AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 76 Monday,
No. 99 May 23, 2011

Part III

Federal Reserve System

12 CFR Part 205
Electronic Fund Transfers; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1419]

RIN 7100–AD76

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The proposal contains new protections for consumers who send remittance transfers to consumers or entities in a foreign country, by providing consumers with disclosures and error resolution rights. The proposed amendments implement statutory requirements set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: Comments must be received on or before July 22, 2011. All comment letters will be transferred to the Consumer Financial Protection Bureau.

ADDRESSES: You may submit comments, identified by Docket No. R–1419 and RIN 7100–AD76, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- FAX: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Mandie Aubrey or Samantha Pelosi, Senior Attorneys, or Vivian Wong, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of the types of transactions covered by the EFTA and Regulation E include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for the disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) interprets the requirements of Regulation E to facilitate compliance and provides protection from liability under Sections 916 and 917 of the EFTA for financial institutions and other persons subject to the Act who act in conformity with the Board's commentary interpretations. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law.[1] Section 1073 of the Dodd-Frank Act adds a new Section 919 to the EFTA to create new protections for consumers who send remittance transfers to designated recipients located in a foreign country. The Dodd-Frank Act requires that remittance transfer providers give senders of remittance transfers certain disclosures, including information about fees, the applicable exchange rate, and the amount of currency to be received by the recipient. In addition, the Dodd-Frank Act provides error resolution rights for senders of remittance transfers and directs the Board to promulgate standards for resolving errors and recordkeeping rules. Finally, the Dodd-Frank Act requires the Board to issue rules regarding appropriate cancellation and refund policies. Final rules must be prescribed not later than 18 months after enactment, which is January 21, 2012.[2]

II. Background

A. General

The term "remittance transfer" typically describes a transaction where a consumer sends funds to a relative or other individual located in another country, often the consumer's country of origin. Traditional remittance transfers often consist of consumer-to-consumer payments of low monetary value.

Information on the volume of remittance transfers varies widely, in part because of the difficulty in obtaining reliable data regarding the subject population, and in part because of differences in the scope of transactions included in estimates. The World Bank estimates that the total volume of remittance transfers worldwide to developing countries reached $325 billion in 2010.[3] The World Bank further estimates that the United States has the highest volume of remittances, totaling $48.3 billion in 2009.[4] The U.S. Bureau of Economic Analysis estimates that cash and in-kind "personal transfers" made by foreign-born residents in the United States to households abroad totaled $37.6 billion in 2009,[5] while the U.S. Census Bureau estimates that cash "monetary transfers" from U.S. residents to nonresident households totaled approximately $12 billion in 2008.[6] The majority of

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] As discussed below, due to the timing of the statute and this proposal, the Board anticipates that final rules on remittance transfers will be issued by the Consumer Financial Protection Bureau ("Bureau").

[3] World Bank, *Migration and Remittances Factbook 2011* 17 (2011). The World Bank includes cash and in-kind transfers, earnings of temporary workers, and other transfers in its calculations.

[4] *Id.* at 15.

[5] U.S. Bureau of Economic Analysis [BEA], *Personal Transfers, 1992:I –2010:I* (Dec. 16, 2010). For more on the BEA's methodology, *see* Christopher L. Bach, BEA, "Annual Revision of the U.S. International Accounts, 1991–2004," *Surv. Of Current Bus.* No. 7 (July 2005) at 64–66.

[6] Elizabeth M. Grieco, Patricia de la Cruz *et al, Who in the United States Sends and Receives Remittances? An Initial Analysis of the Monetary Transfer Data from the August 2008 CPS Migration Supplement,* U.S. Census Bureau Working Paper No. 87 (Nov. 2010), *available at: http://www.census.gov/population/www/documentation/*

remittances from the United States are sent to the Caribbean and Latin America, and primarily to Mexico.[7] Significant sums are also sent to Asia, and to the Philippines in particular.

B. Methods for Sending Remittance Transfers

Remittance transfers can be sent in a variety of ways. The primary methods for sending remittances transfers are discussed below.

Remittance Transfers Through Money Transmitters

Traditionally, consumers send remittance transfers through a money transmitter[8] operating through its own store or through an agent, such as a grocery store or neighborhood convenience store. The remittance transfer provider may have an exclusive arrangement with the agent, or may be one of several providers available to consumers through that agent. Typically, the consumer provides basic identifying information about himself and the recipient, and pays cash sufficient to cover the transfer amount and any transfer fees charged by the money transmitter. The consumer is provided a confirmation code, which the consumer relays to the recipient. The money transmitter sends an instruction to a specified payout location or locations in the recipient's country where the recipient may pick up the transferred funds, often in local currency, on or after a specified date, upon presentation of the confirmation code and other identification. These transfers are generally referred to as cash-to-cash remittances. In some cases, the consumer can also use other methods of payment for the transfer, such as a credit or debit card, or can provide a checking or savings account number from which funds can be debited for the transfer.

Although most money transmitters focus on cash-to-cash remittance transfers, many have also broadened their product offerings, with respect to both the method for sending and the method for receiving remittance transfers. A recent survey of remittance transfer providers operating in Latin America showed that approximately 75% also permit consumers to send transfers of funds that can be deposited directly into a recipient's bank account, and about 15% offer Internet-based transfers.[9] Several money transmitters permit consumers to send remittances only via the Internet. Money transmitters may also permit transfers to be sent through a dedicated telephone at an agent, at a stand-alone kiosk, or by telephone.

In most cases where funds are made available to the recipient in the local currency, the exchange rate is set when the sender tenders payment, although some money transmitters offer floating rate products where the exchange rate is not determined until the recipient picks up the funds. Funds sent through a money transmitter are generally available in one to three business days, although faster delivery may be available for a higher fee.

International Wire Transfers

Consumers may also send remittances through banks and credit unions. Traditionally, consumers have sent remittances through financial institutions by international wire transfer. Consumers may choose to send funds by wire transfer when traditional money transmitters do not send funds where a recipient is located, or when consumers feel that depositing funds directly to a recipient's account provides a more secure method of transmitting funds, particularly when sending larger amounts. A wire transfer is generally an account-to-account transaction. Funds are transferred from the consumer's account into a recipient's account at a foreign financial institution. The two account-holding financial institutions will not communicate directly if they do not have a correspondent relationship. Rather, the sending institution will send funds or a payment instruction to a correspondent institution, which will then be transmitted to the recipient institution directly or indirectly through a series of intermediary institutions. Each wire transfer sent from the sender's financial institution to the recipient's institution may travel through a different transmittal route of financial institutions.

Fees for international wire transfers are typically higher than fees for cash-to-cash transfers. Intermediary institutions along the transmittal route for international wire transfers may deduct fees from the amount transferred, which are often referred to as "lifting fees." The recipient institution may also deduct a fee from the recipient's account for converting the funds into local currency and depositing them into the recipient's account. Further, depending on the number of institutions involved in the transmittal route, it may take longer for funds to be deposited into the recipient's account via international wire transfer than is typically the case for transfers conducted through money transmitters. If the sending institution does not have a direct relationship with the intermediary or receiving institutions, it likely does not have knowledge of all fees that might be imposed on the recipient, or when the funds ultimately will be deposited into the recipient's account.

Financial institutions also do not always know the exchange rate that will apply to wire transfers. In some instances, financial institutions purchase foreign currency at wholesale prices on the commodities market. Before sending a wire transfer, the institution will convert U.S. dollars into local currency using an exchange rate it sets (usually based on the wholesale rate plus a margin), and it thus can determine the exchange rate applicable to the wire transfer. Other financial institutions, however, do not purchase foreign currency on the market, or certain currencies may not be readily available for purchase on the market. In these circumstances, the sending financial institution will send a wire transfer in U.S. dollars, and will not set the exchange rate. In those cases, either the first cross-border intermediary institution in the recipient's country, or the recipient's institution, will set the rate. If the sending financial institution does not have a correspondent relationship with these parties, it generally will not be able to determine the applicable rate.

International ACH

More recently, financial institutions have begun to offer other methods for sending remittances, such as through international automated clearing house (ACH) transactions. In 2001, the Federal Reserve Banks began offering cross-border ACH services to Canada. In 2003, the United States and Mexico launched the "Partnership for Prosperity" initiative aimed at fostering economic development. One of the efforts under this initiative was to lower the cost of remittance transfers from the United States to Mexico. Under this initiative, the Federal Reserve Banks worked with

twps0087/twps0087.html. The report recognizes the substantial difference between its estimate and that of the BEA and offers several possible explanations, but does not come to a conclusion.

[7] U.S. Gov't Accountability Office, GAO–06–204, *International Remittances: Information on Products, Costs, and Consumer Disclosures* 7 (November 2005) ("*GAO Report*"); *see also* Cong. Budget Office, *Migrants' Remittances and Related Economic Flows* 7 (Feb. 2011).

[8] Federal law requires money transmitters to register with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury. 31 U.S.C. 5330; 31 CFR 103.41. Most states also require money transmitters to be licensed by the state.

[9] Manuel Orozco, Elizabeth Burgess et al, Inter-American Dialogue, *A Scorecard in the Market for Money Transfers: Trends in Competition in Latin American and the Caribbean* 6 (June 18, 2010) ("*Scorecard*").

the central bank of Mexico to create an interbank mechanism, later branded "Directo a México," to carry out cross-border ACH transactions between the United States and Mexico. The Directo a México service was introduced in 2004, and the Federal Reserve Banks now offer international ACH services to over 35 countries in Europe, Canada, and Latin America through agreements with private-sector or government entities.

In each case, the Federal Reserve and the entity or entities with which the Federal Reserve has an agreement receive, process, and distribute ACH payments to financial institutions or recipients within the respective domestic payment systems.[10] The Federal Reserve provides U.S. financial institutions access to its FedGlobal ACH Payments Service for a small charge. Financial institutions, in turn, offer the product to their customers for a competitive fee.[11] Institutions may offer customers account-to-account transfers, or allow customers to send transfers that may be picked up at a participating institution or other payout location abroad.[12] In some instances, the financial institution will know the exchange rate when the transfer is requested. In other cases, however, the exchange rate is determined by the foreign ACH counterpart and applied the next business day when funds are deposited into the recipient's account or made available to be picked up.

Other Account-Based Methods

Over the last decade, some financial institutions have independently developed lower-cost remittance transfer products, or have directly partnered with or joined a larger distribution network of financial institutions or other payout locations. These products generally are account-to-account or account-to-cash products that resemble those offered by traditional money transmitters. Transferred funds are generally available in one to three days, similar to the traditional money transmitter model, for a competitive fee.[13]

Additional Methods

In addition to the primary remittance transfer methods described above, there are various other methods and products for delivering funds to a person located abroad. For example, consumers may send funds to recipients abroad using prepaid cards. In one model, a consumer purchases a prepaid card from a remittance transfer provider, which loads funds onto the card and sends it to a specified recipient in another country. The recipient may then use the prepaid card at an ATM or at a point of sale. The consumer can reload the recipient's prepaid card through the provider's Web site. In this model, the exchange rate is set when the recipient uses the card. Other card-based products permit the cardholder to send funds using his or her debit or credit card to the debit or credit card account of a recipient.

A consumer may also add a recipient in another country as an authorized user on his or her checking or savings account. A debit card linked to the consumer's account is provided to the recipient, who can use it to withdraw funds at an ATM or at a point of sale. Remittance transfer providers are also exploring the use of mobile applications to send remittances.[14]

C. Consumer Choice, Pricing, and Disclosure

Consumers choose a particular remittance transfer provider or product over another for a number of reasons. Significant factors include trust in the provider, security, reliability (*i.e.,* having funds available at the specified time), and convenience to the recipient, particularly in markets where the recipient may have limited options where funds can be picked up.[15] Fees and exchange rates are also key factors in choosing a provider. Some studies have shown consumers may agree to pay more to ensure that recipients receive the entire amount promised at the promised delivery time, and that consumers also tend to continue using a service provider once it proves reliable.[16]

Studies also suggest that increasing diversification and competition in the remittance transfer market have contributed to downward market pressure on prices.[17] One study shows that transfer costs to Latin America, the largest recipient of remittances from the United States, have decreased from about 15% of the value transferred before 2000 to approximately 5% of the value transferred, although the rate of decline has slowed in the last few years.[18] Similarly, the World Bank estimates that worldwide, transfer costs declined to an estimated 8.7% of the value of the transfer in first quarter of 2010.[19]

Although the remittance transfer market has seen an overall price decline, concerns remain regarding the adequacy of disclosures. Even though consumers often can obtain exchange rate and fee information orally upon request, many consumers currently do not receive written information about their remittance transaction until after payment is tendered. Consumer advocates have argued that providing written disclosures prior to payment is essential to help the consumer understand the transaction before committing to pay.[20] However, one survey indicated that a majority of consumers are satisfied with the transparency of the exchange rate and fees.[21] Concerns have also been raised that state money transmitter laws address licensing and money laundering issues, but largely do not require disclosures.

Further, there is inconsistency in the type of information disclosed by different providers. In some instances, the provider may disclose the total cost of the transaction to the sender, but not the amount the recipient will receive. In other instances, the consumer may believe that the recipient will receive a specified amount, but lifting fees, recipient agent fees, or foreign taxes reduce the amount the recipient

[10] Fed. Reserve Bank Services, *FedGlobal® ACH Payments Service Origination Manual, available at: http://www.frbservices.org/files/serviceofferings/pdf/fedach_global_service_orig_manual.pdf.*

[11] *See, e.g.,* Lenora Suki, *Competition and Remittances in Latin America: Lower Prices and More Efficient Markets,* Working Paper at 27 (Feb. 2007), available at: *http://www.oecd.org/dataoecd/31/52/38821426.pdf* ("*Competition and Remittances*").

[12] Fed. Reserve Bank Services, *FedGlobal ACH Payments,* available at: *http://www.frbservices.org/serviceofferings/fedach/fedach_international_ach_payments.html.*

[13] *See, e.g., Competition and Remittances* at 27; *Scorecard* at 7.

[14] Consumers may also use informal methods to send money abroad, such as sending funds through the mail or with a friend, relative, or courier traveling to the destination country. *See, e.g.,* Bendixen & Amandi, *Survey of Latin American Immigrants in the United States* (2008), available at: *http://www.bendixenandassociates.com/studies2008.html* (estimating about 12% of remittances to Latin America are through informal means) ("Bendixen Survey").

[15] Marianne A. Hilgert, Jeanne M. Hogarth, et al. "Banking on Remittances: Extending Financial Services to Immigrants." 15 *Partners* No. 2 at 18 (2005); *Competition and Remittances* at 25. *See also* the discussion below regarding the Board's consumer testing.

[16] *GAO Report* at 8. *See also* Appleseed, *The Fair Exchange: Improving the Market for International Remittances* 7 (Apr. 2007).

[17] *Scorecard* at 7. Technology is also a driving factor.

[18] Inter-American Development Bank, Multilateral Investment Fund. *Ten Years of Innovation in Remittances: Lessons Learned and Models for the Future* 8 (2005). The market has recently seen remittance transfer provider consolidation.

[19] World Bank *Migration and Development Brief* No. 13 at 10 (Nov. 2010).

[20] *See, e.g.,* Testimony of Annette LoVoi, Appleseed, in Hearing Before House Subcomm. on Fin. Insts. And Cons. Credit, No. 111–39 (June 3, 2009).

[21] *Scorecard* at 10.

ultimately receives. Thus, consumers could benefit from consistent, accessible disclosures regarding remittance transfers. Concerns have also been raised about a consumer's ability to pursue the resolution of errors with providers, particularly given variations in state law regulation of money transmitters.[22]

Outreach and Consumer Testing

In the fall of 2010, Board staff conducted outreach with various parties regarding remittances and implementation of the statute. Board staff met with representatives from a variety of money transmitters, financial institutions, industry trade associations, consumer advocates, and other interested parties to discuss current remittance transfer business models, consumer disclosure and error resolution practices, operational issues, and specific provisions of the statute.[23]

The Board also engaged a testing consultant, ICF Macro (Macro), to conduct focus groups and one-on-one interviews regarding remittance transfers. Participants represented a range of ages, education levels, amount of time lived in the United States, and country or region to which remittances were sent.

In December 2010, Macro conducted a series of six focus groups with eight to ten participants each, to explore current remittance provider practices and attitudes about remittance disclosures. Three focus groups were held in Bethesda, Maryland, and three were held in Los Angeles, California. At each location, two of the three focus groups were conducted in English, and the third in Spanish. Among other things, participants were asked about the factors they consider when choosing a remittance provider, and information they receive from providers before and after their transaction. Consistent with the research described above, focus group participants identified cost, convenience, and security among the most important factors when choosing a provider, and tended to use the same provider over time. Most participants said they did not receive any written information before completing an in-person remittance transfer, but said they could get information about fees and exchange rates orally if they asked an agent. Only a few participants regularly compared provider prices. Those who did compare would generally call or look on-line for approximate fees and exchange rates. When asked about the usefulness of a storefront sign showing how much a recipient would receive in local currency if $100 were sent, most participants responded by highlighting the limitations and obstacles of such a sign.

In early 2011, Macro conducted a series of one-on-one interviews in New York City, Atlanta, Georgia, and Bethesda, Maryland, with nine to ten participants in each city. During the interview, participants were given scenarios in which they completed a hypothetical remittance transfer and received one or more disclosure forms. For each scenario, participants were asked specific questions to test their understanding of the information presented in the disclosure form. Nearly all participants understood the information presented in the disclosure forms. Most participants said that getting information prior to completing the transaction could be useful in that it would give consumers the opportunity to review or confirm information before sending money. Participants also generally responded positively to disclosures about their error resolution rights.

III. Summary of Proposal

The Board is proposing to implement the Dodd-Frank Act remittance transfer provisions in a new Subpart B of Regulation E, § 205.30 *et seq.*[24] The proposed rule contains new protections for consumers who send remittance transfers to designated recipients in a foreign country by providing consumers with disclosures and error resolution rights.

Under the proposed rule, a remittance transfer provider must generally provide a written pre-payment disclosure to a sender[25] containing information about the specific transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. Oral pre-payment disclosures would be permitted if the transaction is conducted entirely by telephone.

The remittance transfer provider must also generally provide a written receipt when payment is made for the remittance transfer that includes the information provided on the pre-payment disclosure, as well as additional information such as the date of availability, the recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Alternatively, the proposed rule permits remittance transfer providers to provide senders a single written pre-payment disclosure containing all of the information required on the receipt.

The proposal also implements two statutory exceptions that permit a remittance transfer provider to disclose an estimate of the amount of currency to be received, rather than the actual amount. The first exception applies for five years from the date of enactment of the Dodd-Frank Act. This temporary exception applies to insured depository institutions and insured credit unions that cannot determine certain disclosed amounts for reasons beyond their control, which primarily occurs with international wire transfers. The second exception is a permanent exception and applies where the provider cannot determine certain amounts to be disclosed because of (a) the laws of a recipient country or (b) the method by which transactions are made in the recipient country. Under the proposed rule, the permanent exception applies when the government of a foreign country sets the exchange rate after a transfer has been sent, or where the exchange rate, by law, is not set until the recipient picks up the funds. The permanent exception also applies to certain international ACH transactions, where the central bank of the foreign country sets the exchange rate after the transfer has been sent.

The proposed rule also implements the statutory requirement that disclosures must generally be provided in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at a particular office, with several modifications. The proposed rule provides guidance on how and when foreign language disclosures must be provided, and proposes several foreign language disclosure alternatives.

Additionally, the proposed rule prescribes error resolution standards, including recordkeeping standards, consistent with the statute. The proposed rule requires a sender to provide notice of an error to the remittance transfer provider within 180 days of the stated date of availability of a remittance transfer. The notice triggers a provider's duty to investigate the claim and correct any error within 90 days of receiving the notice of error. The proposed rule would establish error resolution procedures similar to those

[22] Nat. Council of La Raza, *Wiring Change: New Protections for Remittances Can Help Families,* at: *http://www.nclr.org/images/uploads/pages/Remittances_and_Banking_Reform_5_5_2010_Final.pdf* (May 2010).

[23] Summaries of these meetings are available on the Board's Web site at: *http://www.federalreserve.gov/newsevents/reform_consumer.htm.*

[24] Existing provisions of Regulation E would be incorporated into a new Subpart A.

[25] As discussed in more detail below, the proposed rule is applicable to senders who are consumers.

that apply to a financial institution under Regulation E with respect to errors involving electronic fund transfers. The proposal also provides senders specified cancellation and refund rights.

Finally, the proposed rule sets forth two alternative approaches for implementing the standards of liability for remittance transfer providers, including those that act through an agent. Under the first alternative, a remittance transfer provider would be liable for violations by an agent, when such agent acts for the provider. Under the second alternative, a remittance transfer provider would be liable for violations by an agent acting for the provider unless the provider establishes and maintains policies and procedures for agent compliance, including appropriate oversight measures, and the provider corrects any violation, to the extent appropriate.

Request for Comment

The Board requests comment on all aspects of this remittances proposal, including on the various alternatives set forth in the proposal, as well as projected implementation and compliance costs. The Board also solicits comment on whether an effective date of one year from the date the final rule is published, or an alternative effective date, would be appropriate. Specifically, the Board requests comment on the length of time remittance transfer providers may need to implement the rule.

Transition Issues

The Dodd-Frank Act requires the Board to issue rules implementing the remittance transfer provisions within 18 months from the date of enactment, or by January 21, 2012. However, the Act transfers rulemaking authority for most consumer protection statutes, including the EFTA, from the Board to the Bureau as of the designated transfer date, which has been designated as July 21, 2011.[26] As a result, the Board anticipates that final rules on remittance transfers will be issued by the Bureau.

IV. Legal Authority

Section 1073 of the Dodd-Frank Act creates a new Section 919 of the EFTA and requires remittance transfer providers to make disclosures to senders of remittance transfers, pursuant to rules prescribed by the Board. In particular, providers must give senders a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer. The remittance transfer provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information. EFTA Section 919(a); 15 U.S.C. 1693o–1(a).

In addition, EFTA Section 919 provides for specific error resolution procedures. The Act directs the Board to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies. EFTA Section 919(d); 15 U.S.C. 1693o–1(d). Finally, EFTA Section 919 requires the Board to establish standards of liability for remittance transfer providers, including those that act through agents. EFTA Section 919(f); 15 U.S.C. 1693o–1(f). Except as described below, the remittance transfer rule is proposed under the authority provided to the Board in EFTA Section 919, and as more specifically described in this **SUPPLEMENTARY INFORMATION**.

In addition to the statutory mandates set forth in the Dodd-Frank Act, EFTA Section 904(a) authorizes the Board to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish "the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems" and to provide "individual consumer rights." EFTA Section 902(b); 15 U.S.C. 1693. As described in more detail in the **SUPPLEMENTARY INFORMATION**, the following provisions are proposed in part or in whole pursuant to the Board's authority in EFTA Section 904(a): §§ 205.31(b)(1)(i), (b)(1)(iii), (b)(1)(v), (b)(1)(vi), (g)(2), and 205.33(c)(1). The proposed Model Forms in Appendix A are also proposed pursuant to EFTA Section 904(a). The Section-by-Section analysis, Initial Regulatory Flexibility Analysis, and Paperwork Reduction Act analysis serve as the economic impact analysis pursuant to EFTA Section 904(a)(2).

EFTA Section 904(c) further provides that regulations prescribed by the Board may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Board deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. As described in more detail in the **SUPPLEMENTARY INFORMATION**, proposed §§ 205.31(g)(1)(ii), (g)(2), (g)(3), 205.32(a), and 205.31(e)(2) are proposed in part or in whole pursuant to the Board's authority in EFTA Section 904(c).

V. Section-by-Section Analysis

Section 205.3 Coverage

Section 205.3(a), which describes Regulation E's coverage, is proposed to be revised to provide that the requirements of Subpart B apply to remittance transfer providers. The revision reflects that the scope of the Dodd-Frank Act's remittance transfer provisions is not limited to financial institutions. Specifically, EFTA Section 919(g)(3) defines a remittance transfer provider as "*any person* that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person" (emphasis added). Thus, Subpart B would also apply to non-financial institutions, such as money transmitters, that send remittance transfers.

Section 205.30 Remittance Transfer Definitions

EFTA Section 919(g) sets forth several definitions applicable to the remittance transfer provisions in Subpart B. Proposed § 205.30 incorporates these definitions, with modifications, and other terms used in the rule, with proposed commentary for further clarification.

