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Part VI

Bureau of Consumer Financial Protection

12 CFR Part 1005
Electronic Fund Transfers (Regulation E); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2014–0008]

RIN 3170–AA45

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend subpart B of Regulation E, which implements the Electronic Fund Transfers Act, and the official interpretation to the regulation. The proposal would extend a temporary provision that permits insured institutions to estimate certain pricing disclosures pursuant to section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Absent further action by the Bureau, that exception expires on July 21, 2015. Based on a preliminary determination that the termination of the exception would negatively affect the ability of insured institutions to send remittance transfers, the Bureau is proposing to extend the temporary exception by five years from July 21, 2015, to July 21, 2020. The Bureau is also proposing several clarifying amendments and technical corrections to the final rule and commentary.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2014–0008 or RIN 3170–AA45, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jane G. Raso, Jennifer Kozma, and Shiri Wolf, Counsels; Eric Goldberg, Senior Counsel, Office of Regulations, at (202) 435–7700 or *CFPB_RemittanceRule@consumerfinance.gov* (please do not submit comments on the proposal to this email address). Please also visit the following Web site for additional information about the remittance rule: *http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010), amended the Electronic Fund Transfers Act (EFTA) by establishing a new and comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. The statute defines ''remittance transfer'' to include most electronic transfers of funds sent by consumers in the United States to recipients in other countries. Between February 2012 and August 2013, the Bureau issued several final rules concerning remittance transfers pursuant to the Dodd-Frank Act (collectively, the 2013 Final Rule or the Remittance Rule). The 2013 Final Rule took effect on October 28, 2013.

This document proposes several amendments to the provisions adopted by the 2013 Final Rule to refine, clarify, or revise regulatory provisions and official interpretations previously adopted by the Bureau.

A. Temporary Exception

EFTA section 919(a)(4) creates a temporary exception that allows covered remittance transfer providers to estimate fees and exchange rates in certain circumstances; the exception expires five years after the enactment of the Dodd-Frank Act, or July 21, 2015.[1] However, if the Bureau determines that expiration of the temporary exception would negatively affect the ability of insured institutions to send remittances to locations in foreign countries, the statute permits the Bureau to extend the temporary exception for up to ten years after enactment of the Dodd-Frank Act (*i.e.,* to July 21, 2020). *See* EFTA section 919(a)(4)(B).

The Bureau is proposing to extend the Regulation E estimation provision that implements this statutory provision, § 1005.32(a) in the 2013 Final Rule. Section 1005.32(a) allows remittance transfer providers to estimate certain third-party fees and exchange rates associated with a remittance transfer if certain conditions are met, namely, that: (1) The provider is an insured depository institution or credit union; (2) the remittance transfer is sent from the sender's account with the provider; and (3) the provider cannot determine the exact amounts for reasons outside of its control.

To assist the Bureau in determining the appropriateness of extending the temporary exception, Bureau staff conducted outreach, including interviewing approximately 35 industry and consumer group stakeholders after the 2013 Final Rule took effect to gather information on the remittance transfer market; industry practices, including the extent of reliance on the temporary exception; and the impact of the exception and its potential expiration on providers and consumers.

Based on this outreach and other research and analysis, the Bureau has preliminarily determined that the termination of the temporary exception would negatively affect the ability of insured institutions to send remittance transfers. Thus, the Bureau is proposing to amend § 1005.32(a)(2) by extending the temporary exception by five years from July 21, 2015, to July 21, 2020.

B. Additional Clarifications

Additionally, the Bureau is proposing several clarificatory amendments and technical corrections to the Remittance Rule. First, the Bureau seeks comment on whether (and if so, how) it should clarify how U.S. military installations abroad are treated for purposes of the Remittance Rule. The Bureau believes there is a potential for confusion in their treatment because the Remittance Rule does not expressly address their status. Second, the Bureau proposes to clarify that whether a transfer from an account is for personal, family, or household

[1] Public Law 111–203 was signed into law on July 21, 2010.

purposes (and thus, whether the transfer could be a remittance transfer) is determined by ascertaining the purpose for which the account was created. Third, the Bureau proposes to clarify that faxes are considered writings for purposes of the Remittance Rule, and that, in certain circumstances, a remittance transfer provider may provide oral disclosures after receiving a remittance inquiry from a consumer in writing. Finally, the Bureau is proposing to clarify two of the rule's error resolution provisions. More specifically, the Bureau is proposing to clarify what constitutes an ''error'' caused by delays related to fraud and related screening, and to clarify the remedies for certain errors.

II. Background

A. Types of Remittance Transfers

As discussed in more detail in the 2013 Final Rule, consumers can choose among several methods of transferring money to foreign countries. 77 FR 6193 (Feb. 7, 2012). These methods generally involve either closed network or open network systems, although hybrids between open and closed networks also exist. Consistent with EFTA section 919, the 2013 Final Rule applies to remittance transfers sent through any electronic mechanism, including closed network and open network systems, or some hybrid of the two. As detailed below, in practice, the situations in which the temporary exception applies frequently involve transfers remitted through open networks.

Closed Networks and Money Transmitters

In a closed network, a remittance transfer provider uses either its own operations or a network of agents or other partners to collect funds from senders in the United States and disburse those funds to designated recipients abroad. Through the provider's contractual arrangements with those agents or other partners, the provider can exercise some control over the remittance transfer from end to end, including to set, limit, and/or learn of fees, exchange rates, and other terms of service. Accordingly, the Bureau expects that a provider that is sending remittance transfers using some version of a closed network is likely able to leverage its control and knowledge of the transfer terms in order to be able to disclose the exact exchange rates and third-party fees that apply to remittance transfers.

Non-depository institutions, known generally as money transmitters, are the type of remittance transfer providers that most frequently use closed networks to send remittance transfers. Remittance transfers sent through money transmitters can be funded by the sender and received abroad using a variety of payments devices. However, the Bureau believes that most remittance transfers sent by money transmitters are currently sent and received abroad in cash, rather than as, for example, debits from and/or direct deposits to accounts held by depository institutions or credit unions.

Open Networks and Wire Transfers

As the data discussed below indicates, the most common form of open network remittance transfer is a wire transfer, an electronically transmitted order that directs a receiving institution to deposit funds into an identified beneficiary's account. Unlike closed network transactions, which generally can only be sent to entities that have signed on to work with the specific provider in question, wire transfers can reach most banks (or other similar institutions) worldwide through national payment systems that are connected through correspondent and other intermediary bank relationships. Unlike closed networks, open networks are typically used to send funds from and to accounts at depository institutions, credit unions, or similar financial institutions. The Bureau believes that the great majority of open network transfers are provided by insured institutions (including credit unions) and that, in turn, open network transfers are the most common type of remittance transfer provided by insured institutions and broker-dealers. However, some money transmitters may also use open networks to send some or all of their remittance transfers.

In an open network, the remittance transfer provider with which the consumer interfaces, *i.e.,* the originating entity, typically does not have control over, or a relationship with, all of the participants in the remittance transfer. The provider may communicate indirectly with the receiving institution by sending funds and payment instructions to a correspondent institution, which will then transmit the instructions and funds to the recipient institution directly, such as in the form of a book transfer, or indirectly through other intermediary institutions (a serial payment). Alternatively, under certain circumstances, the sending institution may send payment instructions directly to the recipient institution, but it will nevertheless rely on a network of intermediary bank relationships to send funds for settlement (a cover payment). In some cases, depending on how the transfer is sent, any one of the intermediary institutions through which the remittance transfer passes may deduct a fee from the principal amount (sometimes referred to as a lifting fee). Likewise, if the originating institution does not conduct any necessary currency exchange, any institution through which the funds pass potentially could perform the currency exchange before deposit into the designated recipient's account.

Institutions involved in open network transfers may learn about each other's practices regarding fees or other matters through contractual or other relationships, through experience in sending such transfers over time, through reference materials, through information provided by the consumer, or through surveying other institutions. However, at least until the implementation of the 2013 Final Rule, intermediary and recipient institutions did not, as a matter of uniform practice, communicate with originating entities regarding the fees and exchange rates that institutions might apply to transfers. Further, as the Bureau has previously noted, the communication systems used to send these transfers typically do not facilitate two-way, real-time transmission of information about the exchange rate and fees associated with the transfers sent through them. *See* 78 FR 30662, 30663 (May 23, 2013) (May 2013 Final Rule). As is explained in more detail below, the Bureau believes that this is largely due to these characteristics of open network systems and that insured institutions using those networks are sometimes relying on the temporary exception to estimate exchange rates and/or intermediary fees (known as covered third-party fees in the Remittance Rule).

International ACH

In recent years, some depository institutions and credit unions have begun to send remittance transfers through the automated clearing house (ACH) system. In the February 2012 Final Rule, the Bureau explained that it considered international ACH transfers to be open network transactions, because, 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. The Bureau acknowledged, however, that international ACH transfers also share some characteristics of closed network transfers, in that the agreements among gateway ACH operators and the United States and

foreign entities involved may be used to control the amount and type of fees that are charged and/or exchange rates that are applied in connection with a remittance transfer. To maintain consistency with the February 2012 Final Rule, international ACH transfers are discussed herein as open network transactions.

Available Remittance Transfer Market Share Data

Based on available information and as discussed in greater detail below, the Bureau believes that closed network transactions make up the great majority of the remittance transfers sent. Relatedly, the Bureau believes that, collectively, money transmitters send far more remittance transfers each year than depository institutions and credit unions. The Bureau recently estimated that money transmitters annually send about 150 million international money transfers, most of which the Bureau believes would likely qualify as remittance transfers pursuant to § 1005.30(e) and, thus, be covered by the Remittance Rule. *See* 79 FR 5302, 5306. (Jan. 31, 2014). By comparison, information reported by credit unions to the National Credit Union Administration (NCUA) suggests that credit unions may have collectively sent less than 1% of this total in 2013 (in fact, less than 1 million remittance transfers combined). The Bureau estimates that depository institutions send many more remittance transfers than credit unions, due to the relative collective size of depository institutions and credit unions, but still far fewer than money transmitters. For example, based on its interviews of some depository institutions, the Bureau roughly estimates that depository institutions collectively may send only 10 percent or less of the estimated 150 million remittance transfers sent by money transmitters. On the other hand, the Bureau believes that the average size of the transfers sent by depository institutions and credit unions is larger than the average size of a remittance transfer sent by a money transmitter; a transfer sent by a depository institution or credit union may be in the thousands of dollars, while the Bureau estimates that the average size of remittance transfers sent by money transmitters average in the hundreds of dollars. *See* 79 FR at 5306.[2]

B. Section 1073 of the Dodd-Frank Act

Section 1073 of the Dodd-Frank Act amended the EFTA by establishing a new consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions sent by remittance transfer providers, section 1073 created a new EFTA section 919 and generally requires: (i) The disclosure of the actual exchange rate and remitted amount to be received prior to and at the time of payment by the consumer; (ii) cancelation and refund rights; (iii) the investigation and remedy of errors by providers; and (iv) liability standards for providers for the acts of their agents. 15 U.S.C. 1693o–1.

EFTA section 919 provides two exceptions to the requirement that providers disclose actual amounts.[3] The first, the temporary exception, is an accommodation for insured depository institutions and credit unions, in apparent recognition of the fact that these institutions might need additional time to develop the necessary systems or protocols to disclose the exchange rates and/or covered third-party fees that might be imposed on a remittance transfer. The temporary exception permits an insured institution that is sending a remittance transfer from the sender's account to provide reasonably accurate estimates of the amount of currency to be received where that institution is ''unable to know [the amount], for reasons beyond its control'' at the time that the sender requests a transfer through an account held with the institution. EFTA section 919(a)(4)(A). The temporary exception sunsets five years from the date of enactment of the Dodd-Frank Act (*i.e.,* July 21, 2015), but permits the Bureau to extend that date for no more than five years (*i.e.,* July 21, 2020) if it determines that termination of the temporary exception would negatively affect the ability of depository institutions and credit unions to send remittance transfers. EFTA section 919(a)(4)(B).

The second statutory exception is permanent; it provides that if the Bureau determines that a recipient country does not legally allow, or that the method by which the 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).

C. Remittance Rulemakings Under the Dodd-Frank Act

The Bureau published three final rules in 2012 and two final rules in 2013 to implement section 1073 of the Dodd-Frank Act. These five final rules are summarized below.

The 2012 Final Rules

The Board of Governors of the Federal Reserve System (the Board) first proposed in May 2011 to amend Regulation E to implement the remittance transfer provisions in section 1073 of the Dodd-Frank Act. 76 FR 29902 (May 23, 2011). On February 7, 2012, the Bureau finalized the Board's proposal in the February 2012 Final Rule as authority to implement the new Dodd-Frank Act provisions amending the EFTA had transferred from the Board to the Bureau on July 21, 2011. *See* 12 U.S.C. 5581(bb)(1); 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include the EFTA).

The February 2012 Final Rule includes provisions that generally require a remittance transfer provider to provide to a sender a written pre-payment disclosure containing detailed information about the transfer requested by the sender, including, among other things, the exchange rate, certain fees and taxes, and the amount to be received by the designated recipient. In addition to the pre-payment disclosure, the provider also must furnish to a sender a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information, such as the date of availability of the funds, the designated recipient's name and, if provided, contact information, and information regarding the sender's error resolution and cancellation rights. In some cases, providers may provide these disclosures orally or via text message. § 1005.31(a)(3)–(5). As is noted below, the Bureau subsequently modified provisions regarding the disclosure of foreign taxes and certain recipient institution fees in its May 2013 Final Rule.

The February 2012 Final Rule generally requires that disclosures state the actual exchange rate, if any, that will apply to the transfer and the actual amount that will be received by the designated recipient of a remittance transfer, unless an exception applies. Section 1005.32(a) implements the temporary exception and the provision that is now § 1005.32(b)(1) implements the permanent statutory exception. As adopted, this permanent exception permits a remittance transfer provider to

[2] We lack data on the volume of remittance transfers sent by broker-dealers.

[3] Two additional permanent exceptions, in § 1005.32(b)(2) and (b)(3) are discussed below.

rely on a list of countries published by the Bureau to determine whether estimates may be provided.[4]

The February 2012 Final Rule also implements EFTA sections 919(d) and (f), which direct the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies, as well as standards of liability for remittance transfer providers.

The Bureau published an amendment to the February 2012 Final Rule on August 20, 2012.[5] The amendments adopted in the August 2012 Final Rule include a safe harbor defining which persons are not remittance transfer providers for purposes of the Remittance Rule because they do not provide remittance transfers in the normal course of their business. The August 2012 Final Rule also modified several aspects of the February 2012 Final Rule by adding provisions governing remittance transfers that are scheduled before the date of transfer, including a provision allowing estimation for transfers scheduled before the date of transfer. *See* § 1005.32(b)(2). The 2012 Final Rule originally had an effective date of February 7, 2013, but on January 29, 2013, the Bureau temporarily delayed the February 7, 2013 effective date. *See* 78 FR 6025 (Jan. 29, 2013).

