv) include all fees imposed for the transfer, regardless of the party that imposed the fee, and are not limited to fees imposed by the provider. Some industry commenters objected to having to refund fees not imposed by the remittance transfer provider. As explained above, however, the Bureau believes that refunding all fees is appropriate if the remittance transfer service was not provided as contracted because the funds were not made available by the disclosed date of availability.

The Bureau is revising proposed comment 33(c)-4, however, to respond to a request from a Federal Reserve Bank commenter to resolve ambiguities in the relationship between the remedies in § 1005.33(c)(2)(ii)(A)(1) or (2) and the remedy in § 1005.33(c)(2)(ii)(B). Specifically, the Bureau has revised proposed comment 33(c)-4, renumbered as comment 33(c)-8, to clarify that the remittance transfer provider must correct the error in accordance with § 1005.33(c)(2)(ii)(A), as applicable. Therefore, if the remittance transfer was made available to the designated recipient, but on an untimely basis, the remedies under § 1005.33(c)(2)(ii)(A) would not be applicable. In that circumstance, the “amount appropriate to resolve the error” would be zero since the entire transfer amount was made available to the designated recipient. The sender’s only remedy in this case would be the refund of fees under § 1005.33(c)(2)(ii)(B). If, however, the funds were never made available to the designated recipient, then the sender would have one of the remedies available under § 1005.33(c)(2)(ii)(A)(1) or (2) in addition to the remedy of the fee refund under § 1005.33(c)(2)(ii)(B). The Bureau also believes the renumbering in § 1005.33(c)(2) should make this clear.

Proposed comment 33(c)-5 clarified that if an error occurred, whether as alleged or in a different amount or manner, a remittance transfer provider may not impose any charges related to any aspect of the error resolution process, including any charges for documentation or investigation. As discussed in the May 2011 Proposed Rule, the Board expressed concern that such fees or charges might have a chilling effect on a sender's good faith assertion of errors and noted that the proposed comment is similar to comment 11(c)-3 for EFTs. Proposed 33(c)-5, however, also stated that nothing would prohibit a remittance transfer provider from imposing a fee for making copies of documentation for non-error-resolution-related purposes, such as for tax documentation purposes under § 1005.33(a)(2)(iii). The Bureau did not receive any comments on the proposed comment. Therefore, the Bureau adopts proposed comment 33(c)-5 as proposed in comment 33(c)-9.

Finally, under proposed comment 33(c)-6, a remittance transfer provider may correct an error, without further investigation, in the amount or manner alleged by the sender to be in error. This is similar to comment 11(c)-4 for EFTs. As with comment 11(c)-4, the provider must otherwise comply with all other applicable requirements of the error resolution procedures, including providing notice of the resolution of the error. Commenters did not address this proposed comment. Therefore, the Bureau adopts proposed comment 33(c)-6 substantially as proposed in comment 33(c)-10.

### **33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred**

The Board proposed § 205.33(d) to establish procedures in the event that a remittance transfer provider determines that no error or a different error occurred from that described by the sender. Specifically, proposed § 205.33(d)(1) stated that the remittance transfer provider must

provide a written explanation of the provider's finding that there was no error or that a different error occurred, consistent with EFTA section 919(d)(1)(B)(iv). Such explanation would have to respond to the sender's specific complaint and note the sender's right to request the documents that the provider relied on in making its determination. Furthermore, under proposed § 205.33(d)(2), the remittance transfer provider would be required to promptly provide copies of such documentation upon the sender's request.

Under proposed comment 33(d)-1, if a remittance transfer provider determined that an error occurred in a manner or amount different from that described by the sender, the provider would be required to comply with applicable provisions of both § 1005.33(c) and (d) (proposed as § 205.33(c) and (d)). Similar to comment 11(d)-1 with respect to error investigations involving EFTs, the provider may choose to give the notice of correction of error under § 1005.33(c)(1) (proposed as § 205.33(c)(1)) and the explanation that a different error occurred under § 1005.33(d) (proposed as § 205.33(d)) separately or in a combined form. The Bureau did not receive any comments on the procedures set forth in proposed § 205.33(d) or comment 33(d)-1. The Bureau adopts these provisions substantially as proposed in renumbered § 1005.33(d) and comment 33(d)-1.

### **33(e) Reassertion of Error**

As discussed in the May 2011 Proposed Rule, under proposed § 205.33(e), a remittance transfer provider that has fully complied with the error resolution requirements with respect to a particular notice of error would have no further responsibilities in the event the sender later reasserts the same error, except in the case of an error asserted following the sender's receipt of information provided under § 1005.33(a)(1)(v). Furthermore, proposed comment 33(e)-1 explained that the remittance transfer provider would have no further error resolution

responsibilities if the sender voluntarily withdraws the notice alleging an error. In such case, however, the sender would retain the right to reassert the allegation within the original 180-day period from the disclosed date of availability unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. As noted in the May 2011 Proposed Rule, the proposed provision and comment were modeled on similar provisions under § 1005.11(e). The Board requested comment on whether additional guidance is necessary regarding the circumstances in which a sender has “voluntarily withdrawn” a notice of error.

Commenters did not generally address proposed § 205.33(e) or proposed comment 33(e)-1. However, one industry commenter suggested that the error resolution process under proposed § 205.33 should be the exclusive remedy for the enumerated errors. EFTA section 916 provides that there is no civil liability for an error resolved in accordance with the error resolution procedures set forth in EFTA section 908, which are the error resolution procedures implemented in § 1005.11. The Bureau notes that EFTA section 916 was not amended to include the error resolution procedures for remittance transfers set forth in EFTA section 919(d). As such, under EFTA section 916, a court could find that there is civil liability even for an error that has been resolved in accordance with the error resolution procedures in § 1005.33. Accordingly, the Bureau adopts proposed § 205.33(e) as proposed in renumbered § 1005.33(e). The Bureau adopts comment 33(e)-1 with one change to include the time period relevant to an error asserted pursuant to § 1005.33(b)(2) after a sender receives requested documentation, additional information or clarification from the remittance transfer provider.

### **33(f) Relation to Other Laws**

As the Board noted in the May 2011 Proposed Rule, the error resolution rights for remittance transfers exist independently from other rights that a consumer may have under other existing Federal law. Proposed § 205.33(f) contains guidance regarding the interplay between the error resolution provisions for remittance transfers and error resolution rights that may exist under other applicable consumer financial protection laws.

The Board proposed § 205.33(f)(1) to implement the provision in EFTA section 919(e)(1) regarding the applicability of the remittance transfer error resolution provisions to EFTs. The proposed rule provided that if an alleged error in connection with a remittance transfer involved an incorrect EFT to a sender's account and the account was also held by the remittance transfer provider, then the requirements of proposed § 205.33, and its applicable time frames and procedures, governed the error resolution process. If the notice of error was asserted with an account-holding institution that was not the same entity as the remittance transfer provider, however, proposed § 205.33(f)(1) provided that the error resolution procedures under § 205.11 (currently § 1005.11), and not those under § 205.33, would apply to the account-holding institution's investigation of the alleged error.

An electronic fund transfer from a consumer's account may also be a remittance transfer. But, as the Board explained in the May 2011 Proposed Rule, an account-holding institution would likely be unable to identify a particular EFT as a remittance transfer unless it was also the remittance transfer provider. In the absence of direct knowledge that a particular EFT was used to fund a remittance transfer, the account-holding institution would face significant compliance risk if the error resolution requirements under proposed § 205.33 were deemed to apply to the error.

The Bureau agrees with the Board that such an outcome would be undesirable. Accordingly, the Bureau is adopting proposed § 205.33(f)(1) in renumbered § 1005.33(f)(1) to permit an account-holding institution to comply with the error resolution requirements of § 1005.11 when the institution is not also the remittance transfer provider for the transaction in question. In such a case, the sender will also have independent error resolution rights against the remittance transfer provider itself under § 1005.33.

Some industry commenters thought the proposed guidance was confusing and would apply more than one error resolution procedure to a remittance transfer provider. Although certain remittance transfer providers may have multiple error resolution obligations, these provisions are meant to resolve conflicts and provide greater certainty about which error resolution provisions apply in certain situations. Therefore, the Bureau is revising comment 33(f)-1 to provide such clarification.

Revised comment 33(f)-1 provides that a financial institution that is also the remittance transfer provider may have error obligations under both §§ 1005.11 and 1005.33. The comment provides examples to illustrate when certain error resolution procedures apply to a remittance transfer provider that is also the account-holding institution from which the transfer is funded. In the first example, a sender asserts an error under § 1005.11 with a remittance transfer provider that holds the sender's account, and the error is not also an error under § 1005.33, such as an omission of an EFT from a periodic statement. In this case, the error-resolution provisions of § 1005.11 exclusively apply to the error. In the second example, a sender asserts an error under § 1005.33 with a remittance transfer provider that holds the sender's account, and the error is also an error under § 1005.11, such as when the amount the sender requested to be deducted from the sender's account and sent for the remittance transfer differs from the amount that was

actually deducted from the account and sent. In this case, the error-resolution provisions of § 1005.33 exclusively apply to the error.

Proposed § 205.33(f)(2) addressed the scenario where the consumer provides a notice of error to the creditor that issued the credit card with respect to an alleged error involving an incorrect extension of credit in connection with a remittance transfer, such as when a consumer provides a credit card to pay for a remittance transfer. Proposed § 205.33(f)(2) provided that, in such a case, the error resolution provisions of Regulation Z, 12 CFR 1026.13, would apply to the creditor, rather than the requirements under proposed § 205.33. Proposed § 205.33(f)(2) also stated that if the sender instead provides a notice of error asserting an incorrect payment amount involving the use of a credit card to the remittance transfer provider, then the error resolution provisions of proposed § 205.33 would apply to the remittance transfer provider.

A creditor of a credit card or other credit account may also act as a remittance transfer provider in certain circumstances, such as when a cardholder sends funds from his or her credit card through a service offered by the creditor to a recipient in a foreign country. In this case, an error could potentially be asserted under either Regulation Z or the error resolution provisions applicable to remittance transfers in the case of an incorrect extension of credit in connection with the transfer. The Board proposed that under these circumstances, the error resolution provisions under Regulation Z § 1026.13 would apply to the alleged error, but solicited comment on the proposed approach.

One commenter suggested that if a remittance transfer provider is serving multiple roles, such as a creditor that is also a remittance transfer provider, the remittance transfer provider should have the ability to choose which error resolution procedure to follow. The Bureau does not believe that remittance transfer providers should be permitted to choose the error resolution

procedure to apply because providers and senders would benefit from the application of consistent procedures in similar situations.

The Bureau agrees with the Board that it is reasonable to apply the Regulation Z error resolution provisions under circumstances where the remittance transfer provider is also the creditor because Regulation Z, 12 CFR 1026.13(d)(1) permits a consumer to withhold disputed amounts while an error is being investigated. However, the Bureau believes that the additional time afforded to a sender to assert an error under § 1005.33 may also be of value. Therefore, for a remittance transfer provider that is also the creditor, the Bureau is requiring that the time period to assert an error under § 1005.33(b) should apply instead of the time period under 12 CFR 1026.13(b). This will also ensure that the error resolution notice required under § 1005.31(b)(2)(iv) is consistent. Otherwise, disclosing to a sender that the time period to assert an error may in some instances be 60 days from the periodic statement reflecting the error and in other instances may be 180 days from the disclosed date of availability on the remittance transfer receipt could be confusing.

The Bureau also believes further clarification is warranted for errors other than incorrect extensions of credit in connection with the remittance transfer. For example, an error involving an incorrect amount of currency received under § 1005.33(a)(1)(iii) or the failure to make funds available by the disclosed date of availability under § 1005.33(a)(1)(iv) may be asserted as an error involving goods or services that have not been delivered as agreed under § 1026.13(a)(3). Accordingly, the Bureau is adding these references to the final rule to resolve any potential conflicts. The Bureau adopts § 205.33(f)(2) in renumbered § 1005.33(f)(2) with these revisions and amendments to clarify that the provision applies to all credit accounts rather than only credit card accounts.



In addition, the Bureau notes that in certain circumstances, a credit cardholder has a right to assert claims or defenses against a card issuer concerning property or services purchased with a credit card under Regulation Z, 12 CFR 1026.12(c)(1). These rights are independent of other billing error rights a cardholder may have. See comment 12(c)-1 to 12 CFR 1026.12(c). Therefore, the Bureau is adopting a new comment 33(f)-2 to clarify that to the extent a credit cardholder has a right to assert claims and defenses against a card issuer under 12 CFR 1026.12(c)(1), nothing in § 1005.33 limits a sender's right in this regard.

The Board also proposed § 205.33(f)(3) to provide guidance where an alleged error involves an unauthorized EFT or unauthorized use of a credit card to send a remittance transfer, such as when a stolen debit or credit card is used to send funds to a foreign country. Specifically, proposed § 205.33(f)(3) clarified that the consumer would have rights under Regulation E §§ 1005.6 and 1005.11 in the case of an unauthorized EFT or Regulation Z §§ 1026.12(b) and 1026.13 in the case of an unauthorized use of a credit card. However, since the consumer holding the asset account or the credit card account is not the sender of the remittance transfer, proposed § 205.33(f)(3) stated that the error resolution provisions for remittance transfers would not apply. See comment 33(b)-1. The Bureau agrees with the Board's proposal, and § 205.33(f)(3) is adopted substantially as proposed in renumbered § 1005.33(f)(3) with an amendment to clarify application of the provision to credit accounts generally as opposed to only credit card accounts.

Some industry commenters suggested that the reasoning the Board used in applying Regulation E §§ 1005.6 and 1005.11 in the case of an unauthorized EFT and Regulation Z §§ 1026.12(b) and 1026.13 in the case of an unauthorized use of a credit card, should be used in applying UCC Article 4A provisions to an unauthorized wire transfer. As discussed above in the

supplementary information to § 1005.30(e), UCC Article 4A-108 provides that Article 4A does not apply “to a funds transfer, any part of which is governed by the [EFTA]” (emphasis added). Furthermore, as discussed above, the Bureau may only preempt State law to the extent that there is an inconsistency. Since the Bureau does not believe there is an inconsistency between the EFTA and UCC Article 4A-108, UCC Article 4A does not apply to wire transfers that are remittance transfers under § 1005.30(e). Therefore, the Bureau declines to implement commenters’ suggestion with respect to unauthorized wire transfers.

Finally, the Board noted that in certain cases a consumer may be able to assert error resolution rights in connection with a remittance transfer with both the remittance transfer provider as well as the account-holding institution or credit card issuer or creditor. Proposed comment 33(f)-2 addressed this situation by providing that if a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or the sender’s account-holding institution or creditor, and then subsequently asserts the same error with the other party, the other party would have no further responsibilities to investigate the error. The proposed comment also clarified that an account-holding institution or creditor may reverse amounts it has previously credited to correct an error if the consumer receives more than one credit to correct the same error and provided an example to illustrate this concept.

One industry commenter noted that the provisions in § 1005.33(f) could provide a consumer with potentially different error resolution procedures depending on who the consumer decides to contact. This may be the case if the remittance transfer provider is not also the account-holding institution or creditor. However, proposed comment 33(f)-2 explains that the second party has no error resolution obligations if the sender already received credit to correct an

error of an incorrect amount paid in connection with a remittance transfer. This comment makes clear that a consumer may not receive a windfall by successfully asserting an error with both the provider and the account-holding institution and/or credit card issuer or creditor.

Another industry commenter suggested that the remittance transfer provider should be permitted to delay providing a remedy until expiration of the card issuer's chargeback right under network rules to prevent duplicate recoveries when remittances are funded by a debit card or a credit card. The Bureau believes that the delay would be disadvantageous for senders in getting a speedy resolution to an error and that proposed comment 33(f)-2 is a better method for dealing with the possibility of duplicate recoveries. The Bureau adopts this comment, renumbered as comment 33(f)-3, substantially as proposed.

Lastly, the Bureau received comment from an industry commenter questioning which error resolution provisions apply when a sender has multiple funding sources for the remittance transfer. For example, a sender could fund a remittance transfer partly by a balance in the sender's account held by the remittance transfer provider and partly by a credit card or an ACH transfer from the sender's checking account. In such cases, the Bureau notes that which error resolution procedure will apply depends on the error that is asserted. For example, if the error asserted is the incorrect extension of credit in connection with the remittance transfer, then § 1005.33(f)(2) provides that § 1026.13 applies to the creditor while § 1005.33 applies to the remittance transfer provider, but only with respect to the amount of the remittance transfer funded by the credit card. However, if the remittance transfer provider is also the creditor, only § 1026.13 applies to the remittance transfer provider with respect to the amount of the remittance transfer funded by the credit card.

Similarly, if the error asserted is an incorrect EFT from a sender's account, then § 1005.33(f)(1) provides that § 1005.11 applies to the account-holding institution while § 1005.33 applies to the remittance transfer provider, but only with respect to the amount of the remittance transfer funded by the debit card or the ACH transfer from the sender's account. However, if the remittance transfer provider is also the account-holding institution, only § 1005.33 applies to the remittance transfer provider with respect to the amount of the remittance transfer funded by the debit card or the ACH transfer from the sender's account. The Bureau believes the regulation and commentary as adopted provide sufficient guidance in this regard, and additional clarification is not necessary.

### **33(g) Error Resolution Standards and Recordkeeping Requirements**

Pursuant to EFTA section 919(d)(2), the Bureau must establish clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. EFTA section 919(d)(2) specifically provides that such standards must include appropriate standards regarding recordkeeping, including retention of certain error-resolution related documentation. The Board proposed § 205.33(g) to implement these error resolution standards and recordkeeping requirements.

Specifically, proposed § 205.33(g)(1) provided that a remittance transfer provider must develop and maintain written policies and procedures that are designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers. The proposed rule also stated that remittance transfer providers must take steps to ensure that whenever a provider uses an agent to perform any of the provider's error resolution obligations, the agent conducts such activity in accordance with the provider's policies and procedures. As noted in the May 2011 Proposed Rule, this approach is similar to one taken by the Federal

banking agencies in other contexts. See, e.g., 12 CFR 1022.90(e) (requiring that an identity theft red flags program exercise appropriate and effective oversight of service-provider arrangements).

One industry commenter suggested that the failure to maintain written policies and procedures should not be an independent cause of action. The Bureau believes that remittance transfer providers must develop written policies and procedures in order to demonstrate compliance to the appropriate regulator. Therefore, the Bureau does not believe the requirement to maintain written policies and procedures that the remittance transfer provider must follow imposes any additional burden.

The Bureau is making one change to proposed § 205.33(g)(1). Specifically, the Bureau is deleting the provision in proposed § 205.33(g)(1) that requires remittance transfer providers to take steps to ensure that when a provider uses an agent to perform any of the provider's error resolution obligations, the agent conducts such activity in accordance with the provider's policies and procedures. The Bureau believes that this provision is no longer necessary in light of the decision under § 1005.35, discussed below, to provide that a remittance transfer provider is liable for any violation of subpart B by an agent when such agent acts for the provider. Proposed § 205.33(g)(1), as revised, is adopted in renumbered § 1005.33(g)(1).

Under proposed § 205.33(g)(2) a remittance transfer provider's policies and procedures concerning error resolution would be required to include provisions regarding the retention of documentation related to an error investigation. Such provisions would be required to ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error, which is consistent with EFTA section 919(d)(2).

Proposed comment 33(g)-1 clarified that remittance transfer providers are subject to the record retention requirements under § 1005.13, which apply to any person subject to the EFTA. Accordingly, remittance transfer providers would be required to retain documentation, including documentation related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider. Similar to comment 13-1, proposed comment 33(g)-1 provided that the record retention requirements do not require a remittance transfer provider to maintain records of individual disclosures of remittance transfers that it has provided to each sender. Instead, a provider need only retain records to ensure that it can comply with a sender's request for documentation or other information relating to a particular remittance transfer, including a request for supporting documentation to enable the sender to determine whether an error exists with respect to that transfer. The Bureau did not receive any comments on proposed § 205.33(g)(2) or proposed comment 33(g)-1. The Bureau adopts proposed § 205.33(g)(2) substantially as proposed in renumbered § 1005.33(g)(2), but with an amendment to make clear that remittance transfer providers are subject to the record retention requirements under § 1005.13. The Bureau also adopts comment 33(g)-1 with amendments to conform the comment to comment 13-1 and to the changes in § 1005.33(g)(2).

#### **Section 1005.34 Procedures for Cancellation and Refund of Remittance Transfers**

EFTA section 919(d)(3) directs the Bureau to issue final rules regarding appropriate remittance transfer cancellation and refund policies for senders within 18 months of the date of enactment of the Dodd-Frank Act. Proposed § 205.34 set forth new cancellation and refund rights for senders of remittance transfers, and they are finalized in renumbered § 1005.34 with changes to the proposed rule, discussed below.

### **34(a) Sender Right of Cancellation and Refund**

Proposed § 205.34(a) stated that a remittance transfer provider must comply with a sender's oral or written request to cancel a remittance transfer received no later than one business day from when the sender makes payment in connection with the remittance transfer provider. In the proposal, the Board recognized that remittance transfers sent by ACH or wire transfer generally cannot be cancelled once the payment order has been accepted by the sending institution. See, e.g., UCC Article 4A-211 (providing that a payment order cannot be cancelled or amended once it has been accepted unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank). The Board stated that it believed that under such circumstances, a bank or credit union making transfers by ACH or wire transfer would likely wait to execute the payment order until the cancellation period had passed, which could delay the receipt of the funds in the foreign country. The Board stated that one business day would provide a reasonable time frame for a sender to evaluate whether to cancel a remittance transfer after providing payment for the transfer, but requested comment regarding whether the proposed minimum time period should be longer or shorter than proposed.

Many industry commenters objected to the proposed cancellation right. One industry commenter believed a cancellation right was unnecessary for remittance transfers because fees incurred by the sender for a remittance transfer were minimal. A Federal Reserve Bank commenter argued that a cancellation right would give senders less incentive to provide accurate information. One industry commenter believed senders could use the cancellation right to take advantage of more favorable exchange rates. The industry commenter believed remittance transfer providers would increase exchange rates to compensate for the risk of loss.

Industry and trade group commenters agreed with the Board that the proposed cancellation period would delay processing routine remittance transfers because remittance transfers sent by ACH or wire transfer would likely be held until the cancellation period passed. Some industry commenters believed that the delay in processing would make it more difficult to determine an exchange rate. A member of Congress urged the Bureau to take into consideration senders' expectation for timely execution of remittance transfers in determining the appropriate cancellation period. A Federal Reserve Bank commenter believed a sender would want to remit funds as quickly as possible, and that the proposed cancellation right could cause senders to make payments using remittance mechanisms that are not subject to Regulation E.

Consumer group commenters believed that the Bureau should require a one business day cancellation period, but suggested that the Bureau study when cancellations typically occur. These commenters suggested that a study could help the Bureau determine that decreasing the cancellation period could adequately protect senders. Many industry commenters believed that if the Bureau required a cancellation period, the period should be shorter than one business day. The commenters suggested a variety of shorter cancellation periods that could be more appropriate. Some industry commenters believed the cancellation period should be shortened to the same day or an hour. Several industry commenters believed the right to cancel should end when the remittance transfer provider executes the payment instruction. Several industry commenters believed the cancellation period should be shortened to 30 minutes, noting that this time period would be consistent with Texas law.

Some industry commenters suggested that institutions sending remittance transfers through ACH or wire transfer should be exempt from the cancellation rules. Other industry commenters suggested that a sender should have the right to opt out of the cancellation right to



have the transfer sent immediately. Another industry commenter suggested that the provider should only be required to cancel if the provider has a reasonable opportunity to act upon the request. One industry commenter believed a right to refund remittance transfers that are unclaimed was a more appropriate cancellation policy. An industry commenter believed the provider should not be required to honor cancellation requests that are made for fraudulent purposes.

Other industry commenters believed the cancellation rules should be disclosure-based. One industry commenter believed that instead of a cancellation right, the provider should disclose that once a sender signs the remittance transaction agreement, it cannot be cancelled and that a failure to carry out a sender's cancellation request once a remittance agreement has been signed is not an error. Another industry commenter believed that if a provider had a cancellation policy, that the Bureau should require that it be properly disclosed.

The Bureau believes that a cancellation right could be helpful to senders of remittance transfers. The Bureau also believes, however, that providers sending remittance transfers through ACH or wire transfer likely will delay transactions for the length of the cancellation period because such transfers are often difficult to retract once they are sent. A cancellation period of one business day thus could prevent a sender from sending a remittance transfer quickly. In addition, a long cancellation period could create an unfair competitive advantage for closed network money transmitters, who are less likely to delay sending a remittance transfer until the end of the cancellation period. Therefore, the Bureau believes a cancellation period shorter than one business day is appropriate.

The final rule requires a 30-minute cancellation period.<sup>83</sup> A 30-minute cancellation period provides the sender the opportunity to review both the pre-payment disclosure and the receipt to ensure that the transfer was sent as the sender intended. However, the 30-minute cancellation period should not substantially delay transactions for senders who want to send funds quickly. The Bureau notes that 30 minutes is the minimum time that a provider must allow senders to cancel transactions, but providers may choose to permit senders to cancel transactions after the 30 minute period has passed. Moreover, even after the cancellation period has passed, senders may still assert their rights under § 1005.33 and obtain a refund or other remedy for transactions where an error occurred.

As discussed above, the final rule sets forth new cancellation requirements in a new § 1005.36 with respect to certain remittance transfers that a sender schedules in advance, including preauthorized remittance transfers. As discussed below, the Bureau believes that when a sender schedules a remittance transfer more than three days in advance of when the remittance transfer is made, a cancellation period tied to when the transfer is made, rather than when the transfer is authorized, is more beneficial to a sender. In those circumstances, the Bureau believes a sender should have the flexibility to cancel the transfer more than 30 minutes after scheduling the transfer to be made, given the potentially significant delay between when the sender authorizes the remittance transfer and when the sender schedules the remittance transfer to be made. Circumstances could change in the intervening period that would negate the purpose of the transfer. At the same time, allowing the sender to cancel certain remittance transfers that a sender schedules in advance for up to 30 minutes after the transfer is made could be burdensome

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<sup>83</sup> The 30-minute cancellation period is the same time period as the remittance transfer cancellation period under Texas law. See TX Admin. Code § 278.052, which provides that a consumer may cancel a transfer for any reason within 30 minutes of initiating the transfer provided the customer has not left the premises. Unlike the Texas law, under § 1005.34(a), a sender may cancel within 30 minutes, regardless of whether the sender has left the premises.

to both senders and providers. A sender may not know the precise time of day that the transfer is scheduled, and such a rule would extend the period of uncertainty for providers, who may delay a transfer until the cancellation period has expired. Consequently, the 30-minute cancellation period described in § 1005.34(a) does not apply to remittance transfers scheduled at least three business days before the date of the transfer, and a remittance transfer provider must instead comply with the cancellation requirements in § 1005.36(c).

Section 1005.34(a) of the final rule provides that, except as provided in § 1005.36(c), a remittance transfer provider shall comply with the requirements of § 1005.34 with respect to any oral or written request to cancel a remittance transfer from the sender that is received by the provider no later than 30 minutes after the sender makes payment in connection with the remittance transfer, if the following two conditions are met.

First, under proposed § 205.34(a)(1), a valid request to cancel a remittance transfer must enable the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled. Proposed comment 34(a)-1 clarified that the request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the provider in connection with the transfer. The proposed comment also permitted the provider to request, or the sender to provide, the sender's email address instead of a physical address, so long as the provider can identify the transfer to which the cancellation request applies.