30(a) Agent

Proposed § 205.30(a) states that an "agent" means an agent, authorized delegate, or person affiliated with a remittance transfer provider under state or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider. EFTA Section 919 does not use consistent terminology concerning agents of remittance transfer providers. For example, EFTA Section 919(f)(1) uses the phrase "agent, authorized delegate, or person affiliated with a remittance transfer provider," when that person "acts for that remittance transfer provider," while other provisions use the phrase "agent or authorized delegate" (EFTA Section 919(f)(2)) or simply "agent" (EFTA Section 919(b)). The Board does not believe that these statutory wording differences are intended to establish different standards across the rule. Therefore, the proposed rule generally refers to "agents," as defined in proposed § 205.30(a), to provide consistency across the proposed rule. Because the concept of agency is historically tied to state law, the proposed definition references these parties under state or other applicable law.

[26] 75 FR 57252 (Sept. 20, 2010).

30(b) Business Day

Several provisions in the proposed rule use the term "business day." *See, e.g.,* §§ 205.31(e)(2) and 205.33(c)(1). The existing definition of "business day" in Regulation E applies only to financial institutions and includes inapt commentary. *See* 12 CFR 205.2(d). Because remittance transfer providers include non-financial institutions, proposed § 205.30(b) contains a new definition of "business day" applicable to Subpart B. The proposed rule states that "business day" means any day on which a remittance transfer provider accepts funds for sending remittance transfers.

Proposed comment 30(b)–1 explains that a business day includes the entire 24-hour period ending at midnight, and that a notice required by any section in Subpart B is effective even if given outside of normal business hours. However, the comment clarifies that no section of Subpart B requires that a remittance transfer provider make telephone lines available on a 24-hour basis.

30(c) Designated Recipient

EFTA Section 919(g)(1) provides that a "designated recipient" is "any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of [the EFTA]." The statute uses the term "person," indicating that the statute applies to remittance transfers sent to businesses, as well as to consumers. *See* proposed comment 30(c)–1.

Proposed § 205.30(c) implements EFTA Section 919(g)(1), with edits for clarity. A remittance transfer provider will generally only know the location where funds are to be sent, rather than where a designated recipient is physically located. For instance, although the sender may indicate that funds are to be sent to the recipient in Mexico City, the recipient could actually be in the United States at the time of the transfer. The Board believes that the statutory reference to a "person located in a foreign country" should be read with a view to the location where funds are to be sent. Additionally, the statute references a remittance transfer "to be made by a remittance transfer provider." As discussed below, the definition of remittance transfer requires that it be sent by a remittance transfer provider. Thus, this language is unnecessary. Accordingly, proposed § 205.30(c) states that a designated recipient is any person specified by the sender as an authorized recipient of a remittance transfer to be received at a location in a foreign country.

Proposed comment 30(c)–2 explains that a remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any state, as defined in § 205.2(l). The Board understands that a provider will generally know the location where funds can be picked up or will be deposited as part of its normal operating procedures. However, the Board solicits comment on whether there are instances where a remittance provider may only receive a recipient's email address and therefore be unable to determine the location where funds are to be received.

30(d) Remittance Transfer

30(d)(1) General Definition

EFTA Section 919(g)(2)(A) defines a remittance transfer as an electronic (as defined in Section 106(2) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7007 *et seq.* ("E–Sign Act")) transfer of funds requested by a sender located in any state to a designated recipient that is sent by a remittance transfer provider. Under the statute, such a transaction is a remittance transfer whether or not the sender holds an account with the remittance transfer provider and whether or not the remittance transfer is also an electronic fund transfer, as defined in EFTA Section 903. The statute thus brings within the scope of the EFTA certain transactions that have traditionally been outside the scope of the EFTA, if those transactions meet elements of the definition of "remittance transfer." Such transactions include cash-based remittance transfers sent through a money transmitter as well as consumer wire transfers. Proposed § 205.30(d) implements the definition of "remittance transfer" in EFTA Section 919(g)(2), with revisions for clarity. The Board is also proposing commentary to provide further guidance on the definition, as well as examples of transactions that are and are not remittance transfers under the rule.

Proposed § 205.30(d)(1) implements the general definition set forth in EFTA Section 919(g)(2)(A). Proposed § 205.30(d)(1) states that a remittance transfer means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. Proposed § 205.30(d)(1) further states that the term applies regardless of whether the sender holds an account with the remittance transfer provider and regardless of whether the transfer is also an electronic fund transfer, as defined in § 205.3(b).

Proposed comments 30(d)–1 through –4 provide further guidance on each of the elements of the proposed definition of "remittance transfer." Proposed comment 30(d)–1 provides that there must be an electronic transfer of funds. The term electronic has the meaning given in Section 106(2) of the E-Sign Act. There may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer. However, the proposed comment explains that where a sender mails funds directly to a recipient, or provides funds to a courier for delivery to a foreign country, there has not been an electronic transfer of funds. Therefore, non-electronic remittance methods are not remittance transfers.

Proposed comment 30(d)–2 provides that the definition of remittance transfer requires a specific sender request that a remittance transfer provider send a remittance transfer. The proposed comment explains that a deposit by a consumer into a checking or savings account does not itself constitute such a request, even if a person in a foreign country is an authorized user on that account, where the consumer retains the ability to withdraw funds in the account.

Proposed comment 30(d)–3 provides that the definition of remittance transfer also requires that the transfer be sent to a designated recipient. As noted above, the definition of "designated recipient" requires a person to be identified by the sender as the authorized recipient of a remittance transfer to be sent by a remittance transfer provider. Proposed comment 30(d)–3 explains that there is no designated recipient unless the sender specifically identifies the recipient of a transfer. Thus, there is a designated recipient if, for example, the sender instructs a remittance transfer provider to send a prepaid card to a specified recipient in a foreign country, and the sender does not retain the ability to draw down funds on the prepaid card. In contrast, there is no designated recipient where the sender retains the ability to withdraw funds, such as when a person in a foreign country is made an authorized user on the sender's checking account, because the remittance transfer provider cannot identify the ultimate recipient of the funds. For instance, a consumer may add his daughter, who is studying abroad, as an authorized user to his account so that the daughter has access to funds while abroad. When the consumer deposits funds to the account,

the consumer's financial institution cannot know whether the purpose of that deposit is to provide funds to the daughter, or is merely a deposit that the consumer will later withdraw himself.

Finally, proposed comment 30(d)–4 provides that the definition of remittance transfer requires that the remittance transfer must be sent by a remittance transfer provider. The proposed comment explains that this means that there must be an intermediary actively involved in sending the transfer of funds. Examples include a person (other than the sender) sending an instruction to a receiving agent in a foreign country to make funds available to a recipient; executing a payment order pursuant to a consumer's instructions; executing a consumer's online bill payment request; or otherwise engaging in the business of accepting or debiting funds for transmission to a recipient and transmitting those funds.

However, the proposed comment explains that a payment card network or other third party payment service that is functionally similar to a payment card network does not send a remittance transfer when a consumer designates a debit or credit card as the payment method to purchase goods or services from a foreign merchant. In such a case, the payment card network or third party payment service is not directly engaged with the sender to send a transfer of funds to a person in a foreign country; rather, the network or third party payment service is merely providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the remittance transfer provider, rather than on behalf of the sender.[27]

Similarly, where a consumer provides a checking or other account number directly to a merchant as payment for goods or services, the merchant is not acting as a remittance transfer provider when it submits the payment information for processing. Proposed comment 30(d)–5 provides a non-exclusive list of examples of transactions that are, and are not, remittance transfers.

Under proposed § 205.30(d), some transactions that have not traditionally been considered remittance transfers, such as a consumer's online bill payment through his or her financial institution to a recipient abroad, will fall within the scope of the rule. In contrast, other transfer methods specifically marketed for use by a consumer to send remittances, but that do not meet all elements of the definition of remittance transfer, may fall outside the scope of the rule (*e.g.*, a prepaid card where the sender retains the ability to draw down funds). The Board believes that proposed § 205.30(d) implements the statutory definition of "remittance transfer." However, the Board solicits comment on whether it should exempt online bill payments made through the sender's institution, and specifically preauthorized bill payments, from the rule, as it could be challenging for institutions to provide timely disclosures.

30(d)(2) Exception for Small-Value Transfers

EFTA Section 919(g)(2)(B) states that a remittance transfer does not include a transfer described in EFTA Section 919(g)(2)(A) "in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a)" of the EFTA. EFTA Section 906(a) addresses the requirements for electronic terminal receipts. The Board has previously determined, by rule, that financial institutions are not subject to the requirement to provide electronic terminal receipts for small-value transfers of $15 or less. 12 CFR § 205.9(e). Proposed § 205.30(d)(3) incorporates this exception for small-value transfers by providing that remittance transfers do not include transfer amounts of $15 or less.

Application of the EFTA; Relationship to Uniform Commercial Code

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

During the Board's outreach, some money transmitters asked how and to what extent the EFTA would apply to providers that would ordinarily be outside its scope. The statute outlines the application of the EFTA to remittance transfers that are not electronic fund transfers. Specifically, EFTA Section 919(e)(1) states that a remittance transfer that is not an electronic fund transfer is not subject to any of the provisions of EFTA Sections 905 through 913. For example, a money transmitter sending a remittance transfer would not be subject to the requirement in EFTA Section 906(b), as implemented in 12 CFR 205.9(b), to provide periodic statements to consumers. The transmitter would, however, generally be subject to other provisions of the EFTA, including provisions on liability under EFTA Sections 916 through 918. EFTA Section 919(e)(2)(A) also clarifies that a transaction that would not otherwise be an electronic fund transfer under the EFTA, such as a wire transfer, does not become an electronic fund transfer because it is a remittance transfer under EFTA Section 919.

Prior to the enactment of the Dodd-Frank Act, wire transfers were entirely exempt from the EFTA and instead were governed by state law through state enactment of Article 4A of the Uniform Commercial Code. Among other things, Article 4A primarily governs the rights and responsibilities among the commercial parties to a wire transfer, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders.

UCC Article 4A–108 provides that Article 4A does not apply "to a funds transfer, *any part of which is governed by the [EFTA]*" (emphasis added). Under EFTA Section 919, wire transfers sent on a consumer's behalf that are remittance transfers will now be governed in part by the EFTA. As a result, it appears that, by operation of Article 4A–108, Article 4A will no longer apply to such consumer wire transfers.[28]

Some institutions have urged the Board to clarify that remittance transfers are not governed by the EFTA for purposes of state law, so that UCC Article 4A will continue to apply to such transfers. However, as noted above, EFTA Section 919(e)(1) explicitly applies the EFTA to remittance transfers that are not electronic fund transfers, except for certain enumerated provisions. Further, the remittance disclosure and error resolution requirements are set forth under the EFTA.

In the alternative, institutions have urged the Board to preempt any provision of state law that prevents a remittance transfer from being treated as a funds transfer under UCC Article 4A based solely upon the inclusion of the remittance transfer provisions in EFTA Section 919. Under this suggested approach, the error resolution provisions of EFTA Section 919(b)(1) would govern remittance transfers as

[27] However, when a consumer uses his or her debit or credit card to send funds to a recipient's debit or credit card, the debit or credit card issuer offering the service could be considered a remittance transfer provider, and the transfer of funds a remittance transfer, under the proposed rule. *See, e.g.,* proposed comment 30(d)–5.

[28] Commercial wire transfers are not affected because a "sender" must be a consumer.

between a sender and a remittance transfer provider, but the remaining provisions in UCC Article 4A would continue to govern the allocation of risk of loss as between the remittance transfer provider and another financial institution that carries out part of the transfer.

Under EFTA Section 921 and § 205.12, the Board may determine whether a state law relating to, among other things, electronic fund transfers is preempted by a provision of the EFTA or Regulation E. However, a provision can only preempt a state law that is inconsistent with the provision and only to the extent of its inconsistency. Moreover, the statute and regulation provide that a state law is not inconsistent with any provision if it is more protective of consumers.

EFTA Section 902(b) states that the primary purpose of the EFTA is the provision of individual consumer rights. In contrast, as discussed above, Article 4A is primarily intended to govern the rights and responsibilities among the commercial parties to a funds transfer, that is, the financial institution that accepts a payment order for a funds transfer and any other financial institutions that may be involved in carrying out the transfer. Thus, because the two statutes focus on different relationships, it is not clear that EFTA Section 919 is inconsistent with UCC Article 4A.

In addition, the Board notes that Congress amended the EFTA's preemption provision to specifically include a reference to state gift card laws when it enacted new EFTA protections for gift cards as part of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act).[29] By contrast, Congress did not amend the EFTA's preemption provision with respect to state laws relating to remittance transfers, including those that are not electronic fund transfers, when it enacted the Dodd-Frank Act.

The Board recognizes that one consequence of covering remittance transfers under the EFTA could be legal uncertainty for certain remittance transfer providers. Specifically, providers of international wire transfers may no longer be able to rely on UCC Article 4A's rules governing the rights and responsibilities among the parties to a wire transfer. However, because this issue arises from a provision of state law, not federal law, the Board believes that the authority for resolving this uncertainty rests with the states or through the rules applicable to the relevant wire transfer system. The final rule must be issued in final form no later than January 21, 2012, and will be effective at a subsequent date. Thus, before the rule is finalized and becomes effective, states have the opportunity to amend UCC Article 4A to restore its application to consumer international wire transfers, or wire transfer systems could amend their operating rules to incorporate UCC Article 4A.

30(e) Remittance Transfer Provider

Proposed § 205.30(e) implements the definition of "remittance transfer provider" in EFTA Section 919(g)(3). Proposed § 205.30(e) states that a remittance transfer provider (or provider) means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. To eliminate redundancy, statutory references to "any person or financial institution" have been revised to state "any person" in the proposed rule, because the term "person" under Regulation E already includes financial institutions. Proposed comment 30(e)–1 clarifies that an agent is not deemed to be a remittance transfer provider by merely providing remittance transfer services on behalf of the remittance transfer provider. The Board solicits comment on whether it should adopt guidance interpreting the phrase "normal course of business" as sending a minimum number of remittance transfers in a given year. If so, the Board solicits comment on what that number should be.

30(f) Sender

Proposed § 205.30(f) implements the definition of "sender" in EFTA Section 919(g)(4) with minor edits for clarity. Under the proposed rule, a sender is a consumer in a state who requests a remittance transfer provider to send a remittance transfer to a designated recipient. Accordingly, the proposed rule does not apply to business-to-consumer or business-to-business transactions.

Section 205.31 Disclosures

The Dodd-Frank Act contains several disclosure requirements relating to remittance transfers. Among these, EFTA Sections 919(a)(2)(A) and (B) require a remittance transfer provider to provide two disclosures to a sender in connection with a remittance transfer. First, a remittance transfer provider must provide a written pre-payment disclosure to a sender with information about the sender's remittance transfer, such as the exchange rate, fees, and the amount to be received by the designated recipient. A remittance transfer provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional information, such as the promised date of delivery, contact information for the designated recipient, and information regarding the sender's error resolution rights. EFTA Section 919(a)(5) provides the Board with certain exemption authority, including the authority to permit a remittance transfer provider to provide, in lieu of a pre-payment disclosure and receipt, a single written disclosure to a sender prior to payment for the remittance transfer that accurately discloses all of the information required on both the pre-payment disclosure and the receipt. *See* EFTA Section 919(a)(5)(C). EFTA Section 919(b) also provides that disclosures under Section 919 must be made in English and in each foreign language principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

Proposed § 205.31(a) sets forth the requirements for the general form of disclosures required under Subpart B. Proposed §§ 205.31(b)(1) and (2) implement the EFTA Section 919(a)(2)(A) and (B) pre-payment disclosure and receipt requirements. Proposed § 205.31(b)(3) sets forth the requirements for providing a combined disclosure, as permitted by EFTA Section 919(a)(5)(C). Proposed § 205.31(b)(4) sets forth disclosure requirements with respect to a sender's error resolution and cancellation rights. Proposed § 205.31(c) sets forth specific format requirements required under Subpart B, including grouping, proximity, prominence and size, and segregation requirements. Proposed § 205.31(d) sets forth the disclosure requirements for providing estimates, to the extent they are permitted by § 205.32. Proposed § 205.31(e) implements the timing requirements of EFTA Sections 919(a)(2) and 919(a)(5)(C). Proposed § 205.31(f) clarifies that the disclosures required by § 205.31(b) must be accurate when payment is made. Finally, proposed § 205.31(g) implements the foreign language requirement in EFTA Section 919(b).

31(a) General Form of Disclosures

31(a)(1) Clear and Conspicuous

Proposed § 205.31(a) sets forth the requirements for the general form of disclosures required under proposed

[29] *See* Credit Card Act § 402, Public Law 111–24, 123 Stat. 1734 (2009).

Subpart B. Pursuant to EFTA Sections 919(a)(3)(A) and (a)(5)(C),[30] proposed § 205.31(a)(1) provides that disclosures required by Subpart B must be clear and conspicuous. These include the disclosures required by proposed § 205.31, as well as disclosures providing a description of the sender's error resolution and cancellation rights under proposed §§ 205.33 and .34, discussed below. Proposed comment 31(a)(1)–1 clarifies that disclosures are clear and conspicuous for purposes of Subpart B if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. Oral disclosures, to the extent permitted by proposed § 205.31(a)(3) and (4), are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them.

Proposed § 205.31(a)(1) also provides that disclosures required by Subpart B may contain commonly accepted or readily understandable abbreviations or symbols. Proposed comment 31(a)(1)–2 clarifies that using abbreviations or symbols such as "USD" to indicate currency in U.S. dollars or "MXN" to indicate currency in Mexican pesos is permissible.

31(a)(2) Written and Electronic Disclosures

Proposed § 205.31(a)(2) sets forth the requirements for written and electronic disclosures under Subpart B. Disclosures required by Subpart B generally must be provided to the sender in writing. *See* EFTA Sections 919(a)(2), (a)(5)(C), and (d)(1)(B)(iv). However, EFTA Section 919(a)(5)(D) permits a remittance transfer provider to disclose a pre-payment disclosure electronically if a sender initiates a transaction electronically. The Board believes the intent of this exemption was to permit a remittance transfer provider to give electronic disclosures when a sender electronically requests the provider to send the remittance transfer. *See also* comment 31(e)–1. Therefore, pursuant to the Board's authority in EFTA Section 919(a)(5)(D), proposed § 205.31(a)(2) permits a pre-payment disclosure under § 205.31(b)(1) to be provided to the sender in electronic form, if the sender electronically requests the remittance transfer provider to send a remittance transfer. In such a case, proposed comment 31(a)(2)–1 explains that electronic disclosures required by § 205.31(b)(1) may be provided without regard to the consumer consent and other applicable provisions of the E-Sign Act. Proposed comment 31(a)(2)–1 also clarifies that if a sender electronically requests the remittance transfer provider to send a remittance transfer, receipts required by § 205.31(b)(2) also may be provided to the consumer in electronic form. However, electronic receipts must comply with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed comment 31(a)(2)–2 clarifies that written disclosures may be provided on any size paper, as long as the disclosures are clear and conspicuous. For example, disclosures may be provided on a register receipt or on an 8.5 inch by 11 inch sheet of paper, consistent with current practices in the industry. The Board believes that the required disclosures are sufficiently simple and limited in scope that they may be provided clearly and conspicuously on various paper sizes, as long as a remittance transfer provider complies with the formatting requirements of proposed § 205.31(a) and (c).

In addition, proposed § 205.31(a)(2) provides that the written and electronic disclosures required by Subpart B must be made in a retainable form, pursuant to EFTA Section 919(a)(2) and consistent with the authority provided to the Board in EFTA Section 919(a)(5)(C). Proposed comment 31(a)(2)–3 clarifies that a remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an on-line disclosure in a format that is capable of being printed. Electronic disclosures cannot be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

The Board requests comment on how the requirement to provide electronic disclosures in a retainable form in proposed § 205.31(a)(2) could be applied to transactions conducted via text messaging or mobile phone application.

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

Relying upon the exemption authority in EFTA § 919(a)(5)(B), proposed § 205.31(a)(3) permits pre-payment disclosures required by § 205.31(b)(1) to be disclosed orally if the transaction is conducted entirely by telephone and if the remittance transfer provider complies with the foreign language disclosure requirements of § 205.31(g)(2), discussed below. Proposed comment 31(a)(3)–1 clarifies that, for transactions conducted partially by telephone, disclosures may not be provided orally. For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated phone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, the proposed comment clarifies that all disclosures must be provided in writing. The Board believes that by limiting oral disclosures to transactions performed entirely by telephone, Congress did not intend to permit providers to satisfy the disclosure requirements orally for transactions conducted partially by telephone. *See* EFTA Section 919(a)(5)(B). Proposed comment 31(a)(3)–1 clarifies that for such a transaction, a provider complies with the disclosure requirements, 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 payment is made for the remittance transfer.

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

Proposed § 205.31(a)(4) permits the report of the results of an investigation of a notice of error required by proposed § 205.33(c)(1) to be provided orally, if the remittance transfer provider determines that an error occurred as described by the sender, and if the remittance transfer provider complies with the foreign language disclosure requirements of § 205.31(g)(2), discussed below. As discussed in § 205.33, below, the Board believes that it is appropriate to permit a remittance transfer provider to orally report its findings that the specified error did occur, alert the sender of the results of the investigation, and facilitate a sender's ability to remedy errors promptly.

In outreach conducted by the Board, some remittance transfer providers suggested that the Board should permit a disclosure made prior to payment to be provided at the point-of-sale either orally or electronically by showing a consumer a computer screen displaying the required disclosures. Alternatively, some remittance transfer providers suggested permitting a disclosure made prior to payment to be provided only upon request of the sender. The providers argued that requiring written disclosures prior to payment would be less convenient and more confusing for

[30] EFTA Section 919(a)(5)(C) incorporates the requirements of EFTA Section 919(a)(3)(A) by reference, including the clear and conspicuous requirement.

consumers, and would create an unnecessary compliance burden.

For point-of-sale transactions, the proposed rule does not permit the pre-payment disclosure required by § 205.31(b)(1) or the combined disclosure required by § 205.31(b)(3), discussed below, to be provided orally or to be shown to a consumer on a computer screen at the point-of-sale prior to payment. As discussed above, EFTA Section 919 requires disclosures to be written and retainable, and only permits oral disclosures in limited circumstances. Therefore, the Board believes that the statute does not permit a remittance transfer provider to provide an oral pre-payment disclosure at the point-of-sale.

Moreover, the statute requires disclosures under EFTA Section 919 to be provided to senders, and not simply made available. Showing a sender the required disclosures on a computer screen at the point-of-sale or providing a written disclosure only upon request of the sender would not comply with the requirement to provide the disclosures to the sender. Therefore, the Board believes that permitting these disclosures to be made available, rather than be provided to a sender, would be inconsistent with the statute.

31(b) Disclosures

Section 205.31(b) sets forth substantive disclosure requirements for remittance transfers. EFTA Sections 919(a)(2)(A) and (B) require a remittance transfer provider to provide to a sender: (1) A written pre-payment disclosure with information applicable to the sender's remittance transfer—specifically, the exchange rate, the amount of transfer and other fees, and the amount that would be received by the designated recipient; and (2) a written receipt that includes the information provided on the pre-payment disclosure, plus the promised date of delivery, contact information for the designated recipient, information regarding the sender's error resolution rights, and contact information for the remittance transfer provider and applicable regulatory agencies. EFTA Section 919(a)(5)(C) also authorizes the Board to permit a remittance transfer provider to provide a single written disclosure to a sender, instead of a pre-payment disclosure and receipt, that accurately discloses all of the information required on both the pre-payment disclosure and the receipt (a "combined disclosure").

Pursuant to EFTA Section 919(a)(2), information on a pre-payment disclosure and a receipt need only be provided to the extent applicable to the transaction. Similarly, the information required on a combined disclosure need only be provided as applicable because the combined disclosure is simply a consolidation of disclosures on the pre-payment disclosure and the receipt. *See* EFTA Section 919(a)(2)(A) and (B). Proposed comment 31(b)-1 clarifies that a remittance transfer provider could choose to omit an inapplicable item provided in § 205.31(b). Alternatively, a remittance transfer provider could disclose a term and state that an amount or item is "not applicable," "N/A," or "None."