The 2013 Final Rule

Following the publication of the February 2012 Final Rule, the Bureau engaged in dialogue with both industry and consumer groups regarding implementation efforts and compliance concerns. As an outgrowth of those conversations, the Bureau decided to propose amendments to specific aspects of the 2012 Final Rule in a notice of proposed rulemaking published on December 31, 2012. *See* 77 FR 77188 (Dec. 31, 2012).

The Bureau finalized these proposed amendments in the May 2013 Final Rule. The May 2013 Final Rule modifies the 2012 Final Rule to make optional, in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution (referred to as non-covered third-party fees) and the requirement to disclose taxes collected by a person other than the remittance transfer provider. In place of these two former requirements, the May 2013 Final Rule requires, where applicable, disclaimers to be added to the rule's disclosures indicating that the recipient may receive less than the disclosed total due to the fees and taxes for which disclosure is now optional. The May 2013 Final Rule also created an additional permanent exception that allows providers to estimate, if they choose to, non-covered third-party fees and taxes collected by a person other than the provider. *See* § 1005.32(b)(3). Finally, the May 2013 Final Rule revised the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information. On August 14, 2013, the Bureau adopted a clarificatory amendment and a technical correction to the May 2013 Final Rule. 78 FR 49365 (Aug. 14, 2013). The 2013 Final Rule became effective on October 28, 2013.

Notice of Proposed Rulemaking Regarding Larger Participants

Section 1024 of the Dodd-Frank Act establishes that the Bureau may supervise certain nonbank covered persons that are ''larger participants'' in consumer financial markets as defined by rule. 12 U.S.C. 5514(a)(1)(B). Pursuant to this authority, the Bureau published a proposal on January 31, 2014, to identify a nonbank market for international money transfers and define ''larger participants'' of this market that would be subject to the Bureau's supervisory program. 79 FR 5302. Specifically, the proposal would extend Bureau supervisory authority to any nonbank international money transfer provider that has at least one million aggregate annual international money transfers to determine compliance with, among other things, the Remittance Rule. The comment period on this proposal ended on April 1, 2014.[6]

D. Implementation Initiatives for the 2013 Final Rule and Related Activities

The Bureau has been actively engaged in an initiative to support implementation of the 2013 Final Rule. For example, the Bureau has established a Web page that contains links to various industry and consumer resources.[7] These resources include a small entity compliance guide that provides a plain-language summary of the 2013 Final Rule and highlights issues that businesses, in particular small businesses, may want to consider when implementing the 2013 Final Rule. A video overview of the rule and its requirements is also available. Consumer resources the Bureau has created include answers to frequently asked questions regarding international money transfers and materials that consumer groups and other stakeholders can use to educate consumers about the new rights provided to them by the Remittance Rule.[8] Some of these resources are available in languages other than English. The Bureau has also conducted media interviews in English and Spanish and participated in other public engagements to publicize the new consumer rights available under the Remittance Rule. Further, the Bureau provides ongoing guidance support to assist industry and others with interpreting the 2013 Final Rule and has spoken at conferences and other fora where it both provided additional guidance on the Remittance Rule and learned from providers and others about efforts to comply with the Rule.

III. Efforts To Reach a Preliminary Determination Regarding the Temporary Exception

As noted, EFTA section 919(a)(4)(B) permits the Bureau to issue a rule to extend the temporary exception if it determines that the termination of the exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers. In the February 2012 Final Rule, the Bureau noted that industry commenters urged the Bureau at that time to make the temporary exception permanent, or in the alternative, extend the exception to July 21, 2020. The Bureau declined to extend the exception in the 2012 February Final Rule because it believed then that it would be premature to make a determination on the extension prior to the rule's release and implementation

[4] *See http://files.consumerfinance.gov/f/201209_CFPB_Remittance-Rule-Safe-Harbor-Countries-List.pdf.* The Bureau republished the list on November 3, 2013. 78 FR 66251 (Nov. 5, 2013). The list contains countries whose laws the Bureau believes prevent providers from determining, at the time the required disclosures must be provided, the exact exchange rate for a transfer involving a currency exchange. However, if the provider has information that a country's laws or the method by which transactions are conducted in that country permit a determination of the exact disclosure amount, the provider may not rely on the Bureau's list. When the Bureau first issued the list of such countries on September 26, 2012, the Bureau stated that the list is subject to change, and invited the public to suggest additional countries to add to the list. The Bureau continues to accept comment on potential changes to this list.

[5] On July 10, 2012, the Bureau also published a technical correction to the February 2012 Final Rule. *See* 77 FR 40459 (July 10, 2012).

[6] The comments submitted regarding this proposed rule are available at *https://federalregister.gov/a/2014-01606.*

[7] *Available at http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/.*

[8] *Available at http://www.consumerfinance.gov/blog/category/remittances/.*

and three years in advance of the July 2015 sunset date. *See* 77 FR 6193, 6202.

Since the Bureau issued the February 2012 Final Rule, the Bureau has supplemented its understanding of the remittance transfer market through information received in the course of subsequent rulemakings, additional research and monitoring of the market, and initiatives related to the implementation of the 2013 Final Rule. The additional research and monitoring have included series of in-depth conversations with several institutions about how they have implemented the requirements of the 2013 Final Rule, participation in industry conferences and related meetings, as well as related monitoring efforts. In addition and as noted above, Bureau staff conducted interviews with approximately 35 industry stakeholders and consumer groups after the Remittance Rule took effect.[9] Through these interviews, the Bureau gathered information regarding remittance transfer providers' reliance on the temporary exception for certain remittance transfers and whether viable alternatives currently exist for those transfers. The Bureau conducted the interviews in order to build on the Bureau's existing knowledge and assist it in making a determination as to whether expiration of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers.[10]

The remittance transfer providers and service providers that the Bureau contacted included community banks, nonbank money transmitters, regional banks, credit unions, nonbank service providers, correspondent banks, broker-dealers, and very large banks that send consumer remittance transfers on behalf of their retail customers and on behalf of other providers. For example, the Bureau contacted providers, such as broker-dealers, that the Bureau believed send transfers via open networks, similar to those used by many insured institutions.[11] Although the temporary exception only applies to insured institutions, the Bureau believed that interviewing certain nonbank money transmitters that send open network transfers without the advantage of the temporary exception would help the Bureau better understand what methods exist for providing exact disclosures for open network transfers because nonbank money transmitters cannot rely on the temporary exception. The correspondent banks and other service providers the Bureau contacted include corporate credit unions, bankers' banks and foreign banks that offer correspondent banking services to U.S. providers, or act as intermediaries in the payment clearing and settlement chain. Insofar as the conversations were voluntary, the Bureau did not ultimately speak with every institution it contacted.

As noted above, the Bureau has also reviewed data collected by the NCUA regarding remittance transfers through its Call Report and Credit Union Profile forms.[12] These data regard the number and types of remittances sent by credit unions, the methods by which credit unions send remittance transfers, and the payment systems credit unions utilize to send remittance transfers. In addition, the Bureau expects to be able to review data about remittance transfer practices collected from depository institutions through the Federal Financial Institutions Examination Council (FFIEC)'s Consolidated Reports of Conditions and Income (FFIEC Call Report), starting with the reports regarding the quarter ending on March 31, 2014.[13] Starting with the report for the quarter ending March 31, 2014, the FFIEC Call Report form will require reporting depository institutions to provide select information regarding remittance transfers including, as relevant here, information on the types of remittance transfers provided and, for institutions that provide more than 100 transfers per year, the number and dollar value of remittance transfers sent by the reporting institutions in their capacity as remittance transfer providers. The report will also include information on the frequency with which a reporting institution uses the temporary exception in its role as a provider.[14]

The Bureau notes that the NCUA and FFIEC call report data do not cover every practice or type of remittance transfer provider and service provider that the Bureau has researched through its market monitoring and research efforts. However, because some call report data regarding remittance transfers will be available for every depository institution and credit union reporting to the NCUA and FFIEC, respectively, the call reports will provide a valuable, if limited, set of comprehensive quantitative data about two categories of remittance transfer providers (depository institutions and credit unions) that complement the more in-depth qualitative information about certain providers and service providers that the Bureau has been able to gather through interviews and other sources. Furthermore, the Bureau notes that the extent of utilization of the temporary exception is not the only, nor necessarily the primary factor that it will consider in determining whether to extend the temporary exception under EFTA section 919(a)(4)(B).

Finally, the Bureau also notes that its conversations included consultations with a number of consumer groups to attempt to identify the effect, if any, that estimating covered third-party fees and exchange rates has on consumers as well as the potential effect on consumers of the expiration of the temporary exception.

IV. Legal Authority

Section 1073 of the Dodd-Frank Act created 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. As discussed above, the Dodd-Frank Act established a temporary exception in amending the EFTA such that, subject to rules prescribed by the Bureau, insured depository institutions and credit unions may provide 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. EFTA section 919(a)(4)(A). The Dodd-Frank Act further establishes that the exception shall terminate five years from the date of enactment of the Dodd-Frank Act (*i.e.,* July 21, 2015), unless the Bureau determines that the termination of the exception would negatively affect the ability of depository institutions and credit unions to send remittance transfers, in which case the Bureau may extend the application of the exception to not longer than ten years after the enactment of the Dodd-Frank Act (*i.e.,*

[9] The Office of Management and Budget (OMB) control number for this information collection is 3170–0032.

[10] *See* Consumer Finance Protection Bureau Request for Approval Under the Generic Clearance: Compliance Costs and Other Effects of Regulation, *available at http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201205-3170-003&icID=209232.*

[11] Staff of the Securities and Exchange Commission (SEC) wrote a no-action letter on December 14, 2012 that concludes it will not recommend enforcement actions to the SEC under Regulation E if a broker-dealer provides disclosures as though the broker-dealer were an insured institution for purposes of the temporary exception. The letter is available at *http://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf.*

[12] *See generally http://www.ncua.gov/dataapps/qcallrptdata/Pages/default.aspx.*

[13] *See* FDIC Fin. Inst. Letter 4–2014 (Jan. 24, 2014) (''FIL 4–2014'').

[14] *See* 79 FR 2509 (Jan. 14, 2014); FIL 4–2014.

July 21, 2020). EFTA section 919(a)(4)(B).

In addition, EFTA section 919(d) provides for specific error resolution procedures and directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies. Finally, EFTA section 919(f) requires the Bureau to establish standards of liability for remittance transfer providers, including those providers that act through agents. Except as described below, the proposed rule is proposed under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this Supplementary Information.

V. Section-by-Section Analysis

Section 1005.30 Remittance Transfer Definitions

1005.30(c) Designated Recipient & 1005.30(g) Sender

Application of the Remittance Rule to U.S. Military Installations Abroad

The 2013 Final Rule only applies when a sender located in a ''State'' sends funds to a designated recipient at a location in a ''foreign country.'' [15] *See* § 1005.30(c) and (g). The commentary to the definition of designated recipient further explains that receipt of money at a location in a foreign country depends on whether the funds are received at a location physically outside of any State. *See* comment 30(c)–2.i. In the case of remittance transfers to or from an account, however, the 2013 Final Rule and commentary look to the location of the account rather than the account owner's physical location at the time of transfer. *See* comment 30(c)–2.ii (whether location is in a foreign country); comment 30(g) (whether consumer is located in a State). The Bureau understands that there is a potential for confusion about how these concepts in the 2013 Final Rule apply to transfers of funds to and from U.S. military installations that are within foreign countries because the 2013 Final Rule does not expressly address such transfers.

According to a 2010 Department of Defense report, the United States had 662 military installations in 90 foreign countries.[16] Many of these installations, particularly larger installations and those in more remote locations, host financial institutions that provide services for the electronic transfer of funds. These financial institutions may include depository institutions, credit unions, and agents of nonbank money transmission businesses. The Bureau understands that, typically, these depository institutions or credit unions are branches of U.S. institutions operating under U.S. banking and other laws, and that servicemembers (and others) may establish accounts at such institutions in the United States. The Bureau does not know, however, whether any particular institution might be subject to a host country's banking laws and believes that this may vary depending on the host country and the agreement that allows the U.S. military installation to operate in that country. The Bureau understands that these institutions may offer account-to-account transfers to or from accounts that may be located in the United States or abroad, as well as cash-based transfers.

The Bureau understands that further guidance or clarity regarding the treatment of U.S. military installations abroad may be useful, particularly when cash transfers are sent to and from U.S. military bases abroad. For example, there could be confusion as to whether the Remittance Rule applies when a consumer in the United States sends a cash transfer to be picked up by a recipient at a financial institution on a foreign military base. Depending on whether the financial institution is deemed to be at a location in a ''foreign country'' or a ''State,'' the 2013 Final Rule may or may not apply. There might also be confusion about whether a cash transfer from a consumer on a foreign military installation to a recipient in the surrounding country would be subject to the rule, again depending on whether the foreign military installation is deemed to be in a ''State.''

The Bureau notes, however, that the application of the Remittance Rule could be different for transfers from accounts of persons stationed at U.S. military installations abroad. When a transfer is made from such an account, whether the sender is located in a State is determined by the location of the sender's account rather than the physical location of the sender at the time of the transaction. *See* comment 30(g)–1. Similarly, whether or not the Remittance Rule applies to transfers from the United States to accounts of different persons stationed at U.S. military installations abroad could differ, depending on the locations of those recipients' accounts. Thus, there may also be confusion as to whether the Remittance Rule applies when a transfer is sent from an account in the United States to an account located at a U.S. military installation abroad, to the extent such accounts exist. The Bureau lacks data regarding the number of servicemembers and other individuals who have accounts that are considered to be located on a U.S. military installation abroad.

As the Remittance Rule does not directly address transfers to and from foreign military installations and in light of the uniqueness of U.S. military installations, the Bureau seeks comment on whether and how it should clarify the application of the Remittance Rule to transfers to and from individuals and/or accounts located on U.S. military installations abroad.

The Bureau recognizes that each alternative (either considering the military installations to be in a State, or not) may entail providing the rule's consumer protections to some transfers instead of others. For example, if locations on these installations are treated as being located in a State for purposes of the rule, those sending remittance transfers from the United States to locations on the installation would not receive the consumer protections of the rule. On the other hand, those sending funds from locations on the installations to the surrounding foreign country would receive these protections. Of course, if locations on military installations are treated as being located within a foreign country, the reverse would be true: Transfers from the United States would be covered, but transfers to the surrounding foreign country would not be.

As a result, the Bureau seeks comment on whether or not it is appropriate or advisable to treat locations on U.S. military installations abroad as being located within a State or a foreign country for the purposes of subpart B of Regulation E. The Bureau also seeks data on the relative number of transfers sent to and from individuals and/or accounts located on U.S. military installations abroad so it can better understand the relative consumer protections of each approach. In addition, the Bureau seeks comment on the appropriateness of extending any clarification regarding U.S. military installations to apply to other U.S. government installations abroad, such as U.S. diplomatic missions.

Non-Consumer Accounts

The 2013 Final Rule applies only when the remittance transfer is requested by a consumer primarily for

[15] Under the 2013 Final Rule, a ''designated recipient'' is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country (§ 1005.30(c)) and 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 (§ 1005.30(g)).

