

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: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending subpart B of Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation (Remittance Rule). This final rule extends 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 would have expired on July 21, 2015. Based on a determination that the termination of the exception would negatively affect the ability of insured institutions to send remittance transfers, the Bureau is extending the temporary exception by five years from July 21, 2015, to July 21, 2020. The Bureau is also making several clarifications and technical corrections to the regulation and commentary.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Jane G. Raso and Shiri Wolf, Counsels; Eric Goldberg, Senior Counsel, Office of Regulations, at (202) 435-7700 or CFPB_RemittanceRule@consumerfinance.gov. 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 Final Rule

This final rule amends regulations that implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that establish a new system of federal protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries.¹ The amendments in this final rule extend by five years an exception in the rule that allows remittance transfer providers flexibility in meeting disclosure requirements that the Bureau believes would otherwise cause some remittance transfer providers to stop sending certain transfers, as well as making clarifications and technical corrections on various issues. The Bureau proposed these amendments in April 2014 (the April Proposal or the Proposal).

A. Temporary Exception for Estimated Disclosures

The Dodd-Frank Act provisions adopted by Congress as section 919(a)(4) of the Electronic Fund Transfer Act (EFTA) generally requires that consumers be provided with exact pricing disclosures before paying for a remittance transfer. However, Congress created a temporary provision that allowed insured institutions for several years to provide estimated disclosures where exact information could not be determined for reasons beyond their control. The provision was apparently designed to provide a transition period to allow credit unions,

¹ Public Law 111-203 was signed into law on July 21, 2010. 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 Remittance Rule took effect on October 28, 2013.

banks, and thrifts to develop better communication mechanisms with foreign financial institutions that may help execute wire transfers and certain other types of remittance transfers.

The statute provides that the exception shall expire five years after the enactment of the Dodd-Frank Act, or July 21, 2015, but permits the Bureau, if it determines that expiration of the temporary exception would negatively affect the ability of insured institutions to send remittances to locations in foreign countries, to extend the temporary exception for up to ten years after enactment of the Dodd-Frank Act (*i.e.*, to July 21, 2020). EFTA section 919(a)(4)(B). Having made that determination after a period of public comment, the Bureau is now extending the Regulation E estimation provision that implements this statutory provision, § 1005.32(a) in the Remittance Rule, to July 21, 2020.

B. Additional Clarifications

The Bureau is also adopting several clarifications and technical corrections to the Remittance Rule. First, the Bureau is clarifying that U.S. military installations abroad are considered to be located in a State for purposes of the Remittance Rule. Second, the Bureau is clarifying that whether a remittance transfer from an account is for personal, family, or household purposes (and thus, whether the transfer could be a remittance transfer) may be determined by ascertaining the primary purpose of the account. Third, the Bureau is clarifying that faxes are considered writings for purposes of satisfying certain provisions of the Remittance Rule that require remittance transfer providers to provide disclosures in writing, and that, in certain circumstances, a provider may provide oral disclosures after receiving a remittance inquiry from a consumer in writing. Fourth, the final rule permits providers to include the Bureau's new remittance-specific consumer Web pages as the Bureau Web site that providers must disclose on remittance transfer receipts. Finally, the Bureau is clarifying two of the rule's

error resolution provisions: what constitutes an “error” caused by delays related to fraud and related screenings, and the remedies for certain errors, including the clarification of a comment in the official interpretation to the rule.

II. Background

A. Types of Remittance Transfers

As the Bureau discussed in more detail when it first published the Remittance Rule in February 2012, consumers can choose among several methods of transferring money to foreign countries (February 2012 Final Rule). 77 FR 6194 (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 Remittance 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 remittance transfers sent 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 typically can exercise some control over the remittance transfer from end to end, including the ability 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. Indeed, virtually all bank respondents to the March 2014 Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (FFIEC Call Report)² who reported that they were remittance transfer providers said they provided wire transfer services to consumers.³ Unlike closed network transactions, which generally can only be sent to entities that have signed

² The remittance transfer data collected for the period beginning on January 1, 2014 and ending on March 31, 2014, is the first quarter in which data related to remittance transfers was collected as part of the FFIEC Call Report; the specific questions and responses are discussed below. The data for this one quarter is the only FFIEC Call Report data available to the Bureau for review and analysis. The Bureau has some concerns about some of the responses and has noted those concerns where relevant in this Federal Register notice. The Bureau expects to continue to monitor responses to future FFIEC Call Reports to questions related to remittance transfers in the FFIEC Call Report.

³ The Bureau's analysis determined 691 depository institutions identified themselves as remittance transfer providers, and 680 of the said 691 institutions reported that they provide wire transfer services during the first quarter of 2014. See generally FFIEC Call Report data in response to the March 2014 Call Report, available at <https://cdr.ffiec.gov/public/>.

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. Also 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 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 institution), typically does not have control over, or a relationship with, all of the participants in transmitting the remittance transfer. The originating institution may communicate indirectly with the designated recipient's institution by sending funds and payment instructions to a correspondent institution, which will then transmit the instructions and funds to the designated recipient's 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 originating institution may send payment instructions directly to the designated recipient's 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 the designated recipient's institution deposits the funds 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 consumers, or through surveying other institutions. However, at least until the implementation of the Remittance Rule, intermediary and designated recipient institutions did not, as a matter of uniform practice, communicate with originating institutions regarding the fees and exchange rates that institutions might apply to transfers. Further, 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 an open network. *See generally* 78 FR 30662, 30663 (May 22, 2013).

International ACH

In recent years, some depository institutions and credit unions have begun to send remittance transfers through the automated clearing house (ACH) system, although use of ACH for consumer transfers is limited. In the FFIEC Call Report for the quarter ending March 31, 2014, only 78 of the 691 depository institutions that reported being remittance transfer providers also reported that they provide international ACH services for consumers. When the Bureau first issued the Remittance Rule in February 2012, the Bureau explained that it considered international ACH transfers to be open network transactions. Like wire transfers, international ACH transfers can involve payment systems in which a large number of institutions may participate, such that the originating institution and the designated recipient's institution may have no direct relationship. The Bureau acknowledged, however, that international ACH

transfers also share some characteristics of closed network transfers. The agreements among gateway ACH operators in 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 to a remittance transfer. To maintain consistency with the Bureau’s prior rulemakings, 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 facilitated by money transmitters make up the great majority of the remittance transfers sent. Relatedly, the Bureau believes that money transmitters collectively send far more remittance transfers each year than depository institutions and credit unions. In January 2014, in connection with a “larger participant” rulemaking (discussed in greater detail below), the Bureau 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) through the NCUA Call Report and Credit Union Profile forms (NCUA Call Report) suggests that credit unions may have collectively sent less than one percent of this total in 2013 (*i.e.* less than 1 million remittance transfers collectively). Data from the FFIEC Call Report confirm that depository institutions send many more remittance transfers than credit unions, but still far fewer than money transmitters. Specifically, the data show that banks that are considered remittance transfer providers pursuant to § 1005.30(f) collectively sent about 2.2 million remittance transfers from October 28 through

December 31, 2013.⁴ Annualizing this figure (without any seasonal adjustments to account for the fact that this data cover the Christmas-New Year holiday season, which the Bureau understands to be traditionally a time of increased transfer volume), the Bureau estimates that depository institutions collectively sent at most 13.2 million international transfers in 2013. This figure is less than 10 percent of the estimated 150 million remittance transfers sent by money transmitters. Although the Bureau believes that money transmitters are responsible for sending the great majority of the remittance transfers, it believes that the typical size of transfers sent by depository institutions and credit unions is larger than the typical size of transfers sent by a money transmitter.⁵ A transfer sent by a depository institution or credit union may be in the thousands of dollars, while the Bureau estimates that the typical size of remittance transfers sent by money transmitters is in the hundreds of dollars.⁶

B. Section 1073 of the Dodd-Frank Act

Section 1073 of the Dodd-Frank Act amended 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. It 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

⁴ Although the FFIEC Call Report covered the period from January 1 through March 31, 2014, this question, concerning the volume of transfers sent, asked about the period October 28 through December 31, 2013. (The remittance rule went into effect on October 28, 2013.)

⁵ Pursuant to the Remittance Rule, transfers of \$15 or less are not considered remittance transfers under the rule. Accordingly, although the FFIEC Call Report notes a very low median transaction amount for remittance transfers (approximately \$9), the Bureau believes that the typical size of the transfers sent by depository institutions and credit unions is a larger number.

⁶ The Bureau lacks data on remittance transfers sent by broker-dealers.

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.⁷ 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 could 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 EFTA section 919, as added by section 1073 of the Dodd-Frank Act, permits the Bureau to extend that date up to five more years (*i.e.*, July 21, 2020), if the Bureau determines that the termination of the temporary exception on July 21, 2015, would negatively affect the ability of insured depository institutions and insured credit unions to send remittance transfers. EFTA section 919(a)(4)(B).

The second statutory exception in EFTA section 919 is permanent. The exception 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 does not allow, a remittance

⁷ The Bureau created two additional permanent exceptions by regulation in § 1005.32(b)(2) and (b)(3). They are discussed below.

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 initially issued regulations to implement section 1073 of the Dodd-Frank Act in February 2012, which was followed by two significant rounds of amendments and some additional minor clarifications and technical corrections. The consolidated Remittance Rule took effect on October 28, 2013.

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, as authority to implement the new Dodd-Frank Act provisions amending EFTA had transferred from the Board to the Bureau on July 21, 2011. *See* 12 U.S.C. 5581(a)(1); 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include EFTA).

The Remittance 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. The information includes, 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, a

provider may provide the required disclosures orally or via text message. Section 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 May 2013.

The Remittance Rule generally requires that the required disclosures state the actual exchange rate, if any, that will apply to a remittance transfer, and the actual amount that will be received by the designated recipient of the transfer, unless an exception applies. Section 1005.32(a) implements the temporary exception. Section § 1005.32(b)(1) implements the permanent statutory exception. As implemented by the Bureau, this permanent exception permits a remittance transfer provider to rely on a list of countries published by the Bureau to determine whether estimates may be provided.⁸ The Remittance 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 amended the Remittance Rule on August 20, 2012.⁹ These amendments 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 amendments also include provisions that apply to remittance transfers that

⁸ See 78 FR 66251 (Nov. 5, 2013). The list, which is also maintained on the Bureau's website, contains countries whose laws the Bureau believes prevent remittance transfer 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 suggestions on potential changes to this list and analyzes those suggestions as they are received.

⁹ On July 10, 2012, the Bureau published a technical correction to the Remittance Rule. See 77 FR 40459 (Jul. 10, 2012).

are scheduled significantly in advance of the date of transfer, including a provision that allows a provider to estimate certain disclosure information for such transfers. *See* § 1005.32(b)(2).

The 2013 Final Rule

Following the initial publication of the Remittance Rule in February 2012, 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 proposed amendments to specific aspects of the Remittance Rule in a notice of proposed rulemaking published on December 31, 2012, in order to avoid potentially significant disruptions to the provision of remittance transfers. *See* 77 FR 77188 (Dec. 31, 2012). The Bureau then decided to delay temporarily the Remittance Rule's original effective date of February 7, 2013, in order to complete this additional rulemaking. *See* 78 FR 6025 (Jan. 29, 2013).

The Bureau finalized these proposed amendments in May 2013. 78 FR 30662 (May 23, 2013). In these amendments, the Bureau modified the Remittance Rule to make optional the requirement to disclose taxes collected on the remittance transfer by a person other than the remittance transfer provider and in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution (defined as non-covered third-party fees). In place of these two disclosure requirements, the Remittance Rule now requires providers, where applicable, to add disclaimers to the disclosures they must provide to sender. The disclaimers must inform senders that due to non-covered third-party fees and taxes collected on the transfer by a person other than the remittance transfer provider, the designated recipient may receive less than the amount listed on the disclosures as the total amount of funds that will be received by him or her. The May 2013 amendments also created an additional permanent exception that allows providers to estimate, if they choose to, non-covered third-party fees and taxes collected

on the remittance transfer by a person other than the provider. *See* § 1005.32(b)(3). Finally, the Bureau 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.¹⁰ The Remittance Rule then 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 (Jan. 31, 2014). 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, and the Bureau is in the process of preparing to issue a final rule.¹¹

D. Implementation Initiatives for the Remittance Rule and Related Activities

The Bureau has been actively engaged in an initiative to support implementation of the Remittance Rule. For example, the Bureau has established a Web page that contains links to various industry and consumer resources.¹² These resources include a small entity compliance guide that provides a plain-language summary of the Remittance Rule and highlights issues that

¹⁰ In August 2013, the Bureau adopted a clarification and a technical correction to the Remittance Rule. 78 FR 49365 (Aug. 14, 2013).

¹¹ The comments submitted regarding this proposed rule are available at <https://federalregister.gov/a/2014-01606>.

¹² Available at <http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>.

businesses, in particular small businesses, may want to consider when implementing the Remittance Rule. In conjunction with the release of this final rule, the Bureau is revising the compliance guide to update its text to reflect the changes to the Remittance Rule adopted herein and improve the guide's clarity. A video overview of the Remittance Rule and its requirements, model forms, and other resources are 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.¹³ 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. The Bureau continues to provide ongoing guidance support to assist industry and others with interpreting the Remittance Rule, and has sent staff to speak at conferences and in other forums, both to provide additional guidance on the Remittance Rule, and learn from providers and others about efforts to comply with the Rule.