For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures required by § 205.31(b)(1)(ii) or (b)(1)(vi). Similarly, a Web site need not be disclosed under § 205.31(b)(2)(v) if the provider does not maintain a Web site.

In some instances, a sender may choose to send funds to a designated recipient to be picked up in U.S. dollars or deposited into a dollar-denominated account. For example, El Salvador is a dollarized economy,[31] so remittance transfers to El Salvador may be sent as dollar-to-dollar transactions. Proposed comment 31(b)-1 clarifies that a provider need not provide the exchange rate disclosure required by § 205.31(b)(1)(iv) if a recipient receives currency in U.S. dollars or currency is delivered into an account in U.S. dollars, rather than in another currency.

Section 205.31(b) requires that disclosures be described using the terms set forth in § 205.31(b) or substantially similar terms. The Board developed and tested the terms in consumer testing to ensure that consumers could understand the information disclosed to them. However, the proposed rule provides remittance transfer providers with some flexibility in developing their disclosures. Proposed comment 31(b)-2 clarifies that terms may be more specific than the terms provided in the proposed rule. For example, a remittance transfer provider sending funds to Colombia may describe a tax disclosed under § 205.31(b)(1)(vi) as a "Colombian Tax" in lieu of describing it as "Other Taxes."

As discussed in § 205.31(g) below, disclosures generally must be provided in English and in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfers, either orally or in writing, at that office. The Board recognizes that not all words or phrases lend themselves to exact word-for-word translations in a foreign language. Therefore, proposed comment 31(b)–2 also clarifies that foreign language disclosures required under § 205.31(g) must contain accurate translations of the terms, language, and notices required by § 205.31(b).

31(b)(1) Pre-Payment Disclosures

Pursuant to EFTA Section 919(a)(2)(A), proposed § 205.31(b)(1) requires a remittance transfer provider to make specified pre-payment disclosures to a sender, as applicable. Proposed § 205.31(b)(1)(i) requires that the remittance transfer provider disclose the amount that will be transferred to the designated recipient using the term "Transfer Amount" or a substantially similar term. The transfer amount must be provided in the currency in which the funds will be transferred. For example, if the funds will be transferred from U.S. dollars to Mexican pesos, the transfer amount required by § 205.31(b)(1) must be disclosed in U.S. dollars. The Board is proposing the disclosure of the transfer amount pursuant to the Board's authority under EFTA Section 904(a). The Board believes the disclosure of the transfer amount helps demonstrate to a sender how a provider calculates the total amount of the transaction, discussed below.

Proposed § 205.31(b)(1)(ii) requires that a remittance transfer provider disclose any fees and taxes that are imposed on the remittance transfer by the remittance transfer provider, in the currency in which the funds will be transferred. The proposed disclosure must be described using the term "Transfer Fees," "Transfer Taxes," or "Transfer Fees and Taxes," or a substantially similar term. These disclosures are proposed pursuant to EFTA Section 919(a)(2)(A)(ii), which requires a remittance transfer provider to disclose the amount of transfer fees and any other fees charged by the remittance transfer provider for the remittance transfer. The Board believes the statute requires the disclosure of all charges that would affect the cost of a remittance transfer to the sender, including any applicable taxes that are passed on to the sender. *See* proposed comment 31(b)(1)–1.

Proposed comment 31(b)(1)–1 clarifies that taxes imposed by the remittance transfer provider include taxes imposed on the remittance transfer by a state or other governmental body. The proposed comment further clarifies that a remittance transfer provider need only disclose fees or taxes required by §§ 205.31(b)(1)(ii) and (b)(1)(vi), as

[31] *See* U.S. Department of State Consular Information Sheet for El Salvador at *http://travel.state.gov/travel/cis_pa_tw/cis/cis_1109.html.*

applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider only needs to disclose applicable transfer fees. If both fees and taxes are imposed, the fees and taxes may be disclosed as one disclosure or as separate, itemized disclosures.

Proposed comment 31(b)(1)–1 distinguishes between the fees and taxes required to be disclosed in proposed § 205.31(b)(1)(ii) and those in proposed § 205.31(b)(1)(vi). The fees and taxes required to be disclosed by § 205.31(b)(1)(ii) include all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any state taxes imposed on the remittance transfer. By contrast, as discussed below, the fees and taxes required to be disclosed by § 205.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider.

Proposed comment 31(b)(1)–1 also clarifies that the terms used to describe the fees and taxes in proposed §§ 205.31(b)(1)(ii) and (b)(1)(vi) must differentiate between such fees and taxes. For example, the terms used to describe the fees for proposed §§ 205.31(b)(1)(ii) and (b)(1)(vi) may not both be described as "Fees." The Board requests comment on whether a provider should be permitted to describe the disclosures in proposed § 205.31(b)(1)(ii) or (b)(1)(vi) using the term "Fees and Taxes" or a substantially similar term if either only fees or only taxes are being charged, or if a provider should be required to describe the amounts being disclosed more specifically using the term "Fees" or "Taxes" or a substantially similar term.

Proposed § 205.31(b)(1)(iii) requires disclosure of the total amount of the transaction, which is the sum of §§ 205.31(b)(1)(i) and (b)(1)(ii) in the currency in which the funds will be transferred. The total amount of the transaction would be required to be described using the term "Total" or a substantially similar term. Although this total is not required by the statute, the Board believes that it is appropriate to include it in the proposed pre-payment disclosure, so that a sender can understand the total amount to be paid out-of-pocket for the transaction. Some consumer testing participants stated that they would use such a disclosure to ensure that they had the funds necessary to complete the transaction on hand. Therefore, the Board proposes to require the disclosure of the total amount of the transaction pursuant to its authority under EFTA Section 904(a).

Proposed § 205.31(b)(1)(iv) requires the disclosure of any exchange rate used by the provider for the remittance transfer, rounded to the nearest 1/100th of a decimal point, consistent with EFTA Section 919(a)(2)(A)(iii). The exchange rate would be required to be described using the term "Exchange Rate" or a substantially similar term. The proposed rule does not require the disclosure of either the wholesale rate or the spread between the wholesale rate and the exchange rate offered by the provider.

Several outreach participants urged the Board to propose a rule that would permit remittance transfer providers to continue offering "floating rate" remittance transfers. A floating rate remittance transfer is a transfer requested by a sender for which the exchange rate is set when the designated recipient claims the funds. When making a floating rate transfer, the remittance transfer provider does not set or disclose a foreign exchange rate to the sender. It was suggested that the Board permit a remittance transfer provider making a floating rate transfer to disclose terms such as "unknown," "floating," "variable," or "to be determined," instead of a specified exchange rate.

However, the statute requires a remittance transfer provider to disclose to the sender the exchange rate to be used for the remittance transfer to the sender both before and at the time the sender pays for the transaction. This disclosure provides senders with certainty regarding the exchange rate and the amount of currency their designated recipients would receive.

Proposed comment 31(b)(1)(iv)–1 clarifies that if the designated recipient will receive funds in a currency other than the currency in which it will be transferred, a remittance transfer provider must disclose an exchange rate. An exchange rate that is estimated must be disclosed pursuant to the requirements of § 205.32. A remittance transfer provider may not disclose, for example, that an estimated exchange rate is "unknown," "floating," or "to be determined." The Board recognizes that the result of proposed § 205.31(b)(1)(iv) would likely be that providers will no longer offer floating rate products.

Proposed comment 31(b)(1)(iv)–2 clarifies that the exchange rate used by the provider for the remittance transfer must be rounded to the nearest 1/100th of a decimal point. However, an exchange rate need not be expressed to the nearest 1/100th of a decimal point if the amount need not be rounded. For example, if one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must disclose that the U.S. dollar exchanges for 11.95 Mexican pesos. However, if one U.S. dollar exchanges for 11.9 Mexican pesos, the provider may disclose that "US$1 = 11.9 MXN," instead of "11.90MXN."

Proposed § 205.31(b)(1)(v) requires the disclosure of the transfer amount in § 205.31(b)(1)(i), in the currency in which the funds will be received by the designated recipient, but only if fees or taxes are imposed under proposed § 205.31(b)(1)(vi). The disclosure must be described using the term "Transfer Amount" or a substantially similar term. As discussed above, a remittance transfer provider is always required to disclose the transfer amount, pursuant to proposed § 205.31(b)(1)(i). The proposal would require a remittance transfer provider to repeat the disclosure of the amount transferred, expressed in the currency in which the funds will be received by the designated recipient, if other fees and taxes are charged under proposed § 205.31(b)(1)(vi). As is the case with the transfer amount required to be disclosed by proposed § 205.31(b)(1)(i), the transfer amount required to be disclosed by proposed § 205.31(b)(1)(v) is proposed pursuant to the Board's authority under EFTA Section 904(a).

This disclosure is only required to the extent fees and taxes are imposed by parties other than the remittance transfer provider. When disclosed with such fees and taxes, the Board believes the disclosure of the transfer amount will help demonstrate to the sender how a provider calculates the amount that will ultimately be received by a designated recipient. For example, a sender could request to send $100 to Nigeria. Assuming an exchange rate of 1 U.S. dollar = 150.00 Nigerian naira, and assuming the recipient is charged an additional fee of 100 naira, the amount to be received would be 14,900 naira. By disclosing the transfer amount as 15,000 naira, and the fee as 100 naira, a sender will better understand why the recipient will receive only 14,900 naira in spite of the exchange rate. However, when the amount to be received is not reduced by any third party fees or taxes, the transfer amount under § 205.31(b)(1)(v) and the amount to be received will be the same number, so the disclosure under § 205.31(b)(1)(v) is unnecessary.

The proposed commentary provides more guidance on this requirement. Proposed comment 31(b)(1)–2 clarifies that two transfer amounts are required to be disclosed by §§ 205.31(b)(1)(i) and (b)(1)(v). First, a provider must disclose the transfer amount in the currency in which the funds will be transferred to show the calculation of the total amount of the transaction. Typically, funds will

be transferred in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if funds will be transferred, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros.

Second, a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, as discussed above, the proposed comment also clarifies that this second transfer amount need not be disclosed if fees and taxes are not imposed for the remittance transfer under proposed § 205.31(b)(1)(vi). In such cases, there is no consumer benefit to the additional information if the transferred amount is not reduced by other fees and taxes.

Finally, proposed § 205.31(b)(1)(v) also requires a remittance transfer provider to use the term "Transfer Amount" or a substantially similar term to describe the disclosure required under this paragraph. Proposed comment 31(b)(1)–2 clarifies that the terms used to describe each transfer amount should be the same.

Proposed § 205.31(b)(1)(vi) requires a remittance transfer provider to disclose any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient. Such fees and taxes could include lifting fees charged in connection with an international wire transfer, a fee charged by a recipient institution or agent, or a tax imposed by a government in the designated recipient's country. In contrast to fees and taxes paid by the sender to the remittance transfer provider, which are added to the total amount paid by the sender, these fees and taxes typically reduce the amount received by the designated recipient. In many cases, the sender may not be aware of the impact of these fees and taxes. The Board believes that it is critical for senders to be aware of all fees and taxes charged in connection with the transfer, even if not imposed by the remittance transfer provider, because such fees and taxes affect the amount ultimately received by the designated recipient. Therefore, the Board is proposing the disclosure of other fees and taxes pursuant to its authority under EFTA Section 904(a).

The remittance transfer provider would be required to describe the disclosures using the term "Other Transfer Fees," "Other Transfer Taxes," or "Other Transfer Fees and Taxes," or a substantially similar term. As discussed above, proposed comment 31(b)(1)–1 clarifies that the fees and taxes required to be disclosed by proposed § 205.31(b)(1)(vi) must include all fees and taxes that are charged for the remittance transfer by a person other than the remittance transfer provider. For example, a provider would disclose fees imposed by the receiving institution or agency at pick-up, fees imposed by intermediary institutions in connection with an international wire transfer, and taxes imposed by a foreign government.

Proposed comment 31(b)(1)(vi)–1 clarifies that § 205.31(b)(1)(vi) requires the disclosure of fees and taxes in the currency in which the funds will be received by the designated recipient. A fee or tax required by § 205.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider should calculate the fee or tax to be disclosed using the exchange rate required by § 205.31(b)(1)(iv). For example, an intermediary institution in an international wire transfer may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. Here, the provider would disclose the fee to the sender expressed in Euros, calculated using the exchange rate used by the provider for the remittance transfer. This is intended to facilitate the sender's understanding of the calculation of the amount to be received.

Proposed § 205.31(b)(1)(vii) requires a remittance transfer provider to disclose to the sender the amount that will be received by the designated recipient, in the currency in which the funds will be received. *See* EFTA Section 919(a)(2)(A)(i). The disclosures should be described using the term "Total to Recipient" or a substantially similar term. EFTA Section 919(a)(2)(A)(i) requires a remittance transfer provider to disclose the amount received by the designated recipient using the values of the currency into which the funds will be exchanged. As discussed above, the Board believes that the amount to be received by the designated recipient is intended to be the amount net of all fees and taxes that would affect the amount received by the designated recipient. An exchange rate, if one is applied, is just one of the factors that could affect the actual amount received by the designated recipient. Providing a total amount to be received that does not take into account all cost elements would not be consistent with the statute's goal of providing disclosures of the costs of a remittance transfer.

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

31(b)(2) Receipt

Proposed § 205.31(b)(2) requires a remittance transfer provider to disclose a written receipt to a sender when payment is made for the remittance transfer. As with the proposed pre-payment disclosure, the disclosures required to be provided on the receipt may be provided as applicable. Proposed § 205.31(b)(2)(i) requires the same disclosures required in the pre-payment disclosure to be disclosed on the receipt, pursuant to EFTA Section 919(a)(2)(B)(i)(I). Proposed § 205.31(b)(2) also requires disclosure of additional elements on the receipt.

Proposed § 205.31(b)(2)(ii) requires a remittance transfer provider to disclose the date of availability of funds to the designated recipient, using the term "Date Available" or a substantially similar term. EFTA Section 919(a)(2)(B)(i)(II) requires the disclosure of the promised date of delivery to the designated recipient on a receipt. While a transfer may be made available to a designated recipient within a specified time frame at a specified pick-up location, the recipient may not pick up the funds for some period of time. The Board interprets the statute to require disclosure of the date the currency will be available to the designated recipient, not on the date the funds are physically picked up by the designated recipient. Time zone differences may result in a date in the United States being different from the date in the country of the designated recipient. Thus, proposed comment 31(b)(2)–1 clarifies that the date of availability that must be disclosed is the date in the foreign country on which the funds will be available to the designated recipient.

In some instances, it may be difficult to determine the exact date on which a remittance transfer will be available to a designated recipient. For example, an international wire transfer may pass through several intermediary institutions prior to becoming available at the institution of a designated

recipient, and the time it takes to pass through these intermediaries may be difficult to determine. Nonetheless, EFTA Section 919(a)(2)(B)(i)(II) requires disclosure of a single, promised date of delivery of the funds. EFTA Section 919 does not permit a remittance transfer provider to provide an estimate of this promised date. Therefore, proposed comment 31(b)(2)–1 clarifies that a remittance transfer provider may not provide a range of dates that the remittance transfer may be available, nor an estimate of the date on which funds will be available.

As a result, remittance transfer providers will likely disclose the latest date that the funds will be available, even if funds are available sooner most of the time. The Board believes it is appropriate for a remittance transfer provider to indicate that funds may be available sooner than the disclosed date. Thus, proposed § 205.31(b)(2)(ii) permits a provider to include a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term "may be available sooner" or a substantially similar term. For example, if funds may be available on January 3, but are not certain to be available until January 10, then January 10 should be disclosed as the date of availability. However, the provider may disclose "January 10 (may be available sooner)." *See* proposed comment 31(b)(2)–1.

The Board tested various terms in consumer testing for communicating the fact that funds may be available earlier than the date disclosed. Participants generally understood the meaning of the statement that funds "may be available sooner" better than other terms.

Proposed § 205.31(b)(2)(iii) implements EFTA Section 919(a)(2)(B)(i)(III) by requiring a remittance transfer provider to disclose the name and, if provided by the sender, the telephone number and/or address of the designated recipient. The proposed rule would require the remittance transfer provider to describe the disclosure using the term "Recipient" or a substantially similar term.

As discussed in more detail below, EFTA Section 919(d) provides the sender with substantive error resolution and cancellation rights. EFTA Section 919(a)(2)(B)(ii)(I) requires a remittance transfer provider to provide a statement containing information about the rights of the sender regarding the resolution of errors on the receipt or combined disclosure. However, the Board recognizes that a long disclosure routinely provided to the sender may be ineffective at conveying the most important information that a sender would need to resolve an error or cancel a transaction. At the same time, the Board believes a sender must have access to a complete description of the sender's error resolution and cancellation rights in order to effectively exercise those rights. Together, proposed §§ 205.31(b)(2)(iv) and § 205.31(b)(4), discussed below, attempt to balance the interest in providing a sender a concise disclosure with the sender's ability to obtain a full explanation of those rights.

Specifically, proposed § 205.31(b)(2)(iv) would require a remittance transfer provider to include an abbreviated statement about the sender's error resolution and cancellation rights on the receipt and on the combined disclosures using language set forth in Model Form A–37 of Appendix A or substantially similar language. The statement requires a brief disclosure of the sender's error resolution and cancellation rights, and includes a notification that a sender may contact the remittance transfer provider for a written explanation of these rights. Consumer testing participants understood and responded positively to the concise, abbreviated disclosure.

EFTA Section 919(a)(2)(B)(ii)(II) generally requires that the remittance transfer provider disclose appropriate contact information for the remittance transfer provider, its state regulator, and the Board. The Board believes that appropriate contact information includes the name, telephone number, and Web site of these entities, so that senders have multiple options for addressing any issues that may arise with respect to a remittance transfer provider.

Therefore, proposed § 205.31(b)(2)(v) requires the disclosure of the name, telephone number, and Web site of the remittance transfer provider. Proposed § 205.31(b)(2)(vi) requires a statement that the sender can contact the state agency that regulates the remittance transfer provider and the Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A–37 of Appendix A or substantially similar language. The statement must include contact information for these agencies, including the toll-free telephone number of the Bureau established under section 1013 of the Consumer Financial Protection Act of 2010. The proposed paragraph requires the disclosure of the Bureau, rather than the Board, because the Bureau will be the appropriate contact when the rules are issued in final form after the designated transfer date. Consumer testing participants understood the brief disclosure of the contact information, and many stated that they would call one or more of the entities to resolve any problems that the provider did not resolve.

The Board requests comment on whether and how a remittance transfer provider should be required to disclose information regarding a state agency that regulates the remittance transfer provider for remittance transfers conducted through a toll-free telephone number or on-line and, if so, what is the appropriate state agency to disclose to a sender. For example, it may be appropriate to require disclosure of the state agency that regulates the remittance transfer provider in the state in which the sender is located.

The Board also requests comment on whether it is appropriate to disclose the contact information for the Bureau, including the toll-free telephone number, in cases where the Bureau is not the primary Federal regulator for consumer complaints against the remittance transfer provider. For example, under the proposed rule, the contact information of the Bureau would be disclosed to a sender who uses a financial institution to send an international wire transfer. The sender may encounter an error and, based on the disclosure, contact the Bureau for assistance with error resolution. However, the Bureau may not have the authority to investigate such complaints against the financial institution. Therefore, the Board requests comment on whether it is appropriate to require the disclosure of the contact information of the Bureau in all circumstances. The Board further requests comment on whether it is appropriate to instead require the contact information of the appropriate Federal regulator of the remittance transfer provider for consumer complaints.

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

31(b)(3) Combined Disclosure

As discussed above, EFTA Section 919(A)(5)(C) grants the Board authority to permit a remittance transfer provider to provide to a sender a single written disclosure instead of the pre-payment disclosure and receipt, if the information disclosed is accurate at the time at which payment is made in connection with the remittance transfer.

The disclosure must include the content provided in the disclosures under EFTA Sections 919(a)(2)(A) and (B).

The Board believes it is appropriate to provide the combined disclosure as a compliance option to give flexibility to remittance transfer providers. The Board determined through consumer testing that participants understood the disclosures provided on the combined disclosure. Moreover, approximately half of the consumers stated that they would prefer to receive the single, combined disclosure rather than the pre-payment disclosure and receipt. Therefore, proposed § 205.31(b)(3) generally permits a remittance transfer provider to provide the disclosures described in proposed §§ 205.31(b)(1) and (b)(2) in a single disclosure prior to payment, as applicable, as an alternative to providing the two disclosures described in proposed §§ 205.31(b)(1) and (b)(2).

Some participants who stated they would prefer to receive a pre-payment disclosure and a receipt expressed concern about receiving the combined disclosure without also receiving proof of payment for the remittance transfer. Particularly if an issue arose with the transaction, these participants felt that they would not have sufficient official documentation to assert an error with the provider. Some participants also expressed concerns about different methods for providing proof of payment with the combined disclosure. For example, some participants believed that stamping the combined disclosure as "paid" constituted sufficient proof of payment, while others believed that it was insufficient because a disclosure could easily be fraudulently stamped as "paid." The Board solicits comment on whether proof of payment should also be required for remittance transfer providers using the combined disclosure and, if so, solicits comment on appropriate methods of demonstrating proof of payment for the combined disclosure.

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

As discussed above, the Board believes a sender must have access to a complete description of the sender's error resolution and cancellation rights, in addition to an abbreviated statement about the sender's error resolution and cancellation rights on the receipt and combined disclosures required by proposed § 205.31(b)(2)(iv). The Board believes that a sender should have access to a full description of his or her rights in order to effectively exercise those rights. Therefore, proposed § 205.31(b)(4) provides that, upon the sender's request, a remittance transfer provider must provide to the sender a notice providing a description of the sender's error resolution and cancellation rights under §§ 205.33 and .34 using Model Form A–36 of Appendix A or a substantially similar notice.

31(c) Specific Format Requirements

Proposed § 205.31(c) sets forth specific format requirements for the written and electronic disclosures required by this section. The Board's consumer testing indicated that grouping certain disclosures together or in close proximity to one another helped consumers with calculations and facilitated their comprehension of the disclosures, including fees and costs. Therefore, proposed §§ 205.31(c)(1) and (2) set forth grouping and proximity requirements for certain disclosures required under § 205.31. Proposed § 205.31(c)(3) sets forth prominence and size requirements for disclosures required by Subpart B, and proposed § 205.31(c)(4) imposes segregation requirements for disclosures provided under Subpart B, with certain specified exceptions.

31(c)(1) Grouping

Proposed § 205.31(c)(1) provides that the disclosures required by proposed §§ 205.31(b)(1)(i), (ii), and (iii) (transfer amount, transfer fees and taxes, and total amount of transaction) must be grouped together. Grouping these disclosures together would make clear to the sender that the total amount charged is comprised of the transfer amount plus any transfer fees and taxes. Proposed § 205.31(c)(1) also provides that the disclosures required by proposed §§ 205.31(b)(1)(v), (vi), and (vii) (transfer amount in the currency to be made available to the designated recipient, other transfer fees and taxes, and amount received by the designated recipient) must be grouped together. Grouping these disclosures together would make clear to the sender how the total amount to be transferred to the designated recipient, in the currency to be made available to the designated recipient, will be reduced by fees or taxes charged by a person other than the remittance transfer provider.

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

31(c)(2) Proximity

Proposed § 205.31(c)(2) provides that the exchange rate required by § 205.31(b)(1)(iv) must be disclosed in close proximity to the other disclosures on the pre-payment disclosure. The Board believes that disclosing the exchange rate in close proximity to both the calculations that demonstrate the total transaction amount, as well as the total amount the recipient will receive, will help a sender understand the effect of the exchange rate on the transaction.

Proposed § 205.31(c)(2) also provides that the error resolution and cancellation disclosures required by § 205.31(b)(2)(iv) must be disclosed in close proximity to the other disclosures on the receipt. The Board determined in consumer testing that providing a brief statement regarding error resolution and cancellation rights in a location that is near the other disclosures effectively communicated these rights to a consumer. Most participants in consumer testing noticed the error resolution statement and liked its brevity and proximity to the other disclosure elements. Therefore, the Board believes that the error resolution and cancellation disclosures should be closely proximate to the other disclosures required under § 205.31(b)(2) to prevent such disclosures from being overlooked by a sender.