Second, proposed § 205.34(a)(2) provided that a sender's timely request to cancel a remittance transfer is effective so long as the transferred funds have not been picked up by the

designated recipient or deposited into an account held by the recipient.<sup>84</sup> Proposed comment 34(a)-2 reiterated that a remittance transfer provider must include an abbreviated notice of the sender's right to cancel a remittance transfer in the receipt or combined notice, as applicable. In addition, the proposed comment clarified that the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer.

The Bureau did not receive comment on the two conditions on the right to cancel. The final rule adopts the two conditions as proposed in renumbered § 1005.34(a)(1) and (a)(2). In addition, the Bureau adopts comments 34(a)-1 and 34(a)-2 substantially as proposed.

The Bureau is also adding comment 34(a)-3 to explain how a remittance transfer provider could comply with the cancellation and refund requirements of § 1005.34 if the cancellation request is received by the provider no later than 30 minutes after the sender makes payment. The comment states that a provider may, at its option, provide a longer time period for cancellation. The comment clarifies that a provider must provide the 30-minute cancellation right regardless of the provider's normal business hours. For example, if an agent closes less than 30 minutes after the sender makes payment, the provider could opt to take cancellation requests through the telephone number disclosed on the receipt. The provider could also set a cutoff time after which the provider will not accept requests to send a remittance transfer. For example, a financial institution that closes at 5:00 p.m. could stop accepting payment for remittance transfers after 4:30 p.m.

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<sup>84</sup> As discussed in the proposal, such accounts need not be accounts held by a financial institution so long as the recipient may access the transferred funds without any restrictions regarding the use of such funds. For example, some Internet-based providers may track consumer funds in a virtual account or wallet and permit the holder of the account or wallet to make purchases or withdraw funds once funds are credited to the account or wallet.

One industry commenter believed that the Bureau should require a sender to contact the remittance transfer provider directly in order to cancel a transaction. The commenter believed that agents should not be required to handle cancellation requests, noting that under certain State laws, the agent does not have a right to the funds paid for a remittance transfer and therefore could not make a refund.

The Bureau believes that a sender's cancellation request should be valid if the sender contacts the agent. Many participants in consumer testing indicated that they would contact an agent first if they encountered a problem with their remittance transfer. The Bureau also believes that requiring a sender to contact a remittance transfer provider by, for example, calling the telephone number listed on the receipt could frustrate the sender's ability to cancel within the 30-minute cancellation period. Consequently, the Bureau clarifies in comment 34(a)-4 that a cancellation request provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under § 1005.34(a) when received by the agent. The Bureau understands, however, that an agent may not be able to provide a sender with the refund for legal or operational reasons, and, as discussed below, the final rule does not require an agent to provide a refund if the agent is unable to do so.

Finally, the Bureau is adding a comment to clarify when a sender makes a payment for a remittance transfer, for purposes of determining when the 30-minute cancellation period has passed. Comment 34(a)-5 clarifies that, for purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

### **34(b) Time Limits and Refund Requirements**

Proposed § 205.34(b) established the time frames and refund requirements applicable to remittance transfer cancellation requests. The proposed rule stated that a remittance transfer provider must refund, at no additional cost to the sender, the total amount of funds tendered by the sender in connection with the remittance transfer, including any fees imposed in connection with the requested transfer, within three business days of receiving the sender's valid cancellation request.

Many industry commenters objected to the requirement in the May 2011 Proposed Rule to refund the total amount of funds to the sender. Industry commenters believed that requiring a refund of the total amount of funds raised significant safety and soundness concerns for institutions sending wire transfers because some remittance transfer providers would be unable to recover the funds from subsequent institutions in a transfer chain. One money transmitter commenter stated that once a transfer is booked at an agent location, the provider is obligated to pay the agent its portion of the transfer fees for the transaction. If a sender cancels the transaction after settlement, the provider would be required to negotiate the return of the fee from the agent or bear the total loss of the fee. Similarly, the commenter noted that it acted as an agent of international billers and is obligated to the billers for the funds when it sends data to the biller. Several industry commenters believed requiring a remittance transfer provider to refund all fees could increase costs for senders, since providers may increase fees to account for losses due to refund. A money transmitter commenter also argued that refunding a third party fee or tax could be impermissible under local law.

Industry commenters suggested that the Bureau permit a remittance transfer provider to charge reasonable fees, even if the sender cancels the transaction. Some of the commenters

noted that this was consistent with a bank's ability to charge fees in connection with a stop payment order on a check to cover the bank's costs. An industry trade association believed providers should be permitted to charge a \$45 fee to stop the transaction. Another industry commenter suggested that if the exchange rate changes between the time the order is placed and the refund is requested such that the amount of local currency originally promised would be equivalent to less U.S. dollars, the refund of the principal should be at the new exchange rate.

Some commenters believed a remittance transfer provider should not be required to provide a refund in certain circumstances. One industry commenter believed a provider should not be required to refund fees charged by intermediaries. Another industry commenter suggested that a provider should not have to refund the portion of any fees that are not attributable to costs incurred by them prior to receiving a cancellation request. A trade association believed a provider should not be required to refund fees when the provider has not made any errors.

The Bureau believes it is appropriate to require a provider to refund the total amount of funds provided by the sender in connection with the remittance transfer. The Bureau believes senders could be discouraged from exercising their cancellation rights if they could not recover the cost of the remittance transfer. Although the Bureau recognizes that a provider may not be able to recover some fees or taxes charged for a transfer, the Bureau believes that the shorter cancellation period adopted in the final rule helps address these concerns. Under the final rule, a provider can mitigate some of the risk of losing fees or taxes charged for a transfer by sending a transfer after the 30-minute cancellation period ends. Therefore, the Bureau is requiring the total amount of funds provided by the sender to be refunded in the final rule in § 1005.34(b) with the additional clarification that refunding the total amount of funds provided by the sender in connection with a remittance transfer requires a provider to refund taxes on the remittance

transfer. However, as noted by one industry commenter, for certain jurisdictions, the remittance transfer provider may be prohibited by law from refunding taxes. Consequently, the requirement in § 1005.34(b) to refund taxes is only to the extent such refund is not prohibited by law. In the final rule, § 1005.34(b) provides that a remittance transfer provider shall refund, at no additional cost to the sender, the total amount of funds provided by the sender in connection with a remittance transfer, including any fees and, to the extent not prohibited by law, taxes imposed in connection with the remittance transfer, within three business days of receiving a sender's request to cancel the remittance transfer.

Proposed comment 34(b)-1 addressed the permissible ways in which a provider could provide a refund. The proposed comment clarified that a remittance transfer provider may, at the provider's discretion, issue a refund in cash or in the same form of payment that was initially tendered by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the amount of the payment.

The Bureau did not receive comment on proposed comment 34(b)-1. However, as discussed above regarding comment 33(c)-6, the Bureau is amending comment 34(b)-1 with respect to refunds if a sender initially provided cash for the remittance transfer. Specifically, comment 34(b)-1 states that a provider may issue a refund by check if a sender initially provided cash for the remittance transfer. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

The Bureau is also finalizing comment 34(b)-2, which addresses costs that must be refunded upon a sender's timely request to cancel a remittance transfer. The comment is adopted substantially as proposed, with amendments clarifying that all funds provided by the sender in



connection with the remittance transfer would include taxes that are assessed by a State or other governmental body, to the extent not prohibited by law. Therefore, the final comment states that if a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must refund all funds provided by the sender in connection with the remittance transfer, including any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body.

Finally, industry commenters suggested amendments to the requirement in the proposal to provide a refund within three business days of receiving a sender's request to cancel the remittance transfer. One industry commenter believed the refund rule should not require the refund to be delivered to the sender within three business days. The commenter cited examples of when it could be difficult to deliver the funds to the sender in three days, such as when the provider mails a refund check and the check takes several days to be delivered to the sender; when the refund is available at an agent location, but the sender takes several days to pick-up the refund; and when the provider issues a chargeback to the sender's credit or debit card account, but the credit takes several days to appear due to card processing systems. The Bureau notes that the requirement to refund funds to a sender does not require a provider to ensure that a refund is delivered to a sender within three business days after receiving the sender's request to cancel the remittance transfer.

### **Section 1005.35 Acts of Agents**

In most cases, remittance transfers are sent through an agent of the remittance transfer provider, such as a convenience store that has contracted with the provider to offer remittance

transfer services at that location. EFTA section 919(f)(1) generally makes remittance transfer providers liable for any violation of EFTA section 919 by an agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider. EFTA section 919(f)(2) requires the Bureau to prescribe rules to implement appropriate standards or conditions of liability of a remittance transfer provider, including one that acts through its agent or authorized delegate.<sup>85</sup>

The Board proposed two alternatives to implement EFTA section 919(f) with respect to acts of agents. Under the first alternative (proposed Alternative A), a remittance transfer provider would be strictly liable for violations of subpart B by an agent when such agent acts for the provider. Under the second alternative (proposed Alternative B), a remittance transfer provider would be liable under the EFTA for violations by an agent acting for the provider, unless the provider establishes and maintains policies and procedures for agent compliance, including appropriate oversight measures, and the provider corrects any violation, to the extent appropriate.

Consumer groups, State regulators, and a Federal Reserve Bank supported proposed Alternative A. These commenters stated that Alternative A would provide the greatest incentives for remittance transfer providers to avoid errors and to oversee and audit their agents. Some argued that proposed Alternative A would be consistent with many State laws, and that adopting proposed Alternative B could disrupt efforts to hold providers to stricter liability standards under State law.

In contrast, industry commenters supported the liability standard set forth in proposed Alternative B. These commenters argued that proposed Alternative B would more appropriately address the unique position of agents in the market, while providing protection for consumers by

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<sup>85</sup> See also § 1005.30(a), which defines the term “agent” for purposes of the rule.

making them whole for the cost of the remittance transfer. These commenters also stated that proposed Alternative B would create an incentive for providers to take an active role in developing compliance policies and procedures and engaging in agent oversight. These commenters also expressed concern about the liability risks associated with proposed Alternative A for the misconduct or a single agent or isolated violations, and that proposed Alternative A could discourage the use of agents.

Based on comments received and the Bureau's further analysis, the final rule adopts proposed Alternative A in renumbered § 1005.35. The Bureau believes that the approach taken in proposed Alternative A is more consistent with the approach generally taken in other Bureau regulations, including Regulation E. For example, under Regulation E's payroll card rules, a financial institution is required to provide initial payroll card disclosures to a payroll account holder. If, by contractual agreement with the institution, a third-party service provider or the employer agrees to deliver these disclosures on the institution's behalf and fails to do so, the issuing financial institution is nonetheless liable for the violation.<sup>86</sup> Similarly, if an agent at a retail establishment fails to provide the disclosures required by § 1005.31, the remittance transfer provider would be liable. The Bureau also believes that proposed Alternative A provides a greater incentive for providers to monitor their agents' activities and to exercise appropriate supervision and oversight than proposed Alternative B.

One commenter suggested that proposed Alternative A could exculpate an agent from responsibility from its own conduct. However, nothing in the rule shields agents from liability, nor does it prevent providers from requiring specific agent conduct in their contracts or negotiating other contractual liability or indemnification clauses.

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<sup>86</sup> 12 CFR 1005.18.

With respect to commenters' concerns about liability risk, EFTA section 919(f)(2) states that enforcement agencies may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider. Thus, enforcement agencies are permitted to tailor any remedies in light of single agent non-compliance or isolated violations.

Several commenters requested further guidance on what it means for an agent to act for a provider. As discussed in the proposal, some agents have a non-exclusive arrangement with several remittance transfer providers, so that a sender may choose from among the remittance transfer providers at that agent location. If a sender chooses to use Provider A to send funds at the agent location, then Provider B would not be liable for the agent's actions in connection with that transaction, because the agent would be acting for Provider A. As noted above regarding the definition of "agent" under § 1005.30(a), the Bureau believes that it is appropriate to defer to State or other applicable law with respect to the relationship between an agent and Provider A.

The final rule also adopts proposed Alternative A's comment 35-1 substantially as proposed. Comment 35-1 explains that remittance transfer providers remain fully responsible for complying with the requirements of this subpart, including, but not limited to, providing the disclosures set forth in § 1005.31 and remedying any errors as set forth in § 1005.33. This is the case even if a remittance transfer provider performs its functions through an agent, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

### **Section 1005.36 Transfers Scheduled in Advance**

As discussed above in connection with the § 1005.30(d) definition of “remittance transfer,” the Board requested comment on whether the rule should exclude from coverage online bill payments, including preauthorized transfers. As noted above, most industry commenters argued that these transfers should be excluded from the final rule. These commenters argued that the provider would not be in a position to know, at the time disclosures are required, the applicable exchange rate for transfers that are scheduled to be sent at a later date.

For the reasons discussed above in the supplementary information to § 1005.30(e), the final rule does not exclude online bill payments from the definition of “remittance transfer,” nor does it exclude certain other remittance transfers that a sender schedules in advance, including preauthorized remittance transfers. Thus, the final rule generally requires that disclosures be provided in accordance with the timing and accuracy rules set forth in § 1005.31, both with respect to the required pre-payment disclosure and the required receipt. Estimates may be disclosed, to the extent permitted by § 1005.32.

However, the Bureau believes that preauthorized remittance transfers, whether for bill payments or for other reasons, raise issues relating to the practical aspects of compliance, and potential consumer confusion issues. As discussed above, § 1005.31(e) links the timing requirements for providing pre-payment disclosures and receipts to senders to the time when the transfer is requested and payment is made by the sender. Similarly, the disclosure accuracy rule in § 1005.31(f) relates to when the sender’s payment is made. For purposes of subpart B, payment is made when payment is authorized. See comments 31(e)-2 and 34(a)-5. Accordingly, if all preauthorized remittance transfers were subject to § 1005.31, providers would have to

provide both pre-payment disclosures and receipts at the time the preauthorized remittance transfers are requested and authorized by the sender. Moreover, these disclosures would need to be accurate for the first and all subsequent transfers scheduled in the future (except to the extent estimates are permitted by § 1005.32).

The Bureau believes that in some circumstances, it is impracticable for providers to provide accurate disclosures for subsequent transfers at the time preauthorized remittance transfers are authorized. For example, while a provider may be able to know or to hedge for a specified exchange rate with respect to the first transfer, the provider or the institution involved in the remittance transfer that sets the exchange rate may be reluctant to set a specified exchange rate applicable to all subsequent transfers that are scheduled to be made into the future. This reluctance could arise due to the risk associated with participating in foreign exchange markets, and the manners in which providers and their partners manage such risk. Many wholesale exchange rates are set largely through currency markets in which rates can fluctuate frequently.<sup>87</sup> As a result, whenever there are time lags in between the time when the retail rate applied to a transfer is set, the time when the relevant foreign currency is purchased, and the time when funds are delivered, a provider (and/or its business partner) may face losses due to unexpected changes in the value of the relevant foreign currency.

Providers and/or their partners generally use a variety of pricing, business processes, or hedging techniques to manage or minimize this exchange rate risk. For some, and perhaps many providers (or their partners), the task of managing or minimizing exchange risk may become more complicated or more costly if the amount of time between when the rate is set for a

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<sup>87</sup> Some foreign exchange rates are set by monetary authorities. There are a variety of business models that providers use to fund transfers that are received in foreign currency. The timing of when foreign currency is purchased, the role of the provider in such a purchase, and the role of other intermediaries, partners, agents, and other parties can vary.

customer and when the transfer is sent increases. Setting the retail rate that applies to a transfer far in advance of when that transfer is sent may require the provider or other parties involved in processing the remittance transfer to use additional or more sophisticated risk management tools.

Some preauthorized remittance transfers may be set up to vary in amount (for example, based on the amount of a utilities bill). In such cases, while the remittance transfer provider may know the amount to be transferred in the first payment, the provider may not know, at the time the sender authorizes the preauthorized remittance transfer, the amounts that will be transferred in subsequent months. Moreover, even if the scheduled amounts to be transferred were fixed, and a provider were permitted to disclose an estimated exchange rate for future payments, providing estimated exchange rates at the time of the initial request for transfers beyond the first transfer may not be useful to senders – and could even be misleading – because currency fluctuations over several months could cause the actual rate applied to particular transfers to vary substantially. The Bureau recognizes that the market for preauthorized remittance transfers is still developing. Consequently, the Bureau is concerned that if providers were required to provide accurate disclosures for subsequent preauthorized remittance transfers at the time those transfers are authorized, in many cases providers would not be able to offer preauthorized remittance transfer products, which could limit consumer access to a potentially valuable product.

The Bureau also believes that the right to cancel a remittance transfer no later than 30 minutes after the sender makes payment as provided in § 1005.34(a) is not appropriate when applied to certain remittance transfers that a sender schedules in advance, including preauthorized remittance transfers. When a sender schedules a remittance transfer many days – or even months – in advance of when the transfer is to be made, a sender should have the

flexibility to cancel the transfer more than 30 minutes after requesting the transfer, given the delay between when the sender authorizes the remittance transfer and when the sender schedules the remittance transfer to be made. In such circumstances, the Bureau believes that remittance transfer providers can accommodate a longer cancellation period without the risk that a sender's cancellation would delay the remittance transfer. Thus, the Bureau believes that a cancellation period tied to when the transfer is made, rather than when the transfer is authorized, is more beneficial to senders.

Therefore, to effectuate the purposes of the EFTA and to facilitate compliance, the Bureau believes it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to adopt a new § 1005.36, which sets forth disclosure requirements specifically applicable to preauthorized remittance transfers, as well as specific cancellation requirements for any remittance transfer scheduled by the sender at least three business days before the date of the transfer. Sections 1005.36(a) and (b) address specific requirements for the timing and accuracy of disclosures for preauthorized remittance transfers. Section 1005.36(c) addresses the cancellation requirements applicable to any remittance transfer scheduled by the sender at least three business days before the date of the transfer, including preauthorized remittance transfers. Because § 1005.36 only addresses timing, accuracy, and cancellation requirements, the other requirements of subpart B, such as content and formatting requirements and the foreign language requirements, continue to apply to remittance transfers subject to § 1005.36. See comment 36-1.

In addition, the Bureau's January 2012 Proposed Rule, published elsewhere in the Federal Register today, solicits comment on alternative disclosure and cancellation requirements with respect to remittance transfers subject to § 1005.36.



### **36(a) Timing**

Section 1005.36(a) sets forth the disclosure timing requirements for disclosures relating to preauthorized remittance transfers. Under § 1005.36(a)(1), for the first scheduled transfer, the provider is required to provide both the pre-payment disclosure described in § 1005.31(b)(1) and the receipt described in § 1005.31(b)(2) in accordance with the timing rules set forth in § 1005.31(e) that generally apply to remittance transfers. In effect, under the final rule, the first scheduled transfer of a preauthorized remittance transfer is treated the same as other individual transfer requests by a sender.

However, under § 1005.36(a)(2), different timing requirements apply to disclosures relating to subsequent scheduled transfers. Under § 1005.36(a)(2)(i), the provider must mail or deliver a pre-payment disclosure, as described in § 1005.31(b)(1), within a reasonable time prior to the scheduled date of each subsequent transfer. If the general timing rule in § 1005.31(e) applied, the provider would be required to provide a pre-payment disclosure at the time the scheduled payments are authorized. By requiring a pre-payment disclosure at this alternative time for each subsequent transfer, senders will receive information about their transfers in closer proximity to the scheduled transfer date, and the provider should be in a better position to make the required disclosures. This approach also reminds senders about the pending transfer, which will enable them to confirm that sufficient funds are available for the transfer. In the January 2012 Proposed Rule published elsewhere in today's Federal Register, the Bureau is also soliciting comment on a safe harbor with respect to the reasonable time requirement.

In addition, under § 1005.36(a)(2)(ii), the provider must provide the receipt described in § 1005.31(b)(2) for each subsequent transfer. As with pre-payment disclosures, the Bureau does not believe a receipt given at the time payment for the transfer is authorized would be as useful

to senders as a receipt received closer in time to the actual transfer that contains more relevant information about the particular scheduled transfer. The final rule requires the receipt to be mailed or delivered to the sender no later than one business day after the date on which the transfer is made. However, if the transfer involves the transfer of funds from the sender's account held by the provider, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided. Section 1005.36(a)(2)(ii) closely tracks the receipt timing rule for receipts in transactions conducted entirely by telephone under § 1005.31(e)(2).

The Bureau believes that these special timing rules for pre-payment disclosures and receipts for subsequent preauthorized remittance transfers will result in more meaningful disclosures to senders than if providers were required to provide these disclosures at the time the transfers were authorized.

### **36(b) Accuracy**

Section 1005.36(b) sets forth requirements for the accuracy of disclosures for preauthorized remittance transfers. For the first scheduled transfer, the disclosure requirements follow the accuracy rule set forth in § 1005.31(f) that generally applies to remittance transfers. See § 1005.36(b)(1). Thus, except as permitted by § 1005.32, the pre-payment disclosure and receipt provided for the first scheduled transfer must be accurate when payment is made; that is, at the time the transfer is authorized.

However, for subsequent scheduled transfers, the disclosures described in § 1005.36(a)(2) must be accurate when the transfer is made. See § 1005.36(b)(2). Thus, for subsequent preauthorized remittance transfers, the final rule provides that senders must receive

an accurate pre-payment disclosure shortly before the transfer is made, and then an accurate receipt shortly after the transfer is made. Providers may continue to disclose estimates to the extent permitted by § 1005.32.

As discussed above, the Bureau believes that it would be problematic to apply the general rule about accuracy in § 1005.31(f) to subsequent preauthorized remittance transfers. For example, some preauthorized remittance transfers are set up to vary in amount, so the provider cannot predict, at the time such transfers are authorized, the amount to be transferred in subsequent months. Therefore, the provider could not provide an accurate pre-payment disclosure and receipt at the time the preauthorized remittance transfers, and payment for the transfers, are authorized. The accuracy requirement in § 1005.31(f) also would present a challenge to determining an applicable exchange rate for subsequent transfers, in that the provider may not know the exchange rate that will apply to subsequent transfers at the time of authorization. Accordingly, to effectuate the purposes of the Act and to facilitate compliance, the Bureau believes it is necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to adopt special requirements for accurate disclosures about subsequent scheduled transfers in § 1005.36(b). In the January 2012 Proposed Rule published elsewhere in today's Federal Register, the Bureau is also soliciting comment on the use of estimates for certain disclosures with respect to the first scheduled transfer.

### **36(c) Cancellation**

Under § 1005.34(a), senders are permitted to cancel a remittance transfer if the request to cancel the remittance transfer is received by the provider no later than 30 minutes after the sender makes payment in connection with the remittance transfer, if certain conditions are met. As noted above, for purposes of subpart B, payment is made when payment is authorized. The

Bureau believes that requiring a sender to cancel a transaction no later than 30 minutes after payment is authorized would not be appropriate for certain remittance transfers that a sender schedules in advance, including preauthorized remittance transfers. Such a rule would permit cancellation only for a short time after the transfers are authorized, even though the remittance transfer may not occur for many days, weeks, or months. For example, if on March 1 a sender scheduled a remittance transfer for March 23, under the general cancellation rule, the sender would be required to cancel 30 minutes after the transfer was authorized on March 1, despite the fact that the transfer is not being made until March 23. The Bureau believes it is appropriate to adopt a different cancellation period in these circumstances because payment is authorized well before the transfer is to be made.

Consequently, the Bureau is adopting a special cancellation rule in § 1005.36(c) that it believes is more appropriate for these types of transfers. Section 1005.36(c) states that, for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a remittance transfer provider shall comply with any oral or written request to cancel the remittance transfer from the sender if the request to cancel: (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 by the provider at least three business days before the scheduled date of the remittance transfer.

The Bureau believes that this time period is more beneficial to senders because it generally provides them more time to decide whether to go through with a scheduled transfer. Senders will have the opportunity to change their minds about sending a transfer if, for example, circumstances change between when the transfer is authorized and when the transfer is to be made. At the same time, the Bureau believes that requiring a sender to cancel at least three days

before a transfer is made gives providers sufficient time to process any cancellation requests before a transfer is made. Many financial institutions that permit senders to schedule remittance transfers at least three business days before the date of the transfer are already subject to the stop payment provisions in Regulation E for preauthorized transfers that are EFTs, which require consumers to notify the institution at least three business days before the scheduled date of a preauthorized EFT. See § 1005.10(c).

The cancellation provisions in both §§ 1005.34(a) and 1005.36(c) permit a sender to cancel a remittance transfer after the transfer has been authorized. Under both provisions, a cancellation period may expire before the transfer itself is made. As noted above, the Bureau expects financial institutions making transfers by ACH or wire transfer may decide to wait to execute the payment order until the cancellation period has passed because these types of remittance transfers generally cannot easily be cancelled once the payment order has been accepted by the sending institution. For the same reason, the Bureau believes it is appropriate to require a sender to cancel before a transfer is made in § 1005.36(c).

Under § 1005.36(c), a transfer must be cancelled only if the request to cancel is received by the provider at least three business days before the scheduled date of the remittance transfer, so that a provider has sufficient time to prevent the transfer from taking place on the scheduled date. Therefore, under the final rule, only transfers scheduled by the sender at least three business days before the date of the transfer are subject to the cancellation requirements in § 1005.36(c). Remittance transfers that are scheduled less than three business days before the date of the transfer are subject to the cancellation requirements in § 1005.34(a). For example, if a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3, the sender may cancel up to 30 minutes after scheduling the

payment on March 1. Thus, in every case, a sender has an opportunity to cancel a remittance transfer.

The Bureau is adopting commentary to provide further guidance on the application of § 1005.36(c). Comment 36(c)-1 clarifies that a remittance transfer is scheduled if it will require no further action by the sender to send the transfer after the sender requests the transfer. For example, a remittance transfer is scheduled at least three business days before the date of the transfer, and § 1005.36(c) applies, where a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 15, if it will require no further action by the sender to send the transfer after the sender requests the transfer.

Comment 36(c)-1 also clarifies three circumstances where the provisions of § 1005.36(c) do not apply, such that a provider should instead comply with the 30-minute cancellation rule in § 1005.34. For example, § 1005.36(c) does not apply when a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3. In this instance, § 1005.36(c) does not apply because the transfer is scheduled less than three business days before the date of the transfer. Section 1005.36(c) also does not apply when a sender on March 1 requests that a remittance transfer provider send a remittance transfer on March 15, but the provider requires the sender to confirm the request on March 14 in order to send the transfer. In this example, § 1005.36(c) does not apply because the transfer requires further action by the sender to send the transfer after the sender requests the transfer.

The other example in comment 36(c)-1 demonstrates situations where § 1005.36(c) does not apply because a transfer occurs more than three days after the date the sender requests the transfer solely due to the provider's processing time and not because a sender schedules the transfer at least three business days before the date of the transfer. For example, § 1005.36(c)

does not apply when a sender on March 1 requests that a remittance transfer provider send an ACH transfer, and that transfer is sent on March 2, but due to the time required for processing, funds are not deducted from the sender's account until March 5.

Comment 36(c)-2 clarifies how a remittance transfer provider should treat requests to cancel preauthorized remittance transfers in a manner consistent with the stop payment provisions of Regulation E. See § 1005.10(c) and comment 10(c)-2. The comment clarifies that for preauthorized remittance transfers, the provider must assume the request to cancel applies to all future preauthorized remittance transfers, unless the sender specifically indicates that it should apply only to the next scheduled remittance transfer.