III. Summary of the Rulemaking Process

A. Fact Gathering Concerning 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 February 2012, the Bureau noted that some industry commenters urged the Bureau at that time to make the temporary exception permanent, or in the alternative, extend the exception to July 21,

¹³ Available at <http://www.consumerfinance.gov/blog/category/remittances/>.

2020. The Bureau declined to extend the exception in February 2012. It believed then that it would have been premature to make a determination on the extension of the temporary exception three years in advance of the July 2015 sunset date, prior to the rule's release, and before the market has had a chance to respond to the regulatory requirements. *See* 77 FR 6194, 6202, and 6243 (Feb. 7, 2012).

Since the Bureau first issued the Remittance 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 Remittance Rule. The additional research and monitoring have included in-depth conversations with several remittance transfer providers about how they have implemented the requirements of the Remittance Rule, participation in industry conferences and related meetings, as well as similar monitoring efforts. In addition, Bureau staff conducted interviews with approximately 35 industry stakeholders and consumer groups after the Remittance Rule took effect in connection with this rulemaking.¹⁴ Through these interviews, the Bureau gathered information regarding 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.¹⁵

¹⁴ The Office of Management and Budget (OMB) control number for this information collection is 3170-0032.

¹⁵ See Consumer Financial 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.

The industry stakeholders that the Bureau contacted included both remittance transfer providers and service providers. The Bureau contacted community banks, regional banks, credit unions, nonbank service providers, and very large banks that send remittance transfers on behalf of their retail customers and on behalf of other providers. The Bureau also contacted remittance transfer providers that are broker-dealers. The Bureau believes that broker-dealers may send transfers via open networks, similar to those used by many insured institutions.¹⁶ The Bureau also contacted nonbank money transmitters that use open networks to send some of their transfers. Although the temporary exception only applies to insured institutions, the Bureau believed that interviewing certain nonbank money transmitters that send open network transfers without being able to rely on the temporary exception would help the Bureau better understand what methods exist for providing exact disclosures for open network transfers. The service providers that the Bureau contacted included correspondent banks and corporate credit unions, bankers' banks, and foreign banks that offer correspondent banking services to U.S.-based remittance transfer 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 NCUA Call Report.¹⁷ The data provided information on 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

¹⁶ 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>.

¹⁷ See generally <http://www.ncua.gov/dataapps/qcallrptdata/Pages/default.aspx>.

remittance transfers. Additionally, as discussed above, the Bureau has reviewed FFIEC Call Report data about remittance transfer practices. On the forms due in April 2014 regarding the reporting period from January 1 through March 31, 2014, depository institutions were required to provide select information, 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 also included information on the frequency with which a reporting institution uses the temporary exception in its role as a remittance transfer provider.¹⁸

The Bureau notes that the data from the NCUA and FFIEC Call Reports do not cover every practice, or every type of remittance transfer providers and service providers that the Bureau has researched and interviewed through its market monitoring efforts. However, as noted in the April Proposal, the FFIEC and NCUA Call Reports have the potential to provide valuable quantitative data to complement the more in-depth qualitative information that the Bureau has been able to gather through interviews and other sources because the scope of the data covers every depository institution and credit union reporting to the NCUA and FFIEC, respectively. At this point, the value of the data collected in the first quarter FFIEC Call Report is limited in part because there has only been one reporting cycle. The Bureau will continue to monitor the data, with a focus on trends over time. The Bureau also expects to continue to assess the data as depository institutions become more familiar with these new reporting requirements. Finally, to the extent that responses to the FFIEC Call Report can provide an accurate measure of the extent of the utilization of the temporary exception by insured institutions, this measure is not

¹⁸ See 79 FR 2509 (Jan. 14, 2014); FDIC Financial Institution Letter FIL 4-2014.

the only, nor necessarily the primary factor that the Bureau has considered in determining whether to extend the temporary exception under EFTA section 919(a)(4)(B).

The Bureau also notes that in connection with the April Proposal, it consulted with consumer groups to attempt to identify the effects, if any, that estimating covered third-party fees and exchange rates may have on consumers, as well as the potential effect on consumers of the expiration of the temporary exception, and, in the alternative, its extension to July 21, 2020.

B. Summary of the April Proposal

As noted above, in April 2014, the Bureau proposed amendments to various provisions of the Remittance Rule to extend a temporary provision that permits insured institutions to estimate certain third-party fees and exchange rates, and to clarify or revise several regulatory provisions and official interpretations previously adopted by the Bureau.

The primary focus of the April Proposal was the temporary exception. The Bureau proposed to extend the Regulation E estimation provision in § 1005.32(a). That provision allows remittance transfer providers to estimate certain third-party fees and exchange rates associated with a remittance transfer, if certain conditions are met. Specifically, a remittance transfer provider may rely on the temporary exception 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 (3) the provider cannot determine the exact amounts for reasons outside of its control. Based on its outreach and internal research and analysis, the Bureau preliminarily determined that the termination of the temporary exception would negatively affect the ability of insured institutions to send remittance transfers. Thus, the Bureau proposed to amend § 1005.32(a)(2) by extending the temporary exception by five years from July 21, 2015, to July 21, 2020.

C. Additional Clarifications

The Bureau also proposed several clarificatory amendments and technical corrections to the Remittance Rule. First, the Bureau sought comment on whether (and if so, how) it should clarify treatment of U.S. military installations located in foreign countries for purposes of the Remittance Rule. The Bureau explained in the April Proposal that it believes there is a potential for confusion in the treatment of these transfers, because the Remittance Rule does not expressly address their status. Second, the Bureau proposed to clarify that whether a transfer from an account is for personal, family, or household purposes (and thus, whether the transfer is a remittance transfer) can be determined by ascertaining the purpose for which the account was created. Third, the Bureau proposed to clarify that faxes are considered writings for purposes of certain disclosure provisions 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 proposed to clarify two of the rule's error resolution provisions. More specifically, the Bureau proposed to clarify what constitutes an "error" caused by delays related to fraud and related screening, and the remedies for certain errors.

D. Comments Received

The Bureau received more than 30 comments on the April Proposal. The majority of comments were submitted by industry commenters, including depository institutions of various sizes, money transmitters, and industry trade associations. In addition, the Bureau received comment letters from two consumer groups.

Industry commenters overwhelmingly supported the April Proposal, and agreed with the Bureau's preliminary determination that the expiration of the temporary exception would have a

negative impact on the ability of insured institutions to send remittance transfers. In support of the April Proposal, several institutions and industry trade associations explained how and why they used the temporary exception. Industry commenters further asserted that the temporary exception is critical and that they would not have the ability to disclose exact amounts for all remittance transfers by July 2015. Other commenters expressed concern that the expiration of the temporary exception could cause many community banks to either exit the remittance transfer market, or significantly cut back the scope of their services.

The two consumer group commenters both opposed this part of the April Proposal. One consumer group commenter asserted that the Bureau should limit the extension of the temporary exception to situations where it was necessary, as defined by the Bureau, or for shorter period of time, rather than the full five years permitted by the Dodd-Frank Act. The other consumer group commenter asserted that if the Bureau were to extend the temporary exception, then it should require insured institutions that rely on the exception to disclose to customers that money transmitters (*i.e.*, remittance transfer providers that are not insured institutions and, thus, are not permitted by the Remittance Rule to rely on the temporary exception) would provide consumers with exact disclosures.

With respect to the Bureau's request for comment and data regarding the treatment of transfers to and from U.S. military installations located in foreign countries, the Bureau received several comments, but only limited data. Industry commenters generally urged the Bureau to determine that military installations located in foreign countries be treated as being located in a State, so that, for example, transfers from a State to a U.S. military installation located in a foreign country would not be covered by the Remittance Rule. These commenters asserted that transfers to or from a U.S. military installation were no different than domestic transfers that are

already exempt from the Remittance Rule. One consumer group, however, urged that the Bureau take the opposite approach, and treat a U.S. military installation located in a foreign country as being located in the foreign country. This consumer group asserted that transfers received on a military installation in a foreign country should not be treated differently from transfers received outside the installation in the foreign country.

As for the Bureau's other proposed amendments, commenters generally supported the proposed changes, although some noted particular objections. Specifically, with respect to the proposed clarification concerning the treatment of faxes as writings, one commenter, a consumer group, opposed the change, arguing that faxes should only be allowed to comply with the Remittance Rule's disclosure requirements where the sender has consented to receive the disclosure by fax by providing E-Sign consent. Commenters also supported the Bureau's proposal that would permit alternatives to disclosing the URL for the Bureau's Web site on required receipts, as well as the Bureau's proposal that would permit remittance transfer providers to respond to written requests for a remittance transfer with oral disclosures, when providing written disclosures would be impractical. Commenters similarly supported the proposal to permit providers to look to the type of account from which the transfer is being sent to determine if the transfer is a remittance transfer (although, as discussed in greater detail below, one large money transmitter opposed the proposal, to the extent the proposal would have been a mandatory change).

The Bureau also received several comments regarding the proposed changes to the Remittance Rule's error resolution and remedy provisions. These comments were mixed. Regarding the proposed change clarifying the circumstances under which provider delay due to certain fraud screening would not be considered an error under the Rule, several commenters

contended that the Bureau’s proposed approach was too narrow, and that it would exclude several categories of screening-related delays that should be included in the Remittance Rule’s exception. Other industry commenters disagreed; they supported the proposed change, and noted that it would cover the majority, if not all, of the delays financial institutions experience related to fraud screening. One consumer group commenter also supported these proposed changes. With respect to the proposed clarifications to the remedies for certain errors, some industry commenters supported, or did not oppose, the proposed clarifications, although several argued that providers should not have to refund their fees, in cases where the designated recipient did not receive the remittance transfer by the date of availability disclosed by the provider, because the sender had provided incorrect or insufficient information. Finally, several commenters urged the Bureau to adjust other parts of the Remittance Rule that were beyond the scope of the April Proposal.

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

IV. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of 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 EFTA, which provides that subject to rules prescribed by the Bureau, insured depository institutions and insured 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.*, 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 final rule is adopted 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

As noted in the April Proposal, the Remittance Rule applies when a sender located in a “State” sends funds to a designated recipient at a location in a “foreign country.” *See* § 1005.30(c) and (g). Further, the Rule specifies that in the context of transfers to or from an account, the Rule’s application depends on the location of the account rather than the account

owner's physical location at the time of transfer. *See* comments 30(c)-2.ii and 30(g). The Rule does not, however, specifically address the status of a transfer that is sent to or from a U.S. military installation located in a foreign country, nor does the definition of "State" in subpart A of Regulation E (§ 1005.2(l)) directly address the definition's application to a U.S. military installation.

In the April Proposal, the Bureau recognized that the Remittance Rule's application to transfers sent to and from U.S. military installations located abroad could, in some cases, lead to confusion. Specifically, the Bureau had received inquiries about whether U.S. military installations located abroad should be treated as located in a State or in a foreign country. The Bureau noted that application of the Remittance Rule might also differ depending on whether the transfer was sent to or from a depository institution account or would be picked up by the recipient at a location on the military installation. 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 (not into the recipient's account) on a U.S. military base in a foreign country. Depending on whether the financial institution is deemed to be at a location in a "foreign country" or a "State," the Remittance 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 noted in the April Proposal, however, that the application of the Remittance Rule could be different for transfers from accounts of persons located on 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. 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.

In light of the complexity of these issues, the Bureau sought comment on whether it would be advisable to provide further clarity on this point and also sought data regarding these issues. The Bureau acknowledged in the April Proposal that it did not then have sufficient information or data to make a determination regarding whether the Remittance Rule should (or should not) treat foreign military installations as "States" for purposes of the Remittance Rule, both in the context of transfers received in cash and in the context of transfers sent to or from an account that is located on a military installation. Accordingly, the Bureau sought data on the relative number of transfers sent to and from individuals and/or accounts located on U.S. military installations in foreign countries. In addition, the Bureau sought comment on the appropriateness of extending any clarification regarding U.S. military installations to other U.S. government installations abroad, such as U.S. diplomatic missions.

The Bureau received several comments on this issue. While a small number of commenters reported on the number of transfers they send to overseas military installations, commenters did not provide data on the relative number of transfers sent to and from such installations. The vast majority of commenters, however, recommended that the Bureau treat U.S. military installations abroad as located "on U.S. soil," and therefore exempt transfers sent to such installations from the Remittance Rule. Commenters favoring this approach provided

various rationales. Several commenters, including a large bank, a community bank, and a State trade association, recommended exempting remittance transfers to U.S. military installations abroad from the Rule. They stated that such transfers present lower risks to consumers than remittance transfers sent from the United States to other foreign locations, because transfers involving U.S. military installations are generally sent to and from U.S. financial institutions, in U.S. dollars, using U.S. payment systems (thus subject to the rules of those systems). They further argued that such transfers do not involve fluctuating exchange rates, and will likely be subject to U.S. consumer protection laws (insofar as the recipient institution is a U.S. financial institution).