[16] *Available at http://www.acq.osd.mil/ie/download/bsr/bsr2010baseline.pdf.*

personal, family, or household purposes. *See* § 1005.30(e) (definition of ''remittance transfer'') and (g) (definition of ''sender''). This qualification is similar to that of subpart A of Regulation E, which applies with respect to accounts only when they are established primarily for personal, family, or household purposes. *See* § 1005.2(b)(1) (definition of ''account''); § 1005.3 (coverage and definition of ''electronic fund transfer'').

The term account as defined in Regulation E does not include accounts held by a financial institution under a bona fide trust agreement, and the commentary to subpart A of Regulation E explains that certain types of accounts, including profit-sharing and pension accounts established under a trust agreement, escrow accounts, and accounts for accumulating funds to purchase U.S. savings bonds are also not accounts under Regulation E. § 1005.2(b)(3); comment 2(b)–3. Furthermore, EFTA, and thus subpart A of Regulation E, applies only to personal accounts, not business accounts. *See* § 1005.2(b)(1); 15 U.S.C. 1693a(2) (the term '' '[a]ccount' means a demand deposit (checking), savings deposit, or other consumer asset account . . . established primarily for personal, family, or household purposes[]'').[17]

When developing the Remittance Rule, the Board had initially proposed defining a sender to be a consumer in a State who requests a remittance transfer provider to send a remittance transfer to a designated recipient. 76 FR 29902, 29939 (proposed 12 CFR 205.30(f)). In response, several commenters suggested that the Bureau limit remittance transfers to those sent for personal, family, or household purposes. Although subpart A of Regulation E's applicability is generally limited to transactions to or from consumer asset accounts, that limitation is contained in the definition of ''account'' in § 1005.2(b), while the Remittance Rule applies to more than just account-based transfers (*e.g.,* cash transfers sent by a money transmitter). As a result, these commenters stated that an individual who requests a non-account based transfer for business purposes could arguably be a ''sender'' under the proposed rule.

To address these concerns, the Bureau adopted in the February 2012 Final Rule the present 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. The Bureau had noted that this revision was consistent with § 1005.2(b) and therefore the 2012 February Final Rule would not apply to business-to-consumer or business-to-business transactions or to transactions that are not for personal, family or household purposes. The Bureau noted that, for example, a transfer requested by a sole proprietor on behalf of his or her company would not be covered by the rule. 77 FR at 6214.

Despite this clarification, the Bureau believes that additional clarification may still be needed regarding treatment of transfers from accounts, as defined in Regulation E. Specifically, the Bureau understands that there may be some confusion regarding whether the purpose of a transfer from an account is determined by the purpose for which the account was established or the purpose of the particular transfer. The Bureau believes that, for purposes of Regulation E, financial institutions often code accounts as being consumer accounts (generally subject to Regulation E) as opposed to business accounts (not subject to Regulation E). Therefore, it could be confusing if providers were required to treat some transfers from business accounts as consumer transactions subject to subpart B of Regulation E but not to subpart A of Regulation E. It might be similarly confusing if some transfers from consumer accounts were treated as business transactions not subject to Regulation E. At the same time, the Bureau believes that judged on a transaction-by-transaction basis some transfers from business accounts might be understood to be sent for personal, family, or household purposes, and that some transfers from consumer accounts may be understood to be sent for business purposes.

The Bureau thus believes it is appropriate to clarify that the 2013 Final Rule applies to transfers from accounts primarily used for personal, family, or household purposes, but not to transfers from non-consumer accounts. The Bureau believes that, at least since the 2013 Final Rule went into effect, remittance transfer providers have considered all transfers from business accounts to be outside the scope of the Rule. In addition, Bureau staff has provided similar informal guidance on this issue. The Bureau believes that the additional, proposed commentary will clarify that, like subpart A, subpart B of Regulation E does not apply to non-consumer accounts.

To clarify this in the commentary to the Remittance Rule, the Bureau is proposing to add comment 30(g)–2, which would explain that under § 1005.30(g), a consumer is a ''sender'' only where he or she requests a transfer primarily for personal, family, or household purposes. A consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under § 1005.30(g). For remittance transfers from an account, the primary purpose for which the account was established determines whether a transfer from that account is requested for personal, family, or household purposes. A transfer that is sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account owned by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g).

Section 1005.31 Disclosures

31(a) General Form of Disclosures

31(a)(2) Written and Electronic Disclosures

Although the 2013 Final Rule requires that disclosures required by subpart B generally be provided to the sender in writing, § 1005.31(a)(2), it does not specify what qualifies as a writing (except to state that written disclosures may be provided on any size of paper, as long as the disclosures are clear and conspicuous, *see* comment 31(a)(2)–2)). During its implementation and market monitoring efforts, the Bureau has come to understand that some senders request remittance transfers by sending a fax to a remittance transfer provider instructing the provider to process the transfer. Similarly, in some cases, the provider may send the required disclosures back to the sender via fax as well.

Although the Remittance Rule does not specifically address disclosures provided pursuant to § 1005.31 or .36 by fax, Bureau staff has noted in informal guidance that disclosures made by fax should be considered to be in writing under the Remittance Rule since such disclosures are generally received on paper in a form the sender can retain. The Bureau proposes to adopt this interpretation in the Remittance Rule.

[17] *See also Shames-Yeakel* v. *Citizens Fin. Bank,* 677 F. Supp. 2d 994, 1006–07 (N.D. Ill. 2009) (distinguishing two types of accounts under the EFTA); *Ironforge.com* v. *Paychex, Inc.,* 747 F. Supp. 2d 384, 402 (W.D.N.Y. 2010) (same).

Thus, the Bureau is proposing a new comment 31(a)–5, which would explain that, for purposes of disclosures required to be provided pursuant to § 1005.31 or § 1005.36, disclosures provided by facsimile transmission (*i.e.,* fax) are considered to be provided in writing and not subject to the additional requirements for electronic disclosures set forth in § 1005.31(a)(2).

The Bureau does not believe that treating faxes as writings will have any significant negative impact on the benefits consumers derive from the Remittance Rule both because many consumers have long communicated with remittance transfer providers via fax and those consumers accept faxes as a legitimate and efficient method of communication. Thus, the Bureau believes it appropriate to treat faxes as a writing for purposes of providing the disclosures required by subpart B of Regulation E.

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

Section 1005.31(a)(3) permits providers to make pre-payment disclosures orally if the ''transaction is conducted orally and entirely by telephone'' and if certain other language and disclosure requirements are met. The Bureau recognizes that senders make requests to remittance transfer providers to send a remittance transfer in many different forms. For example, the Bureau understands that senders may send a provider a fax, email, or mailed letter requesting a remittance transfer, often because a telephone request or a visit to a branch or agent location is impractical (*e.g.,* because the sender is abroad and the provider requires a signature to authorize the transfer). In some circumstances, depending on the nature of the request and the location of the sender, providers have explained that it may be impractical for them to communicate back to the sender via that same means of communication because the sender is far away. For example, if a provider receives a mailed request to send a remittance transfer, a provider might find it impractical to send the pre-payment disclosure or combined disclosure to a sender via the mail and then wait for an acknowledgement from the sender, particularly when the disclosure of an exchange rate is involved.

Under the 2013 Final Rule, a remittance transfer provider may be uncertain as how to provide meaningful and compliant pre-payment disclosures to a sender that is neither physically present nor in ''real time'' communication with a provider's staff. Section 1005.31(e)(1) states that a provider must provide the pre-payment disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. As a result, in such circumstances, senders seeking to initiate a remittance transfer by email, fax, or mailed letter may benefit from receiving pre-payment disclosures from the provider sooner via a telephone call rather than waiting for written or electronic disclosures to be sent. Additionally, providers may frequently need to call senders who send remote and/or time-delayed requests for remittance transfers to confirm various details such that the telephone call would occur in the ordinary course.

In response to inquiries concerning the application of the rule in these circumstances, Bureau staff has explained in informal guidance that it believes that the Remittance Rule's provisions allowing disclosure orally by telephone can, in some cases, be applied to remittance transfers that senders first initiate by fax, mail, or email if the requirements for disclosures for oral transactions are met. *See* § 1005.31(a)(3). Consistent with that informal staff guidance, the Bureau is now proposing to revise comment 31(a)(3)–2 to clarify further when a transaction is conducted orally and entirely by telephone under § 1005.31(a)(3). Comment 31(a)(3)–2 currently explains 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 Bureau is proposing to add to comment 31(a)(3)–2 that a remittance transfer provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. For example, if a sender physically located abroad contacts a U.S. branch of the sender's financial institution and attempts to initiate a remittance transfer by first sending a mailed letter, further communication with the sender by letter may be may be judged impractical due to the physical distance and likely mail delays. In such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to § 1005.31(a)(3) when the provider treats that initial communication as an inquiry and subsequently responds to the consumer's inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

To accommodate this change, the Bureau is also proposing conforming edits to comments 31(a)(3)–1 and 31(e)–1. Comment 31(a)(3)–1 explains when a transaction is conducted partially by telephone and currently explains that a transaction cannot be started in person and then completed by telephone. The proposed change would make clear that comment 31(a)(3)–2 states an alternate situation. Unlike a transaction started in person and completed on the telephone, a transaction that a sender attempts to initiate with a method of communication that the provider believes would be impractical to use to complete the transaction, has not actually started, insofar as the provider treats that initial communication as an inquiry and otherwise conducts the transaction orally and entirely by telephone as contemplated in proposed comment 31(a)(3)–2.

As finalized in the May 2013 Final Rule, comment 31(e)–1 explains when a remittance transfer provider is required to provide pre-payment and combined disclosures to the sender. To accommodate the proposed revision to comment 31(a)(3)–2, the Bureau proposes to add to comment 31(e)–1 the following: For example, a sender that has sent an email, fax, mailed letter, or similar written or electronic communication has not requested a remittance transfer if the provider believes that it is impractical to treat that communication as a request and if the provider treats the communication as an inquiry and subsequently responds to that inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to process a request for a remittance transfer. *See* comment 31(a)(3)–2.

The Bureau recognizes that allowing oral disclosures in the cases contemplated by the proposed comments could result in senders sometimes not receiving written disclosures prior to authorizing a remittance transfer. The Bureau seeks comment on the relative tradeoffs of the various potential approaches to remittance transfers requested in these and similar circumstances.

31(b) Disclosure Requirements

31(b)(2) Receipt

In the February 2012 Final Rule, the Bureau stated that it was appropriate for remittance transfer providers to provide the Bureau's contact information on receipts required by the Remittance Rule, 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). Therefore, § 1005.31(b)(2)(vi) in the 2013 Final Rule required a provider to disclose the contact information for the Bureau, including the Bureau's Web site and its toll-free telephone number. Although the rule did not specify which Bureau Web site should be provided on receipts, the Model Forms published by the Bureau all listed the Bureau's Internet homepage—*www.consumerfinance.gov. See* Model Forms A–31, A–32, A–34, A–35, A–39, and A–40 of appendix A.

The Bureau is in the process of creating a single page that contains resources relevant to international money transfers at *www.consumerfinance.gov/sending-money.* The Bureau is also developing a Spanish language Web site that will have resources relevant to international money transfers at *www.consumerfinance.gov/enviar-dinero.*[18] The Bureau believes that remittance transfer providers may want to use one of these Web sites, as appropriate, on receipts provided to senders so that senders can more easily find relevant Bureau resources or such resources in Spanish when the provider provides the receipt in Spanish. The Bureau seeks comment on whether it should create versions of this Web site in languages other than English and Spanish.

Therefore, the Bureau proposes to add comment 31(b)(2)–4 to explain how remittance transfer providers may satisfy the requirement to disclose the Bureau's Web site. The proposed comment would state that § 1005.31(b)(2)(vi) requires a provider to disclose the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau. Providers may satisfy this requirement by disclosing the Web site of the Consumer Financial Protection Bureau's homepage shown on Model Forms A–31, A–32, A–34, A–35, A–39, and A–40 of appendix A. Alternatively, providers may, but are not required to, disclose the Bureau's Web site as the address of a page on the Bureau's Web site that provides information for consumers about remittance transfers, currently, *www.consumerfinance.gov/sending-money.* In addition, providers making disclosures in a language other than English pursuant to § 1005.31(g) may, but are not required to, disclose a Bureau Web site that provides information for consumers about remittance transfers that is in the relevant language, if such Web site exists. For example, a provider that is making disclosures in Spanish under § 1005.31(g) may, but is not required to, disclose the Bureau's Web site on Spanish-language disclosures as the page on the Bureau's Web site that provides information about remittance transfers in Spanish, currently, *www.consumerfinance.gov/enviar-dinero.*

While disclosure of a Bureau Web site remains a requirement of the Remittance Rule, adoption of this proposed comment would not require remittance transfer providers to change existing receipts that mirror the Bureau's current model forms and link to *www.consumerfinance.gov* if the provider did not choose to make this change. Nevertheless, if this proposed comment is adopted, the Bureau would urge providers to consider adjusting their receipts to refer to these other Web sites, as appropriate, in the future and may eventually consider requiring providers to do so if, for instance, the Bureau were to conclude that other changes to the receipts were necessary.

To accommodate new proposed comment 31(b)(2)–4, the Bureau proposes to renumber current comments 31(b)(2)–4, –5, and –6 as comments 31(b)(2)–5, –6, and –7, respectively, without any other changes.

Section 1005.32 Estimates

32(a) Temporary Exception for Insured Institutions

As noted above, the EFTA, as amended by the Dodd-Frank Act, generally establishes that disclosures provided to senders by remittance transfer providers must state, among other things, the actual exchange rate and amount to be received by the designated recipient. EFTA section 919 provides two exceptions to the requirement, one of which is the temporary exception in EFTA section 919(a)(4), which expires on July 21, 2015. EFTA section 919(a)(4)(B), in turn, permits the Bureau to issue a rule to extend the temporary exception up to five more years, to July 21, 2020, if it determines that the termination of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers.

To implement EFTA section 919(a)(4), the Bureau adopted § 1005.32(a) in the February 2012 Final Rule. Section 1005.32(a)(1), as amended by the May 2013 Final Rule, provides that, when three conditions are met, the remittance transfer provider may provide estimates instead of actual amounts for the following: (1) The exchange rate used by the provider; (2) the total amount, in the currency in which the funds will be received, that will be transferred to the designated recipient inclusive of covered third-party fees imposed on the transfer amount, if any; (3) any covered third-party fees, in the currency in which the funds will be received by the designated recipient; and (4) the amount that will be received by the designated recipient, in the currency in which the funds will be received (*i.e.,* the amount received after deducting covered third-party fees).