Finally, comment 36(c)-3 clarifies that a financial institution that is also a remittance transfer provider may have both stop payment obligations under § 1005.10 and cancellation obligations under § 1005.36. If a sender cancels a remittance transfer under § 1005.36 with a remittance transfer provider that holds the sender's account, and the transfer is a preauthorized transfer under § 1005.10, then the cancellation provisions of § 1005.36 exclusively apply. The Bureau notes that in these circumstances, a provider would not be permitted to require the sender to give written confirmation of a cancellation within 14 days of an oral notification, as is permitted for stop payment orders in § 1005.10(c)(2). The Bureau believes that a sender should be able to orally cancel any remittance transfer, including a remittance transfer that is scheduled at least three business days before the date of the transfer, without the additional burden of providing written confirmation of the cancellation.

In the January 2012 Proposed Rule published elsewhere in today's Federal Register, the Bureau is also soliciting comment on the cancellation period for a remittance transfer scheduled by the sender at least three business days before the date of the transfer.

## **Appendix A – Model Disclosure Clauses and Forms**

The Board proposed in Appendix A twelve model forms that a remittance transfer provider could use in connection with remittance transfers. The disclosures were proposed as model forms pursuant to EFTA section 904(a), rather than model clauses pursuant to EFTA section 904(b), in order to clearly demonstrate the general form and specific format requirements of proposed § 205.31(a) and (c). Proposed Model Forms A-30 through A-32 were developed in consumer testing and reflect a format in which the flow and organization of information effectively communicates the remittance disclosures to most consumers. Proposed Model Forms A-30 through A-41 were intended to demonstrate several formats a remittance transfer provider may use to comply with the disclosure requirements of proposed § 205.31.<sup>88</sup>

The Board proposed to amend instruction 2 to Appendix A regarding the use of model forms and added instruction 4 to Appendix A to describe how a remittance transfer provider may properly use and alter the model forms. Specifically, the Board proposed to amend instruction 2 to Appendix A to include references to remittance transfer providers and remittance transfers and updated the numbering of the liability provisions of the EFTA as sections 916 and 917. The proposed instruction therefore clarified that the use of the proposed model forms in making disclosures would protect a remittance transfer provider from liability under sections 916 and 917 of the EFTA if they accurately reflected the provider's remittance transfer services. The Bureau did not receive comments on proposed instruction 2, and it is adopted substantially as proposed, with an addition to reference § 1005.36 that was added in the final rule.

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<sup>88</sup> Proposed Model Forms A-33 through A-35 and proposed Model Form A-37 were variations of the forms that were developed in consumer testing. Proposed Model Forms A-38 through A-40 were Spanish translations of proposed Model Forms A-30 through A-32. The language in the long form error resolution and cancellation notice in proposed Model Form A-36, and its Spanish translation in Model Form A-41, were based on the model form for error resolution in Regulation E. See 12 CFR part 1005, Appendix A to part 1005, Form A-3.



The Bureau also did not receive any comments on proposed instruction 4 to Appendix A, and it is adopted substantially as proposed. The instruction includes one change to address the Bureau's role in reviewing and approving disclosure forms. The instruction also contains modifications to address the addition of § 1005.36 in the final rule. Accordingly, instruction 4 to Appendix A states that the Bureau will not review or approve disclosure forms for remittance transfer providers, but that the appendix contains 12 model forms for use in connection with remittance transfers. The instruction explains that Model Forms A-30 through A-32 demonstrate how a provider can provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A-33 through A-35 demonstrate how a provider can provide the required disclosures for U.S. dollar-to-U.S. dollar remittance transfers. These forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of § 1005.31(c)(1) and (2), in both a register receipt format and an 8.5 inch by 11 inch format. Model Form A-36 provides long form model error resolution and cancellation disclosures required by § 1005.31(b)(4), and Model Form A-37 provides short form model error resolution and cancellation disclosures required by § 1005.31(b)(2)(iv) and (b)(2)(vi).

Instruction 4 to Appendix A also explains that a remittance transfer provider may use the language and formatting provided in Forms A-38 through A-41 for disclosures that are required to be provided in Spanish, pursuant to the requirements of § 1005.31(g). It also clarifies that the model forms may contain certain information that is not required by subpart B, such as a confirmation code and the sender's name and contact information. This information is included on the model forms to demonstrate one way of displaying this information in compliance with § 1005.31(c)(4). Any additional information must be presented consistent with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

Instruction 4 to Appendix A further clarifies that use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, without modifying the substance of the disclosures. The instruction clarifies that rearrangement or modification of the format of the model forms is permissible, as long as it is consistent with the form, grouping, proximity, and other requirements of § 1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A-30 to A-41.

Instruction 4 to Appendix A also provides examples of permissible changes a remittance transfer provider may make to the language and format of the model forms without losing the benefit of the safe harbor. For example, a remittance transfer provider may substitute the information contained in the model forms that is intended to demonstrate how to complete the information in the model forms – such as names, addresses, and websites; dates; numbers; and State-specific contact information – with information applicable to the remittance transfer. A remittance transfer provider may also eliminate disclosures that are not applicable to the transfer, as permitted under § 1005.31(b), or provide the required disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats. A remittance transfer provider may correct or update telephone numbers, mailing addresses, or website addresses that may change over time. This example applies to all telephone numbers and addresses on a model form, including the contact information of the provider, the State agency, and the Consumer Financial Protection Bureau. The instruction clarifies that adding the term “Estimated” or a substantially similar term and in close proximity to the estimated term or terms, as required under § 1005.31(d), is a permissible change to the model forms. A provider may provide the required disclosures in a foreign language, or multiple foreign languages, subject to the

requirements of § 1005.31(g), without losing the benefit of the safe harbor.

Instruction 4 to Appendix A includes an additional example of a permissible change a remittance transfer provider may make to the language and format of the model forms without losing the benefit of the safe harbor to reflect the addition of § 1005.36 in the final rule. The instruction clarifies that a remittance transfer provider may substitute cancellation language to reflect the right to a cancellation made pursuant to the requirements of § 1005.36(c). For example, for disclosures provided for a preauthorized remittance transfer, a provider could replace the statement that a sender can cancel the remittance transfer within 30 minutes with a statement that a sender may cancel up to three business days before the date of each transfer. Finally, instruction 4 to Appendix A also clarifies that adding language to a form that is not segregated from the required disclosures is impermissible, other than as permitted by § 1005.31(c)(4).

Although the Bureau did not receive comments on the instructions to Model Forms A-30 through A-41, the Bureau did receive suggested changes to the terminology used in and the formatting of the model forms. For example, consumer group commenters believed that the amount of the cost of the transaction expressed as “Total” in the proposal should be labeled in bold as “Total cost to you of this transfer” and that “Total to recipient” should be labeled in bold as “Total amount recipient should receive.” The commenters also believed the term “Total Amount” was too generic and instead should be “Amount Transferred.” An industry commenter believed that fees and taxes charged by entities other than the remittance transfer provider should be labeled as “Receive” or “Payout” fees and taxes, rather than “Other” fees and taxes.

The Bureau believes that the proposed terms sufficiently describe the amounts disclosed on the model forms. The proposed terms were used in consumer testing, and nearly all

participants understood the amounts that were disclosed. Moreover, the Bureau believes that requiring bolding or similar font requirements could pose compliance difficulties for remittance transfer providers that print the disclosures on a register or other printing device that does not permit such font changes, and participants in consumer testing did not have difficulty finding this information on the forms. Thus, the Bureau is adopting the terms and format as proposed.

Consumer group commenters asserted that the content of the long form error resolution and cancellation notice in Model Form A-36 was misleading and not consumer friendly. The commenters provided edits to the disclosure that the commenter believed would be more helpful to a sender. The long form error resolution and cancellation disclosure is based on the model form for error resolution in Regulation E. See 31 CFR part 1005, Appendix A to part 1005, Form A-3. The Bureau believes that any changes to this model form should be made in conjunction with the corresponding changes to existing Regulation E model forms and that such changes should be subject to consumer testing. Therefore, the Bureau is adopting the content of Model Form A-36 as proposed.

Other commenters suggested substantive changes that, if adopted, would result in changes to the model forms. For example, some industry commenters suggested that the Bureau eliminate the requirement to disclose fees and taxes charged by a person other than the remittance transfer provider and that the model forms should instead indicate generally that other fees and charges may apply. Similarly, industry commenters suggested the exchange rate and funds availability date should be permitted to be estimated and, therefore, the model forms should state that these disclosures are subject to change. As discussed above, the Bureau is not adopting these substantive changes in the final rule. Consequently, the Bureau is not adopting the corresponding changes to the model forms.

Finally, a consumer advocate suggested that a fraud warning should be added to the model forms. Such a warning is not required in the statute, and the Bureau believes that the disclosures should be limited to information relating to cost, error resolution, and cancellation. Adding more information and warnings to forms could overwhelm a sender and result in the sender not reading any of the information on the form. Therefore, the Bureau is not adding such a fraud warning to the model disclosures.

The Bureau is, however, making two changes to the model forms that reflect changes from the proposal to the final rule, as discussed above. First, the Bureau is requiring that fees and taxes must be disclosed separately. See comment 31(b)(1)-1. As such, the model forms have been amended to demonstrate how a remittance transfer provider would disclose fees separately from taxes. Second, the final rule provides that a sender may cancel a transaction within thirty minutes of making payment, rather than within one business day, as proposed, and the model forms have been amended to reflect this change.<sup>89</sup>

The Bureau is making additional changes to Model Form A-37 in the final rule. The Bureau is removing sample phone number, website, and remittance transfer company name that was included in the proposed form. Unlike the model pre-payment disclosures, receipts, and combined disclosures, sample information is not necessary to demonstrate how the short form error resolution and cancellation disclosures should be completed. Thus, in the final rule, Model Form A-37 includes brackets indicating where this information should be entered by a provider. The forward slash used in the proposal to indicate that funds may be picked up or deposited is also replaced with the word “or.” The Bureau is also amending the abbreviated statement about

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<sup>89</sup> As noted above, this cancellation language may be amended to the extent § 1005.36(c) applies.

senders' error resolution rights on Model Form A-37 to include a more explicit statement informing senders that they have such rights.<sup>90</sup>

The Bureau is also making minor technical changes in some of the model forms in the final rule for clarity. Plus signs are added to some forms to indicate where fees and taxes will be added to a transfer amount to better demonstrate the calculation of the total amount paid by the sender.<sup>91</sup> The internet address for the sample State regulatory agency is also amended on some forms with the suffix “.gov” rather than “.com.”<sup>92</sup> The toll-free telephone numbers for the Bureau have also been added to some forms.<sup>93</sup>

As discussed above, Model Forms A-38 through A-41 may be used when disclosures are required to be disclosed in Spanish, pursuant to the requirements in § 1005.31(g). The Board proposed model disclosures in Spanish to facilitate compliance with this foreign language requirement and requested comment on the disclosures. One commenter submitted spelling, grammar and verb tense revisions to the Spanish language disclosures. The commenter believed the Spanish language disclosures, as proposed, did not adequately communicate the intent of the language used in the English disclosures.

Certain commenter-suggested revisions have been made in Model Forms A-38 through A-41 to correct inaccuracies in the proposed Spanish language disclosures. However, in other instances, the suggested revisions have not been made. Although the proposed language and the commenter-suggested revisions reflected stylistic variations, both contained accurate translations of the English language model forms. Therefore, the technical corrections are included in Model Forms A-38 through A-41 in the final rule. The Bureau also made stylistic changes to the

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<sup>90</sup> These changes were also made to Model Forms A-31, A-32, A-34, and A-35 where the language in Model Form A-37 is used. The changes are also reflected in the Spanish language disclosures.

<sup>91</sup> See, Model Forms A-30 through A-35 and A-38 through A-40.

<sup>92</sup> See, Model Forms A-31, A-32, A-34, A-35, A-39, and A-40.

<sup>93</sup> See, Model Forms A-31, A-32, A-34, A-35, A-39, and A-40.

Spanish language model forms that it believes better tracks the language in the English language disclosures.<sup>94</sup>

### **Effective Date**

The Dodd-Frank Act requires the Bureau to issue final rules on certain provisions of EFTA section 919 within 18 months from the date of enactment. However, the statute does not specify an effective date for these provisions. The Board solicited comment in the May 2011 Proposed Rule on whether an effective date of one year from the date the final rule is published, or an alternative effective date would be appropriate.

One industry commenter agreed that 12 months would be an appropriate time period to implement the remittance transfer provisions. However, several other industry commenters recommended that the effective date of the final rule be set 18 to 24 months from the date that the final rule is issued. In suggesting this time period, money transmitter commenters stated that they would need time to change hardware printers and software. Agents of remittance transfer providers would also need time to integrate software from the remittance transfer provider with their point of sale systems. Industry commenters also requested time to deplete their existing form stock, develop and implement proper training programs, and amend contracts with agent locations worldwide.

Financial institution commenters cited the need for messaging, settlement, and payment systems, such as the ACH network and SWIFT, to evaluate and possibly amend operating rules, message formats, contracts, and participant agreements. These commenters also stated they would need time to: complete processing system modifications; develop disclosures, operating procedures, marketing and employee training materials; and make modifications to agreements

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<sup>94</sup> One of the stylistic changes made to the Spanish language model forms was to change the format for the dates to eliminate possible consumer confusion as to the day, the month, and the year. Similar changes have been made to the English language model forms for consistency.

with correspondents and other intermediaries. They further requested that the Bureau take into account other regulatory requirement set forth in the Dodd-Frank Act that financial institutions must implement in addition to the remittance transfer provisions.

Given the time period set for compliance with other consumer financial protection regulations, the Bureau believes it is appropriate to set an effective date one year from the date of publication of the final rule in the Federal Register. In setting this effective date, the Bureau believes that this time frame best balances the significant consumer protection interests addressed by this rule against industry's need to make systems changes to comply with the final rule. Therefore, the disclosure requirements in § 1005.31 will apply to remittance transfers that are requested by a sender on or after the effective date. Only remittance transfers for which a sender made payment on or after the effective date will be eligible for the error resolution and refund and cancellation requirements of §§ 1005.33 and 1005.34. For preauthorized remittance transfers, the disclosure requirements in § 1005.36(a) and (b) will apply to preauthorized remittance transfers authorized by a sender on or after the effective date. For transactions subject to § 1005.36(c), the error resolution and refund requirements of §§ 1005.33 and 1005.34 and the cancellation requirements of § 1005.36(c) will apply to transfers authorized by a sender on or after the effective date.

## **VII. Section 1022 Analysis**

### **A. Overview**

Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential costs, benefits, and impacts of its regulations. Specifically, the Bureau is to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the



impact of proposed rules on insured depository institutions and insured credit unions with less than \$10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

The final rule implements section 1073 of the Dodd-Frank Act, which creates a comprehensive system of consumer protections for consumers who electronically transfer funds to recipients in foreign countries. Specifically, as discussed above, the statute: (i) mandates disclosure of the exchange rate and the amount to be received by the remittance recipient, prior to and at the time of payment by the consumer for the transfer; (ii) provides for Federal rights on consumer cancellation and refund policies; (iii) requires remittance transfer providers to investigate disputes and remedy errors regarding remittance transfers; and (iv) establishes standards for the liability of remittance transfer providers for acts of their agents and authorized delegates.

Prior to the Dodd-Frank Act amendments, international money transfers fell largely outside the scope of Federal consumer protections. In the absence of a consistent Federal regime, legal requirements and practices regarding disclosure have varied. Congressional hearings prior to enactment of the Dodd-Frank Act focused on the need for standardized and reliable pre-payment disclosures, suggesting that disclosure of the amount of money to be received by the designated recipient is particularly critical.

The analysis below considers the benefits, costs, and impacts of the key provisions of the final rule: the provisions regarding disclosures and estimates, error resolution, cancellation and refund, and agent liability. With respect to each provision, the analysis considers the benefits to consumers and the costs to providers, as well as possible implications of these costs for

consumers.<sup>95</sup> The analysis also considers certain alternative provisions that were considered by the Bureau in the development of the rule.

The analysis examines the benefits, costs, and impacts of the key provisions of the final rule against a pre-statutory baseline (i.e., the benefits, costs, and impacts of the statute and the regulation combined). The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau notes at the outset that there is a limited amount of data that is publicly available and representative of the full universe or population of remittance transfers with which to quantify the potential benefits, costs, and impacts of the rule. Specifically, though some surveys have measured the characteristics of certain types of remittance consumers or certain types of remittance transfers, there is little publicly available data that represents the entire remittance transfer market and that links the characteristics of consumers who send remittance transfers to the frequency, size and cost of the transfers and the specific services and channels used. There is also limited data on remittance consumer shopping, error resolution, and purchase behavior from which to estimate how new protections might change consumer behavior and the amount consumers pay for remittance transfers. This data would be essential for quantifying the benefits to consumers of the provisions of the rule.

Regarding costs to providers of complying with the rule, there is no representative and publicly available data on the current provision, accuracy, and completeness of pre-payment disclosures and receipts across the remittance transfer market, the frequency and treatment of cancellations and errors, or the frequency of practices by agents for which providers would become liable under the regulation. Additionally, industry commenters did not provide precise

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<sup>95</sup> Costs incurred by providers may, in practice, be shared among providers' business partners, such as agents or foreign exchange providers. To the extent that any of these business partners are covered persons, the rule may impose some cost on them as well.

or comprehensive information from which to estimate such figures. Such data would provide the starting point for quantifying the cost to providers of complying with the rule. To measure such costs fully would also require quantifying the cost of closing the gap between current practices and those provided for by the rule, including the costs of providing disclosures or addressing errors. Industry commenters did not provide the Bureau with any quantitative data regarding such costs.

In light of the lack of data, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. General economic principles, together with the limited data that is available, provides considerable insight into these benefits, costs and impacts but they do not support a quantitative analysis.

As discussed above, the May 2011 Proposed Rule was issued by the Board prior to the transfer of rulemaking authority to the Bureau. The May 2011 Proposed Rule therefore did not contain a proposed Dodd-Frank Act section 1022 analysis, and although the Board did generally request comment on projected implementation and compliance costs, commenters provided little data in response. Furthermore, because of the short time period for publication of the final rule imposed by the statutory deadline, the Bureau's ability to gather additional information or develop new data sources after it assumed rulemaking authority was constrained.

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

### **Disclosure of Accurate Exchange Rates, Fees, and Taxes**

The final rule generally requires remittance transfer providers to provide to senders a pre-payment disclosure with accurate information about, among other things, the exchange rate, fees, and taxes applicable to the transaction, and the amount to be provided to the designated recipient. In addition, the provider must generally give the sender a receipt that contains, among other

things, the date of availability of funds to the designated recipient, as well as the information contained in the pre-payment disclosure.

The disclosures required by the Dodd-Frank Act and the final rule provide many benefits to consumers. Consumers who have reliable information about how much they must spend in order to deliver a specific amount of foreign currency to a recipient are better able to manage all of their household income than are consumers who lack this information. This may be particularly important for low-income immigrants who are trying both to manage their personal budgets in the United States and support friends or family abroad.

Disclosing the amount of currency to be provided to the recipient enables consumers to engage in comparison shopping, since it accounts for both the exchange rate used by the remittance transfer provider and fees and taxes that are deducted from the amount transferred. Consumers also benefit, however, from having reliable information about the individual components of remittance transfer pricing (i.e., exchange rates, fees, and taxes). If the amount the provider commits to deliver is different from the amount the consumer is expecting, the information about the components will help the consumer identify the reason for the difference. The consumer can then better determine the benefits to additional comparison shopping. Consumers may also be less susceptible to deceptive and unfair business practices, and those practices may be less common, when the exchange rate, fees, and taxes are all clearly and reliably disclosed and the consumer knows (and can communicate to the recipient) the amount that the recipient should expect to receive.

Finally, consumers who shop for remittance transfers place competitive pressure on providers, who may lower their prices in response. This benefits all consumers who send

remittance transfers, by either allowing them to send more money abroad for the same price, or by allowing them to save on the amount they spend on such transfers.

By requiring remittance transfer providers to provide accurate disclosures to consumers, the Dodd-Frank Act and the final rule thus require providers to lock in their prices (at the time of the transaction, except when estimates are allowed). As discussed below, providers that operate through closed network systems will face different costs of making this commitment than will providers that operate through open network systems.

Providers that use closed network systems are generally money transmitters, though some depository institutions and credit unions may also offer remittance transfers through closed networks. Insofar as they use the closed network system, money transmitters or other providers often have contractual relationships with agents in the United States through which consumers initiate transfers, as well as agents abroad, which may be used to distribute transfers in cash to recipients. Alternatively, these providers may instead have direct relationships with intermediaries that, in turn, contract with and manage individual agents.

Providers that use closed network systems, through the terms of their contractual relationships, usually have some ability and authority to obtain the information needed for the disclosures from their agents or other network partners. Nevertheless, the disclosure requirements will likely impose some costs on closed network providers (and potentially some of their business partners), to the extent that such institutions need to update systems, revise contracts, change communication protocols and business practices in order to receive the necessary information and comply with the disclosure requirements. Furthermore, closed network providers that currently offer “floating rate” products will need to adjust their business

processes and relationships for setting exchange rates, and change the way they manage foreign exchange rate risk.

On the other hand, providers that operate through open network systems are in a different situation. This group primarily includes depository institutions and credit unions, although comments from industry stated that some institutions that are not depositories or credit unions (including some money transmitters) also use open network systems for certain transactions. Providers that operate through open networks generally do not have direct relationships with all disbursing entities. In some cases, intermediary institutions and recipient institutions may charge fees in connection with the transaction; often these fees are deducted from the principal amount transferred, although some fees may be charged to the sending institution instead. With regard to open networks today, there is no global practice of communications by intermediary and recipient institutions that do not have direct relationships with a sending institution regarding fees deducted from the principal amount or charged to the recipient, exchange rates that are set by the intermediary or recipient institution, or compliance practices. Similar challenges exist for some types of international ACH transactions. Thus, to the extent providers that use open networks are required to disclose information about fees or taxes, they may find it difficult to obtain information that must be provided in the disclosures.

These considerations are relevant for all open network providers, but § 1005.32(a) of the final rule provides insured depositories and credit unions with an exception to the requirements to provide accurate disclosures under certain circumstances until July 21, 2015. Thus, to the extent applicable, insured depository institutions and credit unions are in a separate category for purposes of this analysis and are discussed in the next section below. The discussion that follows applies to money transmitters or other institutions that are not insured depository

institutions or insured credit unions that send remittance transfers through open network systems.<sup>96</sup> Comments on the proposed rule did not provide the Bureau with data on the volume of transactions done by such entities.

Comments on the proposed rule did not provide data on the number of entities that use open network systems (besides insured depository institutions and credit unions), how costly it may be for them to obtain the required information, or how difficult it may be for them to change practices so the information is not required. These costs may not be knowable until some providers attempt to meet the new requirements in the year before the implementation date. The required changes may be extensive, however. It is possible that money transmitters or other institutions using open network systems may increase prices on the products that use open network systems or stop providing those products altogether.

#### Disclosure of Estimated Exchange Rates, Fees, and Taxes

Section 1005.32 of the final rule implements two statutory exceptions that permit remittance transfer providers to disclose “reasonably accurate estimates” of the amount of currency to be received, rather than the actual amount, under certain narrow circumstances. The first exception, which sunsets on July 21, 2015 unless the Bureau makes a finding to support an extension for up to five additional years, permits estimates where an insured depository institution or insured credit union is unable for reasons beyond its control to know the actual amount of currency to be received at the time that a consumer requests a transfer to be conducted through an account held with the provider. The second exception enables remittance transfer providers of all types to provide estimates where foreign countries’ laws or methods of transfer to a country prevent the providers from knowing the amount to be received. Section 1005.32(c)

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<sup>96</sup> More precisely, the discussion applies to entities that use open network systems to direct and make payment to a beneficiary. This is in contrast to entities that may direct and effectuate payment to the recipient through a closed network system but use wire transfers to facilitate settlement among the various parties.

of the final rule prescribes methods that may be used to provide the estimates permitted by the exceptions. Providers may also use any other method to disclose estimates as long as the amount of funds the recipient actually receives is the same as or greater than the disclosed estimate of the amount of funds to be received.

#### First Exception

The first exception applies when an insured depository institution or insured credit union is unable for reasons beyond its control to know the actual amount of currency to be received at the time that a consumer requests a transfer to be conducted through an account held with the provider. The Bureau assumes that the exception will most frequently apply to wire transfers by insured depository institutions and credit unions, though it may also apply, for example, to some transactions sent through the FedGlobal ACH system, or other mechanisms.<sup>97</sup>

Data from the Federal Deposit Insurance Corporation and the National Credit Union Administration indicate that there are about 7,445 insured depository institutions and 7,325 insured credit unions that may be eligible for the exception. Regulatory filings by insured depository institutions, however, do not contain information about the number that send consumer international wire transfers. Data from the National Credit Union Administration indicate that there are approximately 7,325 insured credit unions in the United States as of September 2011. About half offer international wire transfers. Additionally, regulatory filings by insured credit unions contain an indicator for “low cost wire transfers.” These are wire transfers offered to members for less than \$20 per transfer, and about half of insured credit unions offer low cost wire transfers. Though the Bureau does not have exact data on the number

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<sup>97</sup> The Board reported in July 2011 that only around 410 U.S. depository institutions had enrolled in the FedGlobal ACH service; that only about a third of those institutions sent transfers in a typical month; and that some of the enrolled institutions do not offer the FedGlobal ACH services to consumer customers. Board ACH Report at 12 & n.53.



of credit unions that offer wire transfers to consumers, the Bureau assumes that a similar fraction offer consumer international wire transfers.

The above discussion on the qualitative benefits to consumers from accurate disclosures also generally applies where estimates are used. Although disclosures with “reasonably accurate estimates” are somewhat less reliable than those with actual amounts, they still provide consumers with valuable information that they currently do not generally receive from insured depository institutions or credit unions. The exception also benefits consumers by, as discussed below, reducing the costs on insured depository institutions and credit unions of providing disclosures, and therefore making it less likely that they will increase costs to consumers or decrease services.<sup>98</sup> Thus, relative to accurate disclosures, estimated disclosures strike a different balance between accuracy and access, offering less accuracy but potentially preserving greater access.

Comments on the proposed rule did not provide any data on how costly it may be for insured depositories and credit unions to use the allowed methods of estimation. The methods do not necessarily require that sending institutions obtain information from receiving institutions with which they have no contractual or control relationship. To calculate estimates, providers may choose to rely on information about typical or most recent fees charged by the recipient institution and intermediaries in the transmittal route to that institution (or other institutions that set exchange rates that apply to remittances). Information is also required about foreign tax rules and rates. Thus, as discussed below, the final rule may require revisions of contract arrangements and communication systems, to ensure that depository institutions can receive the information needed for estimates (when permitted) or exact disclosures (when required) and

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<sup>98</sup> Consumers generally benefit from having access to both open network products like wire transfers and closed network products like those used offered by money transmitters, to the extent that both types of products meet any particular consumer’s needs.

provide that information to customers at a branch or elsewhere at the appropriate time. Third parties may have some incentive to gather this information and deliver it to depositories and credit unions, in order to preserve the remittance transfer line of business. However, the costs of doing so may be high and potentially prohibitive for transfers to some countries.