Other commenters, including community banks, large banks, credit unions, and trade associations, noted that other statutory and regulatory regimes currently treat U.S. military installations located abroad as located in the United States. For example, a large bank noted that deposits in foreign branches of U.S. financial institutions that are located on a U.S. military installation and governed by Department of Defense regulations are insured by the Federal Deposit Insurance Corporation, while deposits in foreign branches that are not located on such installations are not. A national trade association and a federal credit union similarly noted that the U.S. Postal Service treats mail sent from the United States to U.S. military installations overseas as domestic mail. Several other commenters, including a number of credit unions, urged the Bureau to exempt transfers to U.S. military installations abroad because, they claimed, many remittance transfer providers were already treating such installations as located on “U.S. soil.”

A few commenters did not support treating U.S. military installations as “States” for purposes of the Remittance Rule. One consumer group argued that the Bureau should treat

military installations abroad as located in a foreign country because individuals who send remittance transfers to family members stationed abroad should receive the protections of the Remittance Rule. Other commenters, including a group of national trade associations, noted that any solution that applied exclusively to military installations would pose logistical challenges, because it may be difficult to determine whether a recipient or a recipient's account is located on a military installation. These commenters were either silent about how the Bureau should resolve the issue of money transfers to U.S. military installations or advocated that the Bureau maintain the status quo.

Based on its review of the comments received and its own analysis of this issue, the Bureau is persuaded, for the reasons discussed below, that transfers to individuals and accounts located on U.S. military installations located abroad, as well as transfers from individuals and their accounts located on U.S. military installations abroad to designated recipients in the United States, should be excluded from the Remittance Rule's application. Accordingly, the Bureau is finalizing revisions to the commentary to the definitions of "designated recipient" (§ 1005.30(c)) and "sender" (§ 1005.30(g)). These revisions clarify that, for purposes of determining whether a transfer qualifies as a "remittance transfer" under the Rule, persons or accounts that are located on a U.S. military installation abroad are considered to be located in a State. Pursuant to these revisions, revised comment 30(c)-2.i explains that funds that will be received at a location on a U.S. military installation that is physically located abroad are received in a State, and revised comment 30(c)-2.ii explains that, for transfers that are sent to a recipient's account, an account that is located on a U.S. military installation abroad is considered to be located in a State. As revised, comment 30(g)-1 now explains that senders or senders' accounts that are located on U.S.

military installations that are physically located abroad are located in a State for purposes of subpart B.

The Bureau believes this approach provides clarity without undermining the important consumer protections provided by the Remittance Rule. The Bureau agrees with the majority of commenters that transfers from the United States to a U.S. military installation located abroad share many of the characteristics of domestic transfers, and as such harbor less risk for consumers than a typical remittance transfer. In sum, while the Bureau agrees that servicemembers and their families deserve to receive the same consumer protections that are available to all other consumers, the Bureau agrees with those commenters who asserted that the consumer protection concerns associated with transfers sent to locations in a foreign country generally do not apply to transfers sent to U.S. military installations abroad. Meanwhile, the Bureau notes that transfers from locations on U.S. military installations abroad to recipients in foreign countries may, in many circumstances, qualify as remittance transfers. Unlike the quasi-domestic nature of transfers to the U.S. military installations abroad, transfers from those installations to foreign countries are typically sent without the protection of laws and rules in place for domestic transfers and are more likely to be involve a foreign currency exchange. The Bureau will continue to monitor, through its complaint intake processes and other channels, whether particular concerns arise with respect to transfers involving U.S. military installations abroad.

The Bureau declines to adopt the bright-line test proposed by one money transmitter commenter that would have allowed remittance transfer providers to determine an account's location by looking at whether the account was held with a United States or a foreign financial institution. The Bureau believes that such a rule would be over-broad in that it would exclude

transfers that are sent to accounts located in foreign branches of U.S. financial institutions, of which the Bureau believes there are many. Such transfers, with the limited exception of transfers to foreign branches located on U.S. military installations abroad, as discussed above, currently qualify as remittance transfers under the Rule, and the Bureau did not intend to change this result when it proposed to clarify the treatment of U.S. military installations.

The Bureau acknowledges that, as noted by a few commenters, there may be some scenarios in which it is impossible for the remittance transfer provider to know that the transfer will be sent to a location or account located on a U.S. military installation. The Bureau notes, however, that such scenarios already exist regardless of whether the transfer involves a U.S. military installation located abroad; indeed, the Bureau has previously addressed these scenarios in existing comment 30(c)-2.iii, which explains that, where a sender does not specify information about a designated recipient's account, a provider may make the determination of whether funds will received in a foreign country based on "other information." Thus, those providers who currently make a determination about the location of a recipient or a recipient's account by, for example, looking at the routing number and address of the branch of the financial institution receiving the transfer, can continue to do so; the revised commentary merely provides that where they have specific information that the account is located on a U.S. military installation, they can treat the account as located in a State, notwithstanding any information to the contrary derived from the account's routing number.

Finally, the Bureau is not finalizing a provision that would address the application of the Remittance Rule to other U.S. government installations abroad. The Bureau did not receive any comments indicating that there is actual or potential confusion with respect to the Remittance Rule's application to non-military U.S. installations located in foreign countries.

Non-Consumer Accounts

Section 1005.30(g) provides that a “sender” under subpart B of Regulation E means a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient. Together with the definition of “remittance transfer” in § 1005.30(e), this means that for the Remittance Rule to apply to an electronic transfer of funds, the transfer must have been requested by a consumer primarily for personal, family, or household purposes.

In response to certain questions about how to determine whether the Remittance Rule applies to transfers sent from an account that is not an account for the purposes of Regulation E, such as a business account, the Bureau proposed to add comment 30(g)-2 to explain that a consumer is a “sender” only if the consumer requests a transfer primarily for personal, family, or household purposes. The proposed comment would have also explained that 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. Accordingly, under the proposed clarification, a transfer is not requested primarily for personal, family, or household purposes if it 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 held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, and a person requesting a transfer from such an account therefore is not a sender under § 1005.30(g). Having reviewed the comments received and for the reasons set forth below, the Bureau is adopting comment 30(g)-2 with the modifications explained below.

One of the two consumer group commenters supported this aspect of the April Proposal. Industry commenters generally supported clarifying that the Remittance Rule does not apply to transfers sent from business accounts. Several trade association commenters also supported the change but noted that some financial institutions may re-code accounts that were initially set up as consumer accounts as business accounts, based on the way an accountholder uses the account. The trade association commenters asserted that the Bureau should clarify that financial institutions could rely on the way the account is identified in their records at the time the transfer is requested to determine whether the transfer is made for personal, family, or household purposes. One large money transmitter commenter expressed concern about proposed comment 30(g)-2, because it interpreted the proposed comment to mean that a remittance transfer provider must apply the Remittance Rule to any transfer from a consumer account, even if the customer indicates that the transfer is for a business purpose. The commenter asserted that this interpretation would result in compliance burden for some money transmitters. It explained that it offers customers the ability to send transfers from accounts, but because it does not hold the accounts, it does not know whether those accounts are consumer or non-consumer accounts. Therefore, it relies on the purpose of a transfer, as indicated by its customer, to determine if the transfer is a remittance transfer for purposes of the Rule. A large bank commenter requested that the Bureau adopt additional commentary to clarify that the Remittance Rule does not apply to transfers from accounts held by a financial institution under a *bona fide* trust agreement because those accounts do not meet the definition of “account” under the general provisions of Regulation E.

The Bureau has considered the comments and, for reasons discussed in more detail below, is adopting as proposed the aspect of proposed comment 30(g)-2 that would have

explained the definition of a “sender.” The Bureau is also adding new comment 30(g)-3, in which it is adopting the aspect of proposed comment 30(g)-2 that would have explained that a transfer sent from a non-consumer account is not requested primarily for personal, family, or household purposes, and therefore a consumer requesting a transfer from such an account is not a sender under § 1005.30(g).

Additionally, the Bureau is explaining in comment 30(g)-3 that a transfer from an account held by a financial institution under a *bona fide* trust agreement is also not requested for personal, family, or household purposes, and therefore a consumer requesting a transfer from such an account is not a sender under § 1005.30(g). Section 1005.2(b)(3) provides that the term “account” in Regulation E does not include an account held by a financial institution under a *bona fide* trust agreement. The Bureau believes that adding this clarification to comment 30(g)-3 is consistent with the Bureau’s intent to clarify that insofar as a transfer is sent from an account, the Remittance Rule only applies to transfers from accounts that fall within the definition of “account” under the general provisions of Regulation E.

The Bureau is not adopting the aspect of the proposed comment 30(g)-2 that would have explained that the primary purpose for which the account was established determines whether a transfer from that account is for personal, family, or household purposes. Upon further consideration, the Bureau believes that this aspect of the proposed comment could have been interpreted to mean that a provider would have to apply the Remittance Rule to all transfers from a consumer account, even in situations in which the sender indicates that the primary purpose of the transfer is a non-consumer purpose. Although the Bureau continues to believe that a provider should be able to rely on the primary purpose for which the account was established to determine whether a transfer from that account is for personal, family, or household purposes,

the Bureau believes that applying the Rule to all transfers from a consumer account, even in situations in which the sender indicates that the primary purpose of the transfer is a non-consumer purpose, would be in tension with the definition of a “sender.” The Bureau is also concerned that such a bright-line test could cause compliance burden, as suggested above by a large money transmitter, if required in all cases. The Bureau further believes that it is appropriate to draw a clear line with respect to the applicability of the Remittance Rule to transfers sent from accounts that were not established primarily for personal, family, or household purposes for providers who have access to that information.

Accordingly, as adopted, comment 30(g)-2 explains that a consumer is a “sender” only where he or she requests a transfer primarily for personal, family, or household purposes and that a consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under § 1005.30(g). It further explains that if a consumer requests a transfer from a an account that was established primarily for personal, family, or household purposes, then a remittance transfer provider may generally deem that the transfer is requested primarily for personal, family, or household purposes and the consumer is therefore a “sender” under § 1005.30(g). However, if the consumer indicates that he or she is requesting the transfer primarily for other purposes, such as business or commercial purposes, then the provider may deem the consumer not to be a sender under § 1005.30(g), even if the consumer is requesting the transfer from an account that is used primarily for personal, family, or household purposes.

Comment 30(g)-3 explains that a provider may deem that a transfer that is requested to be 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 held by a business entity such as a corporation, not-for-profit corporation, professional

corporation, limited liability company, partnership, or sole proprietorship, as not being requested primarily for personal, family, or household purposes. A consumer requesting a transfer be sent from such an account therefore is not a sender under § 1005.30(g). The comment also explains that a transfer that is sent from an account held by a financial institution under a *bona fide* trust agreement pursuant to § 1005.2(b)(3) is not requested primarily for personal, family, or household purposes, and a consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g).

Lastly, as discussed above, several trade association commenters suggested that the Bureau adopt guidance that would permit a financial institution to rely on the way an account is identified in its records at the time the transfer is requested (rather than when the account was established) to determine whether the transfer is made primarily for personal, family, or household purposes. The Bureau is not adopting this recommendation. The Bureau proposed comment 30(g)-2 to provide additional clarification that transfers from accounts that do not meet the definition of “account” under the general provisions of Regulation E are not subject to the Remittance Rule. Pursuant to § 1005.2(b)(1), an account at a financial institution is an “account” for purposes of Regulation E if it was “**established** primarily for personal, family, or household purposes.” (Emphasis added.) In other words, the primary purpose for which an account was established determines whether the account is an “account” for purposes of Regulation E. Accordingly, the Bureau believes that adopting this suggestion would be inconsistent with § 1005.2(b)(1), which is a long-standing part of Regulation E. Insofar as commenters did not suggest why accounts should be treated differently for purposes of subpart B of Regulation E, the Bureau is not adopting this suggestion.

Section 1005.31 Disclosures

31(a) General form of disclosures

31(a)(2) Written and Electronic Disclosures

EFTA, as implemented by the Remittance Rule, generally requires remittance transfer providers to provide disclosures required by subpart B of Regulation E to the sender in writing. § 1005.31(a)(2). But neither the statute nor the Remittance Rule specifies 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). The Bureau proposed comment 31(a)(2)-5, which would have explained that disclosures provided pursuant to § 1005.31 or § 1005.36 by facsimile transmission (*i.e.*, fax) are written disclosures for purposes of providing disclosures in writing pursuant to subpart B of Regulation E, and are not subject to the requirements for electronic disclosures set forth in § 1005.31(a)(2). Pursuant to § 1005.31(a)(2) and comment 31(a)(2)-1, a provider may provide the pre-payment disclosure to a sender in electronic form, without regard to the applicable requirements of the E-Sign Act, only if a sender electronically requests the provider to send the remittance transfer. However, with respect to other disclosures required by subpart B of Regulation E, the provider would have to comply with the consumer consent and other applicable provisions of the E-Sign Act. Proposed comment 31(a)(2)-5 would have reflected similar guidance with respect to disclosures made by fax. For the reasons set forth below, comment 31(a)(2)-5 is adopted as proposed.