Consistent with the statute, the three conditions that must be met before a remittance transfer provider can provide an estimate pursuant to the temporary exception are: (1) The remittance transfer provider cannot determine the exact amounts for reasons beyond its control; (2) the provider is an insured institution; and (3) the remittance transfer is sent from the sender's account with the institution. § 1005.32(a)(1). The Remittance Rule explains that insured depository institutions, insured credit unions, and uninsured U.S. branches and agencies of foreign depository institutions are considered ''insured institutions'' for purposes of the temporary exception.[19] § 1005.32(a)(3). Comment 32(a)(1)–1 explains that an insured institution cannot determine exact amounts ''for reasons beyond its control'' when a person other than the insured institution, or a person with which the insured institution has no correspondent relationship, sets the exchange rate or imposes a covered third-party fee. Comments 32(a)(1)–2 and –3 provide, respectively, examples of scenarios that qualify and fail to qualify for the temporary exception.

Related to § 1005.32(a), the Bureau adopted § 1005.32(c), enumerating the list of approaches remittance transfer providers can use to estimate exchange rates and fees pursuant to the temporary exception and the permanent exception. *See* § 1005.32(a) and (b)(1). Section 1005.32(c)(1) provides that with respect to the disclosure of exchange rates, the estimation methods are: (1) For certain remittance transfers sent via international ACH, the most recent exchange rate set by the recipient

[18] Although under development, the Bureau expects these pages to contain information regarding consumers' rights under the Remittance Rule, how consumers can use the receipts that they receive from providers, and how and when to lodge a complaint with the Bureau. The Bureau expects that the English and Spanish versions of this Web site will be available by the time that the Bureau finalizes this proposal.

[19] Accordingly, for purposes of the discussion of the temporary exception, remittance transfer providers eligible to rely on the temporary exception are generally referred to herein as ''insured institutions.''

country's central bank or other governmental authority and reported by a Federal Reserve Bank; (2) the most recent publicly available wholesale exchange rate and, if applicable, any spread that the provider or its correspondent typically applies to such a wholesale rate for remittance transfers for that currency; and (3) 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. Section 1005.32(c)(3)(ii) provides the following estimation methods with respect to covered third-party fees imposed by intermediary institutions or the designated recipient's institution: (1) The provider's most recent remittance transfer to the designated recipient's institution; or (2) a representative transmittal route identified by the provider. Under § 1005.32(c), providers also have the option to use an alternative approach to estimate exchange rates and covered third-party fees so long as the designated recipient receives the same, or greater, amount of funds as compared to the amount disclosed to the sender pursuant to the Remittance Rule (catch-all method).[20]

General Findings From Interviews and Other Outreach Initiatives

To determine if the statutory predicate to extending the temporary exception exists, namely, that sunset of the exception would negatively affect insured institutions' ability to send remittance transfers, the Bureau endeavored to understand how insured institutions are providing remittance transfers from accounts, how, whether, when, and why they are using the temporary exception, and, to the extent insured institutions are using the exception, whether its expiration would negatively affect these institutions' ability to continue sending those remittance transfers for which they now use the temporary exception. The Bureau also sought to understand the impact on consumers of the temporary exception and its potential expiration.

As is explained above, the Bureau used information from a variety of sources to enhance its understanding of the above issues. These included interviews with banks and credit unions of various sizes, including community banks, nonbank money transmitters, nonbank service providers, correspondent banks, broker-dealers, and very large banks that send consumer remittance transfers on behalf of their retail customers and on behalf of other providers. The Bureau has not, however, spoken with all or a majority of entities involved in sending remittance transfers. The Bureau believes that despite the relatively small sample size of its informal interviews, the process undertaken provides significant insights. This is in part because the Bureau believes it spoke with entities responsible for sending or providing information to those entities sending a large portion of remittance transfers that could qualify for the temporary exception.

Nonetheless, the Bureau recognizes that this summary of market practice may not accurately represent all details of either how insured institutions send remittance transfers from accounts, or how other institutions send open network transfers. Thus, the Bureau seeks comments on the accuracy of its findings about how these providers send these remittance transfers as well as any insights or data on remittance transfers not reflected here. The Bureau also seeks comment regarding the consumer impact of providing estimated disclosures, including whether and the extent to which consumers have received estimates that are different from actual exchange rates and amounts received by the designated recipient, and other potential harm or hardships caused by the disclosure of estimates pursuant to the temporary exception.

Industry Implementation of the Remittance Rule

As noted earlier, the Bureau believes that the great majority of remittance transfers sent by insured institutions from accounts are wire transfers, which are typically considered to be open network transfers. The Bureau believes that ACH transfers are used by a limited number of insured institutions sending remittance transfers to a limited number of foreign countries, and that only a few insured institutions use closed networks for remittance transfers from accounts. These institutions typically send international wires as well.

With regard to wire transfers, the Bureau believes that the majority of insured institutions providing remittance transfers from accounts get the necessary information about exchange rates and covered third-party fees (hereinafter, the covered information) from service providers (including correspondent banks and nonbank service providers offering specialized international transfer services); those intermediary service providers, in turn, may rely on other entities to generate the information about covered third-party fees and, often, exchange rates.[21] Indeed, many insured institutions, and small institutions in particular, rely almost entirely on intermediary service providers to provide a complete solution for complying with the requirements of the Remittance Rule that integrates with the institutions' existing system.

The Bureau believes that the market for covered information has developed in such a way that much of the information EFTA section 919 and the 2013 Final Rule require providers to disclose is originally generated by a limited number of entities acting as information aggregators for providers that are sending wire transfers. The information generated by these information aggregators may be exact fee and exchange rate figures or it may be estimates of these amounts (presumably determined pursuant to one of the methods of estimation permitted by the Remittance Rule). In the remittance transfer market, these information aggregators may act as remittance transfer providers themselves (*i.e.,* they may originate remittance transfers for their own consumer clients), or may exclusively act as service providers.

Based on its outreach efforts, the Bureau understands that insured institutions that are remittance transfer providers have, for the most part, already invested significant time and energy in compliance with the requirements of the Remittance Rule whether they are providing exact disclosures or using the temporary exception. Moreover, most institutions reported that, where possible, they provided exact disclosures and only rely on the temporary exception where they deemed it necessary to do so. Indeed, the Bureau's understanding of the market indicates that insured institutions are typically disclosing exact amounts where they believe they are able to do so, even though they might have additional flexibility pursuant to the temporary exception to estimate some disclosed amounts in certain cases had they developed different compliance solutions. This is a significant change from what those same insured institutions generally did before the effective date of the 2013 Final Rule,

[20] As amended by the May 2013 Final Rule, providers are not required to use the estimation methods in § 1005.32(c)(3)(ii) or the catch-all method to estimate non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider when a provider chooses to disclose these amounts. Instead, pursuant to § 1005.32(b)(3), such estimates simply have to be based on ''reasonable sources of information.'' For a list of such information, *see* comment 32(b)(3)–1.

[21] For purposes of this discussion and unless otherwise noted, the term service provider refers to the entity that is generating the information and/or sending the remittance transfer.

when Federal law did not generally require price disclosures for remittance transfers. To the extent that insured institutions provided disclosures before October 28, 2013, we believe these institutions generally did not disclose, or have access to, all of the information required to be disclosed by the 2013 Final Rule.

Thus, to prepare for the Remittance Rule's effective date, many insured institutions (and/or the service providers on which they rely) had to engage in preparations including changes in operations and systems, to be able to provide the required disclosures. Such changes might have included, for example, changing their correspondent banking relationships, establishing or expanding other relationships with new foreign and domestic institutions, and enhancing their information gathering capabilities. Furthermore, the Bureau understands that because the temporary exception is set to expire less than two years after the effective date of the 2013 Final Rule absent Bureau action, some insured institutions (and/or service providers) have been investing in the development of long-term solutions that would allow them to provide senders with exact fee and exchange rate amounts for an increasing percentage of their remittance transfers. In sum, although significant work remains, the Bureau believes that the majority of the insured institutions the Bureau spoke with that are using the exception have been working and are continuing to work to provide accurate disclosures in as many cases as possible.

Notwithstanding the significant progress these institutions have made, insured institutions and their service providers report that they continue to face formidable challenges in attempting to expand their access to covered information. As a result and as explained in greater detail below, the Bureau believes that both small and large insured institutions continue to rely on the temporary exception for transfers from accounts when they believe fee and exchange rate information is not readily available. These institutions have indicated to the Bureau that they are unlikely to find an alternative to their reliance on the temporary exception by July 21, 2015, for at least some portion of the remittance transfers for which they currently use the temporary exception. The Bureau has preliminarily determined, therefore, that these institutions' ability to send remittance transfers would be negatively impacted if the temporary exception is not extended.

Current Industry Practice—Exchange Rates

As noted, the Bureau conducted outreach on how insured institutions disclose exchange rates where necessary and whether these insured institutions are using the temporary exception to do so. The Bureau understands that use of the temporary exception for estimating the foreign exchange rate is quite limited—most insured institutions and service providers told the Bureau that they are not using it, or that they are using it less frequently to estimate exchange rates than they do to estimate covered third-party fees. Most companies with which the Bureau spoke stated that when the 2013 Final Rule requires disclosure of an exchange rate, they are able to disclose an exact exchange rate in most cases and for most currencies in which their customers seek to send remittance transfers.

In addition, the Bureau has learned that, as a result of the 2013 Final Rule's disclosure requirements, a possibly substantial portion of insured institutions have changed their business practices: prior to the rule, those institutions sent out wires denominated in U.S. dollars, even when they knew those wires might be sent to accounts denominated in a foreign currency (and, thus, that the currency would be exchanged before being deposited into the recipient's account). As a result of the 2013 Final Rule, the Bureau believes some of these institutions are now offering to send wires denominated in the appropriate foreign currency by obtaining an exchange rate from service providers.

In general, remittance transfer providers either generate an exchange rate in-house or obtain one from a service provider (which may be one of the limited number of information aggregators described above or some other entity). Some insured institutions reported that service providers provide them with exchange rates that are fixed for a certain time (such as from a rate sheet provided at the start of each day). Other insured institutions stated that they receive exchange rates from the service provider at the time of each sender's request. In either of these cases, the insured institutions disclose to their customers an exact rate equal either to the rate provided by the service provider or that rate plus a spread applied by the insured institution. Thus, for these remittance transfers, providers cannot use (and do not need to use) the temporary exception to disclose an estimated exchange rate in most cases.

Nonetheless, the Bureau believes that there are a number of currencies that, in the view of any particular institution, are either (1) so thinly traded that insured institutions or their service providers find that purchasing such currencies for consumer wire transfers is impossible, impracticable, or economically undesirable, or (2) otherwise impracticable to purchase for other reasons, such as foreign laws barring purchase of that currency in the United States. While these include currencies used in countries currently covered by the permanent exception under § 1005.32(b)(1), they also include other currencies. The Bureau does not know all of these currencies, nor does it have information on whether and to what extent such currencies are viewed and treated differently by different providers.

In conversations with the Bureau, insured institutions and service providers explained that they believe that they may not have a viable mechanism to provide exact exchange rate information for remittance transfers received in the currencies that fall into either of the two categories described above. These entities indicated to the Bureau that typically, the volume of remittance transfers that they provide in those currencies is low, leading them to believe that it is impracticable to expend significant resources to disclose exact exchange rates for those remittance transfers, even if such efforts were possible. Therefore, the Bureau believes that without the temporary exception, some insured institutions would cease or limit remittances denominated in those currencies for which they are unable to use a set exchange rate, negatively affecting their ability to send remittance transfers to certain foreign locations.

Current Industry Practice—Covered Third-Party Fees

The Bureau also conducted outreach about how insured institutions sending wires via an open remittance transfer network disclose covered third-party fees and use the temporary exception to disclose estimates of covered third-party fees in some cases. Based on this outreach, the Bureau believes that a small number of insured institutions, mostly very large ones and including some institutions that act as information aggregators, are able to generate directly information about third-party fees. Most other insured institutions, however, obtain covered third-party fee information directly or indirectly from the limited number of entities described above as information aggregators.

For a particular institution, the information aggregator used to obtain fee information may be the same service provider used to obtain exchange rates, but this is not always the case. Nevertheless, we believe that information aggregator is generally only providing information for remittance transfers it sends, using specific methods and/or corridors; as such, in order for an insured institution to rely on the fee information provided by an information aggregator for a particular remittance transfer, the insured institution must also generally use the information aggregator to help process the remittance transfer.

In most cases, both the large institutions that generate covered third-party information directly and the information aggregators that provide such information for their clients either limit the fees that will be charged for a particular remittance transfer or obtain exact fee information for the transfer such that reliance on the temporary exception is unnecessary. In the alternative, they use the temporary exception. In many cases, the information aggregators are able to leverage relationships in order to facilitate the gathering (or control) of relevant information. These relationships can take various forms, as detailed below, and each information aggregator may use a combination of these methods. The effectiveness and prevalence of each method varies, and may depend on the presence of established relationships between the insured institution (or its service provider) and the other institutions involved in effecting the remittance transfer.

Overall, the Bureau understands that given the current methods insured institutions use to send remittance transfers, one reason they cannot disclose exact amounts in all cases is that they (or their service provider) cannot reliably control or know covered third-party fees in every case. The Bureau understands, however, that at least some of the parties involved in sending remittances from insured institutions are changing the methods they use to send such transfers, and in some cases, the payment systems themselves are evolving so that providers are increasingly able to disclose exact fees.

Limiting covered third-party fees. Information aggregators explained that there are several ways of limiting or eliminating covered third-party fees. When fees can be limited to a known amount or eliminated altogether, an exact figure of covered third-party fees (or no figure) can be disclosed and reliance on the temporary exception is unnecessary, and in some cases, disallowed under the 2013 Final Rule. Generally, there are two ways (which may be combined) to limit or eliminate covered third-party fees: developing relationships with foreign institutions or coding transfers in a way that instructs intermediary institutions to not deduct fees from the transfer amount.

One way in which information aggregators can limit the third-party fees charged in association with a particular remittance transfer is by entering into bilateral relationships with recipient institutions. One such relationship could exist between the insured institution (or its service provider) and a foreign institution hosting the institution's nostro account. Nostro accounts are accounts established by U.S. institutions with foreign banks; funds in the account are typically denominated in the currency of that country. An insured institution or its information aggregator can generally avoid covered third-party fees when depositing funds directly into its nostro account because it bypasses intermediary institutions. Thus, for situations in which the nostro accountholder is the designated recipient's bank, the provider or information aggregator could leverage its relationship to specify the fee terms that would apply to the transfer. As such, the provider would control the fee terms, and would thus not meet the conditions necessary to rely on the temporary exception. In cases where the recipient institution is not the nostro accountholder, the funds are transferred from the nostro account to the designated recipient's account using the recipient country's national payment system or the ultimate recipient bank may have a nostro account with the initial nostro accountholder. In some countries or areas, the national payments system may then limit or bar downstream covered third party fees.[22]

A second method of controlling covered third-party fees is by sending cover payments, a method in which the originator of the wire transfer sends payment instructions directly to the designated recipient's institution and asks that institution to credit the designated recipient the transfer amount. Under this method, the designated recipient's institution may receive the payment instructions before receiving the funds, which are cleared and settled separately through intermediary banks. Accordingly, intermediary fees would not be deducted from the payment, and as such, there would be no covered third-party fees that the originating institution would have to disclose. The Bureau further understands that entities may use cover payments to send remittance transfers received in foreign currency and U.S. dollars.