The rule also permits insured depositories and credit unions to use methods not specified in the rule to calculate estimates, provided the estimate for the amount of funds the recipient will receive proves to be less than or equal to the amount of funds the recipient actually receives. Insured depositories and credit unions will differ in their capacity and willingness to make these estimates and to manage the risk and error resolution expenses for estimates of currency to be received that are too high. For insured depositories and credit unions that undertake this approach, the incentive to attract consumers who comparison shop makes it likely that they will disclose reasonable estimates and that the estimates will improve over time.

The costs of compliance will ultimately be shared among the consumers and businesses involved in remittance transfers in ways that are difficult to predict. One credit union submitted data showing that little revenue, as a share of total income, came from consumer international wire transfers.<sup>99</sup> Other credit union and credit union trade association commenters indicated that consumer international wire transfer services are not a financially significant line of business for them. In some cases, commenters stated, the service is provided as a convenience to customers and prices just cover costs. This suggests that some credit unions may fold the costs of complying with the rule into the prices they charge consumers or stop offering the service.

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<sup>99</sup> Navy Federal Credit Union has about \$45 billion in assets. It states that it processed 19,248 wire transfers in 2010 and charged \$25 per transfer. It had total income of over \$3 billion in 2010, so the wire income of about \$500,000 was about two tenths of one percent of total income. United Nations Federal Credit Union did submit data indicating that wire transfers were about 2% of total income. However, UNFCU serves a distinctively international community.

Depository institutions that provide consumer international wire transfer services similar to those provided by credit unions may face similar costs of compliance.

The statutory exception for insured depository institutions and credit unions expires on July 21, 2015, unless the exception is extended by the Bureau as permitted by the statute. Once the exception expires, insured depository institutions and credit unions will need to provide accurate disclosures. At that time, the benefit to consumers from the expiration, in terms of increased accuracy, will be minimal if the estimated disclosures tend to be accurate but significant if the estimated disclosures tend to be inaccurate. The cost to providers from the expiration, and thus to consumers in terms of higher prices or reduced access, will depend on business practices by depository institutions and credit unions currently eligible for the exception at that time. The Bureau lacks data to predict such practices with reasonable confidence.

#### Second Exception

The second exception permanently permits use of reasonably accurate estimates where a foreign country's laws or methods of transfer to a country prevent remittance transfer providers from determining the actual amount of currency to be received. The rule provides a safe harbor for reliance on a list of countries to be published and periodically updated by the Bureau. Consumers benefit from the exception since it reduces the chance that remittance transfer services to these countries will be discontinued or disrupted. Consumers will also benefit from the Bureau's publication and periodic update of a safe harbor country list since such a list will reduce the chance that consumers will receive estimated disclosures when they should receive accurate ones. Likewise, transfer providers will benefit from the Bureau's publication and periodic update of a list since this will reduce the burden on them of having to assess the laws of and transfer methodologies used in countries with which they do not conduct frequent transfers

### Formatting, Retainability, and Language Requirements in Disclosures

EFTA section 919(a)(3)(A) states that disclosures must be clear and conspicuous. The final rule incorporates this requirement and adds grouping, proximity, prominence, size and segregation requirements to ensure that it is satisfied. The grouping requirement ensures that the disclosures present, in logical order, the computations that lead from the amount of domestic currency paid by the sender to the amount of foreign currency received by the recipient. The other requirements ensure that senders see important information and are not overloaded or diverted by less critical information. The final rule provides model forms that meet these requirements. These forms were consumer-tested for effectiveness.<sup>100</sup>

The specific format requirements impose a one-time cost on certain providers, for programming or updating their systems to produce disclosures that comply with the requirements. The cost is mitigated by the fact that the rule provides model forms and permits providers to use any size paper. Furthermore, as discussed below, the final rule provides certain exceptions to certain of the formatting requirements for transactions conducted entirely by telephone orally or via mobile application or text message. For transactions that must comply with the formatting requirements, the cost depends on the systems in place and the extent to which providers already give disclosures that comply with the requirements.

EFTA section 919(a)(2) and § 1005.31(a)(2) generally require disclosures to be retainable. Retainable disclosures generally provide greater benefits to consumers than do non-retainable disclosures. For example, it is usually easier for consumers to track the costs of remittance transfers over time and across providers when disclosures are retainable. For transactions conducted entirely by telephone, however, providing a retainable pre-payment disclosure may be inconvenient or impracticable.

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<sup>100</sup> For a discussion of how the design of disclosures can help consumers, see Bureau 2011 Report.

EFTA section 919(a)(5)(A) allows the Bureau to permit oral pre-payment disclosures for transactions conducted entirely by telephone. In addition to implementing this general statutory exception, the regulation provides an additional alternative for transfers conducted entirely by telephone via mobile application or text message. Specifically, § 1005.31(a)(5) of the final rule provides that for such transfers, the pre-payment disclosure may be provided orally or via mobile application or text message. Disclosure provided via such methods need not be retainable by the consumer. See § 1005.31(a)(2). When used, this provision likely benefits consumers who initiate transfers via mobile application or text message. First, it allows the transaction to proceed more quickly using the tools that the consumer used to initiate the transaction (mobile application or text message). Second, while the disclosures may not be permanently retainable in this format as compared to an email or paper disclosure, may be able to be retained temporarily without further action by the consumer and thus may be more useful and convenient to consumers than oral disclosures.

The final rule permits providers, at their option, to provide pre-payment disclosures orally or via mobile application or text message for transactions conducted entirely by telephone via mobile application or text message. Thus, this provision of the rule does not in itself impose additional costs on providers, and a provider determines whether to incur the cost of the alternative. Overall, this provision of the final rule benefits consumers and facilitates the development of additional modes of remittance transfer compared to the alternative in which the only non-retainable pre-payment disclosure is an oral disclosure.

Finally, EFTA section 919(b) provides that disclosures required under EFTA section 919 must be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing,

at that office. The final rule incorporates and modifies the statutory provision in § 1005.31(g). In particular, § 1005.31(g)(1)(ii) reduces the number of foreign language disclosures that would otherwise be required to be disclosed by the statute. Under the statute, the provider must provide the sender with written disclosures in English and in each foreign language principally used by the provider to advertise, solicit, or market remittance transfers at a particular office. Section 1005.31(g)(1)(ii) allows providers instead to provide written disclosures in English and in the one foreign language primarily used by the sender with the provider to conduct the transaction or assert the error, provided such foreign language is principally used by the provider to advertise, solicit or market remittance transfers at a particular office. The rule therefore provides a closer link between the disclosures and the language a sender uses with a provider to conduct a particular transaction or to assert an error.

Consumers generally benefit from disclosures that effectively convey information that is relevant and accurate in a language that they can understand. A written disclosure that consists of information in languages the consumer does not understand provides a substantial amount of information that is not relevant to that individual consumer. Thus, relative to the statute, this provision of the final rule allows providers to offer consumers a more effective written disclosure that may be tailored to the language the sender uses with the provider to conduct a particular transaction or to assert an error. This provision of the final rule does not, however, require providers to offer different written disclosures from those required by the statute. Thus, this provision of the rule does not in itself impose costs on providers other than those required by the statute, and a provider determines, at its option, whether to incur the cost of the alternative.

## Error Resolution

EFTA section 919(d) requires remittance transfer providers to investigate and resolve errors upon receiving oral or written notice from the sender within 180 days of the promised date of delivery. The obligation includes situations in which the recipient did not receive the amount of currency by the date of availability stated in the disclosures provided under other parts of the rule. The statute requires the Bureau to establish “clear and appropriate” standards for error resolution to protect senders from such errors, including recordkeeping standards relating to senders’ complaints and providers’ findings of investigation. As explained above, the Bureau has taken an approach that is generally similar to existing error resolution rights for electronic fund transfers under EFTA and Regulation E.

An error may occur if the provider fails to deliver the promised amount of foreign currency to the recipient by the guaranteed date.<sup>101</sup> There are generally three cases of this type of error. In one case, funds are delivered on time but the amount is less than the amount disclosed. As designated by the sender, the provider must either refund to the sender or transfer to the recipient the portion of the funds at no additional charge that were not received. In the second case, the funds are delivered late but the amount delivered is as correctly disclosed. In this case the provider must refund all of the fees, and to the extent not prohibited by law, taxes imposed on the transfer. In the final case, all of the funds are delivered late, and the amount is wrong or the funds are never delivered. In this case the consumer receives both remedies described above – the provider must either refund or transfer the funds that were not received at no additional charge (unless the sender provided incorrect or insufficient information) and the provider must refund all of the fees, and to the extent no prohibited by law, taxes imposed on the transfer

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<sup>101</sup> Other errors are also defined in § 1005.33(a).

(unless the sender provided incorrect or insufficient information). The discussion above refers to this refund provision as “a separate cumulative remedy.”

The benefits to senders from the error resolution procedures specified in the rule are straightforward. When an error occurs, senders benefit from the provision that providers must complete the transaction at no additional charge or return undelivered funds. Senders may also benefit from knowing that the error resolution procedures exist since they make remittance transfers less risky. The magnitude of these benefits depends on the frequency of errors, the financial and other costs that senders currently bear when errors occur, and the risk aversion of senders. Senders may also benefit from the fact that providers are likely to be deterred from committing errors by having to complete the transaction at no additional charge or return undelivered funds and also refunding fees and, to the extent not prohibited by law, taxes when none of the funds are delivered on time, provided the failure was not caused by the sender providing incorrect or insufficient information. The magnitude of this benefit depends on the extent to which providers are not already sufficiently deterred by reputational concerns, and the extent to which providers have sufficient control over the entities responsible for any errors such that they can reduce the incidence of any errors. Although these benefits cannot be quantified, errors can always occur and the error resolution provisions will therefore always provide benefits to senders.

Providers will incur additional costs from the error resolution procedures. In some instances, providers may be required to refund funds or fees and taxes that have already been received by and which cannot easily be recouped from other institutions involved in a remittance transfer or government entities. Alternatively, in refunding or making available funds to a recipient to resolve an error, a provider may face additional exchange rate risk, due to changes in



a foreign exchange market between the time of the transfer and the resolution of the error. Furthermore, providers (and their business partners) may need to adjust communication practices and business processes to comply with the error resolution requirements.

The magnitude of these and other costs depends on the frequency of errors and the financial costs that providers incur. While providers cannot charge senders directly for error resolution activities, they may build the cost of these activities into their general fees. Industry commenters suggests that scenarios in which the entire amount transferred must be returned to the sender before the provider has recovered it from other institutions may be of particular concern. Since this type of error appears to be rare, the quantity of funds never recovered would have to be substantial for this particular error to have a significant impact on fees.<sup>102</sup>

The Bureau considered a number of alternatives in developing the error resolution procedures. In the final rule, if funds are not available by the date of availability because the sender provided incorrect or insufficient information and the sender chooses to have the transfer resent as a remedy for the error, the provider may re-charge third party fees actually incurred. The proposed rule, by contrast, did not permit the imposition of such third-party fees. The effect of this change is to reduce the costs for providers of correcting errors caused by the sender's provision of inaccurate or incomplete information, and, conversely, to prevent such costs from being passed along to all senders, as opposed to keeping those costs with the senders at fault.

On the other hand, the Bureau was asked to use its exception authority to reduce the 180-day statutory time period in which senders may assert an error to 60 or 30 days. Given the international nature of remittance transfers, the additional time a sender may need to

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<sup>102</sup> The Credit Union National Association reports error rate of less than 1% for international wire "exceptions" (including non-timely delivery). Navy Federal Credit Union reports that 75% of its wire transfers are between \$500 and \$10,000 dollars. The full principal may rarely be lost when errors occur. However, assuming all of the principal is lost 10% of the time (or 10% of the principal is lost all of the time), the 1% error rate implies the expected loss to the transmitter is 50 cents on a \$500 transfer and \$10 on a \$10,000 transfer.

communicate with persons abroad, and the lack of information about problems associated with this time period, the Bureau concluded that using its exception authority to reduce the statutory 180-day time period is not currently warranted. As noted above, errors are infrequent enough that the incremental cost to providers of the 180-day period is likely to be small.

#### Cancellation and Refund

EFTA section 919(d)(3) also requires the Bureau to establish appropriate remittance transfer cancellation and refund policies for consumers. The Board originally proposed a one business day cancellation period. The final rule instead requires providers to give consumers at least 30 minutes to cancel the transaction for a full refund, including fees, and to the extent not prohibited by law, taxes, if the transferred funds have not yet been picked up by the recipient. If they wish, providers can hold the funds until the cancellation period expires.

The Bureau believes that a brief cancellation period may provide benefits to both consumers and providers by allowing and perhaps encouraging consumers to review disclosure documents one additional time to confirm that they wish to complete the transaction and to identify any scrivener's errors on the receipt. For instance, the cancellation period affords consumers an opportunity to raise any discrepancies between the two documents or identify errors that might otherwise cause the funds not to be made available on the disclosed date. These actions in turn would allow remittance transfer providers to address and correct errors early in the process, when it may be faster and less expensive to remedy the problem.

The Bureau considered a number of alternatives, including longer cancellation periods of. It is not clear that a longer cancellation period would provide much additional benefit to consumers given that the final rule already provides consumers opportunity to engage in cost comparison based on the detailed pre-payment disclosures. Conversely, a longer cancellation

period may impose costs on consumers who want to send funds as quickly as possible if, as some commenters suggested, providers would delay the transmission of funds until the cancellation period expired. Given these conflicting factors, it does not seem likely that a longer cancellation period would provide consumers with substantial additional net benefits, though the exact difference in benefits provided is not known and may differ, depending on the consumer. If, as some commenters suggested, providers decide to delay transmission of funds until the cancellation period expires, under the final rule, they will likely only hold funds for 30 minutes. Compliance therefore likely imposes minimal costs on providers.

#### Conditions of Agent Liability

The final rule holds a remittance transfer provider liable for any violation by an agent when the agent acts for the provider. However, EFTA section 919(f)(2) states that enforcement agencies may consider, in any action or other proceeding against a provider, the extent to which the provider has established and maintained policies or procedures for compliance.

In States where the strict liability standard for acts of agents is already in place, consumers derive no additional benefit from this rule provision and providers incur no additional costs. In other States, consumers may benefit from the additional incentive the rule gives providers to oversee and police their agents. Providers are likely to incur some additional costs in these States, but the magnitude of such costs much cannot be determined. These costs are mitigated somewhat by the discretion that the statute grants enforcement agencies to consider the extent to which a provider has established and maintained policies or procedures for compliance.

**C. Impact of the Final Rule on Depository Institutions and Credit Unions with \$10 Billion or Less in Total Assets, As Described in Section 1026**

Given the general lack of data on the frequency and other characteristics of remittance transfers by depository institutions and credit unions, it is not possible for the Bureau to distinguish the impact of the final rule on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act from the impact on depository institutions and credit unions in general. Overall, the impact of the rule on depository institutions and credit unions depends on a number of factors, including whether they offer consumer international wire transfers or other remittance transfers, the importance of consumer wire transfer and other remittance transfers as a business line for the institution, how many institutions or countries they send to, and the cost of complying with the rule. The institution's general asset size is not necessarily a good proxy for estimating impacts, since some small institutions which conduct frequent transfers particularly to specific countries may be better positioned to implement the new requirements than larger institutions that may conduct consumer remittance transfers to a larger number of countries on an infrequent basis.

The impact of the rule on small depository institutions and credit unions is discussed in further detail in the Regulatory Flexibility Act analysis below.

**D. Impact of the Final Rule on Consumers in Rural Areas**

The Bureau consulted a number of sources for data with which to study consumers and providers of remittance transfers in rural areas and to consider the impact of the rule. The Bureau consulted research done by the Federal Reserve Bank of Kansas City, which specializes in research on agricultural and rural economies, and surveys done by Economic Research Service of the U. S. Department of Agriculture. The Bureau also consulted surveys done by the Census

Bureau and reports published by the Government Accountability Office. The Bureau believes there is no data or body of research with which to study this subject at this time.

There are likely to be concentrations of individuals in rural areas who want to send remittance transfers and who provide an attractive base of customers for a provider. For example, money transmitters could serve these individuals with agents that have other lines of business and that do not rely exclusively on sending international remittances.

It is likely more difficult for consumers in rural areas than for consumers elsewhere to send large remittance transfers. Both demand and competition for this business is likely stronger outside rural areas. Large remittance transfers are more commonly sent through depository institutions and credit unions than through money transmitters. Insofar as the rule may cause insured depository institutions and credit unions to raise prices or reduce remittance transfer services, and insofar as there are fewer alternative providers in rural areas, consumers in rural areas may be more heavily affected by the rule than consumers outside rural areas. However, insofar as these factors are uncertain, it is not clear that rural consumers who use money transmitters would be more heavily affected by the rule than consumers elsewhere.

The Bureau believes that the disclosures required by the rule are as beneficial to consumers in rural areas as they are to those residing in non-rural areas. These disclosures help them identify the lowest-cost providers among those they find on the internet and in-person. Similarly, the Bureau expects that the error resolution procedures and the other benefits of the rule are as beneficial to consumers in rural areas as they are to those residing in non-rural areas.

## **E. Consultation with Federal Agencies**

In developing the final rule,<sup>103</sup> the Bureau consulted or offered to consult the Board, Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC), including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies. As discussed above, the Bureau also held discussions with FinCEN regarding the impact of extending the EFTA to regulate remittance transfers on application of regulations administered by that agency.

In the course of the consultation, the OCC submitted written objections to the proposed rule pursuant to section 1022(b)(2)(C) of the Dodd-Frank Act<sup>104</sup> urging modification of certain aspects of the proposed error resolution rules to address risk of fraud and the need for financial institutions to conduct monitoring pursuant to Office of Foreign Assets Control (OFAC) requirements. The OCC also urged extension of the temporary exception permitting depository institutions and credit unions to provide estimated disclosures as a means of mitigating impacts on community banks and consumers who may rely on them for remittance transfer services. Finally, the OCC urged the Bureau to mitigate the potential regulatory gaps created by Congress's extension of the EFTA to regulate remittance transfers, given that Article 4A of the Uniform Commercial Code and certain Bank Secrecy Act regulations currently exclude transactions subject to EFTA.

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<sup>103</sup> Section 1022(b)(2)(B) of the Dodd-Frank Act requires the Bureau to conduct consultations with appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with any prudential, market, or systemic objectives that may be administered by such agencies. In this case, the May 2011 Proposed Rule was developed by the Board, which is not subject to section 1022(b)(2)(B), prior to the transfer of rulemaking authority to the Bureau. Accordingly, the Bureau held its first consultation meeting after the closing of the comment period on the proposed rule. The Bureau also consulted with other agencies regarding the January 2012 Proposed Rule.

<sup>104</sup> Although the OCC's letter was not designated as a written objection pursuant to section 1022(b)(2)(C), OCC staff orally confirmed that it was intended as such. The Bureau has asked that agencies designate objections under section 1022(b)(2)(C) as such to distinguish them from other communications.

As discussed in detail in the section-by-section analysis, the Bureau takes seriously all of the concerns raised in the OCC letter, which were also generally raised during the comment period. The final rule adopts both of the error resolution changes advocated by the OCC, specifically, excluding from the definition of error instances of “friendly fraud” by a sender or persons acting in concert with the sender and delays due to OFAC requirements or other similar monitoring activities. The Bureau believes that it is premature to extend the sunset date of the exception allowing estimates by depository institutions and credit unions, but is working in other ways to provide greater certainty to community banks and other small remittance transfer providers. For instance, the Bureau is working to develop safe harbors that will provide greater clarity as to what remittance transfer providers are excluded from the regulations because they do not provide transfers in the “normal course of business” and to publish a list of countries for which estimated disclosures may be used because the laws of the country or the method of transfer to a country prevents remittance transfer providers from determining the amount to be provided to the recipient. The Bureau will also develop a compliance guide for small remittance transfer providers and continue dialogue with industry regarding implementation issues.

Finally, the Bureau shares concerns regarding the potential gaps in State law and Federal anti-money laundering regulation created by the expansion of the EFTA to regulate remittance transfer providers. The Bureau does not have authority to amend either State law or the Federal anti-money laundering regulations to override their exclusion of transfers regulated by EFTA, and as discussed above, does not believe that it can fill the gaps through operation of preemption or by incorporating these separate bodies of law into Regulation E. The Bureau is therefore working to coordinate with State governments and FinCEN to facilitate action.

## **VIII. Final Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (“RFA”) generally requires an agency to publish an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. In the May 2011 Proposed Rule, the Board conducted an initial regulatory flexibility analysis (IRFA) and concluded that the proposed rule could have a significant economic impact on small entities that are remittance transfer providers for international wire transfers. The Board solicited comment on the impact of the rule on small remittance transfer providers, and in particular, on remittance providers for consumer international wire transfers. The Board also solicited comment in its broader Notice of Proposed Rulemaking on a number of proposed provisions that could mitigate the impact on small entities, such as whether to adopt safe harbors and the length of the implementation period.

The Bureau received a number of comments on the Board’s IRFA and the broader Notice of Proposed Rulemaking addressing the burden imposed by the proposed rule and potential mitigation measures and alternatives. These included comments by the Small Business Administration’s Office of Advocacy (SBA). Section 1601 of the Small Business Jobs Act of 2010 generally requires Federal agencies to respond in a final rule to written comments submitted by the SBA on a proposed rule, unless the public interest is not served by doing so. As described further below, the Bureau carefully considered the comments received and performed its own independent analysis of the potential impacts of the rule on small entities and alternatives to the final rule. Based on the comments received and for the reasons stated below, the Bureau is not certifying that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared the following final regulatory flexibility analysis (FRFA) pursuant to section 604 of the RFA.



Section 604(a)(2) of the RFA generally requires that the FRFA contain a summary of significant issues raised by public comments in response to the IRFA, the Bureau's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments. For organizational purposes, this FRFA generally addresses public comments received by the Bureau in the topical section that relates to the subject matter of the comment, i.e., Section 2 addresses comments relating to compliance and other requirements, Section 3 addresses comments relating to the number of small entities affected, and Section 5 addresses other comments received.

1. Statement of the need for, and objectives of, the final rule. The EFTA, as amended by the Dodd-Frank Act, was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Bureau to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The EFTA expressly states that the Bureau's regulations may contain "such classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions . . . as, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of [the EFTA], to prevent circumvention or evasion [of the EFTA], or to facilitate compliance [with the EFTA]." 15 U.S.C. 1693b(c).

Section 1073 of the Dodd-Frank Act adds a new section 919 to the 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. Consumers transfer tens of billions of dollars from the United States each year, but these transactions previously were largely excluded from existing Federal consumer protection regulations in the United States.

Congress concluded that there was a need to fill this gap. Specifically, the Dodd-Frank Act requires: (i) the provision of disclosures concerning, among others, the exchange rate and amount to be received by the remittance recipient, prior to and at the time of payment by the consumer for the transfer; (ii) Federal rights regarding transaction cancellation periods; (iii) investigation and remedy of errors by remittance transfer providers; and (iv) standards for the liability of remittance transfer providers for the acts of their agents.

Furthermore, section 1073 of the Dodd-Frank Act specifically requires the Bureau to issue rules to effectuate these four requirements. The objective of the final rule is therefore to implement section 1073 of the Dodd-Frank Act consistent with congressional intent and the general purposes of the Bureau as specified in section 1021 of the Dodd-Frank Act.

Accordingly, the final rule generally requires remittance transfer providers to provide the sender a pre-payment disclosure containing information about the specific remittance transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. The remittance transfer provider generally must also provide a written receipt for the remittance transfer that includes the above information, as well as additional information such as the date of availability and the recipient's contact information. Alternatively, the final rule permits remittance transfer providers to provide the sender a single written disclosure prior to payment containing all of the information required on the receipt.

As required by statute, the Bureau is also adopting provisions in the final rule which require remittance transfer providers to furnish the sender with a brief statement of the sender's error resolution and cancellation rights, and require providers to comply with related recordkeeping, error resolution, cancellation, and refund policies. The final rule also implements standards of liability for remittance transfer providers that act through an agent.

The Bureau believes that the revisions to Regulation E discussed above fulfill the statutory obligations and purposes of section 1073 of the Dodd-Frank Act, in a manner consistent with the EFTA and within Congress's broad grant of authority to the Bureau to adopt provisions and to provide adjustments and exceptions that carry out the purposes of the EFTA.

2. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule.

The final rule does not impose new reporting requirements. The final rule does, however, impose new recordkeeping and compliance requirements on certain small entities. For the most part, these requirements appear specifically in the statute. Thus, for the most part, the impacts discussed below are impacts of the statute, not of the regulation per se – that is, the Bureau discusses impacts against a pre-statute baseline. The Bureau uses a pre-statute baseline here to facilitate comparison of this FRFA against the Board's IRFA, which uses a pre-statute baseline.<sup>105</sup>

Compliance Requirements

As discussed in detail in **VI. Section-by-Section Analysis** above, the final rule imposes new compliance requirements on remittance transfer providers. For example, remittance transfer providers generally are required to implement new disclosure and related procedures or to review and potentially revise existing disclosures and procedures to ensure compliance with the content, format, timing, and foreign language requirements of the rule, as described above. Remittance transfer providers are also required to review and potentially update their error resolution and cancellation procedures to ensure compliance with the rule, also as described above. For remittance transfer providers that employ agents, remittance transfer providers are liable for any

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<sup>105</sup> The Bureau has discretion in future rulemaking to use a post-statute baseline when it applies Regulatory Flexibility Act analysis.

violations of the rule by their agents, which may require providers to revise agreements with agents or develop procedures for monitoring agents.

#### Recordkeeping Requirements

Because section 1073 of the Dodd-Frank Act incorporates the remittance transfer provisions in the EFTA, small remittance transfer providers that were not previously subject to the EFTA and Regulation E would now be subject to 12 CFR § 1005.13, which requires such entities to retain evidence of compliance with the requirements of EFTA and Regulation E for a period of not less than two years from the date disclosures are required to be made or action is required to be taken. Moreover, under section 1073, the Bureau must establish clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. The statute specifically provides that such standards must include appropriate standards regarding recordkeeping, including retention of certain error-resolution related documentation. The Bureau adopted § 1005.33(g) to implement these error resolution standards and recordkeeping requirements.

As discussed above in **VI. Section-by-Section Analysis**, § 1005.33(g)(1) requires remittance transfer providers, including small remittance transfer providers, to develop and maintain written policies and procedures that are designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers. Furthermore, under § 1005.33(g)(2), a remittance transfer provider's policies and procedures concerning error resolution would be required to include provisions regarding the retention of documentation related to an error investigation. Such provisions would be required to ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to

the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error, which is consistent with EFTA section 919(d)(2).

#### Comments Received

The IRFA conducted by the Board stated that the proposed rule could have a significant economic impact on small financial institutions that are remittance transfer providers for consumer international wire transfers. The Board solicited comment on the impact of the rule on small remittance transfer providers, and in particular, on remittance providers for consumer international wire transfers. Although the Bureau did not receive very specific comment on costs, as discussed in the **SUPPLEMENTARY INFORMATION**, depository institution and credit union commenters expressed concern about the burden and complexity associated with complying with the rule, and in particular providing the required disclosures for remittances that are sent by international wire transfer. Some commenters argued that the implementation and compliance costs would be prohibitive for depository institutions and credit unions that are small entities. Commenters also warned that the burden associated with the rule would force depository institutions and credit unions that are small entities out of the international wire and ACH business. The SBA also urged the Bureau to conduct more outreach to small providers to further assess the economic impacts of the compliance and recordkeeping requirements.