Industry commenters overwhelmingly supported this aspect of the April Proposal. Several commenters asserted that the Bureau should expand the interpretation of “written disclosures” to include any electronic disclosure if the provider has met its obligations to comply with the E-Sign Act. Consumer group commenters had mixed reactions: one consumer group

commenter supported the proposal, but the other asserted that faxes should be subject to the requirements for electronic disclosures set forth in § 1005.31(a)(2) because they are considered electronic records under the Uniform Electronic Transaction Act of 1999.¹⁹ The Bureau has considered the comments and believes it is appropriate to use the Bureau’s interpretive authority under EFTA to treat disclosures provided pursuant to § 1005.31 or § 1005.36 by fax as “written disclosures” for purposes of the Remittance Rule.

As the Bureau explained in the April Proposal, it considers disclosures made by fax to be a “writing” under the Remittance Rule because such disclosures are generally received on paper in a form the sender can retain. Additionally, 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. The Bureau observes that the consumer group that opposed interpreting disclosures provided via fax as written disclosures did not contend that such an interpretation would have a significant negative impact on the benefits consumers derive from the Remittance Rule. Thus, the Bureau believes it appropriate to interpret faxes as “a writing” for purposes of providing disclosures pursuant to § 1005.31 and § 1005.36. The Bureau, however, does not believe that it is necessary to clarify that any electronic disclosure constitutes a “writing” if the provider complies with the E-Sign Act. As discussed above, the Remittance Rule permits a provider to provide electronic disclosures instead of written disclosures, when such electronic disclosures are provided pursuant to § 1005.31(a)(2) as clarified by comment 31(a)(2)-1.

¹⁹ Uniform Electronic Transactions Act of 1999 § 2, comment 6 (2000), available at http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf.

31(a)(3) Disclosures for oral telephone transactions

Section 1005.31(e)(1) states that a remittance transfer provider must provide the pre-payment disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. Section 1005.31(a)(3) permits providers to make these 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 recognized in the April Proposal that a provider may be uncertain as to how to comply with the timing requirements set forth in § 1005.31(e)(1) where a sender is neither physically present nor in “real time” communication with a provider’s staff. To provide further clarification, the Bureau proposed to revise comment 31(a)(3)-2 to set forth 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. In such circumstances, as long as the provider otherwise conducted the transaction orally and entirely by telephone, the provider could provide disclosures orally as permitted by § 1005.31(a)(3). The Bureau also proposed two conforming edits to comments 31(a)(3)-1 and 31(e)-1 to accommodate this change: the proposed revision to 31(a)(3)-1 would have distinguished the scenario proposed in revised 31(a)(3)-2 from a situation in which a sender requests a remittance transfer in person; the revision to 31(e)-1 would have clarified that a sender has not requested a remittance transfer for purposes of triggering the timing requirements set forth in § 1005.31(e)(1) where the provider treats the request as an inquiry.

All commenters who commented on this part of the Proposal generally supported the Bureau’s proposed revisions, with the majority of commenters expressing support without reservation. Some commenters provided additional, specific feedback. For example, one consumer group stated that it supported the proposed revision only if the consumer who made

the initial request in writing received a disclosure that his request was being treated as an inquiry. A number of trade associations sought additional illustrations of when it would be “impractical” for a provider to treat a communication as a request for a transfer. Finally, one community bank proposed that the Bureau allow providers to provide oral disclosures whenever a sender so requests.

The Bureau is finalizing the revisions as proposed with one change to improve clarity (specifically, removing “For example”). The Bureau declines to adopt the suggestion that providers be allowed to give oral disclosures whenever a sender opts for oral disclosures. As stated in its February 2012 Federal Register notice, the Bureau believes that Congress did not intend to permit remittance transfer providers to satisfy the disclosure requirements orally, except in limited scenarios, as set forth in the Remittance Rule and in this final rule.

With respect to the comment that a remittance transfer provider should be required to inform the sender that the provider is treating the sender’s communication as an inquiry, the Bureau does not believe this additional, independent disclosure requirement is necessary. By definition, the provider provides the pre-payment disclosure before the consumer has paid for the remittance transfer; at this point in the transaction, there is little risk of consumer harm. Further, the Bureau believes the sender is likely to know and understand the status of his or her transaction in the course of the sender’s subsequent oral communication with the provider. Finally, with respect to the request for further clarity regarding when it would be impractical for a provider to treat a communication as a request, the Bureau believes that the proposed comment, which the Bureau is adopting with a non-substantive change to improve its clarity, provides sufficient guidance in the form of a specific example.

31(b) Disclosure Requirements

31(b)(2) Receipt

Section 1005.31(b)(2)(vi) requires a remittance transfer provider to disclose the contact information for the Bureau, including the Bureau’s Web site URL and its toll-free telephone number. The Remittance Rule does not specify which Bureau Web site URL should be provided on receipts, but the Model Forms published by the Bureau list 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. In the April Proposal, the Bureau explained that it was creating a single page that would contain resources relevant to remittance transfers at www.consumerfinance.gov/sending-money, as well as a Spanish language Web site that would have resources relevant to remittance transfers at www.consumerfinance.gov/enviar-dinero.²⁰ Accordingly, the Bureau proposed to add comment 31(b)(2)-4 to explain that: (1) providers could satisfy the requirement to disclose the Bureau’s Web site by disclosing the Web address shown on Model Forms A-31, A-32, A-34, A-35, A-39, and A-40 of appendix A, (2) alternatively, providers could, but were not required to, disclose the Bureau’s remittance-specific Web site, currently, www.consumerfinance.gov/sending-money, and (3) providers making disclosures in a language other than English could, but were not required to, disclose a Bureau Web site that would provide information for consumers in the relevant language, if such Web site exists.

Commenters generally expressed support for the proposed comment. Several commenters, however, sought additional confirmation that the proposed optional disclosures

²⁰ At the time of the April Proposal, the additional URLs had not “gone live.” Since the April Proposal, the Bureau published the additional URLs, as well as pages containing the same information in Vietnamese, Mandarin, Korean, Tagalog, Russian, Arabic, and Haitian Creole. The pages 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.

would remain optional. In addition, a consumer group sought confirmation that providers would only be permitted to provide a link to the Bureau’s non-English website where the disclosure was provided in that same non-English language.

As the Bureau stated in both the proposed comment text and the discussion of that text in the preamble of the April Proposal, the alternative disclosures included in comment 31(b)(2)-4 are *optional*, and do not require remittance transfer providers to change existing receipts. Thus, while it urges providers to provide consumers with the most relevant, updated information available from the Bureau, the Bureau confirms that, at this time, providers can continue to disclose the website previously listed on all Model Forms. Likewise, the April Proposal was clear that providers may only disclose the Bureau’s non-English website if they make disclosures in the “relevant” language used in the non-English website. The Bureau will publish a list of any URLs it maintains containing specific information about remittances in foreign languages on its website, currently, <http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>.

For the reasons above, the Bureau is adopting proposed new comment 31(b)(2)-4 substantially as proposed, with minor revisions to include references to revised URLs and revised model forms that illustrated the alternative disclosures proposed by the comment. Specifically, the URLs for the English- and Spanish-language, remittance-specific Websites are [consumerfinance.gov/sending-money](http://www.consumerfinance.gov/sending-money) and [consumerfinance.gov/envois](http://www.consumerfinance.gov/envois), respectively. The comment also clarifies that the Bureau will make available a list of other foreign-language URLs for websites that provide specific information about remittance transfers. In addition, to accommodate new comment 31(b)(2)-4, the Bureau is renumbering current comments 31(b)(2)-4, -5, and -6 as comments 31(b)(2)-5, -6, and -7, respectively, without any other changes.

Finally, the Bureau is revising forms A-31 and A-40 of appendix A to illustrate the optional disclosures set forth in new comment 31(b)(2)-4. The other Model Forms remain unchanged.

Section 1005.32 Estimates

As discussed above, EFTA section 919(a)(4)(A) establishes a temporary exception for insured institutions with respect to the statute's general requirement that remittance transfer providers must disclose exact amounts to senders. EFTA 919(a)(4)(B) provides that the exception shall terminate five years after the enactment of the Dodd-Frank Act (*i.e.*, July 21, 2015), unless the Bureau issues a rule to extend the temporary exception up to five more years (*i.e.*, July 21, 2020). Specifically, the statute permits the Bureau to extend the temporary exception to July 21, 2020, if the Bureau determines that the termination of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers. EFTA section 919(a)(4)(B). The Bureau implemented the temporary exception by adopting § 1005.32(a) in the Remittance Rule.

Section 1005.32(a)(1) provides that a remittance transfer provider may give estimates for disclosures related to: (1) the exchange rate used by the provider; (2) the total amount that will be transferred to the designated recipient inclusive of covered third-party fees, if any; (3) any covered third-party fees and (4) the amount that will be received by the designated recipient (after deducting covered third-party fees), if the provider meets three conditions. The three conditions are: (1) the provider must be an insured institution; (2) the provider must not be able to determine the exact amounts for reasons beyond its control; and (3) the transfer must be sent from the sender's account with the provider. Section 1005.32(a)(2) provides that the temporary exception expires on July 21, 2015. Section 1005.32(a)(3) provides 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.²¹

As discussed above, the Bureau proposed to amend § 1005.32(a)(2) to extend the expiration date of the temporary exception from July 21, 2015, to July 21, 2020, after it had reached a preliminary determination that the expiration of the temporary exception on July 21, 2015, would negatively impact the ability of insured institutions to send remittance transfers. The determination was based on the Bureau’s own understanding of the remittance transfer market, information the Bureau gathered through approximately 35 interviews with remittance transfer providers, service providers, and consumer groups regarding the temporary exception, outreach to industry and consumers groups on the Remittance Rule generally, and a review of comment letters to prior remittance rulemakings and related materials. In the April Proposal, the Bureau sought comments on its preliminary determination that the expiration of the temporary exception on July 21, 2015, would have a negative impact on the ability of insured institutions to send remittance transfers. The Bureau also sought comments on whether it should extend the exception for a period less than the full five years permitted by statute or place other limits on the use of the temporary exception.

The Bureau additionally solicited comments on the current consumer impact of the temporary exception, as well as the potential consumer impact of either the expiration or the extension of the exception. For the reasons stated below, the Bureau has reached a final determination that the expiration of the temporary exception on July 21, 2015, would negatively

²¹ The Bureau understands that broker-dealers may also rely on the temporary exception because a SEC no-action letter concluded that the SEC staff would not recommend enforcement action to the SEC under Regulation E if a broker-dealer provides disclosures as if 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>.

affect the ability of insured institutions to send remittance transfers, and is therefore adopting the change to § 1005.32(a)(2) as proposed.

Industry commenters overwhelmingly supported the proposed extension of the temporary exception from July 21, 2015, to July 21, 2020. They generally agreed with the Bureau's description of the remittance transfer market and preliminary determination that the expiration of the temporary exception would have a negative impact on the ability of insured institutions to send remittance transfers, emphasizing that the expiration of the temporary exception on July 21, 2015, would cause some insured institutions to either exit the market or significantly reduce the number of destinations to which they send remittances.

Furthermore, comments from industry commenters were generally consistent with the Bureau's understanding of how insured institutions are complying with the Remittance Rule's requirements regarding disclosures of the applicable exchange rate and covered third party fees, including the compliance practices of small institutions. Some commenters, ranging from credit unions to a large bank, stated that they rely on larger service providers to help disclose covered third-party fees and exchange rates. Industry commenters also were largely in accord with the Bureau's understanding of the drawbacks to wire transfer alternatives such as international ACH and closed-network remittance transfer products that resemble products offered by money transmitters. Several trade association commenters asserted that even with the expansion of international ACH products and the development of new closed network systems, such expansion will provide a solution only for remittance transfers to a limited set of destination countries and that providers would have difficulty sending remittance transfers to some destinations without reliance on the temporary exception. This is consistent with the Bureau's

understanding of current market conditions based on its interviews with many providers and service providers in the course of developing the April Proposal.

A number of bank and credit union commenters stated that they rely on the temporary exception, and trade association commenters stated that many of their members rely on the temporary exception for at least some portion of the remittance transfers sent by their customers and members. Several trade association commenters asserted that the ability of insured institutions to rely on the temporary exception is critical for certain remittance transfers and emphasized that there are real limitations that exist in open network payment systems that currently prevent insured institutions from being able to disclose actual amounts in all cases. A number of community bank and credit union commenters, as well as the trade associations that represent them, stated that the expiration of the temporary exception could cause many community banks to either exit the remittance transfer market or significantly cut back the scope of their services.

Some industry commenters, including a correspondent bank and several trade associations, expressed concern that, even if the Bureau extended the temporary exception by five years, insured institutions would not be able to develop a comprehensive solution that would allow them to disclose exact covered third-party fees and exchange rates for every corridor they currently serve by July 2020. Several industry commenters also asserted that the Bureau should work with Congress to change the temporary exception into a permanent one, and one commenter suggested that the Bureau should make the temporary exception permanent without waiting for Congress to act.