The Board believes that many remittance transfer providers currently could comply with the proposed grouping and proximity requirements for written and electronic disclosures. However, as remittance transfer products continue to evolve, providing key disclosures about the terms of a remittance transfer may present new challenges. For example, remittance transfers may, in the future, increasingly be sent from the U.S. via text messaging or mobile phone applications. Therefore, the Board requests comment on how the grouping and proximity requirements in proposed §§ 205.31(c)(1) and (2) could be applied to transactions conducted via text messaging or mobile phone application.

31(c)(3) Prominence and Size

Proposed § 205.31(c)(3) sets forth the requirements regarding the prominence

and size of the disclosures required under Subpart B. The proposed rule provides that written and electronic disclosures required by Subpart B must be made in a minimum eight-point font. The disclosures that the Board developed for consumer testing used eight-point font, consistent with the font size used in a register receipt, and were provided on the front of the page shown to consumer testing participants. Participants in consumer testing generally found that the disclosures were readable, and they were able to locate the different disclosure elements during testing. The Board believes that disclosures provided in a smaller font could diminish the readability and noticeability of the disclosures. The Board solicits comment on whether a minimum font size should be required and, if so, whether an eight-point font size is appropriate.

Proposed § 205.31(c)(3) further provides that written disclosures required by Subpart B must be on the front of the page on which the disclosure is printed. In testing, participants reacted positively to front-of-page disclosures. Proposed § 205.31(c)(3) also provides that each of the written and electronic disclosures required under § 205.31(b) must be in equal prominence to each other. Participants in consumer testing generally responded positively to the model forms, and particularly to the statement regarding error resolution and cancellation, which was displayed in the same font and type size as the other disclosures. For example, some participants specifically contrasted the disclosures to error resolution or cancellation disclosures currently provided by remittance transfer providers that they stated were typically provided in "fine print" or on the back of this disclosure. Given the importance of each of the new disclosures in Subpart B, and particularly the new error resolution and cancellation rights, the Board believes that each of the disclosures should be provided in equal prominence to each other.

The Board requests comment on how the prominence and size requirements in proposed § 205.31(c)(3) could be applied to transactions performed via text messaging or mobile phone application.

31(c)(4) Segregation

Proposed § 205.31(c)(4) provides that written and electronic disclosures required by Subpart B must be segregated from everything else and must contain only information that is directly related to the disclosures required under Subpart B. Proposed comment 31(c)(4)–1 clarifies that disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on a notice by outlining them in a box or series of boxes, bold print dividing lines, or a different color background.

Proposed comment 31(c)(4)–2 clarifies that, for purposes of segregation, the following information is directly related information: (i) The date and/or time of the transaction; (ii) the sender's name and contact information; (iii) the location at which the designated recipient may pick up the funds; (iv) the confirmation or other identification code; (v) a company name or logo; (vi) an indication that a disclosure is or is not a receipt or other indicia of proof of payment; (vii) a designated area for signatures or initials; and (viii) a statement that funds may be available sooner, as permitted by § 205.31(b)(2)(ii).

In general, the Board believes that permitting additional information to be included on the disclosure could adversely affect the comprehensibility of the disclosures. Nonetheless, the Board recognizes that certain information not required by the statute or regulation is integral to the transaction, such as the confirmation code that a designated recipient must tender in order to receive the funds, and a remittance transfer provider should be able to communicate this information to a consumer. The Board tested the required disclosures in a segregated format that complies with the requirements of proposed § 205.31(c)(4) and that included most of the additional information discussed above. The Board's testing indicated that the additional information permitted by paragraph (c)(4) was useful to the consumer and did not lead to information overload. Thus, the proposed rule would permit, but would not require, such additional information to be included with the required, segregated disclosures. The Board requests comment on the proposed segregation requirement and whether additional information should be permitted to be included with the required segregated disclosures.

The Board recognizes that the specific formatting requirements set forth in proposed § 205.31(c) are more prescriptive than other disclosures under Regulation E. The Board believes that certain formatting requirements are necessary in order to ensure that consumers notice and understand the disclosures provided under Subpart B. Many of the disclosures required by Subpart B have a mathematical relationship to each other, and presenting this information to consumers in a logical sequence is important for consumer understanding. The Board requests comment, however, on whether certain requirements set forth in proposed § 205.31(c) could be less prescriptive, while still ensuring that consumers are provided with clear and conspicuous disclosures.

31(d) Estimates

Proposed § 205.31(d) provides that estimated disclosures may be provided to the extent permitted by § 205.32. *See* § 205.32, below. The proposed rule would require that such disclosures be described as estimates, using the term "Estimated" or a substantially similar term and in close proximity to the estimated term or terms described. Consumer testing participants generally understood that where the term "estimated" was used in close proximity to the estimated term or terms, the actual amount could vary (for example, the amount of currency to be received could be higher or lower than the amount disclosed). Proposed comment 31(d)–1 provides examples of terms that may be used to indicate that a disclosed amount is estimated. For instance, a remittance transfer provider could describe an estimated disclosure as "Estimated Transfer Amount," "Other Estimated Fees and Taxes," or "Total to Recipient (Est.)."

31(e) Timing

Proposed § 205.31(e) sets forth the timing requirements for the disclosures required by § 205.31 in accordance with the statute. Proposed § 205.31(e)(1) provides that the disclosures required by § 205.31(b)(1) or a combined disclosure provided under § 205.31(b)(3) must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the remittance transfer.

Although current practice generally is to provide written disclosures after payment is made, the Board believes that the statute precludes such an approach with respect to the combined disclosures. Specifically, EFTA Section 919(a)(5)(C) affirmatively requires that the combined disclosure be *accurate at the time at which payment is made* (emphasis added). Such a requirement would be superfluous if the combined disclosure could be provided after payment, because a disclosure provided after payment should accurately reflect the terms of the completed transaction. Therefore, the Board believes the statute requires that the combined disclosure be given prior to payment.

Proposed comment 31(e)–1 clarifies that whether a sender has requested a remittance transfer depends on the facts and circumstances. Under the proposed comment, a sender that asks a provider to send a remittance transfer, and that provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. For example, a sender who asks the provider to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested the remittance transfer provider to send a remittance transfer. In contrast, a sender who solely inquires about that day's rates and fees has not requested the remittance transfer provider to send a remittance transfer.

EFTA Section 919(a)(2)(B) requires that a receipt be provided to a sender at the time at which the sender makes payment in connection with the remittance transfer. The Board believes the statute intends to permit a sender to provide a receipt after the sender pays for a transaction. However, the Board also believes that the statute generally intends the receipt to be provided within a short time period of when the sender pays for the transaction. Therefore, proposed § 205.31(e)(2) provides that a receipt provided under § 205.31(b)(2) must be provided to the sender when payment is made for the transaction. Proposed comment 31(e)–2 provides examples of when a remittance transfer provider may provide the sender a receipt. For example, a provider could give the sender a receipt after the consumer pays for the remittance transfer, but before the sender leaves the counter. A provider could also give the sender a receipt immediately before the sender pays for the transaction.

Proposed § 205.31(e)(2) further states that if a transaction is conducted entirely by telephone, a written receipt may be mailed or delivered to the sender no later than one business day after the date on which payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider, the written receipt may be provided on or with the next regularly scheduled periodic statement. *See* EFTA Section 919(a)(5)(B). In some circumstances, a provider conducting such a transfer from the sender's account held by the provider is not required to provide a periodic statement. The Board believes that in such circumstances, it is appropriate to permit the provider to provide a written receipt within a similar period of time as a periodic statement. Therefore, the Board is also proposing in § 205.31(e)(2) that the written receipt may be provided within 30 days after payment is made for the remittance transfer if a periodic statement is not required, pursuant to its authority under EFTA Section 904(c). In order for the written receipt to be mailed or delivered to a sender conducting a transaction entirely by telephone at these later times, however, the remittance transfer provider must comply with the foreign language requirements of § 205.31(g)(3), discussed below.

Proposed comment 31(e)–3 clarifies that a sender may transfer funds from his or her account, as defined by § 205.2(b), that is held by the remittance transfer provider. For example, a financial institution may send an international wire transfer for a sender using funds from the sender's account with the institution. If the sender conducts such a transfer entirely by telephone, the institution may provide a written receipt on or with the sender's next regularly scheduled periodic statement or within 30 days after payment is made for the remittance transfer if a periodic statement is not required.

The Board requests comment on the timing requirements for the disclosures required by § 205.31.

31(f) Accurate When Payment Is Made

Proposed § 205.31(f) provides that disclosures required by § 205.31(b) must be accurate when a sender pays for the remittance transfer, except as permitted by proposed § 205.32. As discussed above in proposed § 205.31(e)(1), a combined disclosure provided under § 205.31(b)(3) must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the remittance transfer. EFTA Section 919 does not require that the information provided in the required disclosures be guaranteed for any period of time. However, EFTA Section 919(a)(5)(C) requires that the combined disclosure must be accurate when payment is made. The Board believes the statute intends to ensure that the information disclosed to senders in the required disclosures reflects the terms of the transaction.

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

31(g) Foreign Language Disclosures

EFTA Section 919(b) provides that disclosures required under EFTA Section 919 must be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office. Proposed § 205.31(g)(1) implements EFTA Section 919(b) for written or electronic disclosures generally, with the modifications discussed below. In addition, the Board proposes to exempt oral disclosures and written receipts for telephone transactions from the general foreign language disclosure requirements of EFTA Section 919(b) and proposed § 205.31(g)(1). Instead, the Board is proposing different foreign language requirements for those disclosures under proposed §§ 205.31(g)(2) and (g)(3), respectively.

31(g)(1) General

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

Proposed § 205.31(g)(1) generally implements EFTA Section 919(b) with

the following modifications. First, proposed § 205.31(g)(1) only applies to written or electronic disclosures. Oral disclosures are addressed separately in proposed § 205.31(g)(2), discussed below. Second, to simplify the statutory language in EFTA Section 919(b), proposed § 205.31(g)(1) does not incorporate the term "or any of its agents." This is consistent with other sections of Subpart B that reference the remittance transfer provider, where the reference also applies to any of the remittance transfer provider's agents to the extent such agents act for the provider. Third, while EFTA Section 919(b) does not explicitly reference electronic advertising, soliciting, or marketing, proposed § 205.31(g)(1) provides that foreign languages principally used by the remittance transfer provider to advertise, solicit, or market electronically are also triggered.

Fourth, proposed § 205.31(g)(1) is triggered only by foreign language advertisements, solicitations, or marketing of remittance transfer services, and not by foreign language advertisements, solicitations, or marketing of other products or services. Many remittance transfer provider agent offices are located in retail establishments where other financial and non-financial products or services are advertised, solicited, or marketed. For example, an agent of a remittance transfer provider may be located at a grocery store or convenience store. A remittance transfer provider should be able to institute controls on an agent's advertising of the provider's remittance transfer services, but a provider would have little or no control over an agent's advertising practices for any other product or service. Therefore, proposed § 205.31(g)(1) clarifies that only advertisements, solicitations, or marketing of the provider's remittance transfer services trigger foreign language disclosures under the rule.

Finally, proposed § 205.31(g)(1) would allow a remittance transfer provider to fulfill its obligations by providing the consumer with disclosures in English and, if applicable, the one triggered foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error in lieu of *each* of the triggered foreign languages. Permitting this flexibility facilitates compliance with the provision, particularly for a remittance transfer provider who advertises, solicits, and markets in several foreign languages. In such cases, the remittance transfer provider may find it cumbersome to provide disclosures in English and in multiple foreign languages. Such flexibility may also benefit consumers because disclosures containing several foreign languages may also be confusing for consumers to read and understand.

As a result, the Board proposes to use its authority under EFTA Section 904(c) to give remittance transfer providers the flexibility to provide senders with written or electronic disclosures in English and either: (i) In each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market remittance transfer services at that office; or (ii) if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written disclosures provided pursuant to proposed § 205.33, the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used to advertise, solicit, or market remittance transfer services at that office. Proposed §§ 205.31(g)(1)(i) and (ii).

In order to clarify proposed § 205.31(g)(1), the Board also proposes several comments to provide guidance on the terms "principally used," "advertise, solicit, and market," and "at that office."

Principally Used

Proposed comment 31(g)(1)–1 clarifies when a foreign language is principally used. The term "principally used" could be interpreted to mean the foreign language that is used most frequently or most prominently. The Board, however, does not believe this meaning is consistent with the statutory language, which provides that disclosures must be provided "in each of the foreign languages" principally used. Thus, the statute indicates that more than one foreign language may be principally used. Consequently, the term "principally used" does not appear to be limited to the one foreign language that is used most by the remittance transfer provider.

The Board also does not believe that any use of a foreign language by a remittance transfer provider to advertise, solicit, or market should automatically trigger the foreign language disclosure requirement. Such a reading would essentially read out the term "principally" from the statute. Therefore, the Board believes that proper interpretation of the statute requires a reading that is between these two extremes.

The term "principally used" could signify the use of a foreign language in a manner that is not minor or incidental. The Board believes this interpretation may be more consistent with the statute. The Board also believes that whether a foreign language is principally used must be determined based on the facts and circumstances. In the Board's view, factors that contribute to whether a foreign language is principally used include: (i) The frequency with which the remittance transfer provider advertises, solicits, or markets remittance transfers in a foreign language at a particular office; (ii) the prominence of such advertising, soliciting, or marketing in that language at that office; and (iii) the specific foreign language terms used to advertise, solicit, or market remittance transfer services at that office. The Board believes that when a foreign language is used frequently and is featured prominently to advertise, solicit, or market remittance transfer services at a particular office, and when the specific foreign language terms used in such advertisements, solicitations, and marketing convey the availability of remittance transfer services, it may lead a reasonable consumer to expect to receive information on remittance transfer services in that language at that office. In such a case, the Board believes the foreign language has been principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at that office.

Proposed comment 31(g)(1)–1 provides guidance on when a foreign language may be principally used to advertise, solicit, or market remittance transfer services and includes examples to illustrate when a foreign language is principally used and when there is incidental use of the language. Specifically, proposed comment 31(g)(1)–1 provides that an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for a sentence advising consumers to "Ask us about our foreign remittance services" in a foreign language, may create an expectation that a consumer could receive information on remittance transfer services in that foreign language. Thus, based on the prominence of the advertisement using the foreign language and the specific terms of the foreign language used in the advertisement inviting a consumer to inquire about remittance transfer services, the foreign language would be considered to be principally used to advertise, solicit, or market remittance transfer services. In contrast, the

proposed comment provides that an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for the incidental use of one word of greeting in a foreign language, may not create an expectation that a consumer could receive information on remittance transfer services in that foreign language, and would, therefore, not trigger the foreign language disclosure requirement, based on the specific foreign language term used.

The Board also considered an objective standard based on whether a foreign language meets a certain percentage threshold of a remittance transfer provider's advertisements at a particular office as an appropriate way to measure if such a language is principally used. However, such a standard would be arbitrary, may be difficult to administer, and may inappropriately exclude instances where a foreign language is principally used to advertise, solicit or market remittance transfers, even if the number of advertisements in the foreign language is nominally low. For these reasons, the Board believes that a facts-and-circumstances approach that considers not only the frequency with which the foreign language is used, but also the prominence with which the foreign language is featured and the specific foreign language terms used in any advertisement, soliciting, or marketing, would best effectuate the statute and protect consumers.

Advertise, Solicit, or Market

Neither the EFTA nor Regulation E defines advertising, soliciting, or marketing.[32] The general concept of advertising, soliciting, or marketing is explained in other Board regulations. *See, e.g.,* Regulation Z, 12 CFR 226.2(a)(2) and associated commentary; Regulation DD, 12 CFR 230.2(b) and 11(b) and associated commentary.

Proposed comment 31(g)(1)–2 provides both positive and negative examples of advertising, soliciting, or marketing in a foreign language. The proposed comment borrows applicable examples from the commentary to §§ 226.2(a)(2) and 230.2(b) regarding the definition of "advertisement," as well as examples related to the promotion of overdrafts under § 230.11(b). The proposed comment includes examples that could apply to a remittance transfer provider's interactions with a consumer.

At That Office

Under EFTA Section 919(b) and proposed § 205.31(g)(1), the requirement that a remittance transfer provider provide foreign language disclosures is based on whether the foreign language is principally used to advertise, solicit, or market "at that office." Proposed comment 31(g)(1)–3 clarifies the meaning of "office" as used in § 205.31(g)(1). The Board believes that an office of a remittance transfer provider includes both physical and non-physical locations where remittance transfer services are offered to consumers. Because transactions may be conducted, and errors may be asserted, by telephone and through the Internet, the proposal states that an office includes any telephone number or Web site through which a consumer can complete a transaction or assert an error. Therefore, a telephone number or Web site that provides general information about the remittance transfer provider, but through which a consumer does not have the ability to complete a transaction or assert an error, is not an office.

Proposed comment 31(g)(1)–3 also clarifies that a location need not exclusively offer remittance transfer services in order to be considered an office for purposes of § 205.31(g)(1). Many agents of remittance transfer providers are located in retail establishments where other financial and non-financial products or services may be sold. The proposed comment includes an example stating that if an agent of a remittance transfer provider is located in a grocery store, the grocery store is considered an office for purposes of § 205.31(g)(1).

Proposed comment 31(g)(1)–4 provides guidance on the term "at that office." Specifically, the proposed comment states that any advertisement, solicitation, or marketing that is posted, provided, or made at a physical office is considered to be advertising, soliciting, or marketing at that office. Moreover, proposed comment 31(g)(1)–4 also provides that advertisements, solicitations, or marketing posted, provided, or made on a Web site of a remittance transfer provider, or during a telephone call with the remittance transfer provider also constitute advertising, soliciting, or marketing at an office of a remittance transfer provider.

The proposed comment also states that for error resolution disclosures provided pursuant to § 205.33, the relevant office is the office in which the sender first asserts the error and not the office where the remittance transfer was conducted. The Board believes the office in which the sender first asserts the error is the appropriate office to determine whether the foreign language advertising disclosure requirement has been triggered because the remittance transfer provider may not know where the disputed remittance transfer was conducted or may not be able to determine whether the foreign language advertising disclosure requirement was triggered at that office.

31(g)(2) Oral Disclosures

As noted above, the Board proposes to exempt oral disclosures from the general foreign language disclosure rule. Instead, proposed § 205.31(g)(2) would require that disclosures permitted to be provided orally under § 205.31(a)(3) for transactions conducted entirely by telephone must be made in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Proposed § 205.31(g)(2) would also provide that disclosures permitted to be provided orally under proposed § 205.31(a)(4) for error resolution purposes must be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

The Board believes that application of the foreign language disclosure requirement in EFTA Section 919(b) to oral disclosures may not be effective or optimal. First, under EFTA Section 919(b), a foreign language must be principally used by the remittance transfer provider to advertise, solicit, or market remittance transfers at an office in order to be required for disclosures. If this trigger applied to oral disclosures, a sender conducting a transaction or asserting an error in a foreign language that did not meet the foreign language advertising trigger may only receive required oral disclosures in English. Such a result could undermine a sender's ability to comprehend important information related to the transaction. This is especially problematic if the remittance transfer provider conducted the actual transaction or communicated with the sender regarding the error asserted by the sender in a foreign language, then switched to English to disclose the required information under Subpart B. Instead, the Board believes senders would benefit from having the required disclosures provided in the same language primarily used by the sender

[32] Regulation E contains some guidance on whether a card, code, or other device is "marketed or labeled as a gift card or gift certificate" or "marketed to the general public" for purposes of the Board's gift card rule. *See* comments 20(b)(2)–2, 20(b)(2)–3, and 20(b)(4)–1. However, that guidance focuses on a narrow set of circumstances and does not address more broadly what actions generally constitute advertising, soliciting, or marketing.

with the remittance transfer provider to conduct the transaction or assert the error, regardless of whether the language meets the foreign language advertising trigger. As a result, the Board believes foreign language disclosures are especially important in this context.

Second, the Board believes disclosures that are permitted to be provided orally under §§ 205.31(a)(3) and (4) should be provided only in the language primarily used to conduct the transaction or assert the error. EFTA Section 919(b) requires that disclosures be given in English and in each of the triggered foreign languages. Thus, if EFTA Section 919(b) applied to oral transactions, a sender conducting a telephone transaction or receiving the results of an error investigation orally could be given disclosures in English and in every foreign language triggered by the regulation. It is unlikely that providing oral disclosures in two or more languages would be helpful to senders.

For these reasons, the Board proposes to use its authority under EFTA Section 904(c) to exempt oral disclosures from the foreign language requirement under EFTA Section 919(b). At the same time, the Board proposes to use its authority under EFTA Section 919(a)(5)(A) to condition the availability of oral disclosures for transactions conducted entirely by telephone on the remittance transfer provider making such disclosures in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Furthermore, the Board proposes to use its EFTA Section 904(a) authority to permit oral disclosure of certain error resolution investigation results, as discussed below in the supplementary information to § 205.33(c)(1), provided that the oral disclosure of such error resolution investigation results must be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

31(g)(3) Written Receipt for Telephone Transactions

Proposed § 205.31(g)(3) would require that written receipts required to be provided to the sender after payment under proposed § 205.31(e)(2) for transactions conducted entirely by telephone must be made in English and, if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction. The Board proposes to implement this provision by using its authority under EFTA Section 904(c) to exempt such written receipts from the foreign language disclosure requirement of EFTA Section 919(b). At the same time, the proposal imposes a new requirement that the remittance transfer provider make such disclosures in English, and if applicable, in the language primarily used by the sender with the remittance transfer provider to conduct the transaction, regardless of whether such foreign language is primarily used by the remittance transfer provider to advertise, solicit, or market remittance transfers. *See* EFTA Section 919(a)(5)(B).

The Board believes that because the pre-payment disclosures will be provided orally in the language primarily used by the sender with the remittance transfer provider to conduct the transaction entirely by telephone under proposed § 205.31(g)(2), the same language should be used in the written receipt provided to the sender under proposed § 205.31(g)(3) for consistency, regardless of whether the language meets the foreign disclosure advertising trigger.

Alternatively, the Board could apply the general rule proposed in § 205.31(g)(1) to the written receipt provided for transactions conducted entirely by telephone. This would mean that a remittance transfer provider would not be obligated to provide the written receipt in a foreign language, even if such foreign language was used to conduct the telephone transaction, unless the foreign language was principally used to advertise, solicit, or market remittance transfers during the telephone call.

In the Board's outreach with industry, remittance transfer providers generally stated that providing written disclosures in a foreign language can be more costly and burdensome than providing oral disclosures in a foreign language. Therefore, the Board requests comment on whether proposed § 205.31(g)(3) might have the unintended consequence of reducing the number of foreign languages remittance transfer providers may offer for telephone transactions.

General Clarifications

The Board also proposes additional commentary to provide general guidance on issues that affect each of the subsections of § 205.31(g) discussed above. Proposed comment 31(g)–1 addresses the number of languages contained in a written or electronic disclosure. EFTA Section 919(b) does not limit the number of languages that may be used on a single disclosure. However, the Board is concerned that too many languages on a single written document may diminish a consumer's ability to read and understand the disclosures. The Board's proposed rule in § 205.31(g)(2) and (g)(3) regarding oral disclosures and written receipts for telephone transactions, as discussed above, limit the number of languages used in the disclosures. For written or electronic disclosures under § 205.31(g)(1), however, there is no stated limit to the number of languages appearing on a disclosure.

Proposed comment 31(g)–1 suggests that a single written or electronic document containing more than three languages is not likely to be helpful to a consumer. The proposed commentary is not a strict limit and leaves open the possibility that a single written or electronic document may contain more than three languages yet still be helpful to a consumer, depending on how the information is presented. The Board seeks comment on whether three languages is an appropriate suggested limit to the number of languages in a single written or electronic document and whether the regulation should strictly limit the number of languages that may be contained in a single written or electronic disclosure.

As discussed above, proposed § 205.31(g)(1) provides flexibility to remittance transfer providers to provide senders with written or electronic disclosures in English and either: (i) In each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market at that office; or (ii) if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures pursuant to § 205.33, the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that the foreign language is principally used to advertise, solicit, or market at that office. Proposed comment 31(g)–1 clarifies that the remittance transfer provider may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language.

To illustrate this concept, the Board proposes several examples in comment 31(g)–1. If a remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office, the proposed comment provides that the remittance transfer provider may provide all of its consumers with disclosures in English, Spanish, and Vietnamese, regardless of the language the consumer uses with the remittance transfer to conduct the transaction or assert the error.