The Bureau carefully considered these comments from the SBA and other commenters regarding impacts on small entities, and discusses the relative implementation burdens and impacts for different types of remittance transfer providers in this section and Section 3 below. The Bureau conducted further outreach to industry trade associations, financial institutions, consumer groups, and nonbank money transmitters. The Bureau agrees as discussed elsewhere in the FRFA and **SUPPLEMENTARY INFORMATION** that implementation is likely to be

most challenging for depository institutions and credit unions that engage in open network wire transactions, though similar challenges may be associated with some types of international ACH transactions.

For instance, the final rule may require revision of existing contract arrangements and improvement of communications systems and methodologies between contractual partners, as well as between headquarters and branches of financial institutions. Depository institutions and credit unions that provide transfers will need to obtain exchange rate and fee information from correspondent banks and other contractual partners, and possibly third parties, in order to provide required disclosures, and they will need mechanisms to ensure that such information can be provided at the appropriate time to the customer, who may be waiting at a branch, or transacting by phone or online. Current contracts, information technology systems, and practices may not provide for the exchange of such information in order to comply with the timing required by the final rule. Accordingly, modifications may be required, and remittance transfer providers that are small entities may incur implementation costs to comply with the rule.

The final rule may also expose depository institutions and credit unions to new types of risk. In some cases, commenters have suggested, small depository institutions and credit unions may be required by § 1005.33(c)(2) to refund funds or fees or taxes that were already received by other entities, and which they cannot easily recoup, due to the lack of contractual arrangements among the entities involved or an applicable comprehensive worldwide legal regime. The legal right of a depository institution or credit union to recoup previously transmitted funds or fees or taxes from other entities may depend on a number of factors, including the exact nature of the error involved, the source of the mistake, the payment systems involved in the error, and the relationships among the entities involved. In other cases, compliance with § 1005.33(c)(2) may

expose small depository institutions and credit unions (as well as other providers) to additional exchange rate risk, due to changes in a foreign exchange market between the time of the transfer and the resolution of the error.

However, as discussed elsewhere, Congress crafted a very specific accommodation (i.e., a temporary exception) to address some of the challenges involved in collecting information required for disclosures, and the Bureau must implement the statutory regime consistent with the language and intent of section 1073 of the Dodd-Frank Act. Furthermore, as discussed above, the Bureau expects that the incidence of errors requiring investigation and resolution under § 1005.33 will be small. The statutory requirements the regulation implements may prompt small depositories and credit unions to increase their prices or stop providing consumer international wire or ACH transfers altogether.

3. Description of and an estimate of the number of small entities affected by the final rule. Under regulations issued by the Small Business Administration, banks and other depository institutions are considered “small” if they have \$175 million or less in assets, and for other financial businesses, the threshold is average annual receipts that do not exceed \$7 million.<sup>106</sup> The initial regulatory flexibility analysis stated that the number of small entities that could be affected by the rule was unknown. That analysis stated that there were approximately 9,458 depository institutions (including credit unions) that could be considered small entities. The analysis also stated based on data from the Department of Treasury that there were approximately 19,000 registered money transmitters, of which 95% or 18,050 were small entities. The SBA comments urged the Bureau to reexamine the determination of the number of small money transmitters impacted by the rule, asserting based on a telephone conversation with

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<sup>106</sup> 13 CFR § 121.201; SBA, Table of Small Business Size Standards (available at: [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf)).

a trade association that the number was 200,000 to 300,000, including a large number of agents. The Bureau notes that this trade association did not assert this estimate in its comment letter nor was any evidence provided to support this estimate. In response to SBA's comments, the Bureau has reviewed and updated these calculations for the final regulatory flexibility analysis, as discussed below.

#### Depository Institutions and Credit Unions

Of the 7,445 insured depository institutions, 3,989 are small entities.<sup>107</sup> Of the 7,325 insured credit unions, 6,386 are small entities.<sup>108</sup> These institutions could offer remittance transfers through wire transfers, international ACH, or other means.

Regulatory filings by insured depositories do not contain information about the number that send consumer international wire transfers. The Bureau believes that the number is substantial, and the analysis below assumes that all 3,989 small depository institutions send consumer international wire transfers.

Data from the National Credit Union Administration indicate that there are approximately 7,325 insured credit unions in the United States as of September 2011. About half offer international wire transfers. Additionally, regulatory filings by insured credit unions contain an indicator for "low cost wire transfers." These are wire transfers offered to members for less than \$20 per transfer. Also about half of insured credit unions offer low cost wire transfers. Though the Bureau does not have exact data on the number of credit unions that offer wire transfers to consumers, the Bureau assumes that a similar fraction offer consumer international wire transfers. Specifically, the Bureau assumes that half of the 6,386 credit unions that are small entities, or 3,193, offer consumer international wire transfer.

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<sup>107</sup> Federal Deposit Insurance Corporation, [http://www2.fdic.gov/idasp/main\\_bankfind.asp](http://www2.fdic.gov/idasp/main_bankfind.asp). Data as of September 2011.

<sup>108</sup> National Credit Union Administration, <http://webapps.ncua.gov/customquery/>. Data as of September 2011.



Thus, in total, there are approximately 7,182 depository institutions and credit unions that are small entities that could be affected by the statute.<sup>109</sup>

Regulatory filings by insured depositories and credit unions do not report the revenue these institutions earn from consumer international wire transfers, international ACH transactions, or other remittance transfers. One credit union that is not a small entity for purposes of RFA showed that little revenue, as a share of total income, came from this source.<sup>110</sup> Another credit union that is not a small entity for purposes of RFA submitted data indicating that wire transfers were a noticeable share of gross income.<sup>111</sup> The Bureau has no other data from commenters on the amount of revenue that small depository institutions and credit unions obtain from consumer international wire transfers.

#### Non-bank Money Transmitters and Agents

In response to the SBA's comments, the Bureau has reviewed the estimated number of money transmitters and agents, which may be affected by the statute. As stated above, the numbers in IRFA were originally reported by the Financial Crimes Enforcement Network (FinCEN).<sup>112</sup> The Bureau understands that FinCEN derived its estimates using data from the

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<sup>109</sup> Only a small number of depository institutions and credit unions offer FedGlobal ACH or other international ACH services. In July 2011, the Board reported that smaller depository institutions and credit unions were the early adopters of the FedGlobal ACH service, but that only about 410 such institutions offered the service, and that some enrolled institutions do not offer the service for consumer-initiated transfers. Furthermore, only a very small fraction of depository institutions and credit unions send any kind of international ACH transaction, and the Bureau does not know which of those are small entities. See Board ACH Report at 9, 12 & n.53. The Bureau assumes that any small depository institutions or credit unions that offer international ACH services to consumers also offer international wires to consumers, though the Bureau has not found any exact data. Similarly, the Bureau understands that some depository institutions offer remittance transfers through means other than wire or international ACH, but assumes that any such depository institutions also offer international wires to consumers.

<sup>110</sup> Navy Federal Credit Union has about \$45 billion in assets. It states that it processed 19,248 wire transfers in 2010 and charged \$25 per transfer. It had total income of over \$3 billion in 2010, so the wire income of about \$500,000 was about two tenths of one percent of total income.

<sup>111</sup> United Nations Federal Credit Union has about \$3 billion in assets. It states that it processes over 120,000 consumer wire transfers every year. It charges between \$20 and \$35 per transfer and had total income of about \$146 billion, so the wire income of \$2.5 to \$4.2 million was 2% to 3% of total income.

<sup>112</sup> Notice of Proposed Rulemaking, Cross-Border Electronic Transmittal of Funds, 75 FR 60377, 60392 (Sept. 30, 2010) (estimates based on FinCEN's February 2010 Money Service Business Registration List).

registration database for money services businesses (MSBs).<sup>113</sup> As the registration instructions for the database make clear, the estimated 19,000 figure (of which 18,050 have less than \$7 million in gross receipts annually) includes some, but not all, agents of remittance transfer providers. Businesses that are MSBs solely because they are agents of another MSB are not required to register. Businesses that are agents and also engage in MSB activities on their own behalf are required to register.<sup>114</sup> Thus, the database would include a money transmitter that is an agent of a remittance transfer provider only if it also engages in MSB activities as a principal, such as cashing checks or selling money orders.

The Bureau has searched for additional data with which to refine its estimate of the number of small remittance transfer providers and agents. No comments on the proposed rule provided administrative or survey data on the number of small providers, and this information cannot be constructed from public sources. The Bureau used other information, however, to construct useful lower and upper bounds on the number of nonbank money transmitters and agents.<sup>115</sup>

In 2005, one survey of the money services business industry estimated there were about 67,000 principal money transmitters and agents involved in international money transfers.<sup>116</sup> From 2005 through 2010 employment in the broader sector to which money transmitters belong

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<sup>113</sup>FinCEN, [http://www.fincen.gov/financial\\_institutions/msb/msbstateselector.html](http://www.fincen.gov/financial_institutions/msb/msbstateselector.html).

<sup>114</sup>FinCEN, [http://www.fincen.gov/forms/files/fin107\\_msbg.pdf](http://www.fincen.gov/forms/files/fin107_msbg.pdf). See also Money Services Business Registration Fact Sheet, [http://www.fincen.gov/financial\\_institutions/msb/pdf/FinCENfactsheet.pdf](http://www.fincen.gov/financial_institutions/msb/pdf/FinCENfactsheet.pdf).

<sup>115</sup> Commenters state that there may be other entities that serve as remittance transfer providers and that are not depository institutions, credit unions, or money transmitters, as traditionally defined. These entities could include, for example, brokerages that send remittance transfers. Though the Bureau does not have an estimate of the number of any such providers, the Bureau believes that they account for a number of entities that is significantly less than the sum of remittance transfer providers and agents of money transmitters. Similarly, the Bureau believes that the number of any such providers that is a small entity for purposes of RFA is much less than the sum of small remittance transfer providers and small agents of money transmitters.

<sup>116</sup> KPMG, 2005 Money Services Business Industry Survey Study, September 2005; Table 20.

shrunk almost 19%.<sup>117</sup> The Bureau chooses to use the 67,000 figure recognizing that it may overestimate of the number of providers and agents, and that persons who act as agents on behalf of another provider generally will not be providers themselves unless they are engaged in activities on their own behalf that would otherwise qualify them as providers. In public comment, one trade association estimated there are about 500 state-licensed principal money transmitters. Deducting 500 providers from the 67,000 estimate of total money transmitters and agents would suggest that there are currently approximately 66,500 agents.

To estimate how many of these money transmitters are small entities, the Bureau relied on survey research done by the World Bank in 2006 that found that the median money transmitter had \$2 million in annual revenue while the average had \$10 million.<sup>118</sup> Fitting an exponential function to this revenue data suggests that about 350 of the 500 providers had \$7 million or less in revenue. By assuming that the agents are distributed across providers in proportion to revenue, the Bureau estimates that roughly 5,500 of the 66,500 agents are working for small entity money transmitters and the remaining 61,000 agents are working for larger money transmitters.<sup>119</sup>

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<sup>117</sup> The Bureau of Labor Statistics publishes data on Credit Intermediation and Related Activities (NAICS 5223), which encompasses electronic funds transfer services (NAICS 52232) and money transmission services (NAICS 52239). The 2010 employment figure is 262,300, available at [http://www.bls.gov/oes/current/naics4\\_522300.htm](http://www.bls.gov/oes/current/naics4_522300.htm); the 2005 employment figure is 323,920, available at [http://www.bls.gov/oes/2005/may/naics4\\_522300.htm](http://www.bls.gov/oes/2005/may/naics4_522300.htm).

<sup>118</sup> Ole Andreassen, Remittance service providers in the United States: how remittance firms operate and how they perceive their business environment, The World Bank, Financial Sector Discussion Series, June 2006, p. 15.

<sup>119</sup> Since median revenue is far less than average revenue, a two-parameter exponential function provides a straightforward way to model the distribution of firm revenue. The parameters  $(a, b)$  in the exponential function  $y = b * \exp(a * x)$  are calculated using two equations, where  $y$  is firm revenue and  $x$  is the rank of the firm when firms are ordered from smallest to largest by revenue. The equation  $2,000,000 = b * \exp(a * 250)$  formalizes the condition that the 250<sup>th</sup> largest firm (the median firm) has \$2 million in revenue. The second equation formalizes the condition that the average firm has \$10 million in revenue. To keep the analysis simple, firms are assumed to be identical in groups of 50, so firms 1-50 are the same, firms 51-100 are the same, and so forth. The second equation is then  $50 * b * [\exp(a * 50) + \exp(a * 100) + \dots + \exp(a * 450) + \exp(a * 500)] / 500 = 10,000,000$ . Solving the two equations gives  $(.0126, 85,340)$  for the parameters  $(a, b)$ . These parameters in the equation  $y = b * \exp(a * x)$  imply that if  $x = 350$  then approximately  $y = 7,000,000$ . Thus, the firm ranked 350<sup>th</sup> has approximately \$7 million in revenue and the smallest 350 firms are small businesses for purposes of RFA. The function can also be used to compute the distribution of revenue over the industry and then the distribution of agents, all exclusive of two large providers, Moneygram and Western Union (which were not part of Andreassen's analysis). For example, assume 30,000 of the

The Bureau has no way to estimate directly how many of the agents working for larger money transmitters are small entities. However, the Bureau expects that such small agents are not likely to bear a significant economic impact as a result of the rule. The Bureau believes that large money transmitters are likely to facilitate compliance for their agents, achieve substantial benefits to scale and widely leverage the systems and software investments required for compliance across a large base of agent locations.

With regard to agents working for small entity money transmitters, the Bureau assumes that these agents are all small entities themselves. Thus, the Bureau estimates there are approximately 5,500 small agents working for approximately 350 small money transmitters. Sensitivity analysis suggests the actual figure of small agents lies between 4,000 and 7,000 giving a total of between 4,350 and 7,350 small entities.

In general, money transmitters are likely to have significantly less burden in implementing the new regime than depository institutions and credit unions because they generally rely on closed networks.<sup>120</sup> The parties to closed network transactions are interconnected by contractual agreements, making it easier to predict fees and taxes deducted over the course of a transaction, to obtain information about exchange rates and other matters, and to ensure compliance with procedures designed to reduce and resolve errors. Furthermore, because some small providers focus only on transfers to a few specific countries, they may have significant contacts and expertise that may facilitate determining information necessary to

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66,500 agents work for Moneygram and Western Union. Allocating the remaining 36,500 agents across firms by firm revenue implies that approximately 5,500 agents work for the 350 small firms and the remaining 31,000 agents work for the 150 large firms. If instead 20,000 of the 66,500 agents work for Moneygram and Western Union then about 7,000 agents work for the 350 small firms; if 40,000, then the corresponding number is about 4,000 agents work for the 350 small firms.

<sup>120</sup> Commenters also stated that some money transmitters, as well as some other entities that are not insured depository institutions or insured credit unions, offer open network transfers. To the extent that any such money transmitters are small entities, they may face costs that are similar to or more extensive than those faced by insured depository institutions or insured credit unions offering open network transfers.

generate the disclosures. Nevertheless, small providers managing their own networks are less likely to have extensive legal and professional staffs to help minimize the costs of compliance for themselves and their agents. They may not maintain as sophisticated information technology systems to facilitate generation of receipts and communications necessary to exchange information with which to provide the required disclosures. Finally, some one-time investments that may not be significant for larger providers will be more significant for small providers, who must amortize them against a smaller base of revenues and agents.<sup>121</sup> Finally, many of these providers may pass on significant costs to any agents, in part because the agents themselves may have particular customers and specialized knowledge that is useful in serving them.

#### Conclusion

Assuming that nearly all of the estimated 67,000 money transmitters and agents are small entities and adding that total to the number of depository institutions and credit unions that are small entities that may engage in wire transfers, the total number of small entities that could be affected by the rule is approximately 74,000.

4. Steps to minimize the significant adverse economic impact on small entities and reasons for selecting the alternative adopted in the final rule. As discussed above in the **SUPPLEMENTARY INFORMATION**, section 1073 of the Dodd-Frank Act imposes a comprehensive new consumer protection regime for remittance transfers and prescribes specific requirements for remittance transfer providers. The statute requires four major elements: (i) the provision of reliable disclosures concerning the exchange rate and amount to be received by the remittance recipient; (ii) consistent federal rights regarding transaction cancellation periods; (iii)

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<sup>121</sup> Andreassen finds that median firm in his sample, which is a small business for purposes of RFA, has a 3% after-tax profit margin. The average firm in his sample, which is not a small business for purposes of RFA, has a 12% after-tax profit margin. See Andreassen, p. 15.

investigation and remedy of errors by remittance transfer providers; and (iv) standards for the liability of agents who work for remittance transfer providers.

The statute also prescribes certain accommodations that will reduce potential adverse economic impacts. First, in order to address potential difficulties in implementing the disclosure requirements for open network transactions, section 1073 of the Dodd-Frank Act prescribes specific and limited accommodations which allow financial institutions to provide “reasonably accurate estimates” of the amount received where the institutions are unable to know the actual numbers for reasons beyond their control. Second, the Dodd-Frank Act also prescribes an accommodation for remittance transfer providers to provide estimates of certain disclosures if a recipient nation does not legally allow remittance transfer providers to know the amount of currency to be received or the method by which transactions are conducted in the recipient nation prevents that determination as of the time that disclosures are required. Pursuant to this statutory accommodation, the Bureau expects to publish and maintain a list of affected countries as a safe harbor, which will significantly reduce compliance burdens for remittance transfer providers that are small entities.

The specific and prescriptive nature of the Dodd-Frank Act requirements and accommodations works to constrain the range of possible alternatives to the final rule. For instance, as discussed above in **VI. Section-by-Section Analysis**, the Bureau believes that the plain language of the statute precludes interpretations urged by various commenters that would relieve remittance transfer providers from the general requirement of having to determine fees and taxes that may be deducted from the amount to be received by the designated recipient. In such instances, the Bureau believes it is not necessary or proper to exercise its authority under EFTA sections 904(a) and 904(c).

The Bureau has sought to reduce the regulatory burden associated with the rule in a manner consistent with the purposes of section 1073 of the Dodd-Frank Act. For example, as discussed above in **VI. Section-by-Section Analysis**, the Bureau has provided model forms in order to ease compliance and operational burden on small entities. The rule offers flexibility that will mitigate its impact on remittance transfer providers that are small entities. For example, the rule gives remittance transfer providers some flexibility in drafting their disclosures, consistent with formatting requirements needed to ensure that senders notice and can understand the disclosures. In addition, disclosures may be provided on a register receipt or 8.5 inches by 11 inches piece of paper, consistent with current practices in the industry.

Additionally, EFTA section 919(a)(5) provides the Bureau with exemption authority with respect to several statutory requirements. The Bureau is exercising its exemption authority in the rule in order to reduce providers' compliance burden. For instance, the Bureau is exercising its authority under EFTA Section 919(a)(5)(C) to permit remittance transfer providers to provide the sender a single written pre-payment disclosure under the conditions described above, instead of both pre-payment and receipt disclosures. Similarly, consistent with EFTA section 919(a)(5)(A), the rule permits remittance transfer providers to provide pre-payment disclosures orally when the transaction is conducted entirely by telephone. The Bureau has also used its authority under section 919(a)(5)(A) and other provisions of EFTA to tailor the disclosure requirements to reduce potential burdens for transactions conducted by telephone via text message or mobile application and for preauthorized transactions.

One commenter urged the Bureau to consider consolidating federal regulation of remittance transfer providers and money services businesses, citing FinCEN regulations covering money services businesses. The Bureau notes that those regulations implement the Bank

Secrecy Act and effectuate other purposes, such as imposing anti-money laundering program requirements. The Bureau believes that alternative would be inconsistent with the statutory mandate in section 1073 of the Dodd-Frank Act to create a comprehensive new consumer protection regime for consumers who send remittance transfers. The suggested alternative would not effectuate the key protections under section 1073 of the Dodd-Frank Act, such as the requirement to provide reliable disclosures prior to and at payment by the consumer and the establishment of cancellation rights and error resolution procedures. Furthermore, the Bureau believes consolidating the requirements of two statutes would be impracticable under the respective authorities of two agencies.

Other measures intended to provide flexibility to remittance transfer providers are discussed above in this **SUPPLEMENTARY INFORMATION** and in the Bureau's Notice of Proposed Rulemaking that is being published elsewhere in today's Federal Register.

5. Summary of other significant issues raised by public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. In addition to the SBA's comments discussed above regarding the number of small entities affected and various other substantive issues, the SBA's comment letter urged the Bureau to publish a supplemental IRFA prior to issuing a final rule in order to determine the impact on small entities and to consider less burdensome alternatives. The Bureau has taken the substantive issues raised by the SBA into careful account in developing the FRFA. However, the Bureau concluded that publishing a supplemental IRFA prior to issuance of the rule was not required under the RFA and was not practicable in light of statutory deadlines.



The IRFA described the types of small entities that would be affected by the rule (both depository institution/credit union and nonbank money transmitter), specifically acknowledged that the rule would impose implementation costs on such entities, described the nature of those implementation burdens, and noted ways in which the rule had been drafted to reduce some of those burdens. The IRFA also sought public comment on all aspects of its analysis, particularly on the anticipated costs to small entities. Further, the Board in the proposed rule solicited comment on any alternatives that would reduce the regulatory burden on small entities associated with the rule. These specifically included the types of alternatives suggested for consideration by the Regulatory Flexibility Act, including the length of time that remittance transfer providers may need to implement the new requirements, whether to create certain limited exemptions under the new regime, whether to adopt certain safe harbors to reduce implementation burdens, whether particular standards could be less prescriptive, and alternative standards for agency liability.

In light of these elements, the public's opportunity to comment on the IRFA's analysis, and the statutory deadlines set by Congress, the Bureau concluded that it would best serve small entities affected by this rule to focus its resources on development of the final rule, the FRFA, and the concurrent proposal being published elsewhere in today's Federal Register.

#### **IX. Paperwork Reduction Act**

The Bureau's information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) as an amendment to a previously approved collection under OMB control number 3170-0014. Under the Paperwork Reduction Act, 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. Upon receipt of OMB's final action with respect to this information collection, the Bureau will publish a notice in the Federal Register.

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 respondents/recordkeepers are financial institutions and entities involved in the remittance transfer business, including small businesses. Respondents are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

Any entities involved in the remittance transfer business potentially are affected by this collection of information because these entities will be required to provide disclosures containing information about consumers' specific remittance transfers. Disclosures must be provided prior to and at the time of payment for a remittance transfer, or alternatively, in a single pre-transaction disclosure containing all required information. Remittance transfer providers also must make available a written explanation of a consumer's error resolution, cancellation and refund rights upon request. Disclosures must be provided in English and in each foreign language principally used to advertise, solicit or market remittance transfers at an office.

Entities subject to the rule will have to review and revise disclosures that are currently provided to ensure that they accurately reflect the disclosure requirements in this rule. Entities subject to the rule may need to develop new disclosures to meet the rule's timing requirements.

Data from the Federal Deposit Insurance Corporation indicate that there are approximately 7,445 insured depository institutions in the United States. Regulatory filings by insured depository institutions do not contain information about the number that offer consumer

international wire transfers. The Bureau assumes that the 152 large insured depositories and the approximately 7,293 other insured depositories all send consumer international wire transfers.

Data from the National Credit Union Administration indicate that there are approximately 7,325 insured credit unions in the United States as of September 2011. About half offer international wire transfers. Additionally, regulatory filings by insured credit unions contain an indicator for “low cost wire transfers.” These are wire transfers offered to members for less than \$20 per transfer. Furthermore, about half of insured credit unions offer low cost wire transfers. Though the Bureau does not have exact data on the number of credit unions that offer wire transfers to consumers, the Bureau assumes that a similar fraction offer consumer international wire transfers. Specifically, the Bureau assumes that the three largest credit unions offer consumer international wire transfers and as do approximately 3,662 of the other federally insured credit unions. In summary, the Bureau has responsibility for purposes of the PRA for 155 (=152+3) large depository institutions and credit unions (including their depository and credit union affiliates) that send consumer international wire transfers. The Bureau does not have responsibility for the approximately 11,000 other insured depository institutions and credit unions that send consumer international wire transfers.<sup>122</sup>

In 2005, one survey of the money services business industry estimated there were about 67,000 money transmitters, including agents, sending international remittances.<sup>123</sup> From 2005 through 2010 employment in the broader sector to which money transmitters belong shrunk almost 19%.<sup>124</sup> The Bureau chooses to use the 67,000 figure, recognizing that it may

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<sup>122</sup> The Bureau assumes that any depository institutions or credit unions that offer international ACH services or other forms of remittance transfers to consumers also offer international wires to consumers.

<sup>123</sup> KPMG Report at Table 20.

<sup>124</sup> The Bureau of Labor Statistics publishes data on Credit Intermediation and Related Activities (NAICS 5223), which encompasses electronic funds transfer services (NAICS 52232) and money transmission services (NAICS 52239). The 2010 employment figure is 262,300, available at: [http://www.bls.gov/oes/current/naics4\\_522300.htm](http://www.bls.gov/oes/current/naics4_522300.htm); the 2005 employment figure is 323,920, available at: [http://www.bls.gov/oes/2005/may/naics4\\_522300.htm](http://www.bls.gov/oes/2005/may/naics4_522300.htm).

overestimate the number of providers and agents. All of these money transmitters are likely either to have direct responsibilities for compliance with the rule, or to be indirectly involved in assisting business partners in complying with the rule. Thus, the Bureau assumes that all 67,000 money transmitters will have ongoing annual burden to comply with the rule. Based on the Bureau's estimate of the number of money transmitters as discussed above in **Section VIII. Final Regulatory Flexibility Analysis**, the Bureau estimates that the rule would also impose a one-time annual burden on 6,000 money transmitters (500 network providers and 5,500 agents).<sup>125</sup>

The current annual burden to comply with the provisions of Regulation E is estimated to be 1,904,000 hours. This estimate represents the portion of the burden under Regulation E that transferred to the Bureau in light of the changes made by the Dodd-Frank Act. The estimates of the burden increase associated with each major section of the rule are set forth below and represents averages for the institutions described. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the institution.

#### **A. Insured Depository Institutions and Credit Unions**

##### Insured Depositories and Credit Unions Supervised by the Bureau

The Bureau estimates that the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau would take, on average, 120 hours (three business weeks) to update their systems to comply with the disclosure requirements addressed in § 1005.31. This one-time revision would increase the burden by

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<sup>125</sup> Commenters state that there may be other entities that serve as remittance transfer providers and that are not depository institutions, credit unions, or money transmitters, as traditionally defined. These entities could include, for example, brokerages that send remittance transfers. Though the Bureau does not have an estimate of the number of any such providers, the Bureau believes that they account for a number of entities that is significantly less than the sum of money transmitters and their agents.

18,600 hours. Several commenters believed that the compliance burden developed by the Board generally was underestimated. In particular, one commenter claimed that the one-time burden associated with compliance could be as much as 1000 hours (25 business weeks). Although the Bureau understands that the number of hours to update systems may vary, the Bureau's estimate of the one-time burden increase is based on the average hours the 155 respondents supervised by the Bureau would take to comply with the rule. Therefore, the Bureau believes its estimate of the one-time revision is appropriate.

On a continuing basis the Bureau estimates that the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau would take, on average, 8 hours (one business day) monthly to comply with the requirements under § 1005.31 and would increase the ongoing burden by 14,880 hours. In an effort to minimize the compliance cost and burden, particularly for small entities, the rule contains model disclosures in appendix A (Model Forms A-30 through A-41) that may be used to satisfy the statutory requirements. The Bureau received several comments with concerns and suggestions about the terminology and formatting of the model forms. These comments are addressed elsewhere in the **SUPPLEMENTARY INFORMATION**.