As discussed above, the Bureau sought comments on the current consumer impact of the temporary exception, as well as the potential impact of either the expiration or the extension of

the exception. One State credit union trade association stated that its member credit unions indicated that they have not received any complaints from members who received disclosures containing estimated disclosures. A number of community bank and credit union commenters, as well as the trade associations that represent them, stated that the expiration of the temporary exception could cause many community banks to either exit the remittance transfer market or significantly cut back the scope of their services. They asserted that such a reduction would negatively impact consumers, because it would reduce the availability of remittance transfer services. They also expressed the concern that such a reduction could limit competition and drive up prices.

The two consumer group commenters opposed this part of the April Proposal. One of the consumer group commenters asserted that, rather than extend the exception for the maximum of five years permitted by the Dodd-Frank Act, the Bureau should limit the extension of the temporary exception. Specifically, this commenter suggested that the Bureau should: (1) only extend the temporary exception for up to two years and reassess a further extension then; (2) limit the use of the exception to remittance transfers for which disclosing exact amounts is particularly difficult or impossible; or (3) reissue the proposal for additional comment and provide more specific information on the current state of compliance. The other consumer group commenter asserted that if the Bureau were to extend the temporary exception, then it should also require insured institutions that rely on the temporary exception to disclose to customers that money transmitters would be able to provide consumers with exact disclosures.

The Bureau has considered the comments and, for the reasons discussed below, is finalizing as proposed the extension of the temporary exception to July 21, 2020, because the Bureau has made the determination that the expiration of the temporary exception would

negatively affect the ability of insured institutions to send remittance transfers. Comments from industry commenters generally confirmed the Bureau's original understanding of the remittance transfer market and preliminary determination that the expiration of the temporary exception would have a negative impact on the ability of insured institutions to send remittance transfers.²²

In particular, the Bureau understands that insured institutions typically send remittances in the form of wire transfers over open networks. With respect to a wire transfer, the insured institution that acts as the remittance transfer provider typically does not have control over, or a relationship with, all of the participants involved in a remittance transfer, to facilitate the provider's ability to control or obtain information about the applicable exchange rate and covered third-party fees with exactitude. Additionally, the communication systems used to send wire transfers typically do not facilitate two-way, real-time transmission of such information. While the Bureau understands that industry is working to restructure relationships and communication systems to provide more precise pricing information, this process is not yet complete.

While some insured institutions provide exact disclosures of the exchange rate and covered third-party fees for all of their remittance transfers, the Bureau understands that many rely on the temporary exception when disclosing the exchange rate and/or covered third-party fees for at least some portion of transfers initiated by their own consumer customers and as applicable, transfers they send on behalf of other providers. The Bureau also understands that many insured institutions, in particular small institutions, rely almost entirely on larger,

²² The Bureau provided a detailed discussion of the reasons that lead to it making the preliminary determination that the termination of the temporary exception on July 21, 2015, would have a negative impact on the ability of insured institutions to send remittance transfers. *See generally* 79 FR 23234 (April 25, 2014).

intermediary service providers to act as information aggregators to provide them with the applicable exchange rate to disclose and/or covered third-party fee information.²³

With respect to the disclosure of the exchange rate, insured institutions have reported to the Bureau that they have found that one way to provide an exact exchange rate is to convert the funds to the applicable foreign currency based on a fixed exchange rate that the provider either obtains directly or from an information aggregator. However, the Bureau has learned that insured institutions cannot provide a fixed exchange rate for a number of currencies and rely on the temporary exception (or the Bureau's permanent exception for transfers to certain countries, § 1005.32(b)(2)) when disclosing the applicable exchange rate in such situations. The Bureau understands that these currencies are either (1) so thinly traded that insured institutions or their service providers find that purchasing such currencies and obtaining a fixed exchange rate for consumer wire transfers is impossible, impracticable, or economically undesirable, or (2) impracticable to purchase for other reasons (*e.g.*, foreign laws may bar the purchase of that currency in the United States). Further, even if obtaining and disclosing a fixed exchange rate were possible, the Bureau further understands that typically, the volume of remittance transfers involving such currencies is often low and providers believe that it is impracticable to expend significant resources to provide a fixed rate for these low-volume transactions.

With respect to covered third-party fees, the Bureau understands that information aggregators, described above, could directly generate the information from foreign banks in their correspondent banking networks or with whom they have other contractual relationships.

²³ In the April Proposal, the Bureau stated that a particular institution may use one information aggregator to provide it with the covered third-party fee information, and another to provide it with the exchange rate information. 79 FR 23245 (Apr. 25, 2014). The Bureau also stated that it found that an insured institution that uses an information aggregator must generally also use that aggregator to help process the remittance transfer. *Id.*

Additionally, the Bureau understands that for a number of foreign destinations, these entities try to control the amount of covered third-party fees, or eliminate such fees altogether, by sending remittance transfers through nostro accounts they have established with various foreign banks,²⁴ using certain methods to send wire transfers that put participants processing the wire transfer on notice not to deduct a fee from the transfer amount, or through a combination of both.

The information aggregators have reported to the Bureau that as a result of proactively obtaining covered third-party fee information from foreign banks and using methods that control or eliminate such fees, they and, as applicable, their remittance transfer provider clients are typically disclosing exact covered third-party fees where 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 at the same time, information aggregators have reported that the methods that allow insured institutions to control or eliminate covered third-party fees are not reliable in controlling or eliminating such fees for all of the destinations to which they send wire transfers. Additionally, with respect to obtaining covered third-party fees directly from foreign banks, a number of information aggregators have indicated that fee information gathered in this manner could be incomplete because it is not available for all institutions involved in all of the remittance transfers they send. Accordingly, a number of insured institutions have to rely on the temporary exception when sending at least some of their wire transfers.

The Bureau also sought information from insured institutions about their use of potential alternative methods of sending remittance transfers. In particular, the Bureau sought to understand whether insured institutions could control or eliminate covered third-party fees if they

²⁴ Nostro accounts are accounts established by U.S. institutions with foreign banks, and funds in the accounts are funds in the account are typically denominated in the currency of that country. See 79 FR at 23245 (Apr. 25, 2014).

sent remittance transfers using international ACH instead of open network wire transfer systems. The Bureau understands that the Federal Reserve's international ACH product—FedGlobal ACH—generally restricts the deduction of fees from transfer amounts sent through the FedGlobal system, but is nonetheless used only for a small portion of insured institutions' remittance transfers. The Bureau has found that although a number of insured institutions use international ACH for commercial international money transfers, many did not see international ACH developing into an alternative to wire transfers in the near term. A number of insured institutions have reported that international ACH reaches far fewer destinations than wire transfers. They also expressed concern that developing an international ACH service for remittance transfers would involve costs and changes in operation systems that outweigh the potential long-term cost savings as well as any additional value of facilitating compliance with the Remittance Rule.

The Bureau also sought information from insured institutions about developing closed network remittance transfer products that resemble products offered by money transmitters that could allow them to control or eliminate covered third-party fees. The Bureau also understands that a small number of the largest institutions have already developed such products. However, most of the insured institutions that the Bureau interviewed did not set up closed network alternatives to wire transfers and indicated that they did not have plans to develop them. As discussed above, several trade association commenters believed that the expansion of international ACH products and the development of new closed network systems will not provide a comprehensive solution.

For the above reasons and those stated more fully in the April Proposal, the Bureau also believes that it is unlikely that there would be near-term solutions that would address the

challenges in open-network payment systems that prevent insured institutions from being able to disclose exact amounts for all of the foreign destinations to which they send remittance transfers. Accordingly, the Bureau believes that it is appropriate to extend the length of the temporary exception for the full five years permitted by statute, rather than a shorter length of time (or not at all). The Bureau continues to believe that insured institutions will not be able to make the significant progress necessary for all institutions and corridors to warrant terminating the exception before July 2020, and does not believe that reassessing the situation after seeking additional public comment now or in two years would cause it to reach a different conclusion. At the same time, however, the Bureau believes that making the exception permanent in this rulemaking would be beyond its scope, which, pursuant to EFTA section 919(a)(4)(B), focused (on this issue) on whether the Bureau should extend the temporary exception by five additional years. Nevertheless, the Bureau will continue to monitor market and technological developments in open network payment systems. The Bureau expects insured institutions to continue to work towards providing actual disclosures for all remittance transfers by July 2020. The Bureau also notes that through its supervision of insured institutions it will continue to monitor the use of the exception, whether it is being abused, and whether and how providers are working towards finding a permanent solution for all remittance transfers.

The Bureau also believes that it is appropriate to extend the temporary exception without modifications or additional requirements. As noted above, the Bureau continues to believe that insured institutions are unable to make the significant progress necessary for the Bureau to cause the temporary exception to terminate before July 2020. Furthermore, the Bureau is not aware of evidence that insured institutions are improperly using the temporary exception or that consumers are being harmed by its use in particular or, more generally, by the receipt of

disclosures containing estimates. The Bureau understands that although use of the temporary exception varies, the exception appears to be used for the minority of eligible transfers from insured institutions. The FFIEC Call Report asked banks to estimate the number of remittance transfers sent between October 28 and December 31, 2013, to which they applied the temporary exception. The FFIEC Call Report data suggest that the temporary exception is only used in approximately 10 percent of transfers sent by banks that are considered remittance transfer providers under the rule. Additionally, no data was submitted to the Bureau in response to the request in the April Proposal, and the Bureau is aware of no data, that contradicts its view that use of the temporary exception is limited to cases where providers (and their service providers) deem its use to be necessary.

Lastly, the Bureau believes that it would be inappropriate to require insured institutions that disclose estimates pursuant to the temporary exception to inform their customers that money transmitters may provide consumers with exact disclosures. The Bureau notes that Congress expressly permitted any remittance transfer provider to disclose estimates in lieu of exact amounts in certain cases without any additional disclosure. *See* § 1005.32(b)(1) (permanent exception for transfers to certain countries) and (b)(2) (advance transfers) without any additional disclosure. Insofar as money transmitters rely on these exceptions set forth in the Remittance rule, it cannot be said that they are disclosing exact amounts in those cases.

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)(1)(iv)(B) provides that a delay is not an “error” if it is 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. Section 1005.33(a)(1)(iv)(B). In the April Proposal, the Bureau explained that it did not intend for this provision to apply to delays related to routine fraud screening procedures; accordingly, the Bureau proposed to revise § 1005.33(a)(1)(iv)(B) to apply only to delays related to individualized investigation or other special action. To provide additional guidance, the Bureau proposed a new comment 33(a)-7, which would have explained that a delay is not an error where it is caused by an investigation or other special action necessary to address potentially suspicious, blocked, or prohibited activity.

The proposed comment included two examples of the types of delays that would not constitute an error under proposed § 1005.33(a)(1)(iv)(B), namely, a delay that occurs after a screening process flags a designated recipient's name as a potentially blocked individual, and a delay that occurs because the transfer is flagged as being similar to previous fraudulent activity. The proposed comment contrasted these two examples with delays caused by "ordinary fraud or other screening procedures, where no potentially fraudulent, suspicious, blocked or prohibited activity is identified," which would not have qualified for the exception.

The Bureau sought comment on whether the proposed change to the regulatory text and related examples and description in the commentary accurately reflected industry practice and/or provided sufficient guidance on the types of permissible delays. The single consumer group that commented on this issue expressed its support for the proposed changes. Some industry commenters, including a large bank and a community bank, generally expressed support for the Bureau's effort to provide further clarity on the types of delays that qualify for the error exception, opining that the revisions suggested would cover the majority of relevant, screening-related delays.

The majority of commenters who addressed the issue, however, opposed the Bureau’s proposed changes, for a variety of different reasons. Commenters, including State and national trade associations, credit unions, small and large banks, and a bank holding company, generally expressed concern that the revised language would discourage important fraud, terrorism, and anti-money laundering screenings by exposing providers that regularly conduct such screenings to liability under Regulation E. Other commenters, including a large money transmitter and a number of State credit union trade associations, argued that there is a false dichotomy between procedures that are “necessary” or “special” and those that are “ordinary.” They noted that enhanced screening procedures are a standard, routine part of most remittance transfer providers’ “ordinary” business, and that whether or not such procedures are “necessary” cannot always be determined at the outset of an investigation.

A similar concern was expressed by a large money transmitter commenter. Among other concerns, it argued that the two examples proposed by the Bureau in proposed comment 33(a)-7 were too narrow, and the commenter opposed the use of the term “individualized” to characterize the types of procedures that would qualify for the exception under revised § 1005.33(a)(1)(iv)(B). According to this commenter’s description of its standard fraud screening procedures, the Bureau’s choice of examples and terminology did not adequately capture screening procedures that apply to certain categories of transfers – known as “block screenings” – rather than only to a particular transfer. For example, the commenter explained that remittance transfer providers sometimes receive real-time information from law enforcement that transfers going to a certain geographic area (*e.g.*, a particular country or part of a country) could have a high percentage likelihood of being related to a criminal operation. When the provider receives such information, it may temporarily delay all transfers that fit the

characteristics identified by law enforcement. According to the commenter, under the proposed language, it would be unclear whether when such “block screenings” resulted in a delay, the commenter could would be able to rely on the § 1005.33(a)(1)(iv)(B) exception.