The cover payment method has certain limitations, however. One very large bank explained that it believes that it can only send cover payments to recipient entities with which it has a preexisting agreement or contractual relationship because absent this relationship, the bank cannot be sure that the cover payment instruction will be honored. Separately, several information aggregators referred to a ''long tail problem'': in their experience, expanding their networks is often a time-consuming, resource-intensive process because relationships must be established on a country-by-country, or institution-by-institution basis. These aggregators further indicated to the Bureau that it is unlikely that they would be able to establish relationships to reach every recipient financial institution or country by July 21, 2015, if the temporary exception expired. However, the institutions indicated that they would endeavor to use the additional time afforded by any extension of the temporary exception to expand the networks of recipient institutions with which they have relationships or pursue other alternatives that would allow them to ascertain actual fees in cases where they cannot do so today.

A third way in which the provider or information aggregator can attempt to exercise control over covered third-party fees is by coding its payment instructions in a way that prohibits other entities from deducting fees from the transfer. Such codes may be used in conjunction with other methods discussed herein. International wire transfers originating in the United States are generally processed between three types of payment and messaging systems. For transfers settled in U.S. dollars between United States and other financial institutions that are members of the relevant payment systems, entities can use one of two wire systems: either the Clearing House Interbank Payments System (CHIPS), operated by the Clearing House Association,[23] or the Fedwire Funds System (Fedwire), operated by the

[22] The Bureau lacks data on which national payments systems allow institutions to know the fees that will be imposed (or to know that no fees will be imposed) for such transfers.

[23] *See generally https://www.chips.org/about/pages/033738.php.*

Federal Reserve Banks.[24] For transfers between other entities or transfers settled in currencies other than U.S. dollars, SWIFT is the dominant international payments messaging system; the Bureau believes that the majority of international interbank messages use the SWIFT network.[25] When SWIFT is used, funds are generally settled through chains of bilateral correspondent relationships and/or national payment systems.

All three payment or messaging systems support a charge code that institutions may use to provide specific instructions about the way downstream entities handle the fees associated with a remittance transfer. For transfers sent via SWIFT, members have long been able to use the OUR charge code.[26] When the OUR charge code is used, the SWIFT member coding the transfer is instructing downstream institutions that receive the SWIFT message not to deduct a fee, but rather to bill all fees back to the sending institution after delivery of the transfer. Fees charged back to the originating institution are not required to be disclosed under the Remittance Rule because they are not deducted from the transfer amount.

The two U.S. wire systems, CHIPS and Fedwire, do not support the OUR charge code used by SWIFT. However, in reaction to the Remittance Rule, the Clearing House Association and the Federal Reserve Banks developed a charge code, CTO, that is intended to be the functional equivalent of the OUR charge code that can be used for institutions using Fedwire and CHIPS but only if the institution sending the transfer has a preexisting relationship with the entity receiving the transfer.[27]

Certain insured institutions with which the Bureau spoke indicated that they use the OUR code for most of their remittance transfers because they believe that doing so enables them to provide certainty for their customers insofar as use of the code is intended to prevent imposition of covered third-party fees. Some of the entities with which the Bureau spoke that use OUR for remittance transfers are passing on to their customers in the form of higher upfront prices the cost of the fees that are charged back to providers by intermediary institutions. Others are absorbing the extra expense without changing their prices but reported that they are continuing to analyze the impact of using the OUR charge code message on their pricing. Other institutions, however, indicated that they decided not to use OUR for most transactions due to the increased cost and that they either do not want to take on the additional costs or do not want to pass the costs on to their customers.

In addition to cost considerations, the Bureau understands that there may be additional challenges with using the OUR or CTO charge code instructions to avoid covered third-party fees. First, the Bureau understands that, though OUR can and is used in transfers to most destination countries and to most recipient institutions that are SWIFT members, some remittance transfer intermediaries may disregard the OUR or CTO charge codes and deduct a fee from the transfer amount despite the instruction. In the case of the OUR code, disregarding the instruction is a violation of SWIFT rules; however, SWIFT does not enforce violations and there is limited ability to seek redress if an institution violates an OUR instruction in a particular instance. As such, certain interview participants indicated that, while a bilateral agreement is not required when using the OUR charge code, the OUR instruction may be more effective where such a relationship, formalized through a Relationship Management Agreement, or RMA, is in place among the participating institutions.[28] The CTO code, in turn, is understood as a market convention; it is currently only honored if the sending and receiving institution have entered into a bilateral agreement.[29]

A third challenge is the difficulty of ensuring that the charge code instructions reach all the banks involved in the remittance transfer. For example, the Bureau understands that there are several countries in which the national financial messaging or payment system does not support the OUR charge code for transfers that are sent to institutions that are not SWIFT members. Additionally, the OUR charge codes may not be passed on to the next bank in the transmittal route if that bank is not a SWIFT member institution. Finally, certain smaller institutions that originate remittance transfers may not have the accounting systems in place necessary to account for OUR transactions when the charges are billed back to them from the intermediary institutions after the transfer is sent. Similar concerns exist in connection with the CTO charge code.

The Bureau asked interview participants whether they expected use of the OUR and CTO codes to expand in response to the new remittance rule disclosure requirements. Although the Bureau understands that the OUR code has long been used for some commercial wire payments, a number of providers and information aggregators were skeptical that the reliability of the OUR payment instruction will improve in the near future and some actually expected its reliability to decline as its use expanded. Indeed, these institutions reported that based on their analyses, they determined that use of the OUR code for all remittance transfers sent as wires was not feasible as a reliable method to reduce the use of the temporary exception. These institutions speculated that if use of the OUR charge code became widespread its effectiveness could lessen as more foreign banks would either ignore it or bill exorbitant amounts back to the originating institutions. Further, some remittance transfer providers indicated that, in their opinion, sending OUR payments is not in the best interest of the consumer. They asserted that entities originating the wire transfer will increase fees on some or all of their wire services to recoup the fees that intermediaries charged back to them and that generally consumers may overpay when the provider uses this method. At least one provider, however, surmised that a growth in the use of the OUR code method could normalize behavior and expectation in the international remittance transfer industry such that institutions will be more likely to honor the code as its use expanded.

Neither SWIFT nor providers or aggregators using the OUR code method provided the Bureau with concrete data on the prevalence or efficacy of the

[24] *See generally http://www.federalreserve.gov/paymentsystems/fedfunds_about.htm.*

[25] *See* Swift Payments Market Practice Group and the Clearing House Ass'n, White Paper on Dodd Frank Section 1073—Cross-border Remittance Transfers, v.3 (''SWIFT White Paper'') (Sept. 2013), *available at http://www.swift.com/resources/documents/PMPG_Dodd_Frank_1073_Whitepaper_v2.0.pdf.*

[26] SWIFT White Paper. Other methods include BEN and SHAR. A transfer coded BEN means that the beneficiary will pay all fees while a transfer coded SHAR means that the fees will be shared by the sender and the beneficiary.

[27] Federal Reserve Bank Services, Press Release (announcing that effective February 7, 2013, financial institutions that have agreements requiring special handling for remittance transfers sent using Fedwire should use the charge code CTO to identify a remittance transfer in which the originator pays all transaction charges) (Sept. 5, 2012), *available at https://www.frbservices.org/files/communications/pdf/fedwire/090512_dodd_frank.pdf. See also* SWIFT White Paper (''The use of OUR charge code instructions is fairly limited in US Dollar clearing between US financial institutions since CHIPS and Fedwire cannot carry a full OUR code.'').

[28] A RMA is an agreement established between SWIFT members. *See http://www.swift.com/products_services/relationship_management_application_overview.*

[29] *See http://www.frbservices.org/files/communications/pdf/fedwire/090512_dodd_frank.pdf.*

method as a way of controlling remittance transfer fees. As such, it is not clear at this point how expanded use of the OUR code would affect its usefulness as a possible tool for controlling, and therefore predicting, third-party fees associated with remittance transfers. Likewise, as the CTO charge code has only recently been introduced, interview participants were reluctant to speculate about using it to control covered third-party fees and whether and how necessary relationships have been established. Some suggested that a change in the CHIPS rules obligating members to honor the code (similar to the SWIFT member rules) would be necessary to ensure compliance with the CTO code without obligating entities to enter into numerous bilateral agreements. We seek comment on the efficacy of these charge codes and whether and when they are reliable methods of controlling the imposition of covered third party fees (and thus providing a remittance transfer disclosure without reliance on the temporary exception).

A small number of insured institutions with which the Bureau spoke use international ACH for some portion of their remittance transfers. International ACH products, such as the Federal Reserve's FedGlobal ACH Payments Service or services developed by individual financial institutions or service providers, may provide additional mechanisms to limit the fees that can be charged on a remittance transfer. 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 transfer amount. FedGlobal and other ACH services may not currently be widely used by remittance transfer providers, however: According to a report of the Board of Governors of the Federal Reserve, at the end of 2012, 446 depository institutions offered FedGlobal services, representing about 5% of the institutions that originate ACH services.[30]

Institutions with which the Bureau spoke indicated continued reluctance to develop international ACH systems for a variety of reasons, including the following. First, international ACH services generally are developed on a country-by-country or region-by-region basis because they require agreements on protocol with foreign gateway providers and/or other foreign entities. As a result, the currently available international ACH services generally have a much more limited reach than wire services (even though those ACH services generally focus on popular destination countries). Second, insured institutions with which the Bureau spoke indicated that, unlike wire services, international ACH services are not a set of services that they already offered to consumers prior to the Remittance Rule. These institutions worried that developing an international ACH service, or signing onto someone else's ACH service, would involve start-up costs and/or changes in risk management protocol that at present outweigh the potential long-term cost savings (as well as any additional value of facilitating compliance with the Remittance Rule).

Finally, a small number of the biggest institutions with which the Bureau spoke have independently developed closed network remittance transfer products that resemble those closed-network solutions offered by money transmitters. Often designed with a focus on modest-sized transfers, these products include account-to-account, account-to-cash, and cash-to-account products. The institutions that have developed these products operate them independently or in partnership with other institutions, and can therefore know the exact fees and exchange rate that will be applied to specific remittance transfers. However, the closed networks currently in existence and used by insured institutions limit the dollar amount of most transfers, provide services to a limited number of countries and within those countries, to a limited number of pickup locations or recipient institutions, and as such cannot currently provide a complete solution for all of the locations to which insured institutions send remittance transfers. Further, setting up such a network takes significant time and resources. Accordingly, most of the institutions with which the Bureau spoke did not have such a system and have not planned to develop one prior to the planned July 21, 2015, expiration of the temporary exception as a method of resolving their reliance on the temporary exception.

In speaking to remittance transfer providers using various combinations of these methods, the Bureau understands that the methods vary in effectiveness and scope, and that entities' views of the feasibility or effectiveness of any particular method also vary. Interview participants indicated to the Bureau that many factors—including the efficacy of using the OUR charge code for transfers to a particular location or particular institution, concerns about lack of controls at a particular foreign bank, concerns about prudential regulators' reactions to relationships with foreign banks, sheer volume of institutions in the world and limited resources to reach them all, and the business case for investing in new protocols or payment systems—can affect the actual feasibility or effectiveness of a particular method, or an entity's view of such feasibility or effectiveness. Some institutions reported that they are attempting to address these issues by developing an increasing number of relationships with intermediary and recipient institutions; however, these institutions also stated that at present, it is very difficult and often impractical to establish such relationships with all banks in the world to which a U.S. consumer might seek to send a remittance transfer. Some institutions also indicated that the limited volume of international wire transfers they currently send to those corridors for which they cannot disclose exact fee amounts does not justify the expense of reaching these corridors using methods currently available for disclosing exact fees.

Obtaining covered third-party fee information. A number of information aggregators that are banks indicated to the Bureau that they have been able to obtain actual covered third-party fee information through the banks to which they offer correspondent banking services, as well as the banks that offer them correspondent services, and other efforts (such as independent research), but also reported that this information is not available for all institutions involved in all of the remittance transfers they or their partners send. Although some entities with which the Bureau spoke reported conducting internet research regarding intermediary bank fees, some aggregators also indicated that information available on the internet takes time and resources to find, may not be complete, and may be subject to change.

Entities with which the Bureau spoke stated that it is difficult to get fee information from other banks absent a correspondent relationship or assistance from a correspondent or to get information from another institution that might be deemed as a competitor. Specifically, insured institutions and others indicated to the Bureau that many United States and foreign banks treat such information as proprietary, and therefore, rarely make the information available to others upon request (let alone publish it on the Internet). *See* May 2013 Final Rule (78 FR at 30671). On the other hand, some consumer groups maintain that insured

[30] The Bd. of Governors of the Fed. Reserve Sys., Report to the Congress on the Use of the ACH System and Other Payment Mechanisms for Remittance Transfers to Foreign Countries, Apr. 2013.

institutions have had sufficient time since the 2013 Final Rule was first finalized to develop methods to determine actual fees in all cases, and that institutions could better utilize existing trade associations and other networks to complete this work.

Additionally, entities stated that even banks that have correspondent relationships with each other are unlikely to share fee information with each another because they may, in other circumstances, be competitors and typically do not share pricing information. In particular, it appears that some U.S. institutions are concerned that sharing fee information would raise antitrust concerns. Accordingly, participants indicated that these and similar forms of research have been difficult to complete on any comprehensive basis. *See* May 2013 Final Rule (78 FR at 30671).

Another method of learning fee information is to trace individual payments or to send test payments to gather transfer-specific data. Few information aggregators reported that they have tried this on a large scale. They reported that this is also a slow process that incurs some transaction fees. Additionally, some aggregators expressed doubts that gathered information will remain accurate for future transfers because of unknown variables or because different amounts of fees could be assessed on wire transfers sent to the same designated recipient institution, even though the transfers appear to have similar characteristics (*e.g.,* same transfer amount).

Relying on the temporary exception. A number of the insured institutions that spoke to the Bureau, but not all, indicated to the Bureau that they use the temporary exception when sending at least some of their wire transfers. As noted above, these remittance transfer providers stated generally that they strive to provide actual fee information and only use estimates in cases they deem such disclosure infeasible, such as when the transfer involves an entity with whom the U.S. bank has no direct relationship and the bank does not believe that the OUR charge code is a viable solution for that transfer.

Finally, the Bureau does note that some insured institutions reported (or their service provider reported to us about them) that they did not use the temporary exception for any of their transfers. Reasons for this varied. For example, some service providers used the OUR method with increased confidence that it could provide a comprehensive solution or that they did not send to those areas where OUR did not work. Notably, even these service providers doubted that the OUR method could provide a comprehensive solution for all remittance transfers sent by consumers in the United States. Other service providers reported that they could leverage nostro accounts around the world established primarily for the benefit of their corporate customers to send funds directly into the recipient country. The Bureau believes that it may be too early in the use of these methods to know if they are truly comprehensive or able to allow disclosure of exact amounts for all remittance transfers.