The Bureau estimates on average 262,500 consumers would spend 5 minutes in order to provide a notice of error as required under § 1005.33(b). This would increase the total annual burden for this information collection by approximately 21,875 hours.

The Board estimated that 1,133 respondents supervised by the Board would take, on average, 1.5 hours (monthly) to address a sender's notice of error as required by § 1005.33(c)(1). One commenter estimated that the ongoing burden would take, on average, 15 hours (monthly). Based on the comment received and upon consideration, the Bureau estimates that the 155 large

depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau would take, on average, approximately 12 hours (monthly) to address a sender's notice of error as required by § 1005.33(c)(1). This would increase the total annual burden for this information collection by 21,875 hours.

The Bureau estimates that the 155 respondents supervised by the Bureau would take, on average, 40 hours (one business week) to develop written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under § 1005.33. This one-time revision would increase the burden by 6,200 hours. On a continuing basis the Bureau estimates that the 155 respondents would take, on average, 8 hours (one business day) annually to maintain the requirements under § 1005.33 and would increase the ongoing burden by 1,240 hours.

The Bureau estimates that the 155 respondents supervised by the Bureau would take, on average, 40 hours (one business week) to establish policies and procedures for agent compliance as addressed under § 1005.35. This one-time revision would increase the burden by 6,200 hours. On a continuing basis the Bureau estimates that 155 respondents would take, on average, 8 hours (one business day) annually to maintain the requirements under § 1005.35 and would increase the ongoing burden by 1,240 hours.

In summary, the rule would impose a one-time increase in the estimated annual burden on these institutions of approximately 31,000 hours. On a continuing basis the rule would increase the estimated annual burden by approximately 61,000 hours.

#### Insured Depositories and Credit Unions Not Supervised by the Bureau

Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the entities for which they have administrative enforcement authority

under this rule. They may, but are not required to, use the following Bureau estimates. The Bureau estimates that the 11,000 insured depositories and credit unions not supervised by the Bureau would take, on average, 120 hours (three business weeks) to update their systems to comply with the disclosure requirements addressed in § 1005.31. This one-time revision would increase the burden by 1,320,000 hours. On a continuing basis the Bureau estimates that 11,000 institutions would take, on average, 8 hours (one business day) monthly to comply with the requirements under § 1005.31 and would increase the ongoing burden by 1,056,000 hours. In an effort to minimize the compliance cost and burden, particularly for small entities, the rule contains model disclosures in appendix A (Model Forms A-30 through A-41) that may be used to satisfy the statutory requirements.

The Bureau estimates on average 875,000 consumers would spend 5 minutes in order to provide a notice of error as required under section 1005.33(b). This would increase the total annual burden for this information collection by about 73,000 hours. The Bureau estimates that the 11,000 institutions would take, on average, 73,000 hours annually to address a sender's notice of error as required by § 1005.33(c)(1).

The Bureau estimates that the 11,000 institutions would take, on average, 40 hours (one business week) to develop written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under § 1005.33. This one-time revision would increase the burden by 440,000 hours. On a continuing basis the Bureau estimates that 11,000 institutions would take, on average, 8 hours (one business day) annually to maintain the requirements under § 1005.33 and would increase the ongoing burden by 88,000 hours.

The Bureau estimates that 11,000 institutions would take, on average, 40 hours (one business week) to establish policies and procedures for agent compliance as addressed under § 1005.35. This one-time revision would increase the burden by 440,000 hours. On a continuing basis the Bureau estimates that 11,000 institutions would take, on average, 8 hours (one business day) annually to maintain the requirements under § 1005.35 and would increase the ongoing burden by 88,000 hours.

In summary, the rule would impose a one-time increase in the estimated annual burden of approximately 2,200,000 hours. On a continuing basis the rule would increase the estimated annual burden by approximately 1,378,000.

#### **B. Money Transmitters**

Based on the Bureau's estimate of the number of money transmitters as discussed above in **Section VIII. Final Regulatory Flexibility Analysis**, the Bureau estimates that the rule would impose a one-time annual burden on 6,000 money transmitters (500 networks and 5,500 agents) and an ongoing annual burden on all 67,000 money transmitters. The Bureau estimates the one-time annual burden of 200 hours and an ongoing annual burden of 42 hours. The Bureau therefore estimates that the rule would impose a one-time annual burden of 1,200,000 hours and an annual burden of 2,814,000 hours.

#### **C. Summary**

In summary, the Bureau estimates that its total annual burden to comply with the provisions of Regulation E is 7,684,000 hours. The Bureau estimates that the total one-time annual burden of the rule is 3,431,000 hours. The Bureau estimates that the one-time annual burden of the rule includes 31,000 hours for large depositories and credit unions supervised by the Bureau and 600,000 hours for money transmitters supervised by the Bureau. The Bureau



estimates that the total ongoing burden of the rule is 4,253,000 hours. The ongoing burden of the rule includes 61,000 hours for large depositories and credit unions supervised by the Bureau and 1,407,000 hours for money transmitters supervised by the Bureau.

The Bureau is currently discussing appropriate methodologies and burden sharing arrangements with other Federal agencies that share administrative enforcement authority under this regulation and other regulations for which certain rulewriting and administrative enforcement transferred to the Bureau on July 21, 2011. The Bureau will publish a Federal Register notice upon conclusion of these discussions and receipt of OMB's final action with respect to this collection. The notice will include any changes to the estimates discussed in this section.

The Bureau has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to: Chris Willey, Chief Information Officer, Bureau of Consumer Financial Protection, 1700 G Street, N.W., Washington, D.C. 20006, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (3170-0014), Washington, D.C. 20503.

#### **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 set forth in the preamble, the Bureau amends 12 CFR part 1005 and the Official Interpretations, as follows:

#### **PART 1005 – ELECTRONIC FUND TRANSFERS (REGULATION E)**

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

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b.

**Subpart A – General**

2. Add a new subpart A heading as set forth above, and designate §§ 1005.1 through 1005.20 under subpart A.

3. In § 1005.1, revise paragraph (b) to read as follows:

**§ 1005.1 Authority and purpose.**

\* \* \* \* \*

(b) Purpose. This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers and remittance transfers.

4. In § 1005.2, revise to read as follows:

**§ 1005.2 Definitions.**

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

\* \* \* \* \*

5. In § 1005.3, revise paragraph (a) to read as follows:

**§ 1005.3 Coverage.**

(a) General. This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer’s account. Generally, this part applies to financial institutions. For purposes of §§ 1005.3(b)(2) and (b)(3), 1005.10(b), (d), and (e), and 1005.13,

this part applies to any person. The requirements of subpart B apply to remittance transfer providers.

\* \* \* \* \*

6. Add subpart B to part 1005 to read as follows:

**Subpart B – Requirements for Remittance Transfers**

Sec.

1005.30 Remittance transfer definitions.

1005.31 Disclosures.

1005.32 Estimates.

1005.33 Procedures for resolving errors.

1005.34 Procedures for cancellation and refund of remittance transfers.

1005.35 Acts of agents.

1005.36 Transfers scheduled in advance.

**Subpart B – Requirements for Remittance Transfers**

**Authority:** 12 U.S.C. 5601; Pub. L. 111-203, 124 Stat. 1376 (2010).

**§ 1005.30 Remittance transfer definitions.**

For purposes of this subpart, the following definitions apply:

(a) “Agent” means an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

(b) “Business day” means any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions.

(c) “Designated recipient” means any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.

(d) “Preauthorized remittance transfer” means a remittance transfer authorized in advance to recur at substantially regular intervals.

(e) Remittance transfer. (1) General definition. A “remittance transfer” means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in § 1005.3(b).

(2) Exclusions from coverage. The term “remittance transfer” does not include:

(i) Small value transactions. Transfer amounts, as described in § 1005.31(b)(1)(i), of \$15 or less.

(ii) Securities and commodities transfers. Any transfer that is excluded from the definition of electronic fund transfer under § 1005.3(c)(4).

(f) “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.

(g) “Sender” means a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.

**§ 1005.31 Disclosures.**

(a) General form of disclosures. (1) Clear and conspicuous. Disclosures required by this subpart must be clear and conspicuous. Disclosures required by this subpart may contain commonly accepted or readily understandable abbreviations or symbols.

(2) Written and electronic disclosures. Disclosures required by this subpart generally must be provided to the sender in writing. Disclosures required by paragraph (b)(1) of this section may be provided electronically, if the sender electronically requests the remittance transfer provider to send the remittance transfer. Written and electronic disclosures required by this subpart generally must be made in a retainable form. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, need not be retainable.

(3) Disclosures for oral telephone transactions. The information required by paragraph (b)(1) of this section may be disclosed orally if:

(i) The transaction is conducted orally and entirely by telephone;

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

(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.

(4) Oral disclosures for certain error resolution notices. The information required by § 1005.33(c)(1) may be disclosed orally if:

(i) The remittance transfer provider determines that an error occurred as described by the sender; and

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

(5) Disclosures for mobile application or text message transactions. The information required by paragraph (b)(1) of this section may be disclosed 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 requirements of paragraph (g)(2) of this section; 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 paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section.

(b) Disclosure requirements. (1) Pre-payment disclosure. A remittance transfer provider must disclose to a sender, as applicable:

(i) The amount that will be transferred to the designated recipient, in the currency in which the remittance transfer is funded, using the term “Transfer Amount” or a substantially similar term;

(ii) Any fees and taxes imposed on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms “Transfer Fees” for fees and “Transfer Taxes” for taxes, or substantially similar terms;

(iii) The total amount of the transaction, which is the sum of paragraphs (b)(1)(i) and (b)(1)(ii) of this section, in the currency in which the remittance transfer is funded, using the term “Total” or a substantially similar term;

(iv) The exchange rate used by the provider for the remittance transfer, rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places, using the term “Exchange Rate” or a substantially similar term;

(v) The amount in paragraph (b)(1)(i) of this section, in the currency in which the funds will be received by the designated recipient, but only if fees or taxes are imposed under paragraph (b)(1)(vi) of this section, using the term “Transfer Amount” or a substantially similar term. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(vi) Any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient, using the terms “Other Fees” for fees and “Other Taxes” for taxes, or substantially similar terms. The exchange rate used to calculate these fees and taxes is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate; and

(vii) The amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term “Total to Recipient” or a substantially similar term. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate.

(2) Receipt. A remittance transfer provider must disclose to a sender, as applicable:

(i) The disclosures described in paragraphs (b)(1)(i) through (b)(1)(vii) of this section;

(ii) The date in the foreign country on which funds will be available to the designated recipient, using the term “Date Available” or a substantially similar term. A provider may provide a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term “may be available sooner” or a substantially similar term;

(iii) The name and, if provided by the sender, the telephone number and/or address of the designated recipient, using the term “Recipient” or a substantially similar term;

(iv) A statement about the rights of the sender regarding the resolution of errors and cancellation, using language set forth in Model Form A-37 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the statement about the rights of the sender regarding cancellation must instead reflect the requirements of § 1005.36(c);

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

(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.

(3) Combined disclosure. As an alternative to providing the disclosures described in paragraphs (b)(1) and (b)(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. 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.

(4) Long form error resolution and cancellation notice. Upon the sender's request, a remittance transfer provider must promptly provide to the sender a notice describing the sender's error resolution and cancellation rights, using language set forth in Model Form A-36 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the description of the rights of the sender regarding cancellation must instead reflect the requirements of § 1005.36(c).

(c) Specific format requirements. (1) Grouping. The information required by paragraphs (b)(1)(i), (ii), and (iii) of this section generally must be grouped together. The information required by paragraphs (b)(1)(v), (vi), and (vii) of this section generally must be grouped together. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, need not be grouped together.

(2) Proximity. The information required by paragraph (b)(1)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(1) of this section. The information required by paragraph (b)(2)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(2) of this section. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, need not comply with the proximity requirements of this paragraph.

(3) Prominence and size. Written disclosures required by this subpart must be provided on the front of the page on which the disclosure is printed. Disclosures required by this subpart that are provided in writing or electronically must be in a minimum eight-point font, except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section. Disclosures required by paragraph (b) of this section that are provided in writing or electronically must be in equal prominence to each other.

(4) Segregation. Except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, disclosures required by this subpart that are provided in writing or electronically must be segregated from everything else and must contain only information that is directly related to the disclosures required under this subpart.

(d) Estimates. Estimated disclosures may be provided to the extent permitted by § 1005.32. Estimated disclosures must be described using the term “Estimated” or a substantially similar term in close proximity to the estimated term or terms.

(e) Timing. (1) Except as provided in § 1005.36(a), a pre-payment disclosure required by paragraph (b)(1) of this section or a combined disclosure required by paragraph (b)(3) of this section must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer.

(2) Except as provided in § 1005.36(a), a receipt required by paragraph (b)(2) of this section generally must be provided to the sender when payment is made for the remittance transfer. If a transaction is conducted entirely by telephone, a receipt required by paragraph (b)(2) of this section may be mailed or delivered to the sender no later than one business day after the date on which payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender’s account held by the

provider, the receipt required by paragraph (b)(2) of this section may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided. The statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section may, but need not, be disclosed pursuant to the timing requirements of this paragraph if a provider discloses this information pursuant to paragraphs (a)(3)(iii) or (a)(5)(iii) of this section.

(f) Accurate when payment is made. Except as provided in § 1005.36(b), disclosures required by this section must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32.

(g) Foreign language disclosures. (1) General. Except as provided in paragraph (g)(2) of this section, disclosures required by this subpart must be made in English and, if applicable, either in:

(i) Each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error; or

(ii) The foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to § 1005.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively.

(2) Oral, mobile application, or text message disclosures. Disclosures provided orally for transactions conducted orally and entirely by telephone under paragraph (a)(3) of this section or orally or via mobile application or text message for transactions conducted via mobile application or text message under paragraph (a)(5) of this section shall be made in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Disclosures provided orally under paragraph (a)(4) of this section for error resolution purposes shall be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

**§ 1005.32 Estimates.**

(a) Temporary exception for insured institutions. (1) General. For disclosures described in §§ 1005.31(b)(1) through (b)(3) and 1005.36(a)(1) through (a)(2), estimates may be provided in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii), if:

(i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;

(ii) A remittance transfer provider is an insured institution; and

(iii) The remittance transfer is sent from the sender's account with the institution.

(2) Sunset date. Paragraph (a)(1) of this section expires on July 21, 2015.

(3) Insured institution. For purposes of this section, the term "insured institution" means insured depository institutions (which includes uninsured U.S. branches and agencies of foreign depository institutions) as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and insured credit unions as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(b) Permanent exception for transfers to certain countries. (1) General. For disclosures described in §§ 1005.31(b)(1) through (b)(3) and 1005.36(a)(1) through (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 (vii), if a remittance transfer provider cannot determine the exact amounts at the time the disclosure is required because:

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

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

(2) 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.

(c) Bases for estimates. Estimates provided pursuant to the exceptions in paragraph (a) or (b) 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).

(1) Exchange rate. In disclosing the exchange rate as required under § 1005.31(b)(1)(iv), an estimate must be based on one of the following:

(i) For remittance transfers sent via international ACH that qualify for the exception in paragraph (b)(1)(ii) of this section, the most recent exchange rate set by the recipient country's central bank or other governmental authority and reported by a Federal Reserve Bank;

(ii) The most recent publicly available wholesale exchange rate and, if applicable, any additional spread that the remittance transfer provider or its correspondent typically applies to such a wholesale rate for remittance transfers for that currency; or

(iii) The most recent exchange rate offered or used by the person making funds available directly to the designated recipient or by the person setting the exchange rate.

(2) Transfer amount in the currency in which the funds will be received by the designated recipient. In disclosing the transfer amount in the currency in which the funds will be received by the designated recipient, as required under § 1005.31(b)(1)(v), an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(3) Other fees. (i) Imposed as percentage of amount transferred. In disclosing other fees as required under § 1005.31(b)(1)(vi) that are a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(ii) Imposed by intermediary or final institution. In disclosing § 1005.31(b)(1)(vi) fees imposed by institutions that act as intermediaries or by the designated recipient's institution in connection with a remittance transfer, an estimate must be based on one of the following:

(A) The remittance transfer provider's most recent remittance transfer to the designated recipient's institution, or

(B) A representative transmittal route identified by the remittance transfer provider.

(4) Other taxes imposed in the recipient country. In disclosing taxes imposed in the recipient country as required under § 1005.31(b)(1)(vi) that are a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate, and the estimated fees provided in accordance with paragraph (c)(3) of this section.

(5) Amount of currency that will be received by the designated recipient. In disclosing the amount of currency that will be received by the designated recipient as required under § 1005.31(b)(1)(vii), an estimate must be based on the information provided in accordance with paragraphs (c)(1) through (c)(4) of this section, as applicable.

### **§ 1005.33 Procedures for resolving errors.**

(a) Definition of error. (1) Types of transfers or inquiries covered. For purposes of this section, the term error means:

(i) An incorrect amount paid by a sender in connection with a remittance transfer;

(ii) A computational or bookkeeping error made by the remittance transfer provider relating to a remittance transfer;

(iii) The failure to make available to a designated recipient the amount of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless:

(A) The disclosure stated an estimate of the amount to be received in accordance with § 1005.32 and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts; or

(B) The failure resulted from extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated;

(iv) The failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless the failure to make the funds available resulted from:

(A) Extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated;

(B) Delays related to the remittance transfer provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 et seq., Office of Foreign Assets Control requirements, or similar laws or requirements; or

(C) The remittance transfer being made with fraudulent intent by the sender or any person acting in concert with the sender; or

(v) The sender's request for documentation required by § 1005.31 or for additional information or clarification concerning a remittance transfer, including a request a sender makes to determine whether an error exists under paragraphs (a)(1)(i) through (iv) of this section.

(2) Types of transfers or inquiries not covered. The term error does not include:

(i) An inquiry about the status of a remittance transfer, except where the funds from the transfer were not made available to a designated recipient by the disclosed date of availability as described in paragraph (a)(1)(iv) of this section;

(ii) A request for information for tax or other recordkeeping purposes;

(iii) A change requested by the designated recipient; or

(iv) A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under



§ 1005.31(b)(2) or (3) if the remittance transfer provider relied on information provided by the sender as permitted under § 1005.31 in making such disclosure.

(b) Notice of error from sender.

(1) Timing; contents. A remittance transfer provider shall comply with the requirements of this section with respect to any oral or written notice of error from a sender that:

(i) Is received by the remittance transfer provider no later than 180 days after the disclosed date of availability of the remittance transfer;

(ii) Enables the provider to identify:

(A) The sender's name and telephone number or address;

(B) The recipient's name, and if known, the telephone number or address of the recipient;

and

(C) The remittance transfer to which the notice of error applies; and

(iii) Indicates why the sender believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests for documentation, additional information, or clarification described in paragraph (a)(1)(v) of this section.

(2) Request for documentation or clarification. When a notice of error is based on documentation, additional information, or clarification that the sender previously requested under paragraph (a)(1)(v) of this section, the sender's notice of error is timely if received by the remittance transfer provider the later of 180 days after the disclosed date of availability of the remittance transfer or 60 days after the provider sent the documentation, information, or clarification that had been requested.

(c) Time limits and extent of investigation.

(1) Time limits for investigation and report to consumer of error. A remittance transfer provider shall investigate promptly and determine whether an error occurred within 90 days of receiving a notice of error. The remittance transfer provider shall report the results to the sender, including notice of any remedies available for correcting any error that the provider determines has occurred, within three business days after completing its investigation.

(2) Remedies. If, following an assertion of an error by a sender, the remittance transfer provider determines an error occurred, the provider shall, within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy, correct the error as designated by the sender by:

(i) In the case of any error under paragraphs (a)(1)(i) through (iii) of this section, as applicable, either:

(A) Refunding to the sender the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(B) Making available to the designated recipient, without additional cost to the sender or to the designated recipient, the amount appropriate to resolve the error;

(ii) In the case of an error under paragraph (a)(1)(iv) of this section:

(A) As applicable, either:

(1) Refunding to the sender the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(2) Making available to the designated recipient the amount appropriate to resolve the error. Such amount must be made available to the designated recipient without additional cost to the sender or to the designated recipient unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer, in which case, third party fees may be imposed for resending the remittance transfer with the corrected or additional information; and

(B) Refunding to the sender any fees and, to the extent not prohibited by law, taxes imposed for the remittance transfer, unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer; and

(iii) In the case of a request under paragraph (a)(1)(v) of this section, providing the requested documentation, information, or clarification.

(d) Procedures if remittance transfer provider determines no error or different error occurred. In addition to following the procedures specified in paragraph (c) of this section, the remittance transfer provider shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the sender.

(1) Explanation of results of investigation. The remittance transfer provider's report of the results of the investigation shall include a written explanation of the provider's findings and shall note the sender's right to request the documents on which the provider relied in making its determination. The explanation shall also address the specific complaint of the sender.

(2) Copies of documentation. Upon the sender's request, the remittance transfer provider shall promptly provide copies of the documents on which the provider relied in making its error determination.

(e) Reassertion of error. A remittance transfer provider that has fully complied with the error resolution requirements of this section has no further responsibilities under this section should the sender later reassert the same error, except in the case of an error asserted by the sender following receipt of information provided under paragraph (a)(1)(v) of this section.

(f) Relation to other laws. (1) Relation to Regulation E § 1005.11 for incorrect EFTs from a sender's account. If an alleged error involves an incorrect electronic fund transfer from a sender's account in connection with a remittance transfer, and the sender provides a notice of error to the account-holding institution, the account-holding institution shall comply with the requirements of § 1005.11 governing error resolution rather than the requirements of this section, provided that the account-holding institution is not also the remittance transfer provider. If the remittance transfer provider is also the financial institution that holds the consumer's account, then the error-resolution provisions of this section apply when the sender provides such notice of error.

(2) Relation to Truth in Lending Act and Regulation Z. If an alleged error involves an incorrect extension of credit in connection with a remittance transfer, an incorrect amount received by the designated recipient under paragraph (a)(1)(iii) of this section that is an extension of credit for property or services not delivered as agreed, or the failure to make funds available by the disclosed date of availability under paragraph (a)(1)(iv) of this section that is an extension of credit for property or services not delivered as agreed, and the sender provides a notice of error to the creditor extending the credit, the provisions of Regulation Z, 12 CFR 1026.13, governing error resolution apply to the creditor, rather than the requirements of this section, even if the creditor is the remittance transfer provider. However, if the creditor is the remittance transfer provider, paragraph (b) of this section will apply instead of 12 CFR 1026.13(b). If the

sender instead provides a notice of error to the remittance transfer provider that is not also the creditor, then the error-resolution provisions of this section apply to the remittance transfer provider.

(3) Unauthorized remittance transfers. If an alleged error involves an unauthorized electronic fund transfer for payment in connection with a remittance transfer, §§ 1005.6 and 1005.11 apply with respect to the account-holding institution. If an alleged error involves an unauthorized use of a credit account for payment in connection with a remittance transfer, the provisions of Regulation Z, 12 CFR 1026.12(b), if applicable, and § 1026.13, apply with respect to the creditor.

(g) Error resolution standards and recordkeeping requirements. (1) Compliance program. A remittance transfer provider shall develop and maintain written policies and procedures that are designed to ensure compliance with the error resolution requirements applicable to remittance transfers under this section.

(2) Retention of error-related documentation. The remittance transfer provider's policies and procedures required under paragraph (g)(1) of this section shall include policies and procedures regarding the retention of documentation related to error investigations. Such policies and procedures must ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error. Remittance transfer providers are subject to the record retention requirements under § 1005.13.

**§ 1005.34 Procedures for cancellation and refund of remittance transfers.**

(a) Sender right of cancellation and refund. Except as provided in § 1005.36(c), a remittance transfer provider shall comply with the requirements of this section with respect to any oral or written request to cancel a remittance transfer from the sender that is received by the provider no later than 30 minutes after the sender makes payment in connection with the remittance transfer if:

(1) The request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

(b) Time limits and refund requirements. A remittance transfer provider shall refund, at no additional cost to the sender, the total amount of funds provided by the sender in connection with a remittance transfer, including any fees and, to the extent not prohibited by law, taxes imposed in connection with the remittance transfer, within three business days of receiving a sender's request to cancel the remittance transfer.

**§ 1005.35 Acts of agents.**

A remittance transfer provider is liable for any violation of this subpart by an agent when such agent acts for the provider.

**§ 1005.36 Transfers scheduled in advance.**

(a) Timing. For preauthorized remittance transfers, the remittance transfer provider must:

(1) For the first scheduled transfer, provide the pre-payment disclosure described in § 1005.31(b)(1) and the receipt described in § 1005.31(b)(2), in accordance with § 1005.31(e).

(2) For subsequent scheduled transfers:

(i) Provide a pre-payment disclosure as described in § 1005.31(b)(1) to the sender for each subsequent transfer. The pre-payment disclosure must be mailed or delivered within a reasonable time prior to the scheduled date of the subsequent transfer.

(ii) Provide a receipt as described in § 1005.31(b)(2) to the sender for each subsequent transfer. The receipt must be mailed or delivered to the sender no later than one business day after the date on which the transfer is made. However, if the transfer involves the transfer of funds from the sender's account held by the provider, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

(b) Accuracy. For preauthorized remittance transfers:

(1) For the first scheduled transfer, the disclosures described in paragraph (a)(1) of this section must comply with § 1005.31(f).

(2) For subsequent scheduled transfers, the disclosures described in paragraph (a)(2) of this section must be accurate when the transfer is made, except to the extent permitted by § 1005.32.

(c) Cancellation. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a remittance transfer provider shall comply with any oral or written request to cancel the remittance transfer from the sender if the request to cancel:

(1) Enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) Is received by the provider at least three business days before the scheduled date of the remittance transfer.

6. Amend Appendix A to part 1005 as follows:

a. Add Titles A-6 through A-8 and A-30 through A-41, and reserve A-10 through A-29 to the Table of Contents.

b. Add Model Forms A-30 through A-41.

The additions and revisions read as follows:

**Appendix A to part 1005 – Model Disclosure Clauses and Forms**

Table of Contents

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A-10 through A-29 (Reserved)

A-30 – Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

A-31 – Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

A-32 – Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(3))

A-33 – Model Form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(1))

A-34 – Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(2))

A-35 – Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(3))

A-36 – Model Form for Error Resolution and Cancellation Disclosures (Long) (§ 1005.31(b)(4))

A-37 – Model Form for Error Resolution and Cancellation Disclosures (Short)

(§ 1005.31(b)(2)(iv) and (b)(2)(vi))



A-38 – Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(1))

A-39 – Model Form for Receipts for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(2))

A-40 – Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(3))

A-41 – Model Form for Error Resolution and Cancellation Disclosures (Long) – Spanish (§ 1005.31(b)(4))

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[FORMS PROVIDED SEPARATELY]

7. In Supplement I to part 1005:

a. Add new Commentary for Sections 1005.30, 1005.31, 1005.32, 1005.33, 1005.34, 1005.35, and 1005.36.

b. Under Subheading Appendix A, paragraph (2) Use of forms is revised and paragraph (4) is added.

The revisions and additions read as follows:

**Supplement I to part 1005 – Official Interpretations**

\* \* \* \* \*

**Section 1005.30 – Remittance Transfer Definitions**

1. Applicability of definitions in subpart A. Except as modified or limited by subpart B (which modifications or limitations apply only to subpart B), the definitions in § 1005.2 apply to all of Regulation E, including subpart B.