The Bureau is mindful that commenters are wary of any requirement that they view as creating potential liability for what they deem to be standard operational procedures. The Bureau believes, however, that the commenters have largely based their concerns on an inaccurate and overly narrow interpretation of the proposed revisions. The Bureau’s proposal was related to disclosure; it did not dictate to remittance transfer providers the type of screening procedures they could adopt. The proposal would simply have required that, where a provider ordinarily applies a certain type of procedure in connection with a certain type of transfer, the provider account for any additional length of time associated with that screening into its disclosure of the estimated date of availability. This requirement would have applied whether the additional time was 30 minutes or five days – in other words, if the provider knew that a procedure would apply to a particular remittance transfer and would delay that remittance transfer for a period of time (whether it be 30 minutes or five days), the provider would have been required to adjust the disclosed date of availability accordingly.

Nonetheless, the Bureau understands that its attempt in proposed comment 33(a)-7 to draw a distinction between “ordinary” and “necessary” investigations could be construed as not accurately or completely capturing the types of procedures that the Bureau believes could qualify as an exception under § 1005.33(a)(1)(iv)(B). Accordingly, the Bureau is finalizing comment 33(a)-7 with a modification to clarify whether the remittance transfer provider could have reasonably foreseen the delay at the time the provider provided the date of availability disclosure. Specifically, comment 33(a)-7 now explains that a delay does not constitute an error,

if such delay is related to the provider's or any third party's investigation necessary to address potentially suspicious, blocked or prohibited activity, and the provider did not, and could not have reasonably foreseen the delay so as to enable it to timely disclose an accurate date of availability when providing the sender with a receipt or combined disclosure. In addition, the Bureau is adding two additional examples to comment 33(a)-7 to illustrate the application of the revised language. The first example clarifies that there is no error where a provider delays a remittance transfer in order to investigate specific law enforcement information indicating that a remittance transfer may match a pattern of fraudulent activity if it was not reasonable to disclose that delay when the provider disclosed the date of availability. The second example states that, if a provider knows in time to make a timely disclosure that all remittance transfers to a certain area undergo a two-day long screening procedure, the provider must include an additional two days in its disclosure of the date of availability.

The Bureau notes that these examples do not represent the only situations that could satisfy this exception. The unique nature of the screenings at issue and the variety of business practices and technical capabilities among remittance transfer providers do not allow the Bureau to address every possible scenario. Furthermore, the Bureau emphasizes that nothing in the changes adopted herein should be construed as limiting a provider's ability to perform necessary screenings. Instead, the Bureau intends the revision to clarify that providers cannot avoid liability for an error in situations where they could have reasonably foreseen the delay so as to enable them to timely disclose an accurate date of availability but failed to disclose that date to the sender. Whether a provider could have reasonably foreseen a delay in time to make changes to its disclosure depends on the facts and circumstances surrounding the transfer. The Bureau believes that its approach in the final rule, as opposed to the April Proposal, responds to

commenters' concerns that the proposed language was perhaps too narrow and did not allow for flexibility arising out of the varied nature of fraud and other screenings.

Finally, as proposed, the Bureau is renumbering existing comments 33(a)-7 through -10 as comments 33(a)-8 through -11, respectively, to reflect the insertion of new comment 33(a)-7.

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 the sender paid to the remittance transfer provider in connection with the remittance transfer that was not properly transmitted, or an amount appropriate to resolve the error, or (2) to have the 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, but 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. Comment 33(c)-12 provides guidance on how a remittance transfer provider should determine the amount to refund to the sender, or to apply to a new transfer, pursuant to § 1005.33(c)(2)(iii). As explained in comment 33(c)-12, § 1005.33(c)(2)(iii) does not permit a provider to deduct its own fees from the amount refunded or applied to a new transfer. The

Bureau proposed to amend § 1005.33(c)(2)(iii) by incorporating this guidance in current comment 33(c)-12 in the text of proposed § 1005.33(c)(2)(iii).

Proposed § 1005.33(c)(2)(iii) would have stated 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 (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. Proposed § 1005.33(c)(2)(iii) also would have provided that 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.

In connection with the proposed change to § 1005.33(c)(2)(iii), the Bureau also proposed to modify comment 33(c)-5 by adding an example to further explain how a remittance transfer provider should determine the appropriate amount to resolve any error under § 1005.33(a)(1)(iv). Proposed comment 33(c)-5 would have explained that if the designated recipient received the amount that was disclosed pursuant to § 1005.31(b)(1)(vii) before the provider must determine the appropriate remedy, the amount appropriate to resolve the error would be limited to the refund of the appropriate fees and taxes that the sender paid, as determined by § 1005.33(c)(2)(ii)(B) or (c)(2)(iii) as applicable.

One consumer group commented on this aspect of the Proposal and supported the proposed clarifications. Industry commenters had mixed reactions. Several bank commenters and trade associations supported, or did not object to, the specific clarifications that the Bureau had proposed. However, a number of industry commenters asserted the general concern that it was not fair to prohibit remittance transfer providers from deducting their own fees from the amount refunded to a sender or applied to a new transfer in the case of an error under § 1005.33(a)(1)(iv), due to the sender providing incorrect or insufficient information.

Current § 1005.33(c)(2)(iii), as clarified by current comment 33(c)-12, already prohibits remittance transfer providers from deducting their own fees in the situation described above. Proposed § 1005.33(c)(2)(iii) would have stated more explicitly what is already required under current § 1005.33(c)(2)(iii), and, relatedly, proposed comment 33(c)-5 would have illustrated the existing requirement regarding the appropriate refund amount required to resolve an error pursuant to § 1005.33(a)(1)(iv) with an example. Further, this refund requirement has been part of the Remittance Rule since it was initially adopted in February 2012 and has been in place since the rule took effect in October 2013.²⁵ The Bureau did not intend for the April Proposal to reopen the issue of what the appropriate remedy would be in the case of an error under § 1005.33(a)(1)(iv) that occurred because a sender did not provide correct or sufficient information in connection with a remittance transfer. The Bureau simply intended for the April Proposal clarify § 1005.33(c)(2)(iii) as previously adopted. The Bureau considers comments from industry commenters regarding whether it is appropriate for them to have to deduct their own fees from the amount refunded to a sender or applied to a new transfer in the case of an

²⁵ See 77 FR 6257 (Feb. 7, 2012); 78 FR 6025 (Jan. 29, 2013).

error under § 1005.33(a)(1)(iv), due to the sender providing incorrect or insufficient information in connection with the transfer, to be outside the scope of this rulemaking.

Finally, consistent with the Bureau’s intent to clarify the requirement with respect to the appropriate remedy under § 1005.33(c)(2)(iii), the Bureau is adopting a technical correction to comment 33(c)-12.i to describe the total amount that a sender has paid the provider, the total amount of the refund that such sender will receive, and the portion of the total refund that is attributable to the provider’s refund of its own fee in greater detail. The Bureau believes that revised comment 33(c)-12.i provides greater clarity with respect to how the total refund amount is calculated but the changes adopted do not alter the calculations. The Bureau believes that it is appropriate to adopt this technical correction without notice and comment because the correction is consistent with the Bureau’s intent to clarify the requirement with respect to the appropriate remedy under § 1005.33(c)(2)(iii).²⁶

For the above reasons, the Bureau is adopting § 1005.33(c)(2)(iii) and comment 33(c)-5 as proposed, with the addition of the technical correction to comment 33(c)-12.i.

VI. Effective Date

The Bureau proposed to have all of the changes included in the April Proposal take effect thirty days after publication of this final rule in the Federal Register. The Bureau had based the proposed implementation period on its belief that remittance transfer providers would only be required to make minimal changes to their practices to align them with the changes included in the Proposal. The Bureau sought comment on the proposed effective date, including on whether a later effective date would be more appropriate. Several industry commenters, including several

²⁶ One large bank commenter suggested that the Bureau clarify current comment 33(c)(12)-i by revising it to add the remittance transfer provider’s fee to the total refund amount. The Bureau believes that the technical correction to comment 33(c)-12.i addresses the commenter’s concern.

trade associations representing credit unions and a money transmitter, asked the Bureau to adopt a longer implementation period, arguing that the changes proposed would require changes to compliance, training, and disclosure procedures. The majority of these commenters asked for a 90-day implementation period, while the money transmitter commenter asked for a 12-month implementation period. The Bureau agrees to provide a longer implementation period for this final rule in order to allow industry sufficient time to make the changes to systems and procedures that providers and their service providers deem necessary. Insofar as the clarifications adopted herein are largely optional or meant to clarify existing practices or requirements of the Remittance Rule, the Bureau does not believe that their implementation should result in significant operational changes for providers that would require a 12-month implementation period. Accordingly, the final rule will take effect 60 days from the date of publication in the Federal Register.

VII. Section 1022(b)(2) Analysis

A. Overview

In developing this final rule, the Bureau has considered potential benefits, costs, and impacts²⁷ and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding the consistency of this final rule with prudential, market, or systemic objectives administered by such agencies.²⁸

The analysis below considers the benefits, costs, and impacts of the key provisions of this

²⁷ 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.

²⁸ The Bureau also solicited feedback from other agencies with supervisory and enforcement authority regarding Regulation E and the Remittance Rule.

final rule against the baseline provided by the current Remittance Rule. This final rule makes the following changes to the Remittance Rule. First, this final rule extends the temporary exception in the Remittance Rule that permits insured depository institutions and insured credit unions to estimate the exchange rate and covered third-party fees under specified circumstances, from July 21, 2015, to July 21, 2020.

Second, this final rule makes several clarifying amendments and technical corrections to the current Remittance Rule concerning: the application of the Rule to transfers to and from locations on U.S. military installations abroad; the treatment of transfers from consumer and non-consumer accounts; the treatment of faxes; the treatment by a remittance transfer provider of 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. With respect to these provisions, the analysis considers the benefits and costs to senders (consumers) and remittance transfer providers (covered persons). The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau notes at the outset that the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. The Bureau believes that quantification of the potential benefits, costs, and impacts of the provisions is not possible. There are limited data on consumer behavior, which would be essential for quantifying the benefits or costs to consumers. The Bureau also lacks information about the accuracy of estimates for exchange rates and covered third-party fees that 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 actual (as opposed to estimated) information. Further, there

are still limited data about the remittance transfer market such that the Bureau cannot presently quantify the potential benefits, costs, and impacts of the provisions on remittance transfer providers. Nonetheless, the Bureau has reviewed the available data about the remittance transfer market, which now includes responses in the NCUA and FFIEC Call Report filings. As noted above, the Bureau believes that the additional data have enhanced the Bureau's understanding of the remittance transfer offerings of credit unions and depository institutions, including with respect to the number of transfers sent and the methods used to send those transfers. As is discussed above, and consistent with the Bureau's prior estimates, the data suggest that credit unions may have sent less than one percent, and depository institutions less than 10 percent, of the estimated total of 150 million international remittance transfers sent by money transmitters in 2013.

B. Potential Benefits and Costs to Consumers and Covered Persons

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

This final rule amends the current Remittance Rule by providing that remittance transfer providers may estimate exchange rates and covered third-party fees until July 21, 2020 (rather than July 21, 2015, as in the current Remittance Rule), 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 (3) the provider cannot determine the exact amounts for reasons outside of its control.²⁹ The analysis below considers the benefits, costs, and impacts of extending the exception against a baseline of allowing the exception to expire on July 21, 2015.

²⁹ As noted above in the Section-by-Section Analysis, the temporary exception does not apply to broker-dealers. However, SEC staff issued a no-action letter in December 2012 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>.

a. Benefits and Costs to Consumers

As the Bureau stated in its impact analysis in the April Proposal, relative to accurate disclosures, estimated disclosures strike a different balance between accuracy and access, potentially offering less accuracy but also potentially preserving greater access. 77 FR at 6274. The Bureau believes that extending the temporary exception may benefit those consumers who use insured institutions' remittance services because some of those services may otherwise be discontinued if the exception were to sunset on July 21, 2015. Specifically, the extension may benefit these consumers by preserving their current method of sending remittance transfers, particularly if alternatives are more expensive or less convenient, to the extent that such alternatives exist at all.

Extending the temporary exception may also provide benefits to consumers in the form of avoiding increased prices. This benefit depends on the extent to which providing exact information (as opposed to estimates) would require insured institutions or their service providers to take costly steps to provide that information, and the extent to which those institutions would then pass those costs to the consumers.