The frequency of reliance on the temporary exception for disclosure of intermediary fees varied greatly amongst those using the exception. Some did not use it at all while those that did reported that they used the exception for a varying range of their transfers: From 5 percent to as much as 50 to 60 percent of remittance transfers although, to the extent data was reported to the Bureau during its interviews, most insured institutions with which the Bureau spoke reported using the exception for far fewer than half of their remittance transfers. The Bureau lacks data at this time as to the overall industry practice although it anticipates that the soon-to-be-available FFIEC Call Report data will provide helpful detail on this point. The Bureau believes that one factor that could explain the substantial variance among institutions is the destination countries to which particular providers' customers send transfers and the size of the providers' correspondent networks. Even when an institution's reliance on the temporary exception is for a relatively small portion of its (or its customers') remittance transfers, the Bureau understands that the institution may use estimates for remittance transfers sent to a number of countries. These institutions indicated that they did not believe that it was feasible either to get actual fee information or to send wires in a way that controls for covered third-party fees by July 21, 2015, for remittance transfers to those beneficiary banks for which they are today using the temporary exception.

As noted above, the Bureau recognizes that this summary of market practice and consumer impact may not accurately represent all details of how remittance transfer providers send remittance transfers from accounts and, thus, the Bureau seeks comments on whether there are other methods of complying with the requirement to disclose covered third-party fees when sending such remittance transfers or whether other methods of sending transfers altogether might allow providers to comply with the Remittance Rule without reliance on the temporary exception. For example, the Bureau seeks comment on whether international ACH products could grow beyond their current, limited use, and develop into comprehensive solutions enabling insured institutions to provide exact disclosures for transfers from accounts. The Bureau also seeks comment on whether various types of closed networks might also play a role in the development of a solution to the issues outlined above. Finally, the Bureau seeks comment on whether, over time, additional competition amongst service providers will further motivate service providers to develop solutions that would eliminate a need to rely on the temporary exception in more cases.

The Temporary Exception's Impact on Consumers

Although EFTA section 919(a)(4) provides that the Bureau's determination to extend the temporary exception should hinge on the exception's effect on the ability of remittance transfer providers to send transfers without the exception, the Bureau has also considered the impact of the temporary exception and its potential expiration on consumers. Specifically, the Bureau solicited input from several consumer groups whose constituents send remittance transfers. Many of these groups asserted that financial institutions have had sufficient time, and currently hold sufficient resources, to disclose exact figures in all cases. Citing a dearth of specific data on the effect of estimates on consumer experience, these representatives expressed concern that estimates could be wide-ranging and/or inaccurate. At least one of the groups also urged the Bureau to narrowly tailor the temporary exception, perhaps to allow it to be used only for remittance transfers to certain countries not already subject to the permanent exception.

At this point, there is little information that has been developed about the way in which estimation of certain fees and exchange rates associated with a remittance transfer impacts consumers. For example, the Bureau does not have data on the relative accuracy of the estimates provided, nor on whether such estimates are on average higher or lower than the actual fees and rates associated with transactions. Although the Bureau did speak with several consumer groups, the Bureau also does not know the extent to which receipt of an estimate impairs a consumer's ability to rely on disclosures provided. The Bureau seeks comment on the impact of

the use of estimates on consumers as well as the potential impact of an extension of the temporary exception, including whether consumers find estimates to be relatively accurate and the impact of estimates versus actual amounts.

The Bureau's Proposal

Based on information the Bureau has gathered regarding the Remittance Rule in general, including through outreach to industry and consumer groups, review of prior comment letters and other efforts, and from its recent interviews with remittance transfer providers, service providers, and consumer groups regarding the temporary exception, the Bureau has reached a preliminary determination that the expiration of the temporary exception would negatively impact the ability of insured institutions to send remittance transfers.

As discussed above, it appears that a number of insured institutions are relying on the temporary exception to comply with the 2013 Final Rule for some portion of their remittance transfers either to disclose covered third-party fees, exchange rates, or both. When, as remittance transfer providers, they send wire transfers from accounts, these institutions (and/or their service providers) rely (in varying degrees) on action by entities that they do not control and that may not always provide any or accurate information regarding the fees and/or exchange rates that they apply. Thus, in at least some cases, the insured institutions are unable to determine, with accuracy, the actual amounts of the fees and/or exchange rates for the remittance transfers that they provide. Further, it appears that the insured institutions that are in the best position to ascertain exact fee information (*i.e.,* the information aggregators that are insured institutions) do not believe that they could continue sending wire transfers and find an alternative to relying on the temporary exception for all of those corridors for which they are using the exception by July 21, 2015.

Accordingly, the Bureau believes that if the temporary exception terminates on July 21, 2015, it could cause some of these institutions to stop offering remittance transfers to at least some of the foreign destinations to which they currently send remittance transfers using estimated disclosures. The Bureau further believes that a decision by service providers to stop offering remittance transfers to certain foreign destinations may also negatively impact the ability of a number of insured institutions that rely on those service providers to send remittance transfers and disclose covered third-party fees.[31]

With respect to the extension of the temporary exception for disclosure of exchange rates, the Bureau believes that some insured institutions are using the temporary exception for some portion of their remittance transfers. Additionally, similar to the disclosure of intermediary fees, it appears that a number of smaller institutions are relying on either service providers or larger institutions acting as information aggregators to provide their senders with exchange rate information. It also appears that for the remittance transfers for which providers are currently using the temporary exception, a number of institutions may not find a way to provide actual exchange rates for certain currencies by July 21, 2015. The Bureau believes that some portion of these institutions may stop offering remittance transfers to either all or some number of foreign destinations where they are currently disclosing estimated exchange rates.

For the reasons given above, the Bureau makes a preliminary determination that the expiration of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers. Accordingly, the Bureau believes that it is necessary and proper to additionally exercise its authority under EFTA section 919(a)(4)(B) to amend § 1005.32(a)(2) to propose to extend the sunset of the temporary exception to July 21, 2020.

Notwithstanding this preliminary determination, the Bureau will continue to dialogue with key stakeholders regarding possible long-term solutions to facilitate increased accuracy in remittance transfer disclosures while preserving a broad market for remittance transfers sent from accounts at insured institutions. The Bureau expects providers to continue to work towards providing exact disclosures of exchange rates and covered third-party fees in all cases where disclosure is required. If the Bureau finalizes this proposal and the expiration of the temporary exception is extended to July 2020, the Bureau expects that reliance on the temporary exception will decrease going forward as the industry continues to work towards improving solutions that allow for exact disclosures. The Bureau also expects to continue to review Call Report data each quarter to understand how use of the temporary exception changes over time, as well as to continue to engage with insured institutions and service providers to learn more about how key players are working towards the eventual expiration of the exception and to confirm that the providers are not abusing the exception. Furthermore, as the Bureau noted in the May 2013 Final Rule (in the context of its decision to eliminate the requirement to disclosed foreign taxes and certain recipient institution fees), it intends to monitor whether the development and availability of covered third-party fee and exchange rate information becomes more feasible in the future. 2013 Final Rule (78 FR at 30677).

The Bureau solicits comment on the proposed extension of the temporary exception. Additionally, the Bureau solicits comment on its proposed determination that the expiration of the temporary exception would have a negative impact on the ability of insured institutions to send remittance transfers, as well as the magnitude of the impact. The Bureau also seeks comment on whether it should extend the exception for a period less than five years and/or whether it should place other limits on the use of the temporary exception, such as to allow only those institutions at or below a certain asset size to take advantage of the exception.

As stated above, FFIEC Call Report data relevant to various aspects of remittance transfer services offered by certain reporting financial institutions will become available after May 15, 2014. The Bureau notes that this information will include data on the frequency with which insured institutions use the temporary exception.[32] The Bureau may use the data to supplement its understanding of how institutions are using the temporary exception.

The Bureau also recognizes that that more information exists regarding the potential consumer impact of either the expiration or the extension of the temporary exception. The Bureau thus invites comment on the potential consumer impact of either the expiration of the temporary exception on July 21, 2015, or the proposed extension of the exception to July 21, 2020.

[31] The Bureau learned from many smaller institutions that they preferred to utilize compliance solutions that interfaced directly with other existing systems. Switching providers could require systems changes that impact other parts of the institution.

[32] Data can be accessed at *https://cdr.ffiec.gov/public/*.

Section 1005.33 Procedures for Resolving Errors

1005.33(a) Definition of Error

1005.33(a)(1) Types of Transfers or Inquiries Covered.

Section 1005.33(a) defines what subpart B of Regulation E considers to be an error in connection with a remittance transfer. One of these errors is 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 occurs due to certain listed reasons. *See* § 1005.33(a)(1)(iv). One of the reasons listed is for 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. § 1005.33(a)(1)(iv)(B). As the Bureau explained in the 2012 February Final Rule, it did not intend for this provision to apply to delays that occur in the ordinary course, such as delays related to routine fraud screening procedures. 77 FR at 6252.

To clarify the application of this provision, the Bureau is proposing to revise § 1005.33(a)(1)(iv)(B) so that it would expressly apply only to delays related to individualized investigation or other special action by the remittance transfer provider or a third-party as required by the provider's or other entity'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. The Bureau believes that this proposed change is in accordance with the original intent of this provision but proposes this clarification to remove any ambiguity. As the Bureau noted in the 2012 February Final Rule, it believes that individualized investigation or other special action could include a need to go back to the original sender for additional information related to the remittance transfer.

To further clarify which delays would fall under this exception, the Bureau is proposing to add comment 33(a)–7, which would explain that under § 1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver a remittance transfer by the disclosed date of availability is not an error if such failure was caused by a delay related to a necessary investigation or other special action necessary to address potentially suspicious, blocked or prohibited activity in accordance with the BSA, OFAC requirements, or similar laws or requirements. For example, no error occurs if delivery of funds is delayed because the provider's fraud screening system flags a remittance transfer to a designated recipient whose name is similar to the name of a blocked person under a sanctions program, and further investigation is needed to determine that the designated recipient is not actually a blocked person. Similarly, no error occurs if delivery of funds is delayed because the correspondent bank to which the provider forwards the remittance transfer identifies the transfer as similar to previous fraudulent activity and action by a correspondent or the provider is necessary to proceed. However, if a delay is caused by ordinary fraud screening or other screening procedures, where no potentially fraudulent, suspicious, blocked or prohibited activity is identified and no further investigation or action is required, the exception in § 1005.33(a)(1)(iv)(B) would not apply. The Bureau is seeking comment on whether the proposed examples and description accurately reflect industry practice and/or provide sufficient guidance on the types of permissible delays.

Finally, to reflect the insertion of new comment 33(a)–7, the Bureau proposes to renumber existing comments 33(a)–7 through –10 as comments 33(a)–8 through –11, respectively.

1005.33(c) Time Limits and Extent of Investigation

Section 1005.33(c)(2) implements EFTA section 919(d)(1)(B) and establishes procedures and remedies for correcting an error under the Remittance Rule. In particular, where there has been an error under § 1005.33(a)(1)(iv) for failure to make funds available to a designated recipient by the disclosed date of availability, § 1005.33(c)(2)(ii) generally permits a sender to choose either: (1) 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, or (2) to have the remittance transfer provider resend to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or designated recipient. However, if the error resulted from the sender providing incorrect or insufficient information, § 1005.33(c)(2)(iii) requires a provider to refund or, at the consumer's request, reapply to a new transfer, the total amount that the sender paid to the provider and it permits the provider to deduct from this amount fees actually imposed and, where not otherwise prohibited by law, taxes actually collected as part of the first unsuccessful remittance transfer attempt.

As drafted, the Bureau believes that the 2013 Final Rule may be ambiguous with respect to whether, in instances in which the sender provided incorrect or insufficient information the remittance transfer provider must always refund its own fee or whether it has the option of not doing so. *See* § 1005.33(c)(2)(iii). While comment 33(c)–12 explains that in such circumstances, the provider is required to refund its own fees but not the fee imposed by a correspondent (unless that fee will be refunded to the provider by the correspondent), the Bureau believes it appropriate to remove any ambiguity that might exist in the corresponding text of § 1005.33(c)(2)(iii).

The Bureau also proposes to clarify what should happen when an error occurs (for any reason) pursuant to § 1005.33(a)(1)(iv), but the funds are ultimately delivered to the designated recipient before the remedy is determined. If the remittance transfer is delivered late but before the remedy is determined, the provider should be not be required to refund the amount delivered to the designated recipient or apply those funds towards a new transfer (as those funds have already been delivered). For example, consider a situation in which a sender sends $100 to a designated recipient and the provider charges a $10 fee and there are no other non-covered third-party fees or foreign taxes deducted from the transfer amount (the sender pays a total of $110 to the provider and $100 is delivered to the designated recipient after the disclosed date of availability). If $100 is deposited into the designated recipient's account after the date of availability, the Bureau proposes to clarify that the only remedy required would be a refund of the $10 fee to the sender. In this situation, it is not practical to refund the $100 to the sender so that he or she can resend the transfer since it was already delivered. Instead, § 1005.33(c)(2)(iii) (if the error occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer) or (c)(2)(ii) (if the error occurred for another reason), require the provider to refund its $10 fee; after that the amount appropriate to resolve the error should be zero. To require a refund of the $100 would, in essence, result in a windfall (insofar as the $100 was received by the designated recipient).

To clarify these two issues, the Bureau first proposes to revise

§ 1005.33(c)(2)(iii) to state that in the case of an error under § 1005.33(a)(1)(iv) that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by § 1005.33(c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B) within three business days of providing the report required by § 1005.33(c)(1) or (d)(1) except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempts except that the provider shall not deduct its own fee.

To further clarify what remedies must be provided for all errors that occur pursuant to § 1005.33(a)(1)(iv), the Bureau also proposes to modify comment 33(c)–5, to add language explaining that when the amount that was disclosed pursuant to § 1005.31(b)(1)(vii) was received by the designated recipient before the provider must determine the appropriate remedy for an error under § 1005.33(a)(1)(iv), no additional amounts are required to resolve the error after the remittance transfer provider refunds the appropriate fees and taxes paid by the sender pursuant to § 1005.33(c)(2)(ii)(B) or (c)(2)(iii), as applicable.

VI. Proposed Effective Date

The Bureau proposes that all of the changes proposed herein take effect thirty days after publication of a final rule in the **Federal Register**. The proposed change to the temporary exception does not have a practical effect until after July 21, 2015, so an effective date before the expiration would provide for continuity. The other proposed changes generally reinforce current Bureau guidance on interpretation of the 2013 Final Rule. Thus, the Bureau believes that remittance transfer providers should not need to adjust their practices to align them with those proposed herein. The Bureau seeks comment on whether these changes to the 2013 Final Rule should take effect in thirty days after publication of a final rule in the **Federal Register** or if a later effective date is more appropriate.