### 30(b) Business Day.

1. General. A business day, as defined in § 1005.30(b), includes the entire 24-hour period ending at midnight, and a notice given pursuant to any section of subpart B is effective even if given outside of normal business hours. A remittance transfer provider is not required under subpart B to make telephone lines available on a 24-hour basis.

2. Substantially all business functions. “Substantially all business functions” include both the public and the back-office operations of the provider. For example, if the offices of a provider are open on Saturdays for customers to request remittance transfers, but not for performing internal functions (such as investigating errors), then Saturday is not a business day for that provider. In this case, Saturday does not count toward the business-day standard set by subpart B for resolving errors, processing refunds, etc.

3. Short hours. A provider may determine, at its election, whether an abbreviated day is a business day. For example, if a provider engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day.

4. Telephone line. If a provider makes a telephone line available on Sundays for cancelling the transfer, but performs no other business functions, Sunday is not a business day under the “substantially all business functions” standard.

### 30(c) Designated Recipient.

1. Person. A designated recipient can be either a natural person or an organization, such as a corporation. See § 1005.2(j) (definition of person).

2. Location in a foreign country. i. A remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any State, as

defined in § 1005.2(1). A specific pick-up location need not be designated for funds to be received at a location in a foreign country. If it is specified that the funds will be transferred to a foreign country to be picked up by the designated recipient, the transfer will be received at a location in a foreign country, even though a specific pick-up location within that country has not been designated.

ii. For transfers to a designated recipient's account, whether funds are to be received at a location physically outside of any State depends on where the recipient's account is located. If the account is located in a State, the funds will not be received at a location in a foreign country.

iii. Where the sender does not specify information about a designated recipient's account, but instead provides information about the recipient, a remittance transfer provider may make the determination of whether the funds will be received at a location in a foreign country on information that is provided by the sender, and other information the provider may have, at the time the transfer is requested. For example, if a consumer in a State gives a provider the recipient's email address, and the provider has no other information about whether the funds will be received by the recipient at a location in a foreign country, then the provider may determine that funds are not to be received at a location in a foreign country. However, if the provider at the time the transfer is requested has additional information indicating that funds are to be received in a foreign country, such as if the recipient's email address is already registered with the provider and associated with a foreign account, then the provider has sufficient information to conclude that the remittance transfer will be received at a location in a foreign country. Similarly, if a consumer in a State purchases a prepaid card, and the provider mails or delivers the card directly to the consumer, the provider may conclude that funds are not to be received in a foreign country, because the provider does not know whether the consumer will subsequently

send the prepaid card to a recipient in a foreign country. In contrast, the provider has sufficient information to conclude that the funds are to be received in a foreign country if the remittance transfer provider sends a prepaid card to a specified recipient in a foreign country, even if a person located in a State, including the sender, retains the ability to access funds on the prepaid card.

3. Sender as designated recipient. A “sender,” as defined in § 1005.30(g), may also be a designated recipient if the sender meets the definition of “designated recipient” in § 1005.30(c). For example, a sender may request that a provider send an electronic transfer of funds from the sender’s checking account in a State to the sender’s checking account located in a foreign country. In this case, the sender would also be a designated recipient.

#### 30(d) Preauthorized Remittance Transfer.

1. Advance authorization. A preauthorized remittance transfer is a remittance transfer authorized in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a remittance transfer provider to make monthly payments to a payee by means of a remittance transfer, and the payments take place without further action by the consumer, the payments are preauthorized remittance transfers. In contrast, if the consumer must take action each month to initiate a transfer (such as by entering instructions on a telephone or home computer), the payments are not preauthorized remittance transfers.

#### 30(e) Remittance Transfer.

1. Electronic transfer of funds. The definition of “remittance transfer” requires an electronic transfer of funds. The term electronic has the meaning given in section 106(2) of the

Electronic Signatures in Global and National Commerce Act. There may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer. However, where a sender mails funds directly to a recipient, or provides funds to a courier for delivery to a foreign country, there is not an electronic transfer of funds. Similarly, generally, where a provider issues a check, draft, or other paper instrument to be mailed to a person abroad, there is not an electronic transfer of funds. Nonetheless, an electronic transfer of funds occurs for a payment made by a provider under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account to be mailed abroad, and the payee or payees that will be paid in this manner are identified to the consumer. With respect to such a bill-payment service, if a provider provides a check, draft or similar paper instrument drawn on a consumer's account to be mailed abroad for a payee that is not identified to the consumer as described above, this payment by check, draft or similar payment instrument will be an electronic transfer of funds.

2. Sent by a remittance transfer provider. i. The definition of "remittance transfer" requires that a transfer be "sent by a remittance transfer provider." This means that there must be an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient.

ii. A payment card network or other third party payment service that is functionally similar to a payment card network does not send a remittance transfer when a consumer provides a debit, credit or prepaid card directly to a foreign merchant as payment for goods or services. In such a case, the payment card network or third party payment service is not directly engaged

with the sender to send a transfer of funds to a person in a foreign country; rather, the network or third party payment service is merely providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the card issuer, rather than on behalf of the sender. In such a case, the card issuer also is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the card issuer provides payment to the merchant. Similarly, where a consumer provides a checking or other account number, or a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services, the merchant is not acting as an intermediary that sends a transfer of funds on behalf of the sender when it submits the payment information for processing.

iii. However, a card issuer or a payment network may offer a service to a sender where the card issuer or a payment network is an intermediary that is directly engaged with the sender to obtain funds using the sender's debit, prepaid or credit card and to send those funds to a recipient's checking account located in a foreign country. In this case, the card issuer or the payment network is an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender, and this transfer of funds is a remittance transfer because it is made to a designated recipient. See comment 30(c)-2.ii.

### 3. Examples of remittance transfers.

i. Examples of remittance transfers include:

A. Transfers where the sender provides cash or another method of payment to a money transmitter or financial institution and requests that funds be sent to a specified location or account in a foreign country.

B. Consumer wire transfers, where a financial institution executes a payment order upon a sender's request to wire money from the sender's account to a designated recipient.

C. An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a person located in a State (including a sender) retains the ability to withdraw such funds.

D. International ACH transactions sent by the sender's financial institution at the sender's request.

E. Online bill payments and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender's financial institution at the sender's request to a designated recipient.

ii. The term remittance transfer does not include, for example:

A. A consumer's provision of a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services because the issuer is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the issuer provides payment to the merchant. See comment 30(e)-2.

B. A consumer's deposit of funds to a checking or savings account located in a State, because there has not been a transfer of funds to a designated recipient. See comment 30(c)-2.ii.

C. Online bill payments and other electronic transfers that senders can schedule in advance, including preauthorized transfers, made through the website of a merchant located in a foreign country and via direct provision of a checking account, credit card, debit card or prepaid card number to the merchant, because the financial institution is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the institution provides payment to the merchant. See comment 30(e)-2.

### 30(f) Remittance Transfer Provider.

1. Agents. A person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

2. Normal course of business. 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 international consumer wire transfers available to customers, but sends a couple of international consumer wire 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 international consumer wire transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers multiple times per month, the institution provides remittance transfers in the normal course of business.

3. Multiple remittance transfer providers. If the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary to comply with the requirements that subpart B imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.



### 30(g) Sender.

1. Determining whether a consumer is located in a State. Under § 1005.30(g), the definition of “sender” means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. For transfers from a consumer’s account, whether a consumer is located in a State depends on where the consumer’s account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of “sender” in § 1005.30(g), notwithstanding comment 3(a)-3. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

### Section 1005.31 – Disclosures

#### 31(a) General Form of Disclosures.

##### 31(a)(1) Clear and Conspicuous.

1. Clear and conspicuous standard. Disclosures are clear and conspicuous for purposes of subpart B if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. Oral disclosures as permitted by § 1005.31(a)(3), (4), and (5) are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them.

2. Abbreviations and symbols. Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as “USD” to indicate currency in U.S. dollars or “MXN” to indicate currency in Mexican pesos.

### 31(a)(2) Written and Electronic Disclosures.

1. E-Sign Act requirements. If a sender electronically requests the remittance transfer provider to send a remittance transfer, the disclosures required by § 1005.31(b)(1) may be provided to the sender in electronic form without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). If a sender electronically requests the provider to send a remittance transfer, the disclosures required by § 1005.31(b)(2) may be provided to the sender in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. See § 1005.4(a)(1).

2. Paper size. Written disclosures may be provided on any size paper, as long as the disclosures are clear and conspicuous. For example, disclosures may be provided on a register receipt or on an 8.5 inch by 11 inch sheet of paper.

3. Retainable electronic disclosures. A remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

4. Pre-payment disclosures to a mobile telephone. Disclosures provided via mobile application or text message, to the extent permitted by § 1005.31(a)(5), need not be retainable. However, disclosures provided electronically to a mobile telephone that are not provided via mobile application or text message must be retainable. For example, disclosures provided via email must be retainable, even if a sender accesses them by mobile telephone.

### 31(a)(3) Disclosures for Oral Telephone Transactions.

1. Transactions conducted partially by telephone. For transactions conducted partially by telephone, providing the information required by § 1005.31(b)(1) to a sender orally does not fulfill the requirement to provide the disclosures required by § 1005.31(b)(1). For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated telephone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, all disclosures must be provided in writing. A provider complies with this requirement, for example, by providing the written pre-payment disclosure in person prior to the sender's payment for the transaction, and the written receipt when the sender pays for the transaction.

2. Oral Telephone Transactions. Section 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone.

### 31(a)(5) Disclosures for Mobile Application or Text Message Transactions.

1. Mobile application and text message transactions. A remittance transfer provider may provide the required pre-payment disclosures orally or via mobile application or text message if the transaction is conducted entirely by telephone via mobile application or text message, the remittance transfer provider complies with the requirements of § 1005.31(g)(2), and 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). For example, if a sender conducts a transaction via text message on a mobile telephone, the remittance transfer provider may call the sender and orally provide the required pre-payment disclosures. Alternatively, the provider may provide the

required pre-payment disclosures via text message. Section 1005.31(a)(5) applies only to transactions conducted entirely by mobile telephone via mobile application or text message.

### 31(b) Disclosure Requirements.

1. Disclosures provided as applicable. Disclosures required by § 1005.31(b) need only be provided to the extent applicable. A remittance transfer provider may choose to omit an item of information required by § 1005.31(b) if it is inapplicable to a particular transaction.

Alternatively, a provider may disclose a term and state that an amount or item is “not applicable,” “N/A,” or “None.” For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures about fees and taxes generally required by § 1005.31(b)(1)(ii) and (b)(1)(vi). Similarly, a website need not be disclosed if the provider does not maintain a website. A provider need not provide the exchange rate disclosure required by § 1005.31(b)(1)(iv) if a recipient receives funds in the currency in which the remittance transfer is funded, or if funds are delivered into an account denominated in the currency in which the remittance transfer is funded. For example, if a sender in the United States sends funds from an account denominated in Euros to an account in France denominated in Euros, no exchange rate would need to be provided. Similarly, if a sender funds a remittance transfer in U.S. dollars and requests that a remittance transfer be delivered to the recipient in U.S. dollars, a provider need not disclose an exchange rate.

2. Substantially similar terms, language, and notices. Certain disclosures required by § 1005.31(b) must be described using the terms set forth in § 1005.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds to Colombia may describe a tax under § 1005.31(b)(1)(vi) as a “Colombian Tax” in lieu of describing it as “Other Taxes.” Foreign language disclosures

required under § 1005.31(g) must contain accurate translations of the terms, language, and notices required by § 1005.31(b).

31(b)(1) Pre-Payment Disclosures.

1. Fees and taxes. i. Taxes imposed on the remittance transfer by the remittance transfer provider include taxes imposed on the remittance transfer by a State or other governmental body. A provider need only disclose fees or taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. See comment 31(b)-1. If both fees and taxes are imposed, the fees and taxes must be disclosed as separate, itemized disclosures. For example, a provider would disclose all transfer fees using the term “Transfer Fees” or a substantially similar term and would separately disclose all transfer taxes as “Transfer Taxes” or a substantially similar term.

ii. The fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) include all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any State taxes imposed on the remittance transfer. In contrast, the fees and taxes required to be disclosed by § 1005.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider. Fees and taxes imposed on the remittance transfer include only those fees and taxes that are charged to the sender or designated recipient and are specifically related to the remittance transfer. For example, a provider must disclose fees imposed on a remittance transfer by the receiving institution or agent at pick-up for receiving the transfer, fees imposed on a remittance transfer by intermediary institutions in connection with an international wire transfer, and taxes imposed on a remittance transfer by a

foreign government. However, a provider need not disclose, for example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt, because these charges are not specifically related to the remittance transfer. Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not charged to the sender or designated recipient. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer need not be disclosed. The terms used to describe the fees and taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi) must differentiate between such fees and taxes. For example, the terms used to describe fees disclosed under § 1005.31(b)(1)(ii) and (b)(1)(vi) may not both be described solely as "Fees."

2. Transfer amount. Sections 1005.31(b)(1)(i) and (b)(1)(v) require two transfer amount disclosures. First, under § 1005.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the remittance transfer is funded to show the calculation of the total amount of the transaction. Typically, the remittance transfer is funded in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if the remittance transfer is funded, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. Second, under § 1005.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if fees

and taxes are not imposed on the remittance transfer under § 1005.31(b)(1)(vi). The terms used to describe each transfer amount should be the same.

3. Exchange rate for calculation. The exchange rate used to calculate the transfer amount in § 1005.31(b)(1)(v), the fees and taxes imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi), and the amount received in § 1005.31(b)(1)(vii) is the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to § 1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos. Similarly, if a provider estimates pursuant to § 1005.32 that one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to § 1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.95 Mexican pesos (Estimated). If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures. For example, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, a provider must calculate these disclosures using this exchange rate.

31(b)(1)(iv) Exchange Rate.

1. Applicable exchange rate. If the designated recipient will receive funds in a currency other than the currency in which the remittance transfer is funded, a remittance transfer provider must disclose the exchange rate to be used by the provider for the remittance transfer. An exchange rate that is estimated must be disclosed pursuant to the requirements of § 1005.32. A remittance transfer provider may not disclose, for example, that an exchange rate is “unknown,” “floating,” or “to be determined.” If a provider does not have specific knowledge regarding the

currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is actually denominated in Mexican pesos and the funds are converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

2. Rounding. The exchange rate disclosed by the provider for the remittance transfer is required to be rounded. The provider may round to two, three, or four decimal places, at its option. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider may disclose that the U.S. dollar exchanges for 11.9484 Mexican pesos. The provider may alternatively disclose, for example, that the U.S. dollar exchanges for 11.948 pesos or 11.95 pesos. On the other hand, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, the provider may disclose that "US\$1= 11.9 MXN" in lieu of, for example, "US\$1=11.90 MXN." The exchange rate disclosed for the remittance transfer must be rounded consistently for each currency. For example, a provider may not round to two decimal places for some transactions exchanged into Euros and round to four decimal places for other transactions exchanged into Euros.

3. Exchange rate used. The exchange rate used by the provider for the remittance transfer need not be set by that provider. For example, an exchange rate set by an intermediary institution and applied to the remittance transfer would be the exchange rate used for the remittance transfer and must be disclosed by the provider.



### 31(b)(1)(vi) Fees and Taxes Imposed by a Person Other than the Provider.

1. Fees and taxes disclosed in the currency in which the funds will be received. Section 1005.31(b)(1)(vi) requires the disclosure of fees and taxes in the currency in which the funds will be received by the designated recipient. A fee or tax described in § 1005.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider must calculate the fee or tax to be disclosed using the exchange rate in § 1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate. For example, an intermediary institution in an international wire transfer may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. In this case, the provider would disclose the fee to the sender expressed in Euros, calculated using the exchange rate used by the provider for the remittance transfer. For purposes of § 1005.31(b)(1)(v), (vi), and (vii), if a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider may provide the disclosures required in § 1005.31(b)(1)(v), (vi), and (vii) in U.S. dollars, even if the account is actually denominated in Mexican pesos and the funds are subsequently converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

2. Determining taxes. The amount of taxes imposed by a person other than the provider may depend on the tax status of the sender or recipient, the type of accounts or financial institutions involved in the transfer, or other variables. For example, the amount of tax may

depend on whether the receiver is a resident of the country in which the funds are received or the type of account to which the funds are delivered. If a provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables. If a sender does not know the information relating to the variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed for the remittance transfer with respect to any unknown variable.

31(b)(1)(vii) Amount Received.

1. Amount received. The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect all charges imposed on the remittance transfer that affect the amount received, including the exchange rate and all fees and taxes imposed on the remittance transfer by the remittance transfer provider, the receiving institution, or any other party in the transmittal route of a remittance transfer. The disclosed amount received must be reduced by the amount of any fee or tax that is imposed on the remittance transfer by any person, even if that amount is imposed or itemized separately from the transaction amount.

31(b)(2) Receipt.

1. Date funds will be available. A remittance transfer provider does not comply with the requirements of § 1005.31(b)(2)(ii) if it provides a range of dates that the remittance transfer may be available or an estimate of the date on which funds will be available. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. For example, if funds may be available on January 3, but

are not certain to be available until January 10, then a provider complies with § 1005.31(b)(2)(ii) if it discloses January 10 as the date funds will be available. However, a remittance transfer provider may also disclose that funds “may be available sooner” or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed. For example, a provider may disclose “January 10 (may be available sooner).”

2. Agencies required to be disclosed. A remittance transfer provider must only disclose information about a State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer as applicable. For example, if a financial institution is solely regulated by a Federal agency, and not licensed or chartered by a State agency, then the institution need not disclose information about a State agency. A remittance transfer provider must disclose information about the Consumer Financial Protection Bureau, whether or not the Consumer Financial Protection Bureau is the provider’s primary Federal regulator.

3. State agency that licenses or charters a provider. A remittance transfer provider must only disclose information about one State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer, even if other State agencies also regulate the remittance transfer provider. For example, a provider may disclose information about the State agency which granted its license. If a provider is licensed in multiple States, and the State agency that licenses the provider with respect to the remittance transfer is determined by a sender’s location, a provider may make the determination as to the State in which the sender is located based on information that is provided by the sender and on any records associated with the sender. For example, if the State agency that licenses the provider with respect to an online remittance transfer is determined by a sender’s location, a provider could rely on the sender’s

statement regarding the State in which the sender is located and disclose the State agency that licenses the provider in that State. A State-chartered bank must disclose information about the State agency that granted its charter, regardless of the location of the sender.

#### 31(b)(3) Combined Disclosure.

1. Proof of payment. If a sender initiating a remittance transfer receives a combined disclosure provided under § 1005.31(b)(3) and then completes the transaction, the remittance transfer provider must provide the sender with proof of payment. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form. The combined disclosure must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer, pursuant to § 1005.31(e)(1), and the proof of payment must be provided when payment is made for the remittance transfer. The proof of payment for the transaction may be provided on the same piece of paper as the combined disclosure or on a separate piece of paper. For example, a provider may feed a combined disclosure through a computer printer when payment is made to add the date and time of the transaction, a confirmation code, and an indication that the transfer was paid in full. A provider may also provide this additional information to a sender on a separate piece of paper when payment is made. A remittance transfer provider does not comply with the requirements of § 1005.31(b)(3) by providing a combined disclosure with no further indication that payment has been received.

#### 31(c) Specific Format Requirements.

##### 31(c)(1) Grouping.

1. Grouping. Information is grouped together for purposes of subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total

amount of the transaction and the amount that will be received by the designated recipient.

Model Forms A-30 through A-35 in Appendix A illustrate how information may be grouped to comply with the rule, but a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation.

#### 31(c)(4) Segregation.

1. Segregation. Disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may appear on the front of a page where other information appears on the back of that page. The disclosures may be set off from other information on a notice by outlining them in a box or series of boxes, with bold print dividing lines or a different color background, or by using other means.

2. Directly related. For purposes of § 1005.31(c)(4), the following is directly related information:

- i. The date and time of the transaction;
- ii. The sender's name and contact information;
- iii. The location at which the designated recipient may pick up the funds;
- iv. The confirmation or other identification code;
- v. A company name and logo;
- vi. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;
- vii. A designated area for signatures or initials;
- viii. A statement that funds may be available sooner, as permitted by § 1005.31(b)(2)(ii);

ix. Instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and

x. A statement that the provider makes money from foreign currency exchange.

31(d) Estimates.

1. Terms. A remittance transfer provider may provide estimates of the amounts required by § 1005.31(b), to the extent permitted by § 1005.32. An estimate must be described using the term “Estimated” or a substantially similar term in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as “Estimated Transfer Amount,” “Other Estimated Fees and Taxes,” or “Total to Recipient (Est.)”

31(e) Timing.

1. Request to send a remittance transfer. Except as provided in § 1005.36(a), pre-payment and combined disclosures are required to be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer. Whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. For example, a sender who asks the provider to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer. A consumer who solely inquires about that day’s rates and fees to send to Mexico, however, has not requested the provider to send a remittance transfer.

2. When payment is made. Except as provided in § 1005.36(a), a receipt required by § 1005.31(b)(2) must be provided to the sender when payment is made for the remittance transfer. For example, a remittance transfer provider could give the sender the disclosures after

the sender pays for the remittance transfer, but before the sender leaves the counter. A provider could also give the sender the disclosures immediately before the sender pays for the transaction. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

3. Telephone transfer from an account. A sender may transfer funds from his or her account, as defined by § 1005.2(b), that is held by the remittance transfer provider. For example, a financial institution may send an international wire transfer for a sender using funds from the sender's account with the institution. Except as provided in § 1005.36(a), if the sender conducts such a transfer entirely by telephone, the institution may provide a receipt required by § 1005.31(b)(2) on or with the sender's next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

4. Mobile application and text message transactions. If a transaction is conducted entirely by telephone via mobile application or text message, a receipt required by § 1005.31(b)(2) may be mailed or delivered to the sender pursuant to the timing requirements in § 1005.31(e)(2) or § 1005.36(a). For example, if a sender conducts a transfer entirely by telephone via mobile application, a remittance transfer provider may mail or deliver the disclosures to a sender pursuant to the timing requirements in § 1005.31(e)(2) or § 1005.36(a).

5. Statement about cancellation rights. The statement about the rights of the sender regarding cancellation required by § 1005.31(b)(2)(iv) may, but need not, be disclosed pursuant to the timing requirements of § 1005.31(e)(2) if a provider discloses this information pursuant to § 1005.31(a)(3)(iii) or (a)(5)(iii). The statement about the rights of the sender regarding error

resolution required by § 1005.31(b)(2)(iv), however, must be disclosed pursuant to the timing requirements of § 1005.31(e)(2).

31(f) Accurate When Payment is Made.

1. No guarantee of disclosures provided before payment. Except as provided in § 1005.36(b), disclosures required by § 1005.31(b) must be accurate when a sender makes payment for the remittance transfer. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required by § 1005.31(b) for any specific period of time. However, if any of the disclosures required by § 1005.31(b) are not accurate when a sender makes payment for the remittance transfer, a provider must give new disclosures before accepting payment.

31(g) Foreign Language Disclosures.

1. Number of foreign languages used in written disclosure. Section 1005.31(g)(1) does not limit the number of languages that may be used on a single document, but such disclosures must be clear and conspicuous pursuant to § 1005.31(a)(1). Under § 1005.31(g)(1), a remittance transfer provider may, but need not, provide the sender with a written or electronic disclosure that is in English and, if applicable, in each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively. Alternatively, the remittance transfer provider may provide the disclosure solely in English and, if applicable, the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error, provided such language is principally used by the remittance transfer provider to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error,



respectively. If the remittance transfer provider chooses the alternative method, it may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language. The following examples illustrate this concept.

i. A remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office. The remittance transfer provider may provide all senders with disclosures in English, Spanish, and Vietnamese, regardless of the language the sender uses with the remittance transfer provider to conduct the transaction or assert an error.

ii. Same facts as i. If a sender primarily uses Spanish with the remittance transfer provider to conduct a transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure in English and Spanish, whether in a single document or two separate documents. If the sender primarily uses English with the remittance transfer provider to conduct the transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure solely in English. If the sender primarily uses a foreign language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively, the remittance transfer provider may provide a written or electronic disclosure solely in English.

2. Primarily used. The language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used by the sender with the remittance transfer provider to convey the information necessary to complete the transaction.

Similarly, the language primarily used by the sender with the remittance transfer provider to assert the error is the primary language used by the sender with the remittance transfer provider to provide the information required by § 1005.33(b) to assert an error. For example:

i. A sender initiates a conversation with a remittance transfer provider with a greeting in English and expresses interest in sending a remittance transfer to Mexico in English. If the remittance transfer provider thereafter communicates with the sender in Spanish and the sender conveys the other information needed to complete the transaction, including the designated recipient's information and the amount and funding source of the transfer, in Spanish, then Spanish is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

ii. A sender initiates a conversation with the remittance transfer provider with a greeting in English and states in English that there was a problem with a prior remittance transfer to Vietnam. If the remittance transfer provider thereafter communicates with the sender in Vietnamese and the sender uses Vietnamese to convey the information required by § 1005.33(b) to assert an error, then Vietnamese is the language primarily used by the sender with the remittance transfer provider to assert the error.

iii. A sender accesses the website of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors. The website is offered in English and French. If the sender uses the French version of the website to conduct the remittance transfer, then French is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

31(g)(1) General.

1. Principally used. i. All relevant facts and circumstances determine whether a foreign language is principally used by the remittance transfer provider to advertise, solicit, or market under § 1005.31(g)(1). Generally, whether a foreign language is considered to be principally used by the remittance transfer provider to advertise, solicit, or market is based on:

A. The frequency with which the foreign language is used in advertising, soliciting, or marketing of remittance transfer services at that office;

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services in that foreign language at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer service at that office.

ii. For example, if a remittance transfer provider posts several prominent advertisements in a foreign language for remittance transfer services, including rate and fee information, on a consistent basis in an office, the provider is creating an expectation that a consumer could receive information on remittance transfer services in the foreign language used in the advertisements. The foreign language used in such advertisements would be considered to be principally used at that office based on the frequency and prominence of the advertising. In contrast, an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for a greeting in a foreign language, does not create an expectation that a consumer could receive information on remittance transfer services in the foreign language used for such greeting. The foreign language used in such an advertisement is not considered to be principally used at that office based on the incidental specific foreign language term used.

2. Advertise, solicit, or market. i. Any commercial message in a foreign language, appearing in any medium, that promotes directly or indirectly the availability of remittance transfer services constitutes advertising, soliciting, or marketing in such foreign language for purposes of § 1005.31(g)(1). Examples illustrating when a foreign language is used to advertise, solicit, or market include:

- A. Messages in a foreign language in a leaflet or promotional flyer at an office.
- B. Announcements in a foreign language on a public address system at an office.
- C. On-line messages in a foreign language, such as on the internet.
- D. Printed material in a foreign language on any exterior or interior sign at an office.
- E. Point-of-sale displays in a foreign language at an office.
- F. Telephone solicitations in a foreign language.

ii. Examples illustrating use of a foreign language for purposes other than to advertise, solicit, or market include:

- A. Communicating in a foreign language (whether by telephone, electronically, or otherwise) about remittance transfer services in response to a consumer-initiated inquiry.
- B. Making disclosures in a foreign language that are required by Federal or other applicable law.