As stated above, the Bureau understands that disclosures containing estimates may be less accurate than those that disclose exact amounts. Disclosures that accurately reflect actual covered third-party fees and exchange rates may make it easier for a consumer to know whether a designated recipient is going to receive an intended sum of money, or the amount in U.S. dollars that the consumer must send to deliver a specific amount of foreign currency to a designated recipient. Extending the temporary exception may impose a cost on consumers in the form of these foregone benefits, if the estimated disclosures they receive from insured depository institutions and credit unions tend to deviate from the actual amount. Accurate disclosures may

also make it easier for consumers to compare prices across providers. Accordingly, the Bureau believes there may be a cost associated with an extension of the temporary exception in that consumers may be less likely to engage in comparisons, if they believe that they cannot rely on estimated disclosures. However, as stated elsewhere in the preamble, the Bureau believes that the temporary exception is likely used in a small portion of all remittance transfers. To date, the Bureau is not aware of any evidence of abuse of the temporary exception; providers appear to use it only when necessary. Therefore, the Bureau believes that the overall costs to consumers of extending the temporary exception are not significant.

b. Benefits and Costs to Covered Persons

The information the Bureau has gathered 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 determine that if the temporary exception were to sunset on July 21, 2015, its expiration would have a negative impact on the ability of insured institutions to send remittance transfers. The Bureau expects that extending the temporary exception to July 21, 2020, may benefit insured institutions that rely on the temporary exception to send remittance transfers by mitigating the negative impact of its earlier expiration. The Bureau believes that there may not be a cost to insured institutions of extending the exemption because it would not require them to alter current practices.

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. At the same time, the Bureau also understands that some small and some 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. Some of 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.

For insured institutions, the Bureau believes that a potential benefit associated with extending the temporary exception may come from preserving 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. The Bureau acknowledges that the magnitude of this benefit is related to the overall significance of that particular segment of business for an insured institution and whether that institution uses the exception to estimate the disclosure of exchange rates or covered third-party fees (or both). With respect to the disclosure of exchange rates, the Bureau acknowledges that the magnitude of this benefit may be marginal because the exception's use for this purpose is limited. As for the disclosure of covered third-party fees, the Bureau believes that the benefit may be relatively greater to the extent that such estimation is more frequent.

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 in lieu of disclosing estimates. For instance, the Bureau believes that by 2020, insured institutions may develop more effective methods of communication between members of an open network that would allow for on-time verification of third-party fees and exchange rates.

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

The analysis below discusses the potential benefits and costs for consumers and covered persons that may result from clarifying that for purposes of the Remittance Rule: (1) where a

sender specifies that the funds will be received at a U.S. military installation that is physically located in a foreign country, a transfer will be considered as having been received in a State (and thus the Remittance Rule would not apply); (2) where a sender specifies that the funds will be received in an account that is located on a U.S. military installation abroad, the transfer will be considered as having been received in a State; and (3) a sender located on a U.S. military installation that is physically located in a foreign country is considered to be located in a State.

a. Benefits and Costs to Consumers

This clarification should not affect consumers who send remittance transfers to U.S. military installations located abroad using remittance transfer providers that currently treat such transfers as exempt from the Remittance Rule. As stated above, the Bureau understands that the majority of providers already treat transfers to U.S. military installations abroad in this manner. A smaller number of consumers who send transfers to U.S. military installations using providers who are providing disclosures in such instances may incur a cost, insofar as their provider currently applies the Remittance Rule to such transfers, but will no longer be required to do so in the light of this clarification. However, the Bureau believes this cost to be minimal, for the following reasons.

The Bureau believes that transfers to U.S. military installations located abroad share many of the characteristics of domestic transfers, and as such harbor less risk related to, for example, disclosures of fees, inaccuracies in exchange rates, and the timing of availability of funds, than a typical remittance transfer. A majority of commenters agree. Therefore, the benefit to consumers of the additional protections provided by the Remittance Rule for the affected transfers is likely to be insubstantial. Further, to the extent that some providers treated U.S. military installations abroad as being in a foreign location, consumers may also receive

potential benefits from this clarification in the form of more consistent service across providers. Finally, consumers who send transfers from a U.S. military installation to a designated recipient in a foreign country will benefit from the protections of the rule including, for example, cancellation and error resolution rights, if previously those transfers were not subject to its requirements.

b. Benefits and Costs to Covered Persons

As the Bureau explained in the April Proposal, it believed that without clarification, there was a potential for confusion about whether the requirements of the Remittance Rule apply to remittance transfers sent to and from U.S. military installations located in foreign countries. Accordingly, the Bureau believes that this clarification may benefit remittance transfer providers by facilitating compliance without the added cost of determining how to interpret the Remittance Rule as it relates to transfers involving U.S. military installations. The Bureau understands that most remittance transfer providers currently treat U.S. military installations located in foreign countries as being located in States for the purposes of the Rule. Because this clarification is consistent with most providers' existing practices, the Bureau does not expect any material costs on covered persons. To the extent that certain providers have interpreted the Remittance Rule to require disclosures to consumers sending remittance transfers to U.S. military installations located in foreign countries, those providers will now benefit from the cost savings associated with being able to stop providing those disclosures. Conversely, there may be a cost to providers to the extent that previously they did not apply the rule to transfers sent from a U.S. military installation abroad to a designated recipient in a foreign country and now will have to apply the rule to those transfers.

3. Application of the Remittance Rule to Consumer and Non-Consumer Accounts

The Remittance Rule only applies to transfers that are requested primarily for personal, family, or household purposes. This final rule clarifies that a remittance transfer provider may generally deem that the transfer is requested primarily for personal, family, or household purposes if the transfer is sent from an account that was established primarily for personal, family, or household purposes. The final rule also clarifies that a provider may deem that a transfer sent from a non-consumer account, such as a business account or account held by a financial institution under a bona fide trust agreement pursuant to § 1005.2(b)(3), as not being requested primarily for personal, family, or household purposes.

a. Benefit and Costs to Consumers

As discussed below, the Bureau believes that remittance transfer providers are currently treating transfers from non-consumer accounts as being outside 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 costs or benefits to consumers from the clarification.

b. Benefits and Costs to Covered Persons

The Bureau believes that remittance transfer providers are currently treating transfers from non-consumer accounts as being outside 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 costs or benefits to providers from the clarification. The Bureau also generally believes that it is less costly to determine whether a transfer is subject to the Rule on the account level than having to make a transfer-by-transfer determination of whether the Rule applies. To the extent that some covered persons are using the more costly transfer-by-transfer method to identify whether the Remittance Rule applies to a particular transfer and choose to

change to this method, this final rule may reduce their compliance costs.

4. Disclosures Made by Fax; Disclosures for Oral Telephone Transactions; Bureau's Web Site on Receipts

The Bureau is adopting several clarifications regarding the format of disclosures. First, the final rule clarifies that disclosures provided pursuant to § 1005.31 and § 1005.36 that are transmitted by fax may be considered a “writing” under the Remittance Rule. Second, the final rule permits providers to treat a written or electronic communication as an inquiry in cases where treating such communication as a request would be impractical. In response to such inquiries, the provider may provide pre-payment disclosures orally – but only when transactions are conducted orally and entirely by telephone. Third, this final rule specifies that remittance transfer providers may satisfy the requirement to disclose the Bureau’s Web site on the receipts by listing either the Bureau’s main Web page, or the Bureau’s Web page that provides information about remittance transfers, or the Bureau’s Web page in a language other than English, if it exists, insofar as a provider is making disclosures in that language pursuant to § 1005.31(g).

a. Benefits and Costs to Consumers

The Bureau believes that the clarification regarding the treatment of faxes is consistent with current practice. Thus, the Bureau does not believe that there are any material benefits or costs to consumers. The clarification regarding written or electronic inquiries is unlikely to create any material benefits or costs to consumers, because the Bureau believes that the clarification would conform the rule to providers’ current practice. As the Bureau develops its Web page dedicated to remittance transfers, including creating Web pages in languages other than English, consumers may benefit from more direct access to these resources. The Bureau

does not expect any material cost to consumers from this clarification.

b. Benefits and Costs to Covered Persons

The Bureau believes that to the extent remittance transfer providers already send disclosures via fax, they treat those faxes as a “writing.” Accordingly, the Bureau does not expect any material benefits or costs to covered persons.

As discussed above, the Bureau believes that the clarification regarding written or electronic inquiries would conform the rule to providers’ current practice. Accordingly, the Bureau believes that the clarification would have minimal impact on covered persons. To the extent that it has any impact, the impact may be a positive one in that the clarification may benefit covered persons by clarifying that they have the option to respond to such inquiries orally if treating the communication as a request would be impractical. Further, because the clarification represents an option, but not a requirement, the Bureau does not believe that there will be material costs to covered persons, because it does not require a change in their current practices. The Bureau also does not believe that the clarification regarding Bureau’s Web site will impose any material costs or benefits on covered persons. The clarification merely provides them with an option to display Bureau Web pages other than the Bureau’s main Web site, but does not require a change in current practices.

5. Delays Related to Fraud Screening

The current Remittance Rule provides that a delay in relaying the funds is not an “error” if it is 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. This final rule clarifies that a delay does not constitute an “error” if such delay is related to the provider’s or any third party’s investigation

necessary to address potentially suspicious, blocked or prohibited activity, and the provider did not have, and could not have reasonably obtained, sufficient information about the delay to enable it to timely disclose an accurate date of availability when providing the sender with a receipt or combined disclosure.

a. Benefits and Costs to Consumers

The Bureau believes that this clarification will benefit consumers who currently experience delays due to fraud screening procedures, insofar as remittance transfer providers have or could have reasonably obtained sufficient information about the delay to enable them to timely disclose an accurate date of availability. As discussed above, the Bureau expects that the clarification will lead to some providers adjusting their existing disclosure practices to ensure compliance with the final rule. The Bureau believes that the consumers who are the customers of these providers will benefit from more accurate disclosure of the date of availability. The Bureau does not foresee any material costs on consumers from this clarification.

b. Benefits and Costs to Covered Persons

This change to the Remittance Rule is a clarification of what the Bureau intended the rule to be in the first instance. (The Bureau is making this revision because the Bureau believes the original rule may have been unclear.) This change does not impose any material costs on those providers that already include delays due to fraud screening in their method of disclosing the date of availability of funds to recipient. Other providers may incur costs to make adjustments to their practices to ensure that they are complying with the Rule; however, these are only costs intended to bring the disclosure practices up to the intended understanding of the Remittance Rule, and do not constitute additional costs imposed by this final rule.

6. Refunds in Case of Errors Resulting from the Sender Providing Incorrect or

Insufficient Information

In cases of errors resulting from the sender providing incorrect or insufficient information, § 1005.33(c)(2)(iii) now explicitly states that a remittance transfer provider may not deduct its own fees from the amount refunded or applied to a new transfer.³⁰ This clarifies what was already required by the current Remittance Rule – a refund of the provider’s own fee for errors that occur pursuant to § 1005.33(a)(1)(iv). Related to § 1005.33(c)(2)(iii), the Bureau is also adding an example to further explain how a remittance transfer provider should determine the appropriate amount to resolve any error under § 1005.33(a)(1)(iv).

a. Benefits and Costs to Consumers

The Bureau believes that there will be no material impact on consumers, because the Bureau believes that remittance transfer providers are not deducting their own fees when remedying an error pursuant to § 1005.33(a)(1)(iv) because the sender provided incorrect or insufficient information in connection with the transfer.

b. Benefits and Costs to Covered Persons

The Bureau believes that there will be no material benefits or costs on covered persons, because this final rule has simply clarified existing requirements under the rule that have been in place as of the effective date in October 2013.

C. Access to Consumer Financial Products and Services

The Bureau expects that the amendments adopted in this final rule will not decrease consumers’ access to consumer financial products and services. On the contrary, by extending

³⁰ Prior to the adoption of this final rule, § 1005.33(c)(2)(iii), as clarified by current comment 33(c)-12, already prohibited remittance transfer providers from deducting their own fees from the amount refunded to a sender or applied to a new transfer in the case of an error pursuant to § 1005.33(a)(1)(iv) because the sender provided incorrect or insufficient information in connection with the transfer.

the temporary exception, the Bureau believes that this final rule may preserve consumers' current set of options for sending remittance transfers to destinations for which insured institutions rely on the temporary exception, compared to a market in which the temporary exception expires in July of 2015. The Bureau believes that there will not be a material impact of the technical corrections and clarifications of this final rule on consumer access to remittance transfer 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 applies 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 is likely be similar to the effects on larger depository institutions.

In addition, the Bureau believes that the specific impacts of the extension of the temporary exception on depository institutions and credit unions depends on a number of factors, including whether such institutions are remittance transfer providers, the importance of remittance transfers for such institutions, the methods that such 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, as well as data from the FFIEC and NCUA Call Reports, 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 such larger 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 Remittance 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 this final rule than other senders. The Bureau does not have data with which to analyze these impacts in detail. To the extent that the extension of the temporary exception impacts remittance transfer providers by allowing them to continue to provide remittance transfer services, this final rule may disproportionately benefit senders living in rural areas. Consumers in rural areas may have fewer options for sending remittance transfers, and therefore may benefit more than other consumers from a change that keeps more providers in the market. The Bureau does not expect that any of the other changes will have a material impact on consumers in rural areas.

VIII. Regulatory Flexibility Act

A. Overview

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.³¹ 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

³¹ 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.

Act.³²

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.³³ 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.³⁴

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

B. Affected Small Entities

The analysis below evaluates the potential economic impact of this final rule on small entities as defined by the RFA.³⁵ This final rule applies to entities that satisfy the definition of “remittance transfer provider,” which is any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. *See* § 1005.30(f).³⁶ Potentially affected small entities include insured

³² 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).

³³ 5 U.S.C. 603-605.

³⁴ 5 U.S.C. 609.