Alternatively, if a sender primarily uses Spanish to conduct the transaction or assert an error, the proposed comment states that the remittance transfer provider may provide the written disclosure in English and Spanish, whether in a single document or two separate documents. If the sender primarily uses English with the remittance transfer provider to conduct the transaction or assert an error, the remittance transfer provider may provide the written or electronic disclosure solely in English. If the sender primarily uses a language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at that office, the proposed comment provides that the remittance transfer provider may provide the written or electronic disclosure solely in English.

Proposed comment 31(g)–2 clarifies when a language is primarily used by the sender with the remittance transfer provider to conduct a transaction and assert an error. As discussed above, under proposed § 205.31(g)(1)(ii), remittance transfer providers have the flexibility to provide written or electronic disclosures in English, and if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction. Proposed § 205.31(g)(1)(ii) also provides that for written or electronic disclosures provided pursuant to § 205.33, remittance transfer providers have the flexibility to provide such disclosures in English, and if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error. Also, as discussed above, proposed §§ 205.31(g)(2) and (g)(3) require disclosures in the language that is primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error.

Proposed comment 31(g)–2 provides guidance on determining the language that is primarily used by the sender with the remittance transfer provider to conduct a transaction or assert an error. The proposed comment clarifies that the language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used to convey the information necessary to complete the transaction. Proposed comment 31(g)–2 also states that the language primarily used by the sender with the remittance transfer provider to assert an error is the primary language used by the sender with the remittance transfer provider to provide the information required by § 205.33(b) to assert an error.

The proposed comment also provides examples to clarify this concept. Under one proposed example, a sender initiates a conversation with a remittance transfer provider in English and expresses interest in sending a remittance transfer to Mexico. If, based on that knowledge, the remittance transfer provider offers to communicate in Spanish with the sender, and the sender conveys the other information necessary to complete the transaction in Spanish, including the designated recipient's information and the amount and funding source of the transfer, then Spanish is the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Under a second example, a sender initiates a conversation with the remittance transfer provider and tells the remittance transfer provider that there was a problem with a prior remittance transfer to Vietnam. If, based on that knowledge, the remittance transfer provider offers to communicate in Vietnamese with the sender, and the sender conveys the information required by § 205.33(b) to assert an error in Vietnamese, then Vietnamese is the language primarily used by the sender with the remittance transfer provider to assert the error.

Section 205.32 Estimates

In some instances, a remittance transfer provider will not know the amount of currency that a designated recipient will receive. This may happen because the provider does not know the applicable exchange rate or the applicable fees or taxes that may be deducted from the amount transferred. To address these circumstances, the statute provides two exceptions to the requirement to disclose the amount of currency that will be received by the designated recipient.

The first exception (the "temporary exception") is in EFTA Section 919(a)(4) and states that, subject to rules prescribed by the Board, disclosures regarding the amount of currency that will be received by the designated recipient will be deemed to be accurate so long as the disclosure provides a reasonably accurate estimate of the amount of foreign currency to be received. A remittance transfer provider may use this exception only if: (1) It is an insured depository institution or insured credit union (collectively, an "insured institution" as described in more detail below) conducting a transfer through an account that the sender holds with it; and (2) it is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient. *See* EFTA Section 919(a)(4). This exception expires five years after the enactment of the Dodd-Frank Act, or July 20, 2015. If the Board determines that expiration of the exception would negatively affect the ability of insured institutions to send remittances to foreign countries, the Board may extend the exception to not longer than ten years after enactment. *See* EFTA Section 919(a)(4)(B).

The second exception (the "permanent exception") is in EFTA Section 919(c). It states that if the Board determines that a recipient country does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Board may prescribe rules addressing the issue. EFTA Section 919(c) further states that the Board's rules shall include standards for the remittance transfer provider to provide: (1) A receipt that is consistent with EFTA Sections 919(a) and (b); and (2) a reasonably accurate estimate of the foreign currency to be received. The second exception does not have a sunset date.

The Board proposes § 205.32 to implement the exceptions set forth in EFTA Sections 919(a)(4) and (c). Proposed § 205.32 would permit a remittance transfer provider to disclose estimates if it cannot determine exact amounts for the reasons specified in the statute.

32(a) Temporary Exception for Insured Institutions

Proposed § 205.32(a)(1) implements the temporary exception set forth in EFTA Section 919(a)(4)(A) by permitting estimates to be provided in accordance with proposed § 205.32(c) for the disclosures required by proposed §§ 205.31(b)(1)(iv)–(vii), if: (1) A remittance transfer provider cannot determine exact amounts for reasons beyond its control; (2) a remittance transfer provider is an insured institution; and (3) the remittance transfer is sent from the sender's account with the insured institution. For purposes of proposed § 205.32, the term "insured institution" includes insured depository institutions as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and insured credit unions as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752). *See* proposed § 205.32(a)(3).

EFTA Section 919(a)(4) only addresses estimates for the amount of currency that will be received by a designated recipient. Nonetheless, proposed § 205.32(a) also would permit disclosure of an estimate for the exchange rate, the transfer amount in the currency made available to the designated recipient, the fees imposed by intermediaries in the transmittal route, and taxes imposed in the recipient country that are a percentage of the amount transferred to the designated recipient. These items must be disclosed under proposed § 205.31(b)(1)(iv), (v), and (vi), respectively. The inability to determine the exact amount of one or more of these additional items is the reason why the amount of currency that will be received by the designated recipient must be estimated. The Board believes that, by permitting an estimate of the amount of currency that will be received, Congress intended to permit estimates of the components that determine that amount. Furthermore, the Board believes that permitting estimates of these additional items will help consumers to understand why the amount of currency that will be received is displayed as an estimate.

EFTA Section 919(a)(4) permits the use of an estimate of the amount of foreign currency that will be received by a designated recipient. However, proposed § 205.32(a) permits an insured institution to provide an estimate of the currency that will be received, whether it is in U.S. dollars or foreign currency. Many consumers send remittance transfers which are to be paid to the designated recipient in U.S. dollars. When an insured institution sends a remittance via international wire transfer, fees are sometimes deducted by intermediary institutions in the transmittal route with which the sending institution has no correspondent relationship.[33] Although the insured institution may not know the total amount of these fees in advance, it must disclose them to the sender under proposed § 205.31(b)(1)(vi). The amount of currency that will be received by the designated recipient, whether that currency is U.S. dollars or foreign currency, will be an estimate if fees imposed by intermediaries are estimates. Therefore, the Board is exercising its authority under EFTA Section 904(c) to allow an estimate of the amount of currency that will be received, even if that currency is in U.S. dollars.

The proposed commentary to proposed § 205.32(a)(1) provides further guidance on the temporary exception. Proposed comment 32(a)(1)–1 explains that an insured institution cannot determine exact amounts "for reasons beyond its control" when: (1) The exchange rate required to be disclosed under § 205.31(b)(1)(iv) is set by a person with which the insured institution has no correspondent relationship after the insured institution sends the remittance transfer; or (2) fees required to be disclosed under § 205.31(b)(1)(vi) are imposed by intermediary institutions along the transmittal route and the insured institution has no correspondent relationship with those institutions.

Proposed comment 32(a)(1)–2 provides examples of scenarios that qualify for the temporary exception. For instance, an insured institution cannot determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) for an international wire transfer if the insured institution does not set the exchange rate, and the rate is instead later set by the designated recipient's institution with which the insured institution does not have a correspondent relationship. The insured institution will not know the date on which funds will be deposited into the recipient's account, and will not know the exchange rate that will be applied on that date. Proposed comment 32(a)(1)–2.i. Further, an insured institution cannot determine the exact fees required to be disclosed under § 205.31(b)(1)(vi) if an intermediary institution or the designated recipient's institution, with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee. Proposed comment 32(a)(1)–2.ii. Finally, an insured institution cannot determine the exact taxes required to be disclosed under § 205.31(b)(1)(vi) if the insured institution cannot determine the applicable exchange rate or other fees, as described in proposed comments 32(a)(1)–2.i and –2.ii, and the recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees. Proposed comment 32(a)(1)–2.iii.

Proposed comment 32(a)(1)–3 provides several examples of when an insured institution will not qualify for the exception in § 205.32(a). In each case, the insured institution can determine the exact amount for the relevant disclosure. First, the proposed comment explains that an insured institution can determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. Proposed comment 32(a)(1)–3.i. Second, the proposed comment states that an insured institution can determine the exact fees required to be disclosed under § 205.31(b)(1)(vi) if it has negotiated specific fees with a correspondent institution, and the correspondent institution is the only institution in the transmittal route to the designated recipient's institution. Proposed comment 32(a)(1)–3.ii. Finally, the proposed comment notes that an insured institution can determine the exact taxes required to be disclosed under § 205.31(b)(1)(vi) if the recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees, and the insured institution can determine the exact amount of the applicable exchange rate and other fees. Similarly, the insured institution can determine these taxes if the recipient country imposes a flat tax that is not tied to the amount transferred. Proposed comment 32(a)(1)–3.iii.

If an insured institution can determine the exact exchange rate, fees, and taxes required to be disclosed under proposed § 205.31(b)(1)(iv) and (vi), it can determine the exact amounts to be derived from calculations involving them. For instance, the insured institution could determine both the transfer amount expressed as local currency and the amount in local currency that will be received by the designated recipient required to be disclosed under proposed § 205.31(b)(1)(v) and (vii), respectively.

Proposed § 205.32(a)(2) provides that proposed § 205.32(a)(1) expires on July 20, 2015, consistent with the five-year term set forth in EFTA Section 919(a)(4)(B). EFTA Section 919(a)(4)(B) gives the Board authority to extend the application of proposed § 205.32(a)(2) to July 20, 2020, if it determines that termination of the exception would negatively affect the ability of insured institutions to send remittances to foreign countries. The Board understands that this exception was intended to avoid immediate disruption of remittance transfer services by insured institutions using international wire transfers. The exception gives these financial institutions time to reach agreements and modify systems to provide accurate disclosures.

[33] A correspondent relationship is where one financial institution has a contractual arrangement to hold deposits and provide services to another financial institution, which has limited access to certain financial markets. Such agreements permit the financial institution to provide services to account holders without incurring the expense of setting up a branch in another city or country.

32(b) Permanent Exception for Transfers to Certain Countries

Proposed § 205.32(b) implements the permanent exception set forth in EFTA Section 919(c) by allowing estimates to be provided in accordance with proposed § 205.32(c) for amounts required to be disclosed under proposed § 205.31(b)(1)(iv)–(vii) for transfers to certain countries. Like the temporary exception in EFTA Section 919(a)(4), the permanent exception in EFTA Section 919(c) only addresses estimates for the amount of currency that will be received by a designated recipient. For the reasons described above, proposed § 205.32(b) also permits disclosure of estimates for the exchange rate, the transfer amount in the currency made available to the designated recipient, and taxes imposed in the recipient country that are a percentage of the amount transferred to the designated recipient. These items are required to be disclosed under proposed § 205.31(b)(1)(iv), (v), and (vi), respectively.

32(b)(1) Laws of Recipient Country

Proposed § 205.32(b)(1) allows estimates to be provided in accordance with proposed § 205.32(c) for the disclosures required by proposed § 205.31(b)(1)(iv)–(vii), if a remittance transfer provider cannot determine exact amounts because the laws of the recipient country do not permit such a determination.

The proposed commentary provides guidance on this standard. Specifically, proposed comment 32(b)(1)–1 clarifies that the "laws of the recipient country" do not permit a remittance transfer provider to determine exact amounts when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is: (1) Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer; or (2) set when the designated recipient chooses to claim the funds.

Proposed comments 32(b)(1)–2.i and –2.ii provide examples illustrating the application of the exception. Proposed comment 32(b)(1)–2.i explains that the laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) when, for example, the government of the recipient country sets the exchange rate daily and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer. Under such circumstances, an estimate for the exchange rate is permitted because the remittance transfer provider cannot determine a rate that a foreign government has yet to set.

In contrast, proposed comment 32(b)(1)–2.ii explains that the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) if, for example, the government of the recipient country pegs the value of its currency to the U.S. dollar.

32(b)(2) Method by Which Transactions Are Made in the Recipient Country

Proposed § 205.32(b)(2) allows estimates to be provided in accordance with proposed § 205.32(c) for the disclosures required by proposed § 205.31(b)(1)(iv)–(vii), if a remittance transfer provider cannot determine exact amounts because the method by which transactions are made in the recipient country does not permit such a determination.

Based on the Board's outreach and interpretation of the statute, the Board believes that the exception for methods by which transactions are made in the recipient country was intended to permit estimates for certain international ACH transactions. Specifically, the Board interprets the exception to apply to remittances sent via international ACH on terms negotiated by the government of the United States and the government of a recipient country where the exchange rate is set after the transfer is sent. Accordingly, proposed comment 32(b)(2)–1 states that the "method by which transactions are made in the recipient country" does not permit a remittance transfer provider to determine exact amounts when transactions are sent via international ACH on terms negotiated between the United States government and recipient country's government, under which the exchange rate is set by the recipient country's central bank after the provider sends the remittance transfer.

Proposed comment 32(b)(2)–2 provides examples illustrating the application of the exception provided under proposed § 205.32(b)(2). Proposed comment 32(b)(2)–2.i provides an example of when a remittance transfer would qualify for the exception. It explains that a transfer would qualify for the exception when sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank on the business day after the provider has sent the remittance transfer. Under such circumstances, the provider cannot determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv). Remittance transfers sent via Directo a México currently would qualify for the proposed § 205.32(b)(2) exception.

Proposed comments 32(b)(2)–2.ii and –2.iii provide examples of when a remittance transfer would not qualify for the § 205.32(b)(2) exception. Proposed comment 32(b)(2)–2.ii explains that a remittance transfer provider would not be permitted to provide estimates under the proposed § 205.32(b)(2) exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. In this case, transactions are made using a method negotiated between the United States and a private entity. Nonetheless, remittance transfers sent using such a method may qualify for the § 205.32(a) temporary exception. In addition, proposed comment 32(b)(2)–2.iii explains that a remittance transfer provider would not qualify for the § 205.32(b)(2) exception if, for example, it sends transfers via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank before the sender requests a transfer. In such a case, the remittance transfer provider can determine the exchange rate required to be disclosed.

During outreach, several industry members expressed the view that international wire transfers are a method by which transactions are made in a recipient country that does not allow the remittance transfer provider to know the amount of currency that will be received by a designated recipient and should qualify for the permanent exception in EFTA Section 919(c). The Board does not believe that the permanent exception in EFTA Section 919(c) applies to international wire transfers because wire transfers are not a method by which transactions are made that are particular to a specific country or group of countries. Additionally, the application of the permanent exception to international wire transfers would make the temporary exception superfluous. Accordingly, the proposed exception in

§ 205.32(b)(2) does not apply to international wire transfers.

32(c) Bases for Estimates

If a remittance transfer qualifies for either the temporary exception in EFTA Section 919(a)(4) or the permanent exception in EFTA Section 919(c), the statute permits the provider to disclose a reasonably accurate estimate to the sender. The Board believes that providing an exhaustive list of approaches that will result in a reasonably accurate estimate may be more helpful to remittance transfer providers than a less specific standard for calculating estimates. Thus, proposed § 205.32(c) states that estimates provided pursuant to the exceptions in proposed § 205.32(a) and (b) must be based on an approach listed in the regulation for the required disclosure.

Proposed § 205.32(c) further states that if a remittance transfer provider bases an estimate on an approach that is not listed, the provider complies with § 205.32(c) so long as the designated recipient receives the same, or a greater amount, of currency that it would have received had the estimate been based on a listed approach. Thus, use of an approach other than one listed in the proposed rule will not result in a violation, to the extent that the sender is not harmed by such use.

32(c)(1) Exchange Rate

Proposed § 205.32(c)(1) sets forth the approaches that a remittance transfer provider may use as the basis of an estimate of the exchange rate required to be disclosed under proposed § 205.31(b)(1)(iv). Proposed § 205.32(c)(1)(i) states that for remittance transfers qualifying for the § 205.32(b)(2) exception, the estimate must be based on the most recent exchange rate set by the recipient country's central bank and reported by a Federal Reserve Bank. Proposed comment 32(c)(1)(i)–1 clarifies that if the exchange rate for a remittance transfer sent via international ACH that qualifies for the § 205.32(b)(2) exception is set the following business day, the most recent exchange rate available for a transfer will be the exchange rate set for the day that the disclosure is provided, *i.e.,* the current business day's exchange rate.

Proposed § 205.32(c)(1)(ii) provides that, for other transfers, the estimate must be based on the most recent publicly available wholesale exchange rate. Proposed comment 32(c)(1)(ii)–1 provides that publicly available sources of information containing the most recent wholesale exchange rate for a currency include, for example, U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times, a recipient country's national news service, and a recipient country's central bank or other government agency.

However, the Board recognizes that U.S. news services do not list the exchange rate for every currency and that some remittance transfer providers may not have access to the national news services or the information provided by the central bank of a recipient country. Therefore, proposed § 205.32(c)(1)(iii) permits use of the most recent exchange rate offered by the person making funds available directly to the designated recipient as the basis for providing an estimate. This may require a provider to contact the designated recipient's institution or payout location to obtain such a rate.

The Board solicits comment on other approaches a remittance transfer provider might use as the basis for an estimate of the exchange when the currency that will be paid to the designated recipient is infrequently traded or when the remittance transfer provider sends transfers to a recipient country infrequently.

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

Proposed § 205.32(c)(2) states that in disclosing the transfer amount in the currency made available to the designated recipient, as required under proposed § 205.31(b)(1)(v), an estimate must be based upon the estimated exchange rate provided in accordance with § 205.31(c)(1).

32(c)(3) Other Fees Imposed by Intermediaries

Proposed § 205.32(c)(3) provides that one of two approaches must be used to estimate the fees imposed by intermediary institutions in connection with an international wire transfer required to be disclosed under proposed § 205.31(b)(1)(vi). Under the first approach, an estimate must be based on the remittance transfer provider's most recent transfer to an account at the designated recipient's institution. Under the second approach, an estimate must based on the representations of the intermediary institutions along a representative route identified by the remittance transfer provider that the requested transfer could travel. Proposed comment 32(c)(3)(ii)–1 clarifies that a remittance transfer from a sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. Proposed comment 32(c)(3)(ii)–1 further clarifies that, in providing an estimate of the fees required to be disclosed under proposed § 205.31(b)(1)(vi) pursuant to the proposed § 205.32(a) temporary exception, an insured institution may rely upon the representations of the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

The Board solicits comment on other approaches that a remittance transfer provider might use as the basis for calculating an estimate of the fees imposed by intermediaries for an international wire transfer when the remittance transfer provider rarely sends transfers to a requested location.

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

Proposed § 205.32(c)(4) states that, in disclosing taxes imposed in the recipient country as required under proposed § 205.31(b)(1)(vi) that are a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with § 205.32(c)(1) and the estimated fees imposed by institutions that act as intermediaries in connection with an international wire transfer provided in accordance with § 205.32(c)(3). Proposed comment 32(c)(4)–1 clarifies that proposed § 205.32(c)(4) permits a provider to give an estimate only when the taxes imposed in a recipient country are a percentage of the amount transferred to the designated recipient. In other contexts where taxes may be imposed, a remittance transfer provider can determine the exact amount, such as in the case of a flat tax.

32(c)(5) Amount of Currency That Will Be Received by the Designated Recipient

Proposed § 205.32(c)(5) states that, in disclosing the amount of currency that will be received by the designated recipient as required under proposed § 205.31(b)(1)(vii), an estimate must be based on the estimates provided in accordance with §§ 205.32(c)(1), (3), and (4), as applicable.

Storefront and Internet Disclosures

Statutory Requirements

EFTA Section 919(a)(6)(A) states that the Board may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a

notice describing a model remittance transfer for one or more amounts, as the Board may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged. EFTA Section 919(a)(6)(A) also states that the Board may require the notice prescribed to be displayed in every physical storefront location owned or controlled by the remittance transfer provider. Further, EFTA Section 919(a)(6)(A) states that the Board shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice, comparable to the storefront notice described in the statute, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

EFTA Section 919(a)(6)(B) states that, prior to proposing rules under EFTA Section 919(a)(6)(A), the Board shall undertake appropriate studies and analyses, which shall be consistent with EFTA Section 904(a)(2), to determine whether a storefront notice or Internet notice facilitates the ability of a consumer (1) to compare prices for remittance transfers, and (2) to understand the types and amounts of any fees or costs imposed on remittance transfers. EFTA Section 904(a)(2) requires an economic impact analysis that considers the costs and benefits of a regulation to financial institutions, consumers, and other users, including the extent to which additional paperwork would be required, the effects upon competition in the provision of services among large and small financial institutions, and the availability of services to different classes of consumers, particularly low income consumers.

Summary of the Board's Study and Findings

Consistent with EFTA Section 919(a)(6)(B), the Board has reviewed and analyzed the statute and a variety of independent articles, studies, and Congressional testimony; conducted outreach with industry and consumer advocates; and held focus groups with consumers who send remittance transfers. Based on its findings, discussed in more detail below, the Board is not proposing a rule that would require the posting of model remittance transfer notices at a storefront or on the Internet.

The notice described by the statute would illustrate only one of several costs of a remittance transfer. Thus, the Board believes that the statutory notice would not facilitate a consumer's ability to compare prices or to understand the fees and costs imposed on remittance transfers. In addition, most consumers would be unable to apply the information provided by the statutory notice to their own transfers.

The Board considered alternatives to the type of notice described in the statute. The Board considered requiring the posting of transfer fee information for model send amounts, but believes that this alternative notice would have many of the same limitations as the statutory notice. The Board also considered requiring a notice that would reflect all the costs of a transfer as well as the different variables that affect the total cost of the transaction. A notice with this alternative content could help consumers to obtain a better understanding of the costs and fees imposed on remittance transfers. Nonetheless, the Board believes that the length and complexity of such notices could limit their utility. In addition, the frequent manual updates that would be required for any of these storefront notices raise concerns about accuracy. As described in more detail below, these factors led to the Board to decide against proposing a rule requiring remittance transfer providers to post storefront model remittance transfer notices.

Because the Board is not proposing a rule mandating the posting of storefront notices, it is not proposing a rule mandating the posting of Internet notices. As noted above, EFTA Section 919(a)(6)(A) states that the Board shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice comparable to a storefront notice. The Board understands that the word "shall" could be read as mandating the Board to require model Internet notices regardless of whether it proposes model storefront notices. However, the Board believes that the provision is better read as not requiring Internet notices in the absence of any model storefront notices. The Board believes such a reading is more consistent with the statute as a whole. For instance, because the Board is not requiring a storefront notice, there would be no "comparable" Internet notice. Moreover, the Board's study of model Internet notices indicated that consumers using Internet remittance transfer providers to request remittance transfers would be even less likely to use a model transfer notice than those using providers at a physical location. Most Internet providers currently disclose transaction-specific information prior to the consumer's payment for a transfer. Proposed § 205.31(b)(1) would make this common practice a regulatory requirement.

Discussion

Statutory Notice

First, the Board's study showed that the storefront notice as described by EFTA Section 919(a)(6)(A) would not facilitate a consumer's ability to compare prices or to understand the fees and costs imposed on remittance transfers. The statutory storefront notice would illustrate only one of several costs of a remittance transfer—that is, the exchange rate offered by that remittance transfer provider for the particular model transfer amount. In addition to the exchange rate, the total cost of a remittance transfer includes fees charged by the remittance transfer provider, any intermediary in the transfer, and the receiving entity, and any taxes that may be charged in the sending and receiving jurisdictions (all of which must be disclosed pursuant to proposed § 205.31(b)(1)). Because the statutory storefront notice would not address these fees and taxes, it would not present a complete picture to the consumer of all potential fees and costs for a remittance transfer, even for the "model" send amount.[34]

The participants in the focus groups for the Board's consumer testing generally recognized the limitations of the storefront notice described in the statute. Participants noted that the information provided by the storefront notice would permit a customer to calculate the exchange rate being used by the remittance transfer provider, but that the information did not disclose the remittance transfer provider's transfer fee or specify whether there would be a deduction from the amount to be received by the recipient entity or jurisdiction.