VII. Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts [33] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.[34]

The proposal would amend the 2013 Final Rule (or, the Remittance Rule) that took effect on October 28, 2013 and which implements section 1073 of the Dodd-Frank Act regarding remittance transfers. First, the Bureau proposes to extend a temporary exception in the 2013 Final Rule that permits insured depository institutions and insured credit unions to estimate the exchange rate and covered third-party fees under specified circumstances. Second, the Bureau proposes several clarificatory amendments and technical corrections to the Remittance Rule. These provisions regard: The application of the Remittance Rule to transfers to and from locations on U.S. military installations abroad; the treatment of transfers from non-consumer accounts; the treatment of faxes; when a provider may treat a communication regarding a potential remittance transfer as an inquiry; the Web site addresses to be disclosed on consumer receipts; and error resolution provisions related to delays and remedies.

The analysis below considers the benefits, costs, and impacts of the provisions described above against the baseline provided by the 2013 Final Rule. With respect to such provisions, the analysis considers the benefits and costs to senders (consumers) as well as remittance transfer providers (covered persons). The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to benefits, costs, and impacts and an appropriate baseline.

The Bureau notes at the outset that the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. The Bureau believes that quantification of the potential benefits, costs, and impacts of the proposed provisions is not possible. There are limited data on consumer behavior, which would be essential for quantifying the benefits or costs to consumers. For instance, information about the accuracy of estimates for exchange rates and covered third-party fees could help inform the Bureau of the potential cost to consumers of extending the temporary exception to July 21, 2020, in terms of the benefit foregone of receiving accurate information. There is still limited data about the remittance transfer market such that the Bureau cannot presently quantify the potential benefits, costs, and impacts of the proposed provisions. Nonetheless, the Bureau recognizes that available data about the remittance transfer market has increased significantly since the initial issuance of the Remittance Rule. As discussed above, the data collected by the NCUA regarding remittance transfers through its Call Report and Credit Union Profile Forms provide a valuable set of responses about credit unions. For example, credit union respondents are required to indicate their international remittance transfer volume. As discussed in the Section-by-Section Analysis, the Bureau used the responses and estimated that credit unions sent less than 1% the number of international money transfers in 2013 as did money transmitters.

The FFIEC Call Report data the Bureau expects to be made available during the comment period is expected to contain responses about the temporary exception utilization rate by insured depository institutions. Although the Bureau does not believe that the utilization rate should be determinative of the Bureau's ultimate decision with respect to whether to extend the temporary exception, utilization rate data may affect the Bureau's assessment of the impact on depository institutions with respect to the extension of the temporary exception.

B. Potential Benefits and Costs to Consumers and Covered Persons

1. Extension of the Temporary Exception to July 21, 2020

The proposed rule would provide that remittance transfer providers may estimate exchange rates and covered third-party fees until July 21, 2020 if (1) the provider is an insured depository institution or credit union; (2) the remittance transfer is sent from the sender's account with the provider; and

[33] Section 1022(b)(2)(A) of the Dodd-Frank Act directs the Bureau, when prescribing a rule under the Federal consumer financial laws, to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[34] The Bureau also solicited feedback from other agencies with supervisory and enforcement authority regarding Regulation E and the proposed rule.

(3) the provider cannot determine the exact amounts for reasons outside of its control.[35] To implement the Dodd-Frank Act, the 2013 Final Rule provides that the exception sunsets on July 21, 2015. But the Dodd-Frank Act also authorizes the Bureau to extend the exception up to July 21, 2020 if the Bureau determines that the termination of the exception would negatively affect the ability of insured depository institutions and credit unions to send remittance transfers to locations in foreign countries. EFTA section 919(a)(4)(B). This analysis considers the benefits, costs, and impacts of extending the exception against a baseline of allowing the exception to expire on July 21, 2015.

To determine if the statutory predicate to extending the exception exists, namely, a negative effect on remittance transfers caused by a baseline of allowing the exception to expire on July 21, 2015, the Bureau endeavored to understand how insured depository institutions and credit unions are providing remittance transfers without using the temporary exception and when they are using the temporary exception. The Bureau understands that many insured institutions have already taken significant steps toward disclosing actual exchange rates and covered third-party fees when they believe they are able to do so, even though they might have additional flexibility pursuant to the temporary exception to provide estimates instead. But it appears that both small and large insured institutions rely on the temporary exception for remittance transfers from accounts in which they believe covered third-party fee and/or exchange rate information are not readily available and for which they can otherwise satisfy the criteria for using the temporary exception. Further, these institutions have generally indicated to the Bureau that they are unlikely to find an alternative to their reliance on the temporary exception by July 21, 2015, for at least some portion of the remittance transfers for which they currently use the temporary exception. To the extent that institutions believe that finding an alternative by July 21, 2015 is possible, the Bureau believes that a number of institutions view the associated cost as a significant burden, even if such cost falls short of being prohibitive in all cases.

The information the Bureau has gathered thus far with respect to how insured depository institutions and credit unions are or are not using the temporary exception, along with the Bureau's other efforts to understand industry's compliance with the requirements of the Remittance Rule, have provided the Bureau with a basis to make a preliminary determination that if the exception sunsets on July 21, 2015, its expiration would negatively impact the ability of insured institutions to send remittance transfers. The Bureau recognizes that its description of market practices may not be accurate in all respects, and invites comments to further its understanding of such practices.

a. Benefits and Costs to Consumers

As the Bureau stated in its original impact analysis related to the adoption of the temporary exception, relative to accurate disclosures, estimated disclosures strike a different balance between accuracy and access, offering less accuracy but potentially preserving greater access. 77 FR at 6274. The Bureau believes that extending the temporary exception would benefit those consumers who use insured institutions to send remittance transfers to countries or institutions to which some insured institutions would cease providing remittance transfer services, if the exception were to sunset on July 21, 2015. To the extent an insured institution would curtail certain services because it would no longer be able to rely on the temporary exception, and the ability to rely on the temporary exception is instrumental in that institution's decision to continue to offer those services, extending the temporary exception would benefit a consumer using that institution to send remittances to a destination that could be potentially impacted. In that case, the extension would preserve the consumer's ability to continue using that particular institution as the consumer's remittance transfer provider.

Extending the temporary exception would also provide benefits to consumers in the form of avoiding increased prices if providing the actual information (as opposed to estimates) would require insured institutions or their service providers to take costly steps to provide that information and those institutions decide to pass those costs to the consumers. In other words, although the consumers would receive actual information, they may have to pay more to send a remittance transfer in some cases.

Providing estimates instead of actual information has costs for consumers as well. Disclosures that accurately reflect actual covered third-party fees and exchange rates would make it easier for a consumer to know whether a designated recipient is going to receive an intended sum of money, or how much the consumer must send to deliver a specific amount of foreign currency to a designated recipient. Accurate disclosures would also make it easier for consumers to compare prices across providers, via, for example, prepayment disclosures. Extending the temporary exception would impose a cost on consumers in the form of these foregone benefits because they would continue to receive estimated disclosures in some cases. Such cost could be significant if the estimated disclosures they receive from insured depository institutions and credit unions tend to be inaccurate. However, the Bureau lacks data on how often estimates of exchange rates and covered third-party fees that insured institutions disclose to consumers pursuant to the temporary exception tend to be inaccurate, and the degree of the inaccuracy, if any. Additionally, the Bureau believes there would be a cost associated with an extension of the temporary exception in that if consumers believe that they cannot rely on estimated disclosures and thus do not rely on them to, for example, compare prices across providers. However, the Bureau also lacks data on whether consumers that receive estimated disclosures perceive such information to be unreliable.

b. Benefits and Costs to Covered Persons

As noted above, the Bureau believes that many insured institutions have made significant progress toward disclosing exact amounts. But at the same time, it appears that both some small and some large insured institutions rely on the temporary exception for some portion of their transfers. For these institutions, with respect to the segment of their business for which they rely on the temporary exception and for which they are unable to find a practical or cost-effective alternative to the temporary exception, the Bureau believes that a potential benefit associated with extending the temporary exception would be that it would allow them to avoid the cost associated with losing that segment of their business. The Bureau acknowledges that the magnitude of this benefit may be related to how big that segment of the business is for an insured

[35] As noted above in the Section-by-Section Analysis, the temporary exception does not apply to broker-dealers. However, SEC staff has issued a no-action letter stating that it will not recommend an enforcement action under Regulation E against broker-dealers that provide disclosures consistent with the requirements of the temporary exception. *See http://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf.*

institution. Based on the Bureau's outreach efforts, the Bureau has made a preliminary finding that it varies greatly with respect to covered third-party fees. The Bureau also acknowledges that the magnitude of this benefit may only be marginal with respect to the disclosure of exchange rates. As noted above, the Bureau's current understanding is that use of the temporary exception for estimating the applicable foreign exchange rate is quite limited. An additional benefit of extending the temporary exception may be that it could provide additional time for insured institutions to search for efficient and cost-effective ways to disclose actual exchange rates and covered third-party fees.

The Bureau believes that in some circumstances, the additional costs that insured institutions may have to incur to provide exact disclosures may not be so prohibitive such that an insured institution would curtail sending remittance transfers to certain destinations altogether, although this might be possible in some cases. The Bureau notes that entities that currently rely on the temporary exception generally told the Bureau that they believe that the expiration of the temporary exception on July 21, 2015 would create significant costs for them, but that they have not evaluated such costs such that they could provide the Bureau with actual or estimated numbers. The Bureau believes that there would not be a cost to insured institutions of extending the exemption because it would not require them to alter current practices. To the extent that letting the temporary exception expire on July 21, 2015 would raise transaction costs for insured institutions such that it would lead to some insured institutions to no longer offer remittance transfer services to certain destinations, money transmitters that offer services to those destinations could benefit from less competition.

2. Technical Corrections and Clarifications

In addition to the proposed extension of the temporary exception, the Bureau also considers potential benefits and costs to consumers and remittance transfer providers of the several technical corrections and clarifications proposed by the Bureau. Generally, except for the clarification regarding the application of the Remittance Rule to transfers to and from locations on U.S. military installations abroad, the Bureau believes that none of the proposed technical corrections or clarifications will materially alter the benefits and costs to consumers and covered persons of the Remittance Rule. Further, because the technical corrections and clarifications proposed by the Bureau are intended to remove ambiguity, the Bureau believes that they may actually provide some benefit to both consumers and covered persons in that they could increase the clarity and precision of the Remittance Rule and help to reduce compliance costs.

As discussed above, the Remittance Rule does not expressly address transfers to and from U.S. military installations within foreign countries and because the Bureau believes that there is a potential for confusion, the Bureau is considering clarifying the application of the Remittance Rule to transfers to and from locations on these installations. If the Bureau were to treat such locations as being in a State, transfers sent from the United States to those locations would not be subject to the Remittance Rule, and there would be benefits to covered persons of not having to comply with the requirements of the rule, while there would be costs to consumers of not receiving the consumer protections of the rule. The costs and benefits would be reversed if the Bureau decides to treat locations on U.S. military installations as not being in a State.

The Bureau lacks data on current practices, particularly information about the volume and size of transfers sent by consumers in the United States to recipients located on U.S. military installations within foreign countries, and the volume and size of transfers being sent from locations on such installations to the surrounding foreign country or other foreign countries. As the Bureau lacks such data, it cannot evaluate the relative benefits and costs of clarifying the application of the Remittance Rule to locations on U.S. military installations within foreign countries on covered persons and consumers. The Bureau seeks comment generally on the relative costs and benefits of the proposed clarification on consumers and covered persons.

The Bureau is also proposing a clarification to the commentary related to the definition of ''sender'' to clarify the application of the Remittance Rule to transfers sent from non-consumer accounts. The proposed clarification would provide that if a transfer is sent from an account that is not used primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account owned by a business entity, the Remittance Rule would not apply. The proposed clarification would also make clear that transfers from consumer accounts are deemed to be sent for a personal, family, or household purpose. The Bureau believes that remittance transfer providers are currently treating transfers from non-consumer accounts as being outside of the scope of the Remittance Rule, and transfers from consumer accounts as being within the scope of the rule. Thus, the Bureau does not foresee any material impact on the cost or benefits from this proposed clarification.

The Bureau further proposes to clarify that for purposes of disclosures required to be provided pursuant to § 1005.31 or .36, such disclosures provided by remittance transfer providers via fax are considered to be written disclosures for purposes subpart B of Regulation E, and are not subject to the additional requirements for electronic disclosures set forth in § 1005.31(a)(2). The Bureau believes that this proposed clarification would have no material impact on covered persons or consumers because the Bureau believes that to the extent remittance transfer providers already send fax disclosures, they treat those faxes as a ''writing.'' Similarly, the Bureau believes its proposed modification to comment 31(a)(3)–2 would conform the rule to providers' current practice and thus would have minimal impact on covered persons and consumers. As discussed above, proposed comment 31(a)(3)–2 would clarify that: (1) A provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical, and (2) that in such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to § 1005.31(a)(3) when the provider treats that initial communication as an inquiry and responds to the inquiry by telephone and orally gathers or confirms the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

The Bureau is additionally proposing that remittance transfer providers may satisfy the requirement in § 1005.31(b)(2)(vi) to disclose the Bureau's Web site on the receipts they provide to consumers by listing the Web site that is the address of a page on the Bureau's Web site that provides information about remittance transfers, and that providers making foreign language disclosures pursuant to § 1005 31(g) may disclose the Web site of the Bureaus homepage that is in the relevant language, if that Web site exists. Although the Remittance Rule does not specify which Bureau Web site

would be provided on receipts, the Model Forms published by the Bureau all listed the Bureau's internet homepage. Insofar as this proposed change would expand providers' options with respect to meeting the requirement in § 1005.31(b)(2)(vi) to disclose the Web site of the Bureau, but not require them to alter their current receipts, the Bureau does not believe that the proposed change would impose costs on providers, unless providers voluntarily choose to adjust their receipts. If some consumers would receive disclosures with these more specific Bureau Web sites if the Bureau adopts this proposed change, the Bureau believes that those consumers may benefit from receiving more direct access to relevant Bureau resources about their rights under the Remittance Rule.

Finally, the Bureau believes that the proposed changes to the error resolution provisions in § 1005.33 would also not materially alter the costs or benefits of the rule to covered persons and consumers. The Bureau believes that the proposed clarification that § 1005.33(a)(1)(iv)(B) would only apply to individualized investigations or other special actions by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, Office of Foreign Assets Control requirements, or similar laws or requirements and the addition of comment 33(a)–7 would conform the rule to its intended scope, and is consistent with the current understanding of this exception.

With respect to the proposed changes to § 1005.33(c)(2)(iii) regarding how to provide remedies for errors under § 1005.33(a)(1)(iv) (failure to make funds available to the designated recipient by the disclosed date of availability) because the sender provided incorrect or insufficient information in connection with the remittance transfer, the Bureau believes that remittance providers are not deducting their own fees when remedying the error. Current comment 33(c)–12 explains the types of fees that a provider may deduct, and they do not include the provider's own fees. Indeed, an illustration is provided in comment 33(c)–12.i. (a remittance transfer provider imposes a US$10 fee on a remittance transfer, and its correspondent imposes a US$15 fee, an error under § 1005.33(a)(1)(iv) is determined to have occurred, the provider is required to refund its $10 fee). Accordingly, the Bureau does not believe that there would be a material impact from this provision.