³⁵ For purposes of assessing the impacts of this final rule on small entities, “small entities” is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A “small business” is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (“NAICS”) classifications and size standards. 5 U.S.C. 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” 5 U.S.C. 601(4). A “small governmental jurisdiction” is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

³⁶ The definition of “remittance transfer provider” includes a safe harbor under which a person who provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer such transfers in the current

depository institutions and credit unions that have \$550 million or less in assets and that provide remittance transfers in the normal course of their business, as well as non-depository institutions that have annual receipts that do not exceed \$20.5 million and that provide remittance transfers in the normal course of their business.³⁷ With respect to the non-depository institutions, the affected small non-depository entities may include State-licensed money transmitters, broker-dealers, and other money transmission companies.³⁸ This analysis examines the benefits, costs, and impacts of the key provisions of this final rule relative to the baseline provided by the current Remittance Rule. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

C. Extension of the Temporary Exception

This final rule extends the temporary exception that permits insured institutions to provide estimated disclosures, instead of exact disclosures as is generally required under the Remittance Rule, under certain circumstances, from July 21, 2015, to July 21, 2020. 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

calendar year, it is deemed not to be providing remittance transfers for a consumer in the normal course of its business, and is thus not a remittance transfer provider. *See* § 1005.30(f)(2).

³⁷ Small Bus. Admin., Table of Small Business Size Standards Matched to North American Industry Classification System Codes, http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf. Under what were the relevant size standards in place when the Bureau issued the April Proposal, the thresholds were \$500 million for insured depository institutions and credit unions, and \$19 million for non-depository institutions that are remittance transfer providers. The SBA increased the threshold from \$500 to \$550 million for insured depository institutions and credit unions, and from \$19 million to \$20.5 million for non-depository institutions remittance transfer providers, but the adjustments do not change the Bureau’s analysis. The Bureau adopts NAICS code 522390 (“Other Activities Related to Credit Intermediation”) as the most relevant code for remittance transfer providers that are not depository institutions. *See* 79 FR 33647 (June 12, 2014).

³⁸ Many State-licensed money transmitters act through agents. However, the Remittance Rule applies to remittance transfer providers and explains, in official commentary, that a person is not deemed to be acting as a provider when it performs activities as an agent on behalf of a provider. Comment 30(f)-1. Furthermore, for the purpose of this analysis, the Bureau assumes that providers, and not their agents, will assume any costs associated with implementing the modifications.

maintain the status quo.

D. Additional Clarifications

With regard to changes in this final rule concerning the treatment of transfers sent from consumer and 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 provisions would have any material cost impact on any remittance transfer providers for the reasons stated in the Section 1022(b)(2) Analysis.

With respect to the provisions of this final rule concerning the treatment of U.S. military installations located in foreign countries for purposes of the Remittance Rule, the Bureau believes that remittance transfer providers that are small entities will not be significantly impacted, for the following reasons. This final rule clarifies that an account that is located on a U.S. military installation that is physically located in a foreign country is considered to be located in a State. It does not change the current Remittance Rule, insofar as the current rule does not contain specific guidance regarding how to treat such transfers. The final rule provides similar clarification with respect to transfers sent and received by senders (rather than from an account). The Bureau understands that many, if not most, 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 on small insured institutions and credit unions that provide account-based transfers should be relatively limited, because this rule is not adjusting how transfers to and from those accounts are to be treated. For transfers to and from accounts located on a U.S. military installation abroad and for non-account based transfers, the Bureau believes

that the impact will similarly be limited because the Bureau understands that the changes in the rule are largely in accordance with providers' current practice.

E. Cost of Credit for Small Entities

This final rule does not apply to credit transactions or to commercial remittances.

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

F. Certification

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

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, notwithstanding any other provision of law, a respondent is not required to respond to, an information collection unless the information collection displays a valid OMB control number. Regulation E, 12 CFR Part 1005, currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170-0014.

As discussed elsewhere in this preamble, the Bureau solicited comments concerning the relative number of transfers sent to and from individuals and/or accounts located on U.S. military installations located in foreign countries and understands that remittance transfers to and from

U.S. military installations abroad constitute a very small percentage of the overall remittance transfer market. Furthermore, the Bureau understands, and received comments to support the understanding, that remittance transfer providers currently treat such transfers as being within the United States, *i.e.*, akin to domestic transfers not subject to the Remittance Rule. As such, the Bureau believes that remittance providers, in the ordinary course of their business, are in most instances already providing all applicable notices and disclosures required by this clarification, and therefore, there is no material change in burden of the previously identified information collections. Other changes required under this final rule do not affect information collection practices. Therefore, the Bureau does not believe that any of the changes adopted in this final rule will have a substantial 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.

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 preamble, the Bureau amends 12 CFR Part 1005 to read 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 to revise paragraph (a)(2) to read as follows:

§ 1005.32 Estimates

(a) * * *

(1) * * *

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

* * * *

3. Amend § 1005.33 to revise 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 a necessary 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 (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. Appendix A to part 1005 is amended as follows:

a. Model Forms A-31 and A-40 are revised.

The revisions read as follows:

APPENDIX A TO PART 1005 --- MODEL DISCLOSURES AND FORMS

* * * *

A-31 – Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

<p>ABC Company 1000 XYZ Avenue Anytown, Anystate 12345</p> <p>Today's Date: March 3, 2014</p> <p>RECEIPT</p> <p>SENDER: Pat Jones 100 Anywhere Street Anytown, Anywhere 54321 222-555-1212</p> <p>RECIPIENT: Carlos Gomez 123 Calle XXX Mexico City Mexico</p> <p>PICK-UP LOCATION: ABC Company 65 Avenida YYY Mexico City Mexico</p> <p>Confirmation Code: ABC 123 DEF 456</p> <p>Date Available: March 4, 2014</p> <p>Transfer Amount: \$100.00 Transfer Fees: +\$7.00 Transfer Taxes: +\$3.00 Total: \$110.00</p> <p>Exchange Rate: US\$1.00 = 12.27 MXN</p> <p>Transfer Amount: 1,227.00 MXN Other Fees: -30.00 MXN Total to Recipient: 1,197.00 MXN</p> <p>Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.</p> <p>You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.</p> <p>You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.</p> <p>For questions or complaints about ABC Company, contact:</p> <p>State Regulatory Agency 800-111-2222 www.state regulatory agency.gov</p> <p>Consumer Financial Protection Bureau 855-411-2372 855-729-2372 (TTY/TDD) consumerfinance.gov/sending-money</p>
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A-40 – Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(3))

<p>ABC Company 1000 XYZ Avenue Anytown, Anystate 12345</p> <p>Fecha: 3 de marzo de 2014</p> <p>REMITENTE: Pat Jones 100 Anywhere Street Anytown, Anywhere 54321 222-555-1212</p> <p>DESTINATARIO: Carlos Gomez 123 Calle XXX Ciudad de Mexico, D.F. Mexico</p> <p>PUNTO DE PAGO: ABC Company 65 Avenida YYY Ciudad de Mexico, D.F. Mexico</p> <p>Código de Confirmación: ABC 123 DEF 456</p> <p>Fecha Disponible: 4 de marzo de 2014</p> <p>Cantidad de Envío: \$100.00 Cargos por Envío: +\$7.00 <u>Impuestos de Envío:</u> +\$3.00 Total: \$110.00</p> <p>Tipo de Cambio: US\$1.00 = 12.27 MXN</p> <p>Cantidad de Envío: 1,227.00 MXN Otros Cargos por Envío: -30.00 MXN Total al Destinatario: 1,197.00 MXN</p> <p>El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.</p> <p>Usted tiene el derecho de discutir errores en su transacción. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.</p> <p>Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.</p> <p>Para preguntas o presentar una queja sobre ABC Company, contacte a:</p> <p>State Regulatory Agency 800-111-2222 www.stateregulatoryagency.gov</p> <p>Consumer Financial Protection Bureau 855-411-2372 855-729-2372 (TTY/TDD) consumerfinance.gov/envios</p>
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* * * *

5. In Supplement I to Part 1005:

- a. Under *Section 1005.30 – Remittance Transfer Definitions*:
 - i. Under *Paragraph 30(g)*, paragraphs 2 and 3 are 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)*, 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)*, paragraph 7 is added.
 - iii. Under *Paragraph 33(c)*, paragraph 5 is added.
 - iv. Under *Paragraph 33(c)*, paragraph 12.i is revised.

The revisions and additions read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.30 – Remittance Transfer Definitions

* * * *

30(c) Designated Recipient

1. * * *

2. *Location in a foreign country.*

i. A remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any State, as defined in § 1005.2(l). A specific pick-up location need not be designated for funds to be received at a location in a foreign country. If it is specified that the funds will be transferred to a foreign country to be picked up by the designated recipient, the transfer will be received at a location in a foreign country, even though a specific pick-up location within that country has not been designated. If it is specified that the funds will be received at a location on a U.S. military installation that is physically located in a foreign country, the transfer will be received in a State.

ii. For transfers to a designated recipient's account, whether funds are to be received at a location physically outside of any State depends on where the recipient's account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Accounts that are located on a U.S. military installation that is physically located in a foreign country are located in a State.

* * * *

30(g) Sender

1. *Determining whether a consumer is located in a State.* Under § 1005.30(g), the definition of "sender" means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. A sender located on a U.S. military installation that is physically located in a foreign country is located in a State. For transfers from a consumer's account, whether a consumer is located in a State depends on where the consumer's account is located. If the

account is located in a State, the consumer will be located in a State for purposes of the definition of “sender” in § 1005.30(g), notwithstanding comment 3(a)-3. Accounts that are located on a U.S. military installation that is physically located in a foreign country are located in a State. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

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 that was established primarily for personal, family, or household purposes, a remittance transfer provider may generally deem that the transfer is requested primarily for personal, family, or household purposes and the consumer is therefore a “sender” under § 1005.30(g). But if the consumer indicates that he or she is requesting the transfer primarily for other purposes, such as business or commercial purposes, then the consumer is not a sender under § 1005.30(g), even if the consumer is requesting the transfer from an account that is used primarily for personal, family, or household purposes.

3. Non-consumer accounts. A provider may deem that a transfer that is requested to be 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 held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, as not being 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). Additionally, a transfer that is requested to be sent from an account held by a financial institution under a *bona fide* trust agreement pursuant to § 1005.2(b)(3) is not requested primarily for personal, family, or household purposes, and a consumer requesting a transfer from such an account is therefore 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 § 1005.36, 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-32, A-34, A-35, and A-39.

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, consumerfinance.gov/sending-money, as shown on Model Form A-31. 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 consumerfinance.gov/envios. This optional disclosure is shown on Model A-40. The Bureau will publish a list of any other foreign language Web sites that provide information regarding remittance transfers.

5. * * *

6. * * *

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. 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 funds by the disclosed date of availability is not an error if such delay is related to the provider's or any third party's investigation necessary to address potentially suspicious, blocked or prohibited activity, and the provider did not and could not have reasonably foreseen the delay so as to enable it to timely disclose an accurate date of availability when providing the sender with a receipt or combined disclosure. For example, no error occurs if delivery of funds is

delayed because, after the receipt is provided, 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 where, after disclosing a date of availability to the sender, a remittance transfer provider receives specific law enforcement information indicating that the characteristics of a remittance transfer match a pattern of fraudulent activity, and as a result, the provider deems it necessary to delay delivery of the funds to allow for further investigation. However, if a delay could have been reasonably foreseen, the exception in §1005.33(a)(1)(iv)(B) would not apply. For example, if a provider knows in time to make a disclosure that all remittance transfers to a certain geographic area must undergo screening procedures that routinely delay such transfers by two days, the provider's failure to include the additional two days in its disclosure of the date of availability constitutes an error if delivery of the funds is indeed delayed beyond the disclosed date of availability.

8. * * *

9. * * *

10. * * *

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), (c)(2)(i)(B), (c)(2)(ii)(A)(1), and (c)(2)(i)(A)(2) the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. The amount appropriate to resolve the error

does not include consequential damages. 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.

* * * *

12. * * *

i. A sender instructs a remittance transfer provider to send US\$100 to a designated recipient in local currency, for which the provider charges a transfer fee of US\$10 (and thus the sender pays the provider \$110). The provider's correspondent imposes a fee of US\$15 that it deducts from the amount of the transfer. The sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer as requested. Once the provider determines that an error occurred because the sender provided incorrect or insufficient information, the provider must provide the report required by § 1005.33(c)(1) or (d)(1) and inform the sender, pursuant to § 1005.33(c)(1) or (d)(1), that it will refund US\$95 to the sender within three business days, unless the sender chooses to apply the US\$95 towards a new remittance transfer and the provider agrees. Of the \$95 that is refunded to the sender, \$10 reflects the refund of the provider's transfer fee, and \$85 reflects the refund of the amount of funds provided by the sender in connection with the transfer which was not properly transmitted. The provider is not required to refund the US\$15 fee imposed by the correspondent (unless the \$15 will be refunded to the provider by the correspondent).

* * * *

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

Dated: August 21, 2014.

Richard Cordray

Richard Cordray,

Director, Bureau of Consumer Financial Protection.