Second, the Board believes that most consumers would be unable to apply the information provided by a statutory storefront notice to their own transfers. The fees, exchange rate, and taxes for a remittance transfer can vary based upon the amount sent, transfer corridor (*i.e.,* the sending location to the receiving location), speed of transfer (*e.g.,* the next day, the same day, or in one hour), method of delivery (*e.g.,* an electronic deposit into a bank account or a cash disbursement), and type of receiving entity (*e.g.,* a bank or a money

[34] A significant number of focus group participants request that their transfers be paid to their designated recipient in U.S. dollars. These participants would not use the exchange rate and local currency amount information provided by a statutory storefront notice.

transmitter's payout partner). Because of these variations, it is unlikely that a storefront notice as described by the statute would contain a model transfer pertinent to the consumer's intended transfer. For example, some remittance transfer providers offer a discount on their exchange rate margin for large send amounts. Therefore, even if the consumer's transfer were identical to the model transfer posted in the storefront notice except for the send amount, the consumer still may be unable to determine the exchange rate that would apply to the consumer's transfer based on the storefront notice.

Focus group participants also recognized these shortcomings of the statutory storefront notices. Participants commented that if they were sending more than the posted send amount, they would need to ask the provider how much local currency would be received because the notice would not necessarily provide the information needed to independently calculate that amount. Some participants indicated that the statutory storefront notice would not help them because it would not show how much money in U.S. dollars they would need to send so that the recipient would receive a specific amount in local currency.

Third, the Board believes consumers may proceed with their transfer requests as planned even with the posting of the statutory storefront notices. A few focus group participants said that they would use the information in the statutory storefront notice to calculate the exchange rate offered by that provider and compare it to the wholesale bank exchange rate published in a national newspaper or the exchange rate offered by other providers when contemplating future transactions. However, most participants stated that if they went to a particular store intending to send money and learned that the exchange rate would result in the delivery of less local currency to the recipient than expected, they would still complete the transaction. Because these participants generally transferred smaller amounts, a slightly lower exchange rate would have little impact on the total amount of local currency received.

Alternative Notices

In light of the concerns raised by the statutory storefront notices, the Board considered proposing two alternative storefront notices. The first alternative notice would have required remittance transfer providers to show the transfer fees imposed by the provider for one or more model send amounts. The second alternative notice would have required remittance transfer providers to show all the cost variables for one or more model send amounts. The cost variables would include: Location of the receiving entity; speed of delivery; fees charged by the remittance transfer provider, any intermediaries, and the recipient entity; taxes imposed by sending and receiving jurisdictions; exchange rate; and amount of currency to be received by the designated recipient.

The Board considered requiring remittance transfer providers to display storefront notices showing the transfer fee charged for one or more model send amounts based on comments made during the focus groups that posted fee information could be useful. A few focus group participants noted that a remittance transfer provider's fee, rather than its exchange rate, accounts for the largest percentage of the total cost for a transfer. One focus group participant said that he currently uses fee information posted by two providers to help him to decide which provider he should use for an upcoming transfer. Another participant said that he would use a storefront notice with fee information to shop among providers.

However, a storefront notice containing information regarding the remittance transfer provider's fees still would not present a complete picture of all potential costs for a transfer. A storefront notice with a provider's fee information would not necessarily disclose the exchange rate, fees imposed by any intermediary in the transfer or the receiving entity, and taxes imposed by the receiving jurisdiction. Participants in the Board's one-on-one consumer interviews universally expressed their wish to know if a recipient would be charged a fee by the receiving entity or would be taxed by the receiving jurisdiction.

The Board believes that many consumers would not be able to apply the fee information provided by an alternative notice to their own transfers. As mentioned above with respect to the statutory storefront notices, the fee charged by the remittance transfer provider also varies based on the transfer corridor, speed of transfer, method of delivery, and type of receiving entity. For example, some providers charge different fees for sending funds to an urban versus a rural area in a particular country. Again, because of these variations, a notice would not necessarily contain a model transfer identical to the consumer's intended transfer. Further, some remittance transfer providers use a tiered pricing structure for their fees that would prevent the consumer from accurately extrapolating the fee for his or her transfer from the information provided, even if the consumer's transfer were identical to the model transfer except for the send amount. Customers who are members of a remittance transfer provider's loyalty program might be eligible for fee discounts that would not be reflected in a storefront notice.

A remittance transfer provider's fee generally changes less frequently than the exchange rate offered for a given transfer, and accordingly would become outdated less frequently. Some remittance transfer providers operate in just one or two corridors and charge a flat fee for transfers under a certain amount within those corridors. Thus, for these providers, a storefront notice with fee information arguably would be less burdensome and costly than the statutory storefront notice to produce, and could ameliorate concerns about the accuracy of posted information. But, a storefront notice with fee information posted by global remittance transfer providers would be long and complex and could be burdensome and costly to produce.

Many focus group participants raised similar concerns when presented with the idea of a storefront notice showing fee information as they did regarding a storefront notice showing the amount of local currency to be received. Thus, the Board believes that, in practice, alternative storefront notices containing fee information would have many of the same limitations as the statutory storefront notices containing information about the amount of currency to be received.

The Board also considered requiring remittance transfer providers to post a notice that would reflect all the costs of a transfer as well as the different variables that affect the total cost of the transaction. However, as described below, the Board believes that the length and complexity of such notices could discourage consumers' use of the notice and prove overly burdensome for industry.

Remittance transfer providers that operate in just one or two corridors with little price variability could produce a storefront notice reflecting all cost variables that is inexpensive and relatively simple in nature although, as discussed below, accuracy would continue to be a concern because currency values frequently fluctuate. A notice with this content could help consumers to obtain a better understanding of the costs and fees imposed on remittance transfers.

However, for other providers, a storefront notice for sending a specified amount to just a single country could contain multiple rows of information to

account for differences in pricing based on the transfer method, timing option, receipt location, and cost permutations described above. Many providers offer remittance transfers to multiple countries, and several locations within each country, which would multiply the number of data points on the notice. The Board believes that a consumer could be overwhelmed by the amount of data appearing in a long, complex storefront notice posted by these providers and, therefore, might not use it. One pilot study on storefront notices containing comprehensive cost information showed that only 37% of bank and money transmitter customers sending remittances checked the posting.[35] Thus, taken as a whole, the Board does not believe this alternative would benefit consumers.

Both the statutory and the more comprehensive alternate storefront notice would become inaccurate whenever the exchange rate for a model transfers changed. As a result, the Board believes a storefront notice could be unhelpful and even misleading to consumers, while creating unnecessary legal risks for remittance transfer providers. In Congressional hearings[36] and during the Board's outreach, industry representatives and others expressed concern that, because currency exchange rates frequently fluctuate, remittance transfer providers would have to update the storefront notice for each send location several times a week, or as frequently as several times a day. These rates could also be different at a single provider's different send locations. Remittance transfer providers would need to distribute the updated notices to each send location and each send location would need to replace the outdated notice just as frequently. Non-exclusive send locations that offer the services of two or more money transmitters would have to post and update the storefront notices for each remittance transfer provider. Compliance concerns are magnified for providers that have a large network of agents where the providers would have to rely on store clerks to update disclosures on a timely basis. Echoing the concerns of industry representatives, focus group participants also questioned the ability of remittance transfer providers to keep the notices up to date.

Finally, the Board is concerned about the effect the storefront notice requirement would have on competition and costs to the consumer. Remittance transfer providers that sell their products through agents have expressed concern that the work involved in posting and updating storefront notices could cause some agents to stop offering remittance transfers. Further, credit unions and small banks that infrequently conduct transfers may find the burden and cost of producing storefront notices prohibitive and discontinue the service. Given the costs and risks associated with posting and updating the storefront notices contemplated by the statute, some providers may exit the market, which could reduce competition among providers and increase costs for consumers. For these reasons, the Board is not proposing to require providers to post model storefront or Internet notices.

Section 205.33 Procedures for Resolving Errors

EFTA Section 919(d) addresses error resolution procedures for errors in connection with remittance transfers, and requires a sender to provide notice of an error within 180 days of the promised date of delivery of a remittance transfer. The notice triggers a remittance transfer provider's duty to investigate the claim and correct any error within 90 days of receiving the notice. Proposed § 205.33 implements the new error resolution requirements for remittance transfers and establishes, where appropriate, error resolution procedures similar to those that apply to a financial institution under § 205.11 with respect to errors involving electronic fund transfers.

33(a) Definition of Error

Proposed § 205.33(a)(1) defines the term "error" for purposes of the error resolution provisions applying to remittance transfers. The proposed definition lists the types of transfers or inquiries that constitute errors. Proposed § 205.33(a)(2) lists types of transfers or inquiries that do not constitute errors. The proposed commentary provides additional guidance illustrating errors under the rule.

Under proposed § 205.33(a)(1)(i), the term "error" includes an incorrect amount paid by a sender in connection with a remittance transfer. The proposed provision is similar to § 205.11(a)(1)(ii), which defines as an error an incorrect EFT to or from a consumer's account. Proposed comment 33(a)–1 clarifies that this provision is intended to cover circumstances in which the amount paid by the sender differs from the total transaction amount stated in the receipt provided under § 205.31(b)(2) or the combined disclosure provided under § 205.31(b)(3). *See also* § 205.31(b)(1)(iii).

Proposed comment 33(a)–1 also states that an error under § 205.33(a)(1)(i) covers incorrect amounts paid by a sender regardless of the form or method of payment tendered by the sender for the transfer, including when a debit, credit, or prepaid card is used to pay an amount in excess of the amount of the transfer requested by the consumer plus applicable fees. For example, if a remittance transfer provider incorrectly charged a sender's credit card account for $150 to send $120 to the sender's relative in a foreign country, plus a transfer fee of $10, and the provider sent only $120, the sender could assert an error with the remittance transfer provider for the incorrect charge. In addition, however, as discussed below under proposed § 205.33(f), the right to assert an error with a remittance transfer provider for incorrect amounts paid in connection with a transfer is independent of any other existing rights that the sender may also have under other applicable law with respect to an incorrect payment amount.

Proposed § 205.33(a)(1)(ii) defines as an error "a computational or bookkeeping error made by a remittance transfer provider relating to a remittance transfer." Similar to an existing error provision for EFTs in § 205.11(a)(iv), an error is intended to include "arithmetical errors, posting errors, errors in printing figures, and figures that were jumbled due to mechanical or electronic malfunction." *See* 44 FR 59480 (Oct. 15, 1979). The proposed error would cover, for example, circumstances in which a remittance transfer provider fails to reflect all fees that will be imposed in connection with the transfer or misapplies the applicable exchange rate in calculating the amount of currency that will be received by the designated recipient. Thus, notwithstanding that the designated recipient may receive the amount of currency stated on the receipt or combined disclosure, an error could be asserted because the provider incorrectly calculated the amount that should have been received.

Proposed § 205.33(a)(1)(iii) provides that an error also generally includes the failure by a remittance transfer provider to make available to a designated recipient the amount of currency identified in the receipt (or combined notice) given to the sender. Proposed comment 33(a)-2 contains guidance regarding the scope of the error under

[35] Appleseed, *Remittance Transparency: Strengthening Business, Building Community* 8 (2009).

[36] *See, e.g.,* Testimony of Mark Thompson, The Western Union Company, in Hearing Before House Subcomm. on Fin. Insts. And Cons. Credit, No. 111–39 (June 3, 2009).

§ 205.33(a)(1)(iii). For example, as discussed above under proposed § 205.31, the amount of currency to be received by the designated recipient stated on the transfer receipt must accurately reflect any third party fees or taxes that may be imposed in the course of the remittance transfer (for example, fees imposed by the recipient agent or bank in the foreign country or by an intermediary institution). Accordingly, if the remittance transfer provider fails to account for such third party fees or taxes, resulting in the designated recipient's receipt of less than the amount disclosed on the transaction receipt, the sender may assert an error (except in the case of an estimate). The proposed definition would also cover circumstances in which the remittance transfer provider initially transmits or sends an amount that differs from the amount requested by the sender.

The proposed definition in § 205.33(a)(1)(iii) does not, however, apply to circumstances in which the amount received by a designated recipient differs from the stated amount of currency where the remittance transfer provider provides an estimate as permitted in proposed § 205.32, discussed above. For example, where the law in the foreign country prohibits the remittance transfer provider from offering a fixed currency exchange rate and the provider gives an estimate of the currency to be received in compliance with § 205.32(c), the fact that the designated recipient received less than the estimated currency amount would not constitute an error under proposed § 205.33(a)(1)(iii).

Proposed comment 33(a)–3 provides examples illustrating circumstances in which an incorrect amount of currency may be received by a designated recipient.

Proposed § 205.33(a)(1)(iv) generally treats as an error a remittance transfer provider's failure to make funds in connection with a remittance transfer available to the designated recipient by the date of availability stated on the receipt (or combined disclosure). *See* proposed § 205.31(b)(2)(ii). Proposed comment 33(a)-4 provides examples of the circumstances that would be errors. These circumstances include the late delivery of a remittance transfer after the stated date of availability or non-delivery of the transfer, and the deposit of a remittance transfer to the wrong account. *See, however,* proposed § 205.33(a)(1)(iv)(B), discussed below. An error could also be asserted if a recipient agent or institution retains the transferred funds after the stated date of availability, rather than making the funds available to the designated recipient.

In addition, an error under § 205.33(a)(1)(iv) includes a circumstance in which a person other than the person identified by the sender as the designated recipient of the transfer fraudulently picks up a remittance transfer in the foreign country. An error would not, however, include circumstances in which a designated recipient picks up a remittance transfer from the provider's agent as authorized, but subsequently has the funds stolen from the recipient's possession.

The proposed approach with respect to the fraudulent pick-up of a remittance transfer is consistent with the scope of unauthorized EFTs under § 205.2(m), which include unauthorized EFTs initiated through fraudulent means. *See* comment 2(m)-3. Moreover, the Board believes it is appropriate to treat these circumstances as errors under the proposed rule because the remittance transfer provider, rather than the sender, is in the best position to ensure that a remittance transfer is picked up only by the person designated by the sender. For example, the provider could establish appropriate policies and procedures for its agents to verify the identity of the recipient of the transfer.

The proposed rule provides two exceptions to the definition of error in § 205.33(a)(1)(iv). First, under proposed § 205.33(a)(1)(iv)(A), the failure to make funds from a remittance transfer available by the stated date of availability does not constitute an error where the failure resulted from circumstances outside the remittance transfer provider's control. As clarified in proposed comment 33(a)–5, the exception is limited to circumstances that are generally referred to under contract law as force majeure, or uncontrollable or extraordinary circumstances that cannot be reasonably anticipated by the remittance transfer provider and that prevent the provider from delivering a remittance transfer, such as war, civil unrest, or a natural disaster. The exception for circumstances beyond a provider's control also covers government actions or restrictions that occur after the transfer has been sent but that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or the garnishment or attachment of funds by a foreign government. Comment is requested regarding whether additional examples or guidance is necessary to illustrate the exception for circumstances outside the remittance transfer provider's control.

Under proposed § 205.33(a)(1)(iv)(B), the failure to make funds from a remittance transfer available on the stated date of availability does not constitute an error if it was caused by the sender providing incorrect information in connection with the remittance transfer to the provider. For example, a transfer may not be delivered by the stated date of delivery as a result of the sender's provision of incorrect information in connection with the transfer if the sender misspells the recipient's name or otherwise incorrectly identifies the designated recipient or account to which the transferred funds are to be deposited. Under these circumstances, however, the provider must give the sender the opportunity to correct the information and resend the transfer at no additional cost in order to avoid triggering the error resolution requirements.

The exception in § 205.33(a)(1)(iv)(B) applies only where funds from a transfer were not made available by the stated date of availability as a result of incorrect information provided by the sender. Accordingly, proposed comment 33(a)–6 clarifies that if the failure to make funds from a transfer available by the stated date of availability occurred due to the provider's miscommunication of information necessary for the designated recipient to pick up the transfer, such as providing the incorrect location where the transfer may be picked up or providing the wrong confirmation number or code for the transfer, such failure would be treated as an error under § 205.33(a)(1)(iv).

Finally, proposed § 205.33(a)(1)(v) includes as an error a sender's request for documentation provided in connection with a remittance transfer or additional information or clarification concerning a remittance transfer. An error under proposed § 205.33(a)(1)(v) would also cover a sender's request to determine whether an error exists under the proposed errors discussed above under proposed §§ 205.33(a)(1)(i) through (a)(1)(iv). The proposal is similar to an existing provision in § 205.11(a)(1)(vii).

Proposed § 205.33(a)(2) lists circumstances that do not constitute errors. Under proposed § 205.33(a)(2)(i), an inquiry about a transfer of $15 or less does not constitute an error, since these small-value transfers do not fall within the scope of the definition of remittance transfer. *See* § 205.30(d)(2), discussed above. Proposed § 205.33(a)(2)(ii) states that an inquiry about the status of a remittance transfer—for example, if the sender calls to ask whether the funds have been made available in the foreign

country—is not an error (unless the funds have not been made available by the stated date of availability). Finally, proposed § 205.33(a)(3)(iii) provides that the term "error" does not include a sender's request for information for tax or other recordkeeping purposes.

The Board solicits comment on all aspects of the proposed definition of error in § 205.33(a), including whether additional circumstances should be treated as errors under the proposed rule and whether additional examples of non-errors are necessary to provide clarity.

33(b) Notice of Error From Sender

Proposed § 205.33(b) sets forth the timing and content requirements for a notice of error provided by a sender in connection with a remittance transfer. Under proposed § 205.33(b)(1)(i), a sender must generally provide a notice of error orally or in writing to the remittance transfer provider no later than 180 days after the date of availability of the remittance transfer stated in the receipt (or combined disclosure). *See* EFTA Section 919(d)(1)(A). Such notice of error must be sufficient to enable the remittance transfer provider to identify the sender's name and telephone number or address; the recipient's name, and if known, the telephone number or address of the recipient; and the remittance transfer to which the notice of error applies. *See* proposed § 205.33(b)(1)(ii). Except for requests for documentation, additional information, or clarification under proposed § 205.33(a)(1)(v), the notice must also indicate why the sender believes the error exists and include to the extent possible the type, date, and amount of the error. *See* proposed § 205.33(b)(1)(iii).

Proposed § 205.33(b)(2) provides that when a notice of error is based on documentation, additional information, or clarification that the sender had previously requested under § 205.33(a)(1)(v), the sender's notice of error is timely if received by the provider no later than 60 days after the provider sends the requested documentation, information, or clarification. The proposed 60-day time frame for the sender to provide a new notice of error following the sender's receipt of documentation, information, or clarification from the remittance transfer provider is consistent with the 60-day time frame established for similar circumstances under the general error resolution provisions in Regulation E, § 205.11(b)(3). The Board believes that under these circumstances, 60 days, rather than the 180-day error resolution time frame generally applicable to remittance transfers, provides sufficient time for a sender to review the additional information provided by the remittance transfer provider and determine whether an error occurred in connection with a transfer.

Proposed comment 33(b)–1 clarifies that the error resolution procedures for remittance transfers apply only when a notice of error is received from the sender of the transfer. Thus, under the proposed rule, a notice of error provided by the designated recipient does not trigger the remittance transfer provider's error resolution obligations. This interpretation is consistent with EFTA Section 919(d)(1)(A), which establishes error resolution obligations for a remittance transfer provider only when a notice is received from the "sender." [37] The proposed comment also clarifies that the error resolution provisions do not apply when the remittance transfer provider itself discovers and corrects an error.

Proposed comment 33(b)–2 provides that a notice of error is effective so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, many remittance transfer providers may use the confirmation number or code given to the sender for the pick-up of a remittance transfer to identify the particular transfer in their tracking systems and records. In those circumstances, if a sender provides the confirmation number or code in the notice of error, or any other identification number or code supplied by the provider in connection with the remittance transfer, such number or code should be sufficient to enable the provider to identify the transfer. Proposed comment 33(b)–3 provides that a remittance transfer provider may request, or the sender may provide, an e-mail address of the sender or the designated recipient, as applicable, instead of a physical address if the e-mail address would be sufficient to enable the provider to identify the remittance transfer to which the notice applies.

Proposed comment 33(b)–4 clarifies that if the sender fails to provide a timely notice of error within 180 days from the stated date of delivery, the remittance transfer provider is not required to comply with the error resolution requirements set forth in the rule. *See, e.g.,* comment 11(b)(1)–7 (providing that a financial institution need not comply with the error resolution provisions of § 205.11 for untimely notices of error).

In many cases, a sender that has a problem or issue with a particular remittance transfer may contact the agent location that the sender used to send the transfer to resolve the problem or issue, rather than notifying the provider directly. Proposed comment 33(b)–5 states that a notice of error from a sender received by a remittance transfer provider's agent is deemed to be received by the provider for purposes of the 180-day time frame for reporting errors under proposed § 205.33(b)(1)(i). The Board believes that it is appropriate to treat notices of error given to the agent as notice to the provider because in most cases, it will be the agent with which the sender has the direct relationship, and not the provider. In addition, treating a notice of error given to the agent as notice to the provider ensures that a sender does not lose his or her error resolution rights merely because the sender was unaware of a need to directly notify the provider.

Proposed comment 33(b)–6 cross-references the disclosure requirements in proposed § 205.31, discussed above, to reiterate that a remittance transfer provider must include an abbreviated notice of the consumer's error resolution rights on the receipt under § 205.31(b)(2) or combined disclosure under § 205.31(b)(3), as applicable. In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of error resolution rights that is substantially similar to the proposed model error resolution and cancellation notice set forth in Appendix A of this regulation (Model Form A–36).

33(c) Time Limits and Extent of Investigation

EFTA Section 919(d)(1)(B) generally provides that a remittance transfer provider must investigate and resolve an error not later than 90 days after receipt of a sender's timely notice of error. EFTA Section 919(d)(1)(B) also specifies certain remedies for errors in connection with a remittance transfer; however, the statute also authorizes the Board to provide "such other remedy" as the Board determines appropriate "for the protection of senders."

Proposed § 205.33(c) implements the statutory time frame for investigating errors and sets forth the procedures for resolving an error, including the applicable remedies. Consistent with the statute, proposed § 205.33(c)(1) requires a remittance transfer provider to promptly investigate a notice of error to determine whether an error occurred

[37] *See also* EFTA Section 919(g)(1) (providing that a designated recipient "shall not be deemed to be a consumer for purposes of this Act").

within 90 days of receiving the sender's notice.

Pursuant to the Board's authority under EFTA Section 904(a), the proposed rule further requires the remittance transfer provider to report the results to the sender within three business days after completing its investigation, which is consistent with the time frame for reporting the results of an error investigation under Regulation E, § 205.11(c)(2)(iv). The report or notice of results must also alert the sender of any remedies available for correcting any error that the provider determines has occurred.

Although EFTA Section 919(d)(1) does not expressly require a notice to be provided to the sender when the provider determines that an error has occurred, the Board believes that a notice is appropriate under these circumstances to alert the sender of the results of the investigation as well as to inform the sender of available remedies. The proposed rule does not require a written notice to a sender that an error occurred because such a requirement could unnecessarily delay a sender's ability to receive an appropriate remedy. Accordingly, proposed comment 33(c)–1 clarifies that if the error occurred as described by the sender, the provider may inform the sender of its findings either orally or in writing. However, if the error did not occur as described, the remittance transfer provider must provide a written notice of its findings under § 205.33(d), discussed below.

Proposed § 205.33(c)(2) establishes the procedures and remedies for correcting an error. The proposed rule implements the two remedies that are specified in the statute and adds a third remedy that would apply if the transfer was not made available to the designated recipient by the stated date of availability under proposed § 205.33(a)(1)(iv). As in the statute, the proposed rule allows the sender to designate the preferred remedy in the event of an error. *See* EFTA Section 919(d)(1)(B). Under proposed § 205.33(c)(2), the sender could choose to obtain a full refund of the amount tendered where the remittance transfer was not properly transmitted, or an amount appropriate to resolve the error. Alternatively, the sender could choose to have the remittance transfer provider send to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or the designated recipient. *See* proposed §§ 205.33(c)(2)(i) and (ii).

In addition, if the remittance transfer was not sent or delivered to the designated recipient by the stated date of availability, the remittance transfer provider would be required to refund all fees charged or imposed in connection with the transfer, even if the consumer asks the provider to send the remittance transfer to the designated recipient as the preferred remedy. *See* proposed § 205.33(c)(2)(iii). The Board believes that requiring the provider to refund all fees imposed in connection with the remittance transfer, including the transfer fee, is appropriate under such circumstances because the sender did not receive the contracted service, specifically the availability of funds in connection with the transfer by the stated date. Moreover, in some cases, the sender may have paid an additional fee for expedited delivery of funds. *See* proposed comment 33(c)–4. Of course, in the event that the funds have already been delivered to the recipient, even if on an untimely basis, the sole remedy in such case would be the refund of fees.