Lastly, the Bureau is proposing to add to comment 33(c)–5 with an example that would illustrate what is meant by the explanation set forth in the comment with respect to the amount appropriate to resolve the error for purposes of certain remedies set forth in rule. The Bureau does not believe that there will be a material impact, because the proposed addition would not alter the current explanation and impact the amount consumers would receive as the amount appropriate to resolve the error. The Bureau believes that the proposed addition may have a small beneficial impact because it would add clarity to the existing commentary.

C. Access to Consumer Financial Products and Services

The Bureau expects that the proposal generally would not decrease consumers' access to consumer financial products and services. By extending the temporary exception, the proposal could preserve consumers' current set of options for sending remittance transfers to destinations for which insured institutions avail themselves of the temporary exception, compared to a market in which the temporary exception has expired, and some remittance transfer providers has stopped providing services to some destinations, particularly if many providers use the exception to send remittance transfers to the same destinations. Additionally, by facilitating insured institutions' continued participation in the segment of the market for which they avail themselves of the temporary exception, the proposal could preserve competition. As discussed above, the Bureau seeks comments in particular on the relative costs and benefits of the proposal to clarify the application of the Remittance Rule to transfers sent to and from locations on U.S. military installations abroad. The Bureau also invites comment on its potential impact on consumer access to consumer financial product and services.

D. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets

As discussed above, the Bureau understands that with regard to remittance transfers sent from accounts, the majority of insured institutions that are remittance transfer providers obtain information about exchange rates and covered third-party fees from a limited number of service providers that are either very large insured institutions or large nonbank service providers. The Bureau believes that this would apply to depository institutions and credit unions with $10 billion or less in total assets. Given that reliance, the nature of the impacts on these institutions would likely be similar to the effects on larger depository institutions.

The specific impacts of the proposed extension on depository institutions and credit unions would depend on a number of factors, including whether they are remittance transfer providers, the importance of remittance transfers for the institutions, the methods that the insured institutions use to send remittance transfers, and the number of institutions or countries to which they send remittance transfers. Information that the Bureau obtained during prior remittance rulemaking efforts and the NCUA Call Report data discussed above suggest that among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and the number of remittance transfers sent by the institution are positively, though imperfectly, related. The Bureau therefore expects that among depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers, compared to larger such institutions, a greater share will qualify for the safe harbor related to the definition of ''remittance transfer provider'' and therefore would be entirely unaffected by the proposed extension because they are not subject to the requirements of the 2013 Final Rule. *See* § 1005.30(f)(2).

E. Impact of the Proposal on Consumers in Rural Areas

Senders in rural areas may experience different impacts from the proposal than other senders. The Bureau does not have data with which to analyze these impacts in detail. However, to the extent that the proposal leads more remittance transfer providers to continue to provide remittance transfer services, the proposal may disproportionately benefit senders living in rural areas. Senders in rural areas may have fewer options for sending remittance transfers, and therefore may benefit more than other senders from a change that keeps more providers in the market. The Bureau does not expect that any of its other proposed changes would have a material impact on consumers in rural areas.

F. Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposal before finalizing this proposal. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed above in the Section-by-Section

Analysis and this part. This includes comment or data regarding the number and characteristics of affected entities and consumers; providers' current practices and how this proposal might change their current practices or their planned practices under the 2013 Final Rule; and any other portions of this analysis.

The Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. Further, the Bureau seeks information or data on the proposed rule's potential impact on consumers in rural areas as compared to consumers in urban areas. The Bureau also seeks information or data on the potential impact of the proposed rule on depository institutions and credit unions with total assets of $10 billion or less as described in Dodd-Frank Act section 1026 as compared to depository institutions and credit unions with assets that exceed this threshold and their affiliates.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[36] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[37]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[38] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[39]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau believes that the extension of the temporary exception would not impose a cost on any insured institutions, because the extension would not require them to alter current practices but instead maintain the status quo. With regard to the proposed clarifications and technical corrections with respect the treatment of transfers sent from non-consumer accounts, the treatment of faxes, when a provider may treat a communication regarding a potential remittance transfer as an inquiry, the Web site addresses to be disclosed on consumer receipts, and error resolution provisions related to delays and remedies, the Bureau does not believe that any of the proposed provisions would have any material cost impact on any remittance providers for the reasons stated in the Section 1022(b)(2) Analysis.

With respect to the proposal to clarify the treatment of U.S. military installations located in foreign countries, the Bureau believes that remittance transfer providers that are small entities would not be significantly impacted. As discussed above, there is a potential for confusion with respect to when the Remittance Rule applies to transfers to and from locations on U.S. military installations abroad. If locations on U.S. military installations abroad are treated as being in a State, the Remittance Rule would apply to transfers from locations on installations to locations in foreign countries, but would not apply to transfers from locations in a State to locations on installations. If, in the alternative, locations on U.S. military installations abroad are not treated as being in a State, the Remittance Rule would not apply to transfers from locations on installations to locations in foreign countries, but would apply to transfers from locations in a State to locations on installations.

Depending on current practice, each approach could impose additional costs on some entities with respect to some transfers (*i.e.,* by applying the Remittance Rule to transfers to which the rule is not currently being applied), and relieve burdens on some entities with respect to some other transfers (*i.e.,* by clarifying that the Remittance Rule does not apply to transfers to which it is currently being applied).

As noted above, the Bureau lacks data on the relative impacts of the approaches to clarifying the application of the Remittance Rule. However, the Bureau does not believe that the impacts would be large enough to cause a significant economic impact on a substantial number of small entities for at least three reasons. First, for transfers to and from the accounts of persons stationed on U.S. military bases abroad, the Remittance Rule provides that the determination of whether or not the rule applies depends on the location of the account, rather than the account owner's physical location at the time of transfer. *See* comment 30(c)–2.ii (whether location is in a foreign country); comment 30(g) (whether consumer is located in a State). Based on the Bureau's outreach to date, the Bureau believes that many servicemembers and other consumers stationed at U.S. military bases abroad opened their accounts in the United States. Accordingly, the Bureau believes that the impact of a potential clarification on account-based transfers should be relatively limited.

Second, the Bureau notes that either approach would likely have the burden-relieving effect of clarifying the application of the rule. Third, the Bureau does not believe that a substantial number of small entities send transfers to and from locations on U.S. military bases. For such transactions, the small entity would have to be located on the installation (for transfers from locations on the installation) or, for most such transactions that not are account-based, have an agent on the installation (for transfers to locations on the installation). The Bureau believes that remittance transfer providers that are small entities generally do not have such locations or agent networks.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposed rule on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), the Bureau 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. Regulation E, 12 CFR 1005, currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014.

With the exception of the proposal to clarify the application of the Remittance Rule to transfers sent from locations on U.S. military installations abroad, the Bureau does not believe that any of the proposed changes to Remittance Rule

[36] 5 U.S.C. 601, *et seq.* The Bureau is not aware of any small governmental units or not-for-profit organizations to which the proposal would apply.

[37] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[38] 5 U.S.C. 603–605.

[39] 5 U.S.C. 609.

set forth in this proposal would have a material impact on the Bureau's current collections of information pursuant to Regulation E approved by the Office of Management and Budget (OMB) under section 3507(d) of the PRA. With respect to the proposal to clarify the application of the Remittance Rule to transfers sent from locations on U.S. military installations abroad, the Bureau lacks data about current practice and thus is unable to determine the potential impact of the proposed modification on the Bureau's current collection of information pursuant to Regulation E. Other than this aspect of the proposal, there are no new collections of information in this proposal that are subject to the PRA that could potentially amend current collections of information pursuant to Regulation E that have been previously submitted to and approved by OMB.

Comments are specifically requested concerning information that would assist the Bureau with making a determination on the impact of clarifying the application of the Remittance Rule to transfers sent from locations on U.S. military installations abroad on the Bureau's current collection of information pursuant to Regulation E, and whether the determination that the rest of the changes to the Remittance Rule in this proposal would not have a material impact on the Bureau's current collections of information pursuant to Regulation E approved by OMB is correct. Comments should be submitted as outlined in the **ADDRESSES** section above. All comments will become a matter of public record.

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 proposes to amend 12 CFR part 1005 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 B is also issued under 12 U.S.C. 5601.

Subpart B—Requirements for Remittance Transfers

■ 2. Amend § 1005.32 by revising paragraph (a)(2) to read as follows:

§ 1005.32 Estimates.

(a) * * *

(2) Paragraph (a)(1) of this section expires on July 21, 2020.

* * * * *

■ 3. Amend § 1005.33 by revising paragraphs (a)(1)(iv)(B) and (c)(2)(iii) to read as follows:

§ 1005.33 Procedures for Resolving Errors.

(a) * * *

(1) * * *

(iv) * * *

(B) Delays related to individualized investigation or other special action by the remittance transfer provider or a third party as required by the 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;

* * * * *

(c) * * *

(2) * * *

(iii) In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by paragraphs (c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B) of this section within three business days of providing the report required by paragraph (c)(1) or (d)(1) of this section except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt except that the provider shall not deduct its own fee.

■ 4. In Supplement I to Part 1005:

■ a. Under *Section 1005.30—Remittance Transfer Definitions:*

■ i. Under *Paragraph 30(g),* paragraph 2 is added.

■ b. Under *Section 1005.31—Disclosures:*

■ i. Under *Paragraph 31(a)(2),* paragraph 5 is added.

■ ii. Under *Paragraph 31(a)(3),* paragraph 1 is revised.

■ iii. Under *Paragraph 31(a)(3),* paragraph 2 is revised.

■ iv. Under *Paragraph 31(b)(2),* paragraphs 4, 5, 6 are redesignated as paragraphs 5, 6, and 7.

■ v. Under *Paragraph 31(b)(2),* paragraph 4 is added.

■ vi. Under *Paragraph 31(e)(2),* paragraph 1 is revised.

■ c. Under *Section 1005.33—Procedures for Resolving Errors:*

■ i. Under *Paragraph 33(a),* paragraphs 7, 8, 9, 10 are redesignated as paragraphs 8, 9, 10, and 11.

■ ii. Under *Paragraph 33(a),* new paragraph 7 is added.

■ iii. Under *Paragraph 33(c),* paragraph 5 is added.

The revisions and additions read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.30—Remittance Transfer Definitions

* * * * *

30(g) Sender

1. * * *

2. *Personal, family, or household purposes.* Under § 1005.30(g), a consumer is a ''sender'' only where he or she requests a transfer primarily for personal, family, or household purposes. A consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under § 1005.30(g). For transfers from an account, the primary purpose for which the account was established determines whether a transfer from that account is requested for personal, family, or household purposes. A transfer that is sent from an account that is not used primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account owned by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g).

Section 1005.31—Disclosures

31(a) General Form of Disclosures

31(a)(2) Written and Electronic Disclosures

* * * * *

■ 5. *Disclosures provided by fax.* For purposes of disclosures required to be provided pursuant to § 1005.31 or .36, disclosures provided by facsimile transmission (*i.e.,* fax) are considered to be provided in writing for purposes of providing disclosures in writing pursuant to subpart B and are not

subject to the requirements for electronic disclosures set forth in § 1005.31(a)(2).

* * * * *

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

* * * * *

1. *Transactions conducted partially by telephone.* Except as provided in comment 31(a)(3)–2, 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. A remittance transfer provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. For example, if a sender physically located abroad contacts a U.S. branch of the sender's financial institution and attempts to initiate a remittance transfer by first sending a mailed letter, further communication with the sender by letter may be impractical due to the physical distance and likely mail delays. In such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to § 1005.31(a)(3) when the provider treats that initial communication as an inquiry and subsequently responds to the consumer's inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

* * * * *

31(b) Disclosure Requirements

31(b)(2) Receipt

* * * * *

4. *Web site of the Consumer Financial Protection Bureau.* Section 1005.31(b)(2)(vi) requires a remittance transfer provider to disclose the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau. Providers may satisfy this requirement by disclosing the Web site of the Consumer Financial Protection Bureau's homepage, *www.consumerfinance.gov,* as shown on Model Forms A–31, A–32, A–34, A–35, A–39, and A–40 of appendix A. Alternatively, providers may, but are not required to, disclose the Bureau's Web site as the address of a page on the Bureau's Web site that provides information for consumers about remittance transfers, currently, *www.consumerfinance.gov/sending-money.* In addition, providers making disclosures in a language other than English pursuant to § 1005.31(g) may, but are not required to, disclose the Bureau's Web site as a page on the Bureau's Web site that provides information for consumers about remittance transfers in the relevant language, if such Web site exists. For example, a provider that is making disclosures in Spanish under § 1005.31(g) may, but is not required to, disclose the Bureau's Web site on Spanish-language disclosures as the page on the Bureau's Web site that provides information regarding remittance transfers in Spanish, currently *www.consumerfinance.gov/enviar-dinero.*

* * * * *

7. * * *

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 that has sent an email, fax, mailed letter, or similar written or electronic communication has not requested a remittance transfer if the provider believes that it is impractical for the provider to treat that communication as a request and if the provider treats the communication as an inquiry and subsequently responds to that inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to process a request for a remittance transfer. *See* comment 31(a)(3)–2. Likewise, a consumer who solely inquires about that day's rates and fees to send to Mexico has not requested the provider to send a remittance transfer. Conversely, a sender who asks the provider at an agent location to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer.

* * * * *

Section 1005.33 Procedures for Resolving Errors

33(a) Definition of Error

* * * * *

7. *Failure to make funds available by disclosed date of availability—fraud and other screening procedures.* 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 a delay related to the provider's or any third party's necessary investigation or other special action necessary to address potentially suspicious, blocked or prohibited activity 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. For example, no error occurs if delivery of funds is delayed because the provider's fraud screening system flags a remittance transfer because the designated recipient has a name similar to the name of a blocked person under a sanctions program and further investigation is needed to determine that the designated recipient is not actually a blocked person. Similarly, no error occurs if delivery of funds is delayed because the correspondent bank to which the provider forwards the remittance transfer identifies the transfer as similar to previous fraudulent activity and action by a correspondent or the provider is necessary to proceed. However, if a delay is caused by ordinary fraud or other screening procedures, where no potentially fraudulent, suspicious, blocked or prohibited activity is identified and no further investigation or action is required, the exception in § 1005.33(a)(1)(iv)(B) would not apply.

* * * * *

11. * * *

33(c) Time Limits and Extent of Investigation

* * * * *

5. *Amount appropriate to resolve the error.* For purposes of the remedies set forth in § 1005.33(c)(2)(i)(A) and (B), (c)(2)(ii)(A)(*1*), and (*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. For example, when the amount that was disclosed pursuant to § 1005.31(b)(1)(vii) was received by the designated recipient before the provider must determine the appropriate remedy for an error under § 1005.33(a)(1)(iv), no additional amounts are required to resolve the error after the remittance transfer provider refunds the appropriate fees and taxes paid by the sender pursuant to § 1005.33(c)(2)(ii)(B) or (c)(2)(iii), as applicable.

* * * * *

Dated: April 14, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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