3. Office. An office includes any physical location, telephone number, or website of a remittance transfer provider where a sender may conduct a remittance transfer or assert an error for a remittance transfer. The location need not exclusively offer remittance transfer services. For example, if an agent of a remittance transfer provider is located in a grocery store, the grocery store is considered an office for purposes of § 1005.31(g)(1). Because a consumer must be located in a State in order to be considered a “sender” under § 1005.30(g), a website is not an

office for purposes of § 1005.31(g)(1), even if the website can be accessed by consumers that are located in the United States, unless a sender may conduct a remittance transfer on the website or may assert an error for a remittance transfer on the website.

4. At the office. Any advertisement, solicitation, or marketing is considered to be made at the office in which a sender conducts a transaction or asserts an error if such advertisement, solicitation, or marketing is posted, provided, or made: at a physical office of a remittance transfer provider; on a website of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; during a telephone call with a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; or via mobile application or text message by a remittance transfer provider if the mobile application or text message may be used by senders to conduct remittance transfers or assert errors. An advertisement, solicitation, or marketing that is considered to be made at an office does not include general advertisements, solicitations, or marketing that are not intended to be made at a particular office. For example, if an advertisement for remittance transfers in Chinese appears in a Chinese newspaper that is being distributed at a grocery store in which the agent of a remittance transfer provider is located, such advertisement would not be considered to be made at that office. For disclosures provided pursuant to § 1005.31, the relevant office is the office in which the sender conducts the transaction. For disclosures provided pursuant to § 1005.33 for error resolution purposes, the relevant office is the office in which the sender first asserts the error, not the office where the transaction was conducted.

#### Section 1005.32 – Estimates

1. Disclosures where estimates can be used. Sections 1005.32(a) and (b) permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (b)(3)

and 1005.36(a)(1) through (a)(2). To the extent permitted in § 1005.32(a) and (b), 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 (2).

### 32(a) Temporary Exception for Insured Institutions.

#### 32(a)(1) General.

1. Control. For purposes of this section, an insured institution cannot determine exact amounts “for reasons beyond its control” when a person other than the insured institution or with which the insured institution has no correspondent relationship sets the exchange rate required to be disclosed under § 1005.31(b)(1)(iv) or imposes a fee required to be disclosed under § 1005.31(b)(1)(vi). For example, if an insured institution has a correspondent relationship with a financial institution in another country and that correspondent institution sets the exchange rate or imposes a fee for remittance transfers sent from the insured institution to the correspondent institution, then the insured institution must determine exact amounts for the disclosures required under § 1005.31(b)(1)(iv) or (vi) because the determination of those amounts are not beyond the insured institution’s control.

2. Examples of scenarios that qualify for the temporary exception. The following examples illustrate when an insured institution cannot determine an exact amount “for reasons beyond its control” and thus would qualify for the temporary exception.

i. Exchange rate. An insured institution cannot determine the exact exchange rate to disclose under § 1005.31(b)(1)(iv) for an international wire transfer if the insured institution does not set the exchange rate, and the rate is set when the funds are deposited into the recipient’s

account by the designated recipient's institution with which the insured institution does not have a correspondent relationship. The insured institution will not know the exchange rate that the recipient institution will apply when the funds are deposited into the recipient's account.

ii. Other fees. An insured institution cannot determine the exact fees to disclose under § 1005.31(b)(1)(vi) if an intermediary institution or the designated recipient's institution, with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee.

iii. Other taxes. An insured institution cannot determine the exact taxes to disclose under § 1005.31(b)(1)(vi) if the insured institution cannot determine the applicable exchange rate or fees as described in paragraphs i. and ii. above, and the recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees.

3. Examples of scenarios that do not qualify for the temporary exception. The following examples illustrate when an insured institution can determine exact amounts and thus would not qualify for the temporary exception.

i. Exchange rate. An insured institution can determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. The determination of the exchange rate is in the insured institution's control even if there is no correspondent relationship with an intermediary institution in the transmittal route or the designated recipient's institution.

ii. Other fees. An insured institution can determine the exact fees required to be disclosed under § 1005.31(b)(1)(vi) if it has agreed upon the specific fees with a correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient's institution, which itself does not impose fees.

iii. Other taxes. An insured institution can determine the exact taxes required to be disclosed under § 1005.31(b)(1)(vi) if:

A. The recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees, and the insured institution can determine the exact amount of the applicable exchange rate and other fees; or

B. The recipient country imposes a specific sum tax that is not tied to the amount transferred.

32(b) Permanent Exception 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)(ii) 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)(ii) 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)(2), a remittance transfer provider may provide estimates of the amounts to be disclosed under § 1005.31(b)(1)(iv) through (vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under § 1005.32(b)(1) 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), even if that country does not appear on the list published by the Bureau.

### 32(c) Bases for Estimates.

#### 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)(ii) 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.

2. Publicly available. Examples of publicly available sources of information containing the most recent wholesale exchange rate for a currency include U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times; a recipient country's national news services, and a recipient country's central bank or other government agency.

3. Spread. An estimate for disclosing the exchange rate based on the most recent publicly available wholesale exchange rate must also reflect any spread the remittance transfer provider typically applies to the wholesale exchange rate for remittance transfers for a particular currency.

4. Most recent. For the purposes of § 1005.32(c)(1)(ii) and (iii), if the exchange rate with respect to a particular currency is published or provided multiple times throughout the day

because the exchange rate fluctuates throughout the day, a remittance transfer provider may use any exchange rate available on that day to determine the most recent exchange rate.

32(c)(3) Other Fees.

1. Potential transmittal routes. A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under § 1005.31(b)(1)(vi) pursuant to the § 1005.32(a) temporary exception, an insured institution may rely upon the representations of the designated recipient's institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

32(c)(4) Other Taxes Imposed in the Recipient Country.

1. Other taxes imposed in a recipient country that are a percentage. Section 1005.32(c)(4) sets forth the basis for providing an estimate of only those taxes imposed in a recipient country that are a percentage of the amount transferred to the designated recipient because a remittance transfer provider can determine the exact amount of other taxes, such as a tax of a specific amount imposed without regard to the amount of the funds transferred or received. However, a remittance transfer provider can determine the exact amount of other taxes that are a percentage of the amount transferred if the provider can determine the exchange rate and the exact amount of other fees imposed on the remittance transfer.

## Section 1005.33 – Procedures for Resolving Errors

### 33(a) Definition of Error

1. Incorrect amount of currency paid by sender. Section 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). Such error may be asserted by a sender regardless of the form or method of payment provided, including when a debit, credit, or prepaid card is used to fund the transfer and an excess amount is paid. For example, if a remittance transfer provider incorrectly charged a sender's credit card account for US\$150, and US\$120 was sent, plus a transfer fee of US\$10, the sender could assert an error with the remittance transfer provider for the incorrect charge under § 1005.33(a)(1)(i).

2. Incorrect amount of currency received – coverage. Section 1005.33(a)(1)(iii) covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified on the disclosures provided to the sender, except where the disclosure stated an estimate of the amount of currency to be received in accordance with § 1005.32 and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts, or the failure was caused by circumstances outside the remittance transfer provider's control. A designated recipient may receive an amount of currency that differs from the amount of currency disclosed, for example, if an exchange rate other than the disclosed rate is applied to the remittance transfer, or if the provider fails to account for fees or taxes that may be imposed by the provider or a third party before the transfer is picked up by the designated recipient or deposited into the recipient's account in the foreign country. However, if the provider rounds the exchange rate used to calculate the amount

received consistent with § 1005.31(b)(1)(iv) and comment 31(b)(1)(iv)-2 for the disclosed rate, there is no error if the designated recipient receives an amount of currency that results from applying the exchange rate used, prior to any rounding of the exchange rate, to calculate fees, taxes, or the amount received rather than the disclosed rate. Section 1005.33(a)(1)(iii) also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender.

3. Incorrect amount of currency received – examples. For purposes of the following examples illustrating the error for an incorrect amount of currency received under § 1005.33(a)(1)(iii), assume that none of the circumstances permitting an estimate under § 1005.32 apply (unless otherwise stated).

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender's payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate used by the provider, prior to any rounding of the exchange rate, to disclose the amount of currency to be received by the designated recipient on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect additional foreign taxes that will be imposed in Colombia on the transfer. Because the designated recipient

will receive less than the amount of currency disclosed on the receipt due to the additional foreign taxes, an error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed on the receipt due to the additional fees, an error has occurred.

iv. A consumer requests to send US\$250 to a relative in India to a U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US\$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US\$200, resulting in a smaller deposit to the designated recipient's account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US\$100 to a relative in a foreign country to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to the law in the foreign country requiring that the exchange rate be set by the foreign country's central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt due to application of the actual exchange rate, fees, and taxes, rather than any estimated amounts. Because § 1005.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under § 1005.32(c).

4. Incorrect amount of currency received –extraordinary circumstances. Under § 1005.33(a)(1)(iv)(B), a remittance transfer provider’s failure to deliver or transmit a remittance transfer by the disclosed date of availability is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider’s control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider’s control that could not have been reasonably anticipated under § 1005.33(a)(1)(iv)(B) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided under § 1005.31(b)(2) or (3).

5. Failure to make funds available by disclosed date of availability – coverage. Section 1005.33(a)(1)(iv) generally covers disputes about the failure to make funds available in connection with a remittance transfer to a designated recipient by the disclosed date of availability. If only a portion of the funds were made available by the disclosed date of availability, then § 1005.33(a)(1)(iv) does not apply, but § 1005.33(a)(1)(iii) may apply instead. The following are examples of errors for failure to make funds available by the disclosed date of availability (assuming that none of the exceptions in § 1005.33(a)(1)(iv)(A), (B), or (C) apply).

- i. Late or non-delivery of a remittance transfer;
- ii. Delivery of funds to the wrong account;
- iii. The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient;



iv. The recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient.

6. Failure to make funds available by disclosed date of availability –extraordinary circumstances. Under § 1005.33(a)(1)(iv)(A), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under § 1005.33(a)(1)(iv)(A) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls.

7. Recipient-requested changes. Under § 1005.33(a)(2)(iii), a change requested by the designated recipient that the remittance transfer provider or others involved in the remittance transfer decide to accommodate is not considered an error. The exception under § 1005.33(a)(2)(iii) is available only if the change is made solely because the designated recipient requested the change. For example, if a sender requests to send US\$100 to a designated recipient at a designated location, but the designated recipient requests the amount in a different currency (either at the sender-designated location or another location requested by the recipient) and the remittance transfer provider accommodates the recipient's request, the change does not constitute an error.

8. Change from disclosure made in reliance on sender information. Under the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's

representations in making certain disclosures. See, e.g. comments 31(b)(1)(iv)-1, 31(b)(1)(vi)-1, and 31(b)(1)(vi)-2. For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error pursuant to § 1005.33(a)(2)(iv). Similarly, if the remittance transfer provider relies on the sender's representations regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the change in the amount of currency the designated recipient actually receives due to the taxes actually imposed does not constitute an error pursuant to § 1005.33(a)(2)(iv).

### 33(b) Notice of Error from Sender.

1. Person asserting or discovering error. The error resolution procedures of this section apply only when a notice of error is received from the sender, and not when a notice of error is received from the designated recipient or when the remittance transfer provider itself discovers and corrects an error.

2. Content of error notice. The notice of error is effective so long as the remittance transfer provider is able to identify the elements in § 1005.33(b)(1)(ii). For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the sender (and contact information), designated recipient, and the transfer in question. For an account-based remittance transfer, the notice of error is effective

even if it does not contain the sender's account number, so long as the remittance transfer provider is able to identify the account and the transfer in question.

3. Address on notice of error. A remittance transfer provider may request, or a sender may provide, the sender's or designated recipient's email address, as applicable, instead of a physical address, on a notice of error.

4. Effect of late notice. A remittance transfer provider is not required to comply with the requirements of this section for any notice of error from a sender that is received by the provider more than 180 days from the disclosed date of availability of the remittance transfer to which the notice of error applies or, if applicable, more than 60 days after a provider sent documentation, additional information, or clarification requested by the sender, provided such date is later than 180 days after the disclosed date of availability.

5. Notice of error provided to agent. A notice of error provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under § 1005.33(b)(1)(i) when received by the agent.

6. Consumer notice of error resolution rights. Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the consumer's error resolution rights on the receipt or combined notice provided under § 1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the sender's error resolution rights, using language set forth in Appendix A of this part (Model Form A-36) or substantially similar language.

#### 33(c) Time Limits and Extent of Investigation.

1. Notice to sender of finding of error. If the remittance transfer provider determines during its investigation that an error occurred as described by the sender, the remittance provider

may inform the sender of its findings either orally or in writing. However, if the provider determines that no error or a different error occurred, the provider must provide a written explanation of its findings under § 1005.33(d)(1).

2. Incorrect or insufficient information provided for transfer. Under § 1005.33(c)(2)(ii)(A)(2), if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient or the recipient's account number or by providing insufficient information to enable the entity distributing the funds to identify the correct designated recipient, the sender may choose to have the provider make funds available to the designated recipient and third party fees may be imposed for resending the remittance transfer with the corrected or additional information. The remittance transfer provider may not require the sender to provide the principal transfer amount again. Third party fees that were not incurred during the first unsuccessful remittance transfer attempt may not be imposed again for resending the remittance transfer. A request to resend is a request for a remittance transfer. Therefore, a provider must provide the disclosures required by § 1005.31 for a resend of a remittance transfer, and the provider must use the exchange rate it is using for such transfers on the date of the resend if funds were not already exchanged in the first unsuccessful remittance transfer attempt. A sender providing incorrect or insufficient information does not include a provider's miscommunication of information necessary for the designated recipient to pick up the transfer. For example, a sender is not considered to have provided incorrect or insufficient information if the provider discloses the incorrect location where the transfer may be

picked up or gives the wrong confirmation number/code for the transfer. The following examples illustrate these concepts.

i. A sender instructs a remittance transfer provider to send US\$100 to a designated recipient in local currency, for which the remittance transfer provider charges a transfer fee of US\$10, and the sender provided incorrect or insufficient information that resulted in non-delivery of the remittance transfer as requested. If the sender chooses the remedy to have the remittance transfer provider make the funds available to the designated recipient pursuant to § 1005.33(c)(2)(ii)(A)(2) and provides the corrected or additional information, the remittance transfer provider may not require the sender to provide another US\$100 to send to the designated recipient or charge the sender the US\$10 transfer fee to resend the remittance transfer with the corrected or additional information. If the funds were not already exchanged into the local currency during the first unsuccessful remittance transfer attempt, the provider must use the exchange rate it is using for such transfers on the date of the resend.

ii. A sender instructs a remittance transfer provider to send US\$100 to a designated recipient in a foreign country, for which a remittance transfer provider charges a transfer fee of US\$10 and an intermediary institution charges a lifting fee of US\$5, such that the designated recipient is expected to receive only US\$95, as indicated in the receipt. If the sender provided incorrect or insufficient information that resulted in non-delivery of the remittance transfer as requested, an error has occurred. If the sender chooses the remedy to have the remittance transfer provider make the funds available to the designated recipient pursuant to § 1005.33(c)(2)(ii)(A)(2) and provides the corrected or additional information, the remittance transfer provider may not charge another transfer fee of US\$10 to send the remittance transfer again with the corrected or additional information necessary to complete the transfer. If the

intermediary institution charged a lifting fee of US\$5 in the first unsuccessful remittance transfer attempt, the sender may choose to provide an additional amount to offset the US\$5 lifting fee deducted in the first unsuccessful remittance transfer attempt and ensure that the designated recipient receives US\$95 or may choose to resend the US\$95 amount with the understanding that another US\$5 fee will be deducted by the intermediary institution, as indicated in the receipt. Otherwise, if the intermediary institution did not charge a US\$5 lifting fee in the first unsuccessful remittance transfer attempt, the provider must resend the original \$100 transfer amount, and a US\$5 lifting fee may be imposed by the intermediary institution, as indicated in the receipt.

3. Designation of requested remedy. Under § 1005.33(c)(2), the sender may choose to obtain a refund of the amount of funds that was not properly transmitted or delivered to the designated recipient or request redelivery of the amount appropriate to correct the error at no additional cost. Upon receiving the sender's request, the remittance transfer provider shall correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided under § 1005.31(b)(2) or (3), if the sender requests delivery of the amount appropriate to correct the error. The remittance transfer provider may also request that the sender indicate the preferred remedy at the time the sender provides notice of the error. However, if the sender does not indicate the desired remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the report provided under § 1005.33(c)(1) if the provider determines an error occurred.

4. Default remedy. The provider may set a default remedy that the remittance transfer provider will provide if the sender does not designate a remedy within a reasonable time after the

sender receives the report provided under § 1005.33(c)(1). A provider that permits a sender to designate a remedy within 10 days after the provider has sent the report provided under § 1005.33(c)(1) before imposing the default remedy is deemed to have provided the sender with a reasonable time to designate a remedy. In the case a default remedy is provided, the remittance transfer provider must correct the error within one business day, or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed, consistent with § 1005.33(c)(2).

5. Amount appropriate to resolve the error. For purposes of the remedies set forth in § 1005.33(c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii)(A)(1), and (c)(2)(i)(A)(2) the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. The amount appropriate to resolve the error does not include consequential damages.

6. Form of refund. For a refund provided under § 1005.33(c)(2)(i)(A), (c)(2)(ii)(A)(1), or (c)(2)(ii)(B), a remittance transfer provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the appropriate amount. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

7. Remedies for incorrect amount paid. If an error under § 1005.33(a)(1)(i) occurred, the sender may request the remittance transfer provider refund the amount necessary to resolve the

error under § 1005.33(c)(2)(i)(A) or that the remittance transfer provider make the amount necessary to resolve the error available to the designated recipient at no additional cost under § 1005.33(c)(2)(i)(B).

8. Correction of an error if funds not available by disclosed date. If the remittance transfer provider determines an error of failure to make funds available by the disclosed date occurred under § 1005.33(a)(1)(iv), it must correct the error in accordance with § 1005.33(c)(2)(ii)(A), as applicable, and refund any fees imposed for the transfer (unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer), whether the fee was imposed by the provider or a third party involved in sending the transfer, such as an intermediary bank involved in sending a wire transfer or the institution from which the funds are picked up in accordance with § 1005.33(c)(2)(ii)(B).

9. Charges for error resolution. If an error occurred, whether as alleged or in a different amount or manner, the remittance transfer provider may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation).

10. Correction without investigation. A remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements of § 1005.33.

#### 33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred.

1. Error different from that alleged. When a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, it must



comply with the requirements of both § 1005.33(c) and (d), as applicable. The provider may give the notice of correction and the explanation separately or in a combined form.

#### 33(e) Reassertion of Error.

1. Withdrawal of error; right to reassert. The remittance transfer provider has no further error resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. A sender who has withdrawn an allegation of error has the right to reassert the allegation unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The sender must do so, however, within the original 180-day period from the disclosed date of availability or, if applicable, the 60-day period for a notice of error asserted pursuant to § 1005.33(b)(2).

#### 33(f) Relation to Other Laws.

1. Concurrent error obligations. A financial institution that is also the remittance transfer provider may have error obligations under both §§ 1005.11 and 1005.33. For example, if a sender asserts an error under § 1005.11 with a remittance transfer provider that holds the sender's account, and the error is not also an error under § 1005.33 (such as the omission of an EFT on a periodic statement), then the error-resolution provisions of § 1005.11 exclusively apply to the error. However, if a sender asserts an error under § 1005.33 with a remittance transfer provider that holds the sender's account, and the error is also an error under § 1005.11 (such as when the amount the sender requested to be deducted from the sender's account and sent for the remittance transfer differs from the amount that was actually deducted from the account and sent), then the error-resolution provisions of § 1005.33 exclusively apply to the error.

2. Holder in due course. Nothing in this section limits a sender's rights to assert claims and defenses against a card issuer concerning property or services purchased with a credit card under Regulation Z, 12 CFR 1026.12(c)(1), as applicable.

3. Assertion of same error with multiple parties. If a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), and subsequently asserts the same error with another party, that party has no further responsibilities to investigate the error if the error has been corrected. For example, assume that a sender initially asserts an error with a remittance transfer provider with respect to a remittance transfer alleging that US\$130 was debited from his checking account, but the sender only requested a remittance transfer for US\$100, plus a US\$10 transfer fee. If the remittance transfer provider refunds US\$20 to the sender to correct the error, and the sender subsequently asserts the same error with his account-holding institution, the account-holding institution has no error resolution responsibilities under Regulation E because the error has been fully corrected. In addition, nothing in this section prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if a sender receives more than one credit to correct the same error. For example, assume that a sender concurrently asserts an error with his or her account-holding institution and remittance transfer provider for the same error, and the sender receives credit from the account-holding institution for the error within 45 days of the notice of error. If the remittance transfer provider subsequently provides a credit of the same amount to the sender for the same error, the account-holding institution may reverse the amounts it had previously credited to the consumer's account, even after the 45-day error resolution period under § 1005.11.

### 33(g) Error Resolution Standards and Recordkeeping Requirements.

1. Record retention requirements. As noted in § 1005.31(g)(2), remittance transfer providers are subject to the record retention requirements under § 1005.13. Therefore, remittance transfer providers must retain documentation, including documentation related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider. A remittance transfer provider need not maintain records of individual disclosures that it has provided to each sender; it need only retain evidence demonstrating that its procedures reasonably ensure the sender's receipt of required disclosures and documentation.

### Section 1005.34 – Procedures for Cancellation and Refund of Remittance Transfers

#### 34(a) Sender Right of Cancellation and Refund.

1. Content of cancellation request. A request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the transfer. A remittance transfer provider may also request, or the sender may provide, the sender's email address instead of a physical address, so long as the remittance transfer provider is able to identify the transfer to which the request to cancel applies.

2. Notice of cancellation right. Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the sender's right to cancel a remittance transfer on the receipt or combined disclosure given under § 1005.31(b)(2) or (3). In addition, the remittance transfer

provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer using language that is set forth in Model Form A-36 of Appendix A to this part or substantially similar language.

3. Thirty-minute cancellation right. A remittance transfer provider must comply with the cancellation and refund requirements of § 1005.34 if the cancellation request is received by the provider no later than 30 minutes after the sender makes payment. The provider may, at its option, provide a longer time period for cancellation. A provider must provide the 30-minute cancellation right regardless of the provider's normal business hours. For example, if an agent closes less than 30 minutes after the sender makes payment, the provider could opt to take cancellation requests through the telephone number disclosed on the receipt. The provider could also set a cutoff time after which the provider will not accept requests to send a remittance transfer. For example, a financial institution that closes at 5:00 p.m. could stop accepting payment for remittance transfers after 4:30 p.m.

4. Cancellation request provided to agent. A cancellation request provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under § 1005.34(a) when received by the agent.

5. Payment made. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

#### 34(b) Time Limits and Refund Requirements.

1. Form of refund. At its discretion, a remittance transfer provider generally may issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card

account in the amount of the payment. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

2. Fees and taxes refunded. If a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must refund all funds provided by the sender in connection with the remittance transfer, including any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body.

#### Section 1005.35 – Acts of Agents

1. General. Remittance transfer providers must comply with the requirements of subpart B, including, but not limited to, providing the disclosures set forth in § 1005.31 and providing any remedies as set forth in § 1005.33, even if an agent or other person performs functions for the remittance transfer provider, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

#### Section 1005.36 – Transfers Scheduled in Advance

1. Applicability of subpart B. The requirements set forth in subpart B apply to remittance transfers subject to § 1005.36, to the extent that § 1005.36 does not modify those requirements. For example, the foreign language disclosure requirements in § 1005.31(g) and related commentary continue to apply to disclosures provided in accordance with § 1005.36(a)(2).

### 36(c) Cancellation.

1. Scheduled remittance transfer. Section 1005.36(c) applies when a remittance transfer is scheduled by the sender at least three business days before the date of the transfer, whether the sender schedules a preauthorized remittance transfer or a one-time transfer. A remittance transfer is scheduled if it will require no further action by the sender to send the transfer after the sender requests the transfer. For example, a remittance transfer is scheduled at least three business days before the date of the transfer, and § 1005.36(c) applies, where a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 15, if it will require no further action by the sender to send the transfer after the sender requests the transfer. A remittance transfer is not scheduled, and § 1005.36(c) does not apply, where a transfer occurs more than three days after the date the sender requests the transfer solely due to the provider's processing time. The following are examples of when a sender has not scheduled a remittance transfer at least three business days before the date of the remittance transfer, such that the cancellation rule in § 1005.34 applies.

i. A sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3.

ii. A sender on March 1 requests that a remittance transfer provider send a remittance transfer on March 15, but the provider requires the sender to confirm the request on March 14 in order to send the transfer.

iii. A sender on March 1 requests that a remittance transfer provider send an ACH transfer, and that transfer is sent on March 2, but due to the time required for processing, funds will not be deducted from the sender's account until March 5.

2. Cancelled preauthorized remittance transfers. For preauthorized remittance transfers, the provider must assume the request to cancel applies to all future preauthorized remittance transfers, unless the sender specifically indicates that it should apply only to the next scheduled remittance transfer.

3. Concurrent cancellation obligations. A financial institution that is also a remittance transfer provider may have both stop payment obligations under § 1005.10 and cancellation obligations under § 1005.36. If a sender cancels a remittance transfer under § 1005.36 with a remittance transfer provider that holds the sender's account, and the transfer is a preauthorized transfer under § 1005.10, then the cancellation provisions of § 1005.36 exclusively apply.

#### Appendix A – Model Disclosure Clauses and Forms

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2. Use of forms. The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of sections §§ 1005.5(b)(2) and (b)(3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(d)(1) and (d)(2), 1005.18(c)(1) and (c)(2), 1005.31, and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively.

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4. Model forms for remittance transfers. The Bureau will not review or approve disclosure forms for remittance transfer providers. However, this appendix contains 12 model forms for use in connection with remittance transfers. These model forms are intended to

demonstrate several formats a remittance transfer provider may use to comply with the requirements of § 1005.31(b). Model Forms A-30 through A-32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A-33 through A-35 demonstrate how a provider could provide the required disclosures for dollar-to-dollar remittance transfers. These forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of § 1005.31(c)(1) and (2), in both a register receipt format and an 8.5 inch by 11 inch format. Model Form A-36 provides long form model error resolution and cancellation disclosures required by § 1005.31(b)(4), and Model Form A-37 provides short form model error resolution and cancellation disclosures required by § 1005.31(b)(2)(iv) and (b)(2)(vi). Model Forms A-38 through A-41 provide language for Spanish language disclosures.

i. The model forms contain information that is not required by subpart B, such as a confirmation code and the sender's name and contact information. Additional information not required by subpart B may be presented on the model forms as permitted by § 1005.31(c)(4). Any additional information must be presented consistent with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of § 1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A-30 to A-41.



iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information contained in the model forms that is intended to demonstrate how to complete the information in the model forms—such as names, addresses, and websites; dates; numbers; and State-specific contact information—with information applicable to the remittance transfer.

B. Eliminating disclosures that are not applicable to the transfer, as permitted under § 1005.31(b).

C. Correcting or updating telephone numbers, mailing addresses, or website addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to “estimated” in close proximity to the specified terms in § 1005.31(b)(1) and (b)(2), as required under § 1005.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of § 1005.31(g).

G. Substituting cancellation language to reflect the right to a cancellation made pursuant to the requirements of § 1005.36(c).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by § 1005.31(c)(4).