Under proposed § 205.33(c)(2), the remittance transfer provider must correct the error within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy. The Board expects that in most cases, a remittance transfer provider will correct an error in accordance with the sender's instructions within one business day of receiving the instructions. However, the proposed rule provides additional flexibility to address the limited circumstances where the particular method of sending a remittance transfer may present practical impediments to a provider's ability to correct an error within one business day. For example, as discussed above, a wire transfer sent internationally may go through several intermediary institutions before getting to the designated recipient. In such cases, it may not be practicable to make the amount in error available to the recipient within one business day in accordance with a sender's request. The Board solicits comment on whether the proposed time frame for correcting an error under § 205.33(c)(2) is appropriate.

Proposed comment 33(c)–2 clarifies that the remittance transfer provider may request that the sender designate the preferred remedy at the time the sender provides notice of error. Permitting such requests may enable providers to process error claims more expeditiously without waiting for the sender's subsequent instructions after notifying the sender of the results of the investigation. Nonetheless, if the sender does not indicate the desired remedy at the time of providing a notice of error, the provider would still be required to notify the sender of any available remedies in the report provided under § 205.33(c)(1) if the provider determines an error occurred. *See* proposed comment 33(c)–2.

The Board notes that under the statute and proposed rule, a provider may be unable to promptly correct an error if the consumer fails to designate an appropriate remedy either at the time of providing the notice of error or in response to the provider's notice informing the consumer of its error determination and available remedies. Comment is requested on whether the Board should alternatively permit remittance transfer providers to select a default method of correcting errors, provided that the sender retains the option of selecting a different remedy if appropriate. For example, a sender could choose to automatically refund to senders any amounts necessary to correct the error, but each sender could decide in an individual case to decline the refund and instead request that the provider deliver the appropriate amount to the designated recipient.

Proposed comment 33(c)–3 provides additional guidance regarding the appropriate remedies where the sender has paid an excess amount to send a remittance transfer. Under that circumstance, the sender may request a refund of the amount paid in excess or may request that the remittance transfer provider make that excess amount available to the designated recipient at no additional cost. Proposed comment 33(c)–4 states that fees that must be refunded to a sender for a failure to make funds from a remittance transfer available by the stated date of availability under § 205.33(a)(1)(iv) include all fees imposed for the transfer, regardless of the party that imposed the fee, and are not limited to fees imposed by the provider.

Proposed comment 33(c)–5 clarifies that if an error occurred, whether as alleged or in a different amount or manner, a remittance transfer provider may not impose any charges related to any aspect of the error resolution process, including any charges for documentation or investigation. The Board is concerned that such fees or charges might have a chilling effect on a sender's good faith assertion of errors. *See, e.g.,* comment 11(c)–3. Nothing in this proposed rule, however, would prohibit a remittance transfer provider from imposing a fee for making copies of documentation for non-error-resolution related purposes, such as for tax documentation purposes. *See, e.g.,* proposed § 205.33(a)(2)(iii).

Under proposed comment 33(c)–6, a remittance transfer provider may correct an error, without further investigation,

in the amount or manner alleged by the sender to be in error. However, the provider must otherwise comply with all other applicable requirements of § 205.33, including providing notice of the resolution of the error under § 205.33(c). *See, e.g.,* comment 11(c)–4.

33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred

Proposed § 205.33(d) establishes procedures in the event that a remittance transfer provider determines that no error or a different error occurred from that described by the sender. Consistent with EFTA Section 919(d)(1)(B)(iv), proposed § 205.33(d)(1) would require the remittance transfer provider to provide a written explanation of the provider's finding that there was no error or that a different error occurred. Such explanation must respond to the sender's specific complaint and note the sender's right to request the documents that the provider relied on in making its determination. Proposed § 205.33(d)(2) further states that upon the sender's request, the remittance transfer provider must promptly provide copies of such documentation.

Proposed comment 33(d)–1 states that where a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, the provider must comply with applicable provisions of both § 205.33(c) and (d). The proposed commentary also clarifies that in such case, the provider may choose to give the notice of correction of error under § 205.33(c)(1) and the explanation that a different error occurred under § 205.33(d) separately or in a combined form. *See, e.g.,* comment 11(d)–1 (establishing a similar provision for error investigations involving EFTs).

33(e) Reassertion of Error

Under proposed § 205.33(e), a remittance transfer provider that has fully complied with the error resolution requirements with respect to a particular notice of error has no further responsibilities in the event the sender later reasserts the same error, except in the case of an error asserted following the sender's receipt of information provided under § 205.33(a)(1)(v). Proposed comment 33(e)–1 clarifies that the remittance transfer provider has no further error-resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. In such case, however, the sender retains the right to reassert the allegation within the original 180-day period from the stated date of availability unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The proposed provision and comment are modeled on similar provisions under § 205.11(e). Comment is requested on whether additional guidance is necessary regarding the circumstances in which a sender has "voluntarily withdrawn" a notice of error.

33(f) Relation to Other Laws

As noted above under § 205.33(a)(1)(i), the error resolution rights for remittance transfers exist independently from other rights that a consumer may have under other existing federal law. For example, when a sender uses a credit card to pay for a remittance transfer, the sender may have billing error rights under Regulation Z, 12 CFR 226.13, with respect to the extension of credit if there is an incorrect amount charged to the consumer's account for the transfer, in addition to the error resolution rights the sender may assert against the remittance transfer provider. Similarly, a sender may use a debit card to pay for a remittance transfer and thus may have error resolution rights with respect to both the remittance transfer provider and the account-holding institution. Proposed § 205.33(f) contains guidance regarding the interplay between the error resolution provisions for remittance transfers and error resolution rights that may exist under other applicable consumer financial protection laws.

In most cases when a consumer pays for a remittance transfer by means of an electronic fund transfer from his or her checking or savings account (for example, by providing a debit card as payment or authorizing an ACH transfer from the account), the institution providing the remittance transfer service will not be the same institution that holds the debited account. If, however, the sender uses his or her bank or credit union to send a remittance transfer via an international ACH service, the account-holding bank or credit union would also be the remittance transfer provider. In such case, a potential conflict arises between the error resolution time frames and procedures that would apply under EFTA Section 908, implemented in § 205.11, and the error resolution provisions under this proposed rule. For example, under § 205.11(c), a financial institution generally has 10 business days to investigate a consumer's notice of error (and up to 45 calendar days if provisional credit is provided). However, under EFTA Section 919(d)(1)(B) and proposed § 205.33(c), discussed above, a remittance transfer provider has up to 90 calendar days to investigate a sender's notice of error. EFTA Section 919(e)(1) provides that under these circumstances—that is, where a remittance transfer is also an electronic fund transfer—the error resolution provisions for remittance transfers apply to the institution/provider, rather than the error resolution provisions generally applicable to EFTs.

Proposed § 205.33(f)(1) implements EFTA Section 919(e)(1)'s conflict of law provision. The proposed rule provides that if an alleged error in connection with a remittance transfer involves an incorrect EFT to a sender's account and the account is also held by the remittance transfer provider, then the requirements of § 205.33, and its applicable time frames and procedures, govern the error resolution process. However, proposed § 205.33(f)(1) further provides that if the notice of error is asserted with an account-holding institution that is not the same entity as the remittance transfer provider, the error resolution procedures under § 205.11, and not those under § 205.33, apply to the account-holding institution's investigation of the alleged error. In both cases, the electronic fund transfer from a consumer's account may also be a remittance transfer. Nonetheless, the Board believes that as a practical matter, an account-holding institution would be unable to identify a particular EFT as a remittance transfer unless it was also the remittance transfer provider. In the absence of direct knowledge that a particular EFT was used to fund a remittance transfer, the account-holding institution would face significant compliance risk if the error resolution requirements under proposed § 205.33 were deemed to apply to the error. The Board does not believe such an outcome is desirable. Accordingly, proposed § 205.33(f)(1) permits an account-holding institution to comply with the error resolution requirements of § 205.11 when the institution is not also the remittance transfer provider for the transaction in question. Of course, the consumer still has independent error resolution rights against the remittance transfer provider itself under proposed § 205.33.

Proposed comment 33(f)–1 clarifies that the guidance in § 205.33(f)(1) applies only when an error could be asserted under both §§ 205.11 and 205.33 with a financial institution that is also the remittance transfer provider. For example, the proposed comment provides that if the sender asserted an error under § 205.11 with a remittance

transfer provider that holds the sender's account, and the error was not also an error under § 205.33 (such as in the case of an omission of an EFT on a periodic statement), then the error-resolution provisions of § 205.11 would exclusively apply to the error.

Proposed § 205.33(f)(2) addresses circumstances where an alleged error involves an incorrect extension of credit in connection with a remittance transfer, such as when a consumer provides a credit card to pay for a remittance transfer. If the consumer provides a notice of error to the creditor that issued the credit card, the provisions of Regulation Z, 12 CFR 226.13, governing error resolution apply to the creditor, rather than the requirements under § 205.33. However, if the sender instead provides a notice of error asserting an incorrect payment amount involving the use of a credit card to the remittance transfer provider, then the error-resolution provisions of § 205.33 apply to the remittance transfer provider.

In certain circumstances, the creditor issuing a credit card may also act as a remittance transfer provider, for example, when the cardholder sends funds from his or her credit card through a service offered by the creditor to a recipient in a foreign country. In the case of an incorrect extension of credit in connection with the transfer, an error could potentially be asserted under either Regulation Z or the error resolution provisions applicable to remittance transfers in proposed § 205.33. The proposed rule provides that under these circumstances, the error resolution provisions under Regulation Z § 226.13 would apply to the alleged error. Under these circumstances, the Board believes it is reasonable to apply the Regulation Z error resolution provisions because 12 CFR 226.13(d)(1) permits a consumer to withhold disputed amounts while an error is being investigated. Nonetheless, the Board notes that if the error resolution provisions under proposed § 205.33 were instead deemed to apply to the error, then a sender would have 180 days from the stated date of availability for the transfer to assert a notice of error, rather than 60 days from the periodic statement reflecting the error. Accordingly, because the error resolution provisions under 12 CFR 226.13 and proposed § 205.33 each provide greater protection to consumers in different respects, the Board solicits comment on the appropriate standard to apply when an error for an incorrect amount paid arises in connection with a remittance transfer sent by a creditor. Proposed § 205.33(f)(3) provides guidance where a person makes an unauthorized EFT or unauthorized use of a credit card to send a remittance transfer, such as when a stolen debit or credit card is used to send funds to a foreign country. Under such circumstances, the consumer holding the asset account or the credit card account is not the sender of the remittance transfer, and thus the error resolution provisions under § 205.33 do not apply. *See* proposed comment 33(b)–1. However, proposed § 205.33(f)(3) clarifies that the consumer retains existing rights under Regulation E §§ 205.6 and 205.11 in the case of an unauthorized EFT and Regulation Z §§ 226.12(b) and 226.13 in the case of an unauthorized use of a credit card.

As discussed above, in certain cases a consumer may be able to assert error resolution rights in connection with a remittance transfer with both the remittance transfer provider as well as his or her account-holding institution or credit card issuer or creditor. Nonetheless, the Board does not believe that a consumer should be able to receive a windfall that could otherwise arise if the consumer were to successfully assert an error with both the provider and the account-holding institution and/or credit card issuer or creditor. Accordingly, proposed comment 33(f)–2 clarifies that if a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or the sender's account-holding institution (or creditor), and then subsequently asserts the same error with the other party, the other party has no further responsibilities to investigate the error. In such case, the sender has already received sufficient credit to correct the error, thereby extinguishing the second party's error resolution obligations. The proposed comment also clarifies that nothing in this section prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if the consumer receives more than one credit to correct the same error. For example, assume that a sender concurrently files notices of error with his or her account-holding institution and remittance transfer provider for the same error, and the sender receives credit from the account-holding institution for the error. If the remittance transfer provider subsequently provides a credit to the sender for the same error, the account-holding institution may reverse the amounts it had previously credited to the consumer's account even after the 45-day error resolution period set forth in § 205.11.

33(g) Error Resolution Standards and Recordkeeping Requirements

EFTA Section 919(d)(2) directs the Board to establish clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. The statute specifically provides that such standards must include appropriate standards regarding recordkeeping, including retention of certain error-resolution related documentation. Proposed § 205.33(g) implements the new requirements regarding error resolution standards and recordkeeping requirements.

Proposed § 205.33(g)(1) provides that a remittance transfer provider must develop and maintain written policies and procedures that are designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under § 205.33. The proposed rule would also require remittance transfer providers to take steps to ensure that whenever a provider uses an agent to perform any of the provider's error resolution obligations, the agent conducts such activity in accordance with the provider's policies and procedures. This approach is similar to one taken by the federal banking agencies in other contexts. *See, e.g.,* 12 CFR 222.90(e) (requiring that an identity theft red flags program exercise appropriate and effective oversight of service-provider arrangements).

Proposed § 205.33(g)(2) provides that the remittance transfer provider's policies and procedures concerning error resolution must include provisions regarding the retention of documentation related to an error investigation. Consistent with the statute, such provisions must ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error. *See* EFTA Section 919(d)(2).

Proposed comment 33(g)–1 states that remittance transfer providers are subject to the record retention requirements under § 205.13, which apply to "any person subject to the [EFTA]." Accordingly, remittance transfer providers must retain documentation, including documentation related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be

taken by the provider. However, the proposed comment further clarifies that the record retention requirements do not require a remittance transfer provider to maintain records of individual disclosures of remittance transfers that it has provided to each sender. Instead, a provider need only retain records to ensure that it can comply with a sender's request for documentation or other information relating to a particular remittance transfer under § 205.33(a)(1)(v), including a request for supporting documentation to enable the sender to determine whether an error exists with respect to that transfer.

Section 205.34 Procedures for Cancellation and Refund of Remittance Transfers

EFTA Section 919(d)(3) directs the Board to issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers within 18 months of the date of enactment of the Dodd-Frank Act. Proposed § 205.34 establishes new cancellation and refund rights for senders of remittance transfers as required by the Dodd-Frank Act.

34(a) Sender Right of Cancellation and Refund

Under proposed § 205.34(a), a remittance transfer provider must comply with a sender's oral or written request to cancel a remittance transfer received no later than one business day from when the sender makes payment in connection with the remittance transfer provider. In determining the appropriate minimum time period for cancelling a remittance transfer, the Board considered a number of factors. Through its outreach, the Board understands that some remittance transfer providers permit a sender to cancel a remittance transfer and obtain a full refund of all funds tendered at any time so long as the transfer has not been picked up in the foreign country by the recipient or deposited into the recipient's account.

In contrast, however, remittance transfers sent by ACH or wire transfer generally cannot be cancelled once the payment order has been accepted by the sending institution. *See, e.g.,* UCC Article 4A–211 (providing that a payment order cannot be cancelled or amended once it has been accepted unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank). Thus, a prolonged cancellation period would present significant practical difficulties for remittance transfers sent by ACH and wire transfer. Under such circumstances, the bank or credit union would likely wait to execute the payment order until the cancellation period has passed, which could further delay the receipt of the funds in the foreign country.

The Board also considered time frames for cancellation established under state laws applicable to remittance transfers, or money transfers more generally. *See, e.g.,* TX Admin. Code § 278.052 (providing that a consumer may cancel a transfer for any reason within 30 minutes of initiating the transfer provided the customer has not left the premises). Finally, during the Board's consumer testing, a few of the participants that believed that they had a right to cancel a remittance transfer expected that they would have to exercise their right to cancel the same day they requested the transfer be sent. For these reasons, the Board believes that one business day provides a reasonable time frame for a sender to evaluate whether to cancel a remittance transfer after providing payment for the transfer. Nothing in the proposed rule, however, prohibits remittance transfer providers from offering longer cancellation time frames to senders. Comment is requested regarding whether the proposed minimum time period should be longer or shorter than proposed.

The proposed rule contains two conditions on the right to cancel. First, under proposed § 205.34(a)(1), a valid request to cancel a remittance transfer must enable the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled. Proposed comment 34(a)–1 clarifies that the request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the provider in connection with the transfer. The proposed comment also permits the provider to request, or the sender to provide, the sender's e-mail address instead of a physical address, so long as the provider can identify the transfer to which the cancellation request applies.

Second, proposed § 205.34(a)(2) provides that a sender's timely request to cancel a remittance transfer is effective so long as the transferred funds have not been picked up by the designated recipient or deposited into an account held by the recipient.[38]

Proposed comment 34(a)–2 cross-references the disclosure requirements in proposed § 205.31 to reiterate that a remittance transfer provider must include an abbreviated notice of the sender's right to cancel a remittance transfer in the receipt or combined pre-payment notice, as applicable. In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer that is substantially similar to the proposed model error resolution and cancellation notice set forth in Appendix A of this regulation (Model Form A–36).

34(b) Time Limits and Refund Requirements

Proposed § 205.34(b) establishes the time frames and refund requirements applicable to remittance transfer cancellation requests. The proposed rule requires a remittance transfer provider to refund, at no additional cost to the sender, the total amount of funds tendered by the sender in connection with the remittance transfer, including any fees imposed in connection with the requested transfer, within three business days of receiving the sender's valid cancellation request. The Board believes that three business days provides sufficient time for a remittance transfer provider to determine whether a remittance transfer has been picked up in the foreign country or deposited into the recipient's account. Comment is requested regarding the appropriate time period for providing a refund following a sender's request for cancellation.

Proposed comment 34(b)–1 clarifies that a remittance transfer provider may, at the provider's discretion, issue a refund in cash or in the same form of payment that was initially tendered by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the amount of the payment.

Proposed comment 34(b)–2 addresses fees that must be refunded upon a sender's timely request to cancel a

[38] Such accounts need not be accounts held by a financial institution so long as the recipient may access the transferred funds without any restrictions regarding the use of such funds. For example, some Internet-based providers may track consumer funds in a virtual account or wallet and permit the holder of the account or wallet to make purchases or withdraw funds once funds are credited to the account or wallet.

remittance transfer. Under the proposed comment, the remittance transfer provider must refund all funds tendered by the sender in connection with the remittance transfer, including any fees that have been imposed for the transfer, regardless of whether the provider or a third party, such as an intermediary institution, imposed the fee.

The Board solicits comment on any and all aspects of the proposed right to cancel a remittance transfer.

Section 205.35 Acts of Agents

In most cases, remittance transfers are sent through an agent of the remittance transfer provider, such as a convenience store that has contracted with the provider to offer remittance transfer services at that location. EFTA Section 919(f)(1) generally makes remittance transfer providers liable for any violation of EFTA Section 919 by an agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider. EFTA Section 919(f)(2) requires the Board to prescribe rules to implement appropriate standards or conditions of liability of a remittance transfer provider, including one that acts through its agent or authorized delegate.[39]

The Board is proposing two alternatives to implement EFTA Section 919(f) with respect to acts of agents. Under the first alternative, a remittance transfer provider would be strictly liable for violations by an agent when such agent acts for the provider. Under the second alternative, a remittance transfer provider would not be liable under the EFTA for violations by an agent acting for the provider where the provider establishes and maintains policies and procedures for agent compliance, including appropriate oversight measures, and the provider corrects any violation, to the extent appropriate. The Board solicits comment on both alternatives.

Alternative A

EFTA Section 919(f)(1) states that remittance transfer providers are liable for any violation of EFTA Section 919 by an agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider. Under Alternative A, proposed § 205.35 provides that a remittance transfer provider is liable for any violation of Subpart B by an agent when such agent acts for the provider. Some agents have a non-exclusive arrangement with several remittance transfer providers, so that a sender may choose from among the remittance transfer providers at that location. If a sender chooses to use Provider A to send funds at the agent location, then Provider B would not be liable for the agent's actions in that instance because the agent would be acting for Provider A.

Proposed comment 35–1 explains that remittance transfer providers remain fully responsible for complying with the requirements of this subpart, including, but not limited to, providing the disclosures set forth in proposed § 205.31 and remedying any errors as set forth in proposed § 205.33. This is the case even if a remittance transfer provider performs its functions through an agent, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

The approach set forth in Alternative A is consistent with EFTA Section 919(f)(1), as well as the approach generally taken in other Board regulations, including Regulation E. For example, under Regulation E's payroll card rules, a financial institution is required to provide initial payroll card disclosures to a payroll account holder. If, by contractual agreement with the institution, a third-party service provider or the employer agrees to deliver these disclosures on the institution's behalf and fails to do so, the issuing financial institution is nonetheless liable for the violation.[40] Similarly, if an agent at a retail establishment fails to provide the disclosures required by proposed § 205.31, under the proposed rule, the remittance transfer provider would be liable.

Even where there is no contractual relationship between a provider and an agent, the proposed rule by its terms requires the remittance transfer provider to make accurate, timely disclosures and to provide error resolution rights to the sender. *See, e.g.,* proposed § 205.31(b). A remittance transfer provider may not always have a contractual relationship with the location that is making funds available or depositing funds into the recipient's account. For example, a financial institution that sends a wire transfer may not have a correspondent relationship or other contractual privity with an institution abroad where the wire transfer is deposited. Nonetheless, if the amount of currency paid to the designated recipient is reduced by an intermediary institution's fee, such that the amount disclosed by the remittance transfer provider (or its agent) is no longer accurate, the remittance transfer is responsible for providing the appropriate remedy under proposed § 205.33. *See* proposed § 205.33(a)(1)(iii).

Alternative B

Remittance transfer providers have expressed concern that, under a strict liability approach, they may be held responsible for their agents' failure to comply with the statute despite the provider's best efforts to monitor and train their agents. As noted previously, the majority of senders send remittances through money transmitters at agent locations. Some providers have a network of thousands, or in some cases, hundreds of thousands of agent locations worldwide to oversee, making frequent on-site inspection of each location impracticable. Providers have expressed particular concern about administrative and civil liability under the EFTA for a single agent's non-compliance.

Alternative B recognizes the unique position of agents in the remittance transfer model, while still making an individual consumer whole for any problems experienced with the remittance transfer. Under Alternative B, proposed § 205.35 provides that a remittance transfer provider is liable for any violation of Subpart B by an agent when such agent acts for that provider, unless it meets two conditions. The first condition is that the remittance transfer provider must establish and maintain written policies and procedures designed to assure compliance with Subpart B by an agent, including policies, procedures and other appropriate oversight measures. *See* proposed § 205.35(a). The second condition is that the remittance transfer provider must correct the violation to the extent appropriate, including complying with the error resolution procedures set forth in proposed § 205.33 and providing the sender the remedies set forth in proposed § 205.33(c)(2). *See* proposed § 205.35(b). A remittance transfer provider that meets these two conditions would not be liable for the acts of its agents. Alternative B is proposed consistent with the Board's authority under EFTA

[39] *See* proposed § 205.30(a), which defines the term agent for purposes of the proposed rule.

[40] 12 CFR 205.18. *See* 71 FR 51437, 51441–42 (August 30, 2006) ("In many cases, the depository institution may use a third-party service provider to perform some or a substantial proportion of the compliance duties (*e.g.,* in a turnkey arrangement), including mailing account terms and conditions and providing error resolution services"; "[P]ayroll card account holders will, at a minimum, be able to assert their Regulation E rights against the depository institution holding their account in all cases * * *").

Section 919(f)(2) to prescribe rules to implement appropriate standards or conditions of liability of a remittance transfer provider, including one that acts through its agent or authorized delegate.

Proposed comment 35–1 states that remittance transfer providers generally remain fully responsible for complying with the requirements of Subpart B, including but not limited to providing the disclosures set forth in proposed § 205.31 and remedying any errors as set forth in proposed § 205.33. As in Alternative A, this is the case even if a remittance transfer provider performs its functions through an agent or other person, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

Proposed comment 35–2 provides further guidance on proposed § 205.35(a)(1). The proposed comment states that a remittance transfer provider must establish and maintain written policies and procedures for compliance with Subpart B applicable to its agents. Maintenance of policies and procedures includes periodic updates to and administration of such policies and procedures, including appropriate oversight over agents. Further, appropriate oversight measures include regular audits, training, and other measures designed to ensure an agent's compliance with Subpart B. Under these circumstances, a provider will not be liable if an agent fails to follow the policies and procedures in an individual case, and so long as the remittance transfer provider makes the consumer whole for any error resulting from an agent's acts, including as set forth under the error resolution provisions in proposed § 205.33.

Appendix A—Model Disclosure Clauses and Forms

The proposal would add to Appendix A twelve model forms that a remittance transfer provider may use in connection with remittance transfers. Proposed Model Forms A–30 through A–41 are intended to demonstrate several formats a remittance transfer provider may use to comply with the disclosure requirements of proposed § 205.31. The Board is proposing model forms pursuant to its authority under EFTA section 904(a), rather than model clauses pursuant to its authority under EFTA section 904(b), in order to clearly demonstrate the general form and specific format requirements of § 205.31(a) and (c). Proposed Model Forms A–30 through A–32 were developed in consumer testing and reflect a format in which the flow and organization of information effectively communicates the remittance disclosures to most consumers.

The proposed rule amends instruction 2 to Appendix A regarding the use of model forms, which currently only references financial institutions and electronic fund transfers. The instruction is proposed to be revised to include references to remittance transfer providers and remittance transfers. The proposed instruction also updates the numbering of the liability provisions of the EFTA as sections 916 and 917. Thus, the proposed instruction clarifies that the use of the proposed model forms in making disclosures would protect a remittance transfer provider from liability under sections 916 and 917 of the EFTA if they accurately reflect the provider's remittance transfer services.

The proposal also adds instruction 4 to Appendix A to describe how a remittance transfer provider may properly use and alter the model forms. Proposed instruction 4 to Appendix A explains that Model Forms A–30 through A–32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Proposed Model Forms A–33 through A–35 demonstrate how a provider could provide the required disclosures for U.S. dollar-to-U.S. dollar remittance transfers. Proposed instruction 4 states that these forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of § 205.31(c)(1) and (2), in both a register receipt format (as developed in consumer testing) and an 8.5 inch by 11 inch format. Proposed Model Form A–36 provides long-form model error resolution and cancellation disclosures in connection with § 205.31(d), and Model Form A–37 provides short-form model error resolution and cancellation disclosures in connection with § 205.31(b)(2)(iv).

Proposed instruction 4 to Appendix A also explains that a remittance transfer provider could use the language and formatting provided in proposed Forms A–37 through A–41 for disclosures that are required to be provided in Spanish, pursuant to the requirements of proposed § 205.31(g). The Board understands that the majority of remittance transfers from the United States are sent to Mexico and the Caribbean, Central America, and South America.[41] Spanish is the primary language in many of the countries in these regions, so many senders of remittance transfers that remit funds to the countries in these regions speak Spanish. Therefore, the Board believes that it is appropriate to provide model disclosures in Spanish to facilitate compliance. The Board requests comment on the provision of Spanish language disclosures, including whether the language used in the Spanish translation would effectively communicate the remittance transfer disclosures to Spanish-speaking consumers.

The Board recognizes that disclosures may be required to be provided in languages other than English and Spanish. Nonetheless, the Board believes it would be impracticable to provide model forms in every possible language in which remittance transfer disclosures may be provided.

Proposed instruction 4 to Appendix A clarifies that the model forms may contain information that is not required by Subpart B, such as a confirmation code and the sender's name and contact information. The additional information not required by Subpart B is included on the model form to demonstrate one way of displaying this information in compliance with § 205.31(c)(4). The proposed instruction clarifies that any additional information must be presented consistent with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

Proposed instruction 4 to Appendix A further clarifies that use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, without modifying the substance of the disclosures. Proposed instruction 4 to Appendix A clarifies that rearrangement or modification of the format of the model forms is permissible, as long as it is consistent with the form, grouping, proximity, and other requirements of § 205.31(a) and (c). The proposed instruction states that providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of proposed model forms A–30 to A–41. The Board recognizes that many remittance transfer providers currently provide disclosures in a variety of forms. The Board intends to provide flexibility to remittance transfer providers in developing disclosure forms that comply with the proposed rule.

Proposed instruction 4 to Appendix A also provides examples of permissible changes a remittance transfer provider may make to the language and format of the model forms without losing the benefit of the safe harbor. The proposed

[41] *See* GAO Report at 7 (Nov. 2005).

instruction clarifies that a remittance transfer provider could substitute the information entered into the model forms that is intended to demonstrate how to complete the information in the model forms—such as names, addresses, and Web sites; dates; numbers; and state-specific contact information—with information applicable to the remittance transfer. A remittance transfer provider could also eliminate disclosures that are not applicable to the transfer, as permitted under proposed § 205.31(b), or provide the required disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats. The proposed instruction also clarifies that a remittance transfer provider could correct or update telephone numbers, mailing addresses, or Web site addresses that may change over time. This instruction applies to all telephone numbers and addresses on a model form, including the contact information of the provider, the state agency, and the Consumer Financial Protection Bureau. The proposed instruction also clarifies that a provider could provide the required disclosures in a foreign language, or multiple foreign languages, subject to the requirements of proposed § 205.31(g), without losing the benefit of the safe harbor.

The proposed comment also clarifies that an impermissible change would be adding language to a form that is not segregated from the required disclosures, other than as permitted by § 205.31(c)(4).

Proposed instruction 4 to Appendix A further clarifies that adding the term "Estimated" or a substantially similar term and in close proximity to the estimated term or terms, as permitted under proposed § 205.31(d), is a permissible change to the model forms. The Board is not proposing separate forms that demonstrate how estimated content would be presented on the forms, because the disclosures will be the same as the proposed model forms, except for the disclosures that certain information is estimated. The general form and specific formatting will be the same on forms that include estimates as they are in the model forms that are provided.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) ("RFA") generally requires an agency to publish an initial regulatory flexibility analysis with a proposed rule whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. The Board requests public comment on the following areas in connection with its initial regulatory flexibility analysis. The Board will conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The EFTA, as amended by the Dodd-Frank Act, was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The EFTA expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions . . . as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the EFTA], to prevent circumvention or evasion [of the EFTA], or to facilitate compliance [with the EFTA]." 15 U.S.C. 1693b(c).

The Board is proposing revisions to Regulation E to implement Section 1073 of the Dodd-Frank Act. The proposal creates new protections for consumers who send remittance transfers from the United States to a designated recipient in a foreign country. The proposal generally requires remittance transfer providers to provide the sender a written pre-payment disclosure containing information about the specific remittance transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. The remittance transfer provider generally must also provide a written receipt for the remittance transfer that includes the above information, as well as additional information such as the date of availability and the recipient's contact information. Alternatively, the proposal permits remittance transfer providers to provide the sender a single written pre-payment disclosure containing all of the information required on the receipt.

The proposal also requires remittance transfer providers to furnish the sender with a brief statement of the sender's error resolution and cancellation rights, and requires providers to comply with related recordkeeping, cancellation, and refund policies. The proposed revisions also implement standards of liability for remittance transfer providers, including those that act through an agent.

The Board believes that the revisions to Regulation E discussed above are consistent with the EFTA, as amended by Section 1073 of the Dodd-Frank Act, and within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the EFTA.

2. *Small entities affected by the proposed rule.* The number of small entities affected by this proposal is unknown. Under regulations issued by the Small Business Administration ("SBA"), an entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions, or for other financial businesses, as one whose average annual receipts do not exceed $7 million.[42] Based on estimates compiled by the Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, there are approximately 9,458 depository institutions that could be considered small entities.[43] In addition, the Financial Crimes Enforcement Network (FinCEN) previously estimated that there are approximately 19,000 registered money transmitters, an estimated 95% of which have less than $7 million in gross receipts annually.[44]

Remittance transfer providers will be required to review and potentially revise their disclosures and procedures to ensure that disclosures meet the content, format, timing, and foreign language requirements of the proposed rule, as described above. Remittance transfer providers will also be required to review and potentially update their error resolution and cancellation procedures to ensure compliance with the proposed rule, also as described above. Accordingly, remittance transfer providers that are small entities will incur implementation costs to comply with the rule.

The Board believes that the rule as proposed offers flexibility that will mitigate the impact of the proposed rule on remittance transfer providers that are small entities. Although the proposed disclosure rules do contain certain formatting requirements in order to ensure that senders notice and comprehend the disclosures, the proposed rule also gives remittance

[42] 13 CFR 121.201; SBA, Table of Small Business Size Standards (available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*).

[43] The estimate includes 1,459 institutions regulated by the Board, 659 national banks, and 4,099 federally-chartered credit unions, as determined by the Board. The estimate also includes 2,872 institutions regulated by the FDIC and 369 thrifts regulated by the OTS. See 75 FR 36016, 36020 (Jun. 24, 2010).

[44] Notice of Proposed Rulemaking, Cross-Border Electronic Transmittal of Funds, 75 FR 60377, 60392 (Sept. 30, 2010) (estimates based on FinCEN's February 2010 Money Service Business Registration List).

transfer providers some flexibility in drafting their disclosures. For example, disclosures may be provided on a register receipt or 8.5 inches by 11 inches piece of paper, consistent with current practices in the industry. The Board also believes that currently, some remittance transfer providers give the disclosures' required content.

Additionally, EFTA Section 919(a)(5) provides the Board with exemption authority with respect to several statutory requirements. The Board is exercising its exemption authority in the proposed rule in order to reduce providers' compliance burden. For instance, the Board is exercising its authority under EFTA Section 919(a)(5)(C) to permit remittance transfer providers to provide the sender a single written pre-payment disclosure under the conditions described above, instead of both pre-payment and receipt disclosures. Similarly, consistent with EFTA Section 919(a)(5)(A), the proposed rule permits remittance transfer providers to provide pre-payment disclosures orally when the transaction is conducted entirely by telephone.

Other measures intended to provide flexibility to remittance transfer providers are discussed above in this **SUPPLEMENTARY INFORMATION**.

The proposed rule could have a significant economic impact on small financial institutions that are remittance transfer providers for consumer international wire transfers. Specifically, as discussed above, one consequence of covering remittance transfers under the EFTA could be legal uncertainty for financial institutions, as providers of consumer international wire transfers may no longer be able to rely on UCC Article 4A's rules governing the rights and responsibilities among the parties to a wire transfer. As a result, some financial institutions may decide to stop offering international wire transfers to consumer customers. However, unless these international wire transfers constitute a high volume of a financial institution's remittance transfer business, or business in general, such a decision is unlikely to have a significant economic impact on the institution. Based on the Board's understanding that consumers are less likely to send remittance transfers by wire transfer compared to other methods, the Board does not believe that small financial institutions are likely to be significantly impacted by the rule.

Nonetheless, the Board solicits comment on whether the proposed rule will have a significant economic impact on small remittance transfer providers. The Board also solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

3. *Other federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any federal rule.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rule is found in 12 CFR part 205. In addition, as permitted by the PRA, the Board also proposes to extend for three years the current recordkeeping and disclosure requirements in connection with Regulation E. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200.

This information collection is required to provide benefits for consumers and is mandatory. *See* 15 U.S.C. 1693 *et seq.* Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are for-profit financial institutions and entities involved in the remittance transfer business, including small businesses. Respondents are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

Any entities involved in the remittance transfer business potentially are affected by this collection of information because these entities will be required to provide disclosures containing information about consumers' specific remittance transfers. Disclosures must be provided prior to and at the time of payment for a remittance transfer, or alternatively, in a single pre-transaction disclosure containing all required information. Remittance transfer providers also make available a written explanation of a consumer's error resolution, cancellation and refund rights upon request. Disclosures must be provided in English and in each foreign language principally used to advertise, solicit or market remittance transfers at an office.

Entities subject to the rule will have to review and revise disclosures that are currently provided to ensure that they accurately reflect the disclosure requirements in this proposed rule. Entities subject to the rule may need to develop new disclosures to meet the proposed rule's timing requirements.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The current annual burden to comply with the provisions of Regulation E is estimated to be 738,600 hours for the 1,133 institutions [45] supervised by the Federal Reserve that are deemed to be respondents for the purposes of the PRA.

The Board estimates that 1,133 respondents regulated by the Federal Reserve would take, on average, 120 hours (three business weeks) to update their systems to comply with the disclosure requirements addressed in § 205.31. This one-time revision would increase the burden by 135,960 hours. On a continuing basis the Board estimates that 1,133 respondents would take, on average, 8 hours (one business day) monthly to comply with the requirements under § 205.31and would increase the ongoing burden by 108,768 hours. In an effort to minimize the compliance cost and burden, particularly for small entities, the proposed rule contains model disclosures in appendix A (Model Forms A–10 through A–20) that may be used to satisfy the statutory requirements.

The Board estimates that on average 825,600 consumers would spend approximately 5 minutes in order to provide a notice of error as required under section 205.33(b). This would increase the total annual burden for this information collection by 68,798 hours.

The Board estimates that 1,133 respondents regulated by the Federal Reserve would take, on average, 1.5 hours (monthly) to address a sender's

[45] The number of Board-supervised respondents was obtained from queries of entities that filed December 2010 Call Reports: 828 State member banks, 243 branches & agencies of foreign banks, three commercial lending companies, and 59 Edge Act or agreement corporations.

notice of error as required by § 205.33(c)(1) and would increase the ongoing burden by 20,349 hours.

The Board estimates that 1,133 respondents regulated by the Federal Reserve would take, on average, 40 hours (one business week) to develop written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under § 205.33. This one-time revision would increase the burden by 45,320 hours. On a continuing basis the Board estimates that 1,133 respondents would take, on average, 8 hours (one business day) annually to maintain the requirements under § 205.33 and would increase the ongoing burden by 9,064 hours.

The Board estimates that 1,133 respondents regulated by the Federal Reserve would take, on average, 40 hours (one business week) to establish policies and procedures for agent compliance as addressed under § 205.35, This one-time revision would increase the burden by 45,320 hours. On a continuing basis the Board estimates that 1,133 respondents would take, on average, 8 hours (one business day) annually to maintain the requirements under § 205.35 and would increase the ongoing burden by 9,064 hours.

The proposed rule would impose a one-time increase in the estimated annual burden 226,600 hours. On a continuing basis the proposed rule would increase in the estimated annual burden by 216,043 hours. Overall the total annual burden is estimated to increase by 442,643 hours, from 738,600 to 1,181,243 hours.

In a September 2010 rulemaking the Department of Treasury estimated that as of February 2010, the number of registered U.S. entities engaged in money transmission was approximately 19,000.[46] Using the Federal Reserve's method the proposed rule would impose a one-time estimated annual burden for such entities of 3,800,000 hours. On a continuing basis the proposed rule would impose an annual burden for such entities of 798,000 hours. Overall the proposed total annual burden for such entities is estimated to be 4,598,000 hours.

The other federal financial agencies[47] are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the current total estimated annual burden for all persons subject to Regulation E, including Federal Reserve-supervised institutions would be approximately 5,166,413 hours. The above estimates represent an average across all respondents and reflect variations between persons based on their size, complexity, and practices. All covered persons, including depository institutions (of which there are approximately 19,000), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 3,800,000 hours. On a continuing basis the proposed rule would increase in the estimated annual burden for such institutions by 798,000 hours. The proposed total annual burden for the respondents regulated by the federal financial agencies is estimated to be 9,764,413 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and staff commentary. New language is shown inside ►bold-faced arrows◄, while language that would be deleted is set off with **[**bold-faced brackets**]**.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

Subpart A—General

2. Add a new Subpart A heading as set forth above, and designate §§ 205.1 through 205.20 under Subpart A.

3. In § 205.3, revise paragraph (a) to read as follows:

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 205.3(b)(2) and (b)(3), 205.10(b), (d), and (e), and 205.13, this part applies to any person. ►The requirements of Subpart B apply to remittance transfer providers.◄

* * * * *

4. Add Subpart B to part 205 to read as follows:

Subpart B—Requirements for Remittance Transfers

Sec.
205.30 Remittance transfer definitions.
205.31 Disclosures.
205.32 Estimates.
205.33 Procedures for resolving errors.
205.34 Procedures for cancellation and refund of remittance transfers.
205.35 Acts of agents.

Subpart B—Requirements for Remittance Transfers

Authority: 12 U.S.C. 5601; Pub. L. 111–203, 124 Stat. 1376 (2010).

►§ 205.30 Remittance transfer definitions.

For purposes of this subpart, the following definitions apply.

(a) *Agent* means an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under state or other applicable law, when such agent, authorized delegate,

[46] 75 FR 60377, 60392 (Sept. 30, 2010).

[47] Appendix B—Federal Enforcement Agencies—of Regulation E lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Securities and Exchange Commission, and Federal Trade Commission.

or affiliate acts for that remittance transfer provider.

(b) *Business day* means any day on which a remittance transfer provider accepts funds for sending remittance transfers.

(c) *Designated recipient* means any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.

(d) *Remittance transfer*—(1) *General definition.* A remittance transfer means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in § 205.3(b).

(2) *Exception for small value transactions.* Remittance transfers do not include transfer amounts of $15 or less.

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

(f) *Sender* means a consumer in a state who requests a remittance transfer provider to send a remittance transfer to a designated recipient.

§ 205.31 Disclosures.

(a) *General form of disclosures*—(1) *Clear and conspicuous.* Disclosures required by this subpart must be clear and conspicuous. Disclosures required by this subpart may contain commonly accepted or readily understandable abbreviations or symbols.

(2) *Written and electronic disclosures.* Disclosures required by this subpart generally must be provided to the sender in writing. Disclosures required by paragraph (b)(1) of this section may be provided electronically, if the sender electronically requests the remittance transfer provider to send the remittance transfer. Written and electronic disclosures required by this subpart must be made in a retainable form.

(3) *Oral disclosures for telephone transactions.* The information required by paragraph (b)(1) of this section may be disclosed orally if:

(i) The transaction is conducted entirely by telephone; and

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

(4) *Oral disclosures for certain error resolution notices.* The information required by § 205.33(c)(1) may be disclosed orally if:

(i) The remittance transfer provider determines that an error occurred as described by the sender; and

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

(b) *Disclosure requirements*—(1) *Pre-payment disclosure.* A remittance transfer provider must disclose to a sender, as applicable:

(i) The amount that will be transferred to the designated recipient, in the currency in which the funds will be transferred, using the term "Transfer Amount" or a substantially similar term;

(ii) Any fees and taxes imposed on the remittance transfer by the provider, in the currency in which the funds will be transferred, using the term "Transfer Fees," "Transfer Taxes," or "Transfer Fees and Taxes," or a substantially similar term;

(iii) The total amount of the transaction, which is the sum of paragraphs (b)(1)(i) and (b)(1)(ii) of this section, in the currency in which the funds will be transferred, using the term "Total" or a substantially similar term;

(iv) The exchange rate used by the provider for the remittance transfer, rounded to the nearest 1/100th of a decimal point, using the term "Exchange Rate" or a substantially similar term;

(v) The amount in paragraph (b)(1)(i) of this section in the currency in which the funds will be received by the designated recipient, but only if fees or taxes are imposed under paragraph (b)(1)(vi) of this section, using the term "Transfer Amount" or a substantially similar term;

(vi) Any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient, using the term "Other Transfer Fees," "Other Transfer Taxes," or "Other Transfer Fees and Taxes," or a substantially similar term.

(vii) The amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term "Total to Recipient" or a substantially similar term.

(2) *Receipt.* A remittance transfer provider must disclose to a sender, as applicable:

(i) The disclosures described in paragraphs (b)(1)(i) through (b)(1)(vii) of this section;

(ii) The date of availability of funds to the designated recipient, using the term "Date Available" or a substantially similar term. A provider may provide a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term "may be available sooner" or a substantially similar term.

(iii) The name and, if provided by the sender, the telephone number and/or address of the designated recipient, using the term "Recipient" or a substantially similar term;

(iv) A statement about the rights of the sender regarding the resolution of errors and cancellation, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language;

(v) The name, telephone number, and Web site of the remittance transfer provider; and

(vi) A statement that the sender can contact the state agency that regulates the remittance transfer provider and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language, and the telephone number and Web site of the state agency that regulates the remittance transfer provider and the telephone number and Web site of the Consumer Financial Protection Bureau, including the toll-free telephone number established under Section 1013 of the Consumer Financial Protection Act of 2010.

(3) *Combined disclosure.* As an alternative to providing the disclosures described in paragraphs (b)(1) and (b)(2) of this section, a remittance transfer provider may provide the disclosures described in paragraph (b)(2) of this section, as applicable, in a single disclosure.

(4) *Long form error resolution and cancellation notice.* Upon the sender's request, a remittance transfer provider must provide to the sender a notice providing a description of the sender's error resolution and cancellation rights under §§ 205.33 and 205.34 using Model Form A–36 of Appendix A to this part or a substantially similar notice.

(c) *Specific format requirements*—(1) *Grouping.* The information required by paragraphs (b)(1)(i), (ii), and (iii) of this section must be grouped together in written and electronic disclosures. The information required by paragraphs (b)(1)(v), (vi), and (vii) of this section must be grouped together in written and electronic disclosures.

(2) *Proximity.* The information required by paragraph (b)(1)(iv) of this section must be disclosed in close proximity to the other information required by paragraph (b)(1) of this section in written and electronic disclosures. The information required by paragraph (b)(2)(iv) of this section

must be disclosed in close proximity to the other information required by paragraph (b)(2) of this section in written and electronic disclosures.

(3) *Prominence and size.* Written disclosures required by this subpart must be provided on the front of the page on which the disclosure is printed. Written and electronic disclosures required by this subpart must be in a minimum eight-point font. Written and electronic disclosures required by paragraph (b) of this section must be in equal prominence to each other.

(4) *Segregation.* Written and electronic disclosures required by this subpart must be segregated from everything else and must contain only information that is directly related to the disclosures required under this subpart.

(d) *Estimates.* Estimated disclosures may be provided to the extent permitted by § 205.32. Estimated disclosures must be described using the term "Estimated" or a substantially similar term and in close proximity to the estimated term or terms.

(e) *Timing.* (1) Disclosures required by paragraph (b)(1) or (b)(3) of this section must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the remittance transfer.

(2) A receipt required by paragraph (b)(2) of this section must be provided to the sender when payment is made for the remittance transfer. If a transaction is conducted entirely by telephone, a written receipt may be mailed or delivered to the sender no later than one business day after the date on which payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider, the written receipt may be provided on or with the next regularly scheduled periodic statement or within 30 days after payment is made for the remittance transfer if a periodic statement is not required and must comply with paragraph (g)(3) of this section.

(f) *Accurate when payment is made.* Disclosures required by this section must be accurate when a sender pays for the remittance transfer, except to the extent permitted by § 205.32

(g) *Foreign language disclosures*—(1) *General.* Except as provided in paragraphs (g)(2) and (g)(3) of this section, disclosures required by this subpart must be made in English and either:

(i) In each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office; or

(ii) If applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to § 205.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office.

(2) *Oral disclosures.* Disclosures permitted to be provided orally under paragraph (a)(3) of this section for transactions conducted entirely by telephone shall be made in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Disclosures permitted to be provided orally under paragraph (a)(4) of this section for error resolution purposes shall be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

(3) *Written receipts for telephone transactions.* Receipts required to be provided to the sender after payment under paragraph (e)(2) of this section for transactions conducted entirely by telephone shall be made in English and, if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction.

§ 205.32 Estimates.

(a) *Temporary exception for insured institutions*—(1) *General.* Estimates may be provided in accordance with paragraph (c) of this section for the amounts required to be disclosed under §§ 205.31(b)(1)(iv) through (vii), if:

(i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;

(ii) A remittance transfer provider is an insured institution; and

(iii) The remittance transfer is sent from the sender's account with the institution.

(2) *Sunset date.* Paragraph (a)(1) of this section expires on July 20, 2015.

(3) *Insured institution.* For purposes of this section, the term "insured institution" includes insured depository institutions as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and insured credit unions as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(b) *Permanent exception for transfers to certain countries.* Estimates may be provided in accordance with paragraph (c) of this section for the amounts required to be disclosed under §§ 205.31(b)(1)(iv) through (vii), if a remittance transfer provider cannot determine the exact amounts because

(1) The laws of the recipient country do not permit, or

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

(c) *Bases for estimates.* Estimates provided pursuant to the exceptions in paragraph (a) or (b) of this section must be based on the below-listed approach or approaches applicable to the required disclosure. If a remittance transfer provider bases an estimate on an approach that is not listed in this paragraph (c), the provider complies with this paragraph (c) so long as the designated recipient receives the same, or a greater amount, of currency that it would have received had the estimate been based on a listed approach.

(1) *Exchange rate.* In disclosing the exchange rate as required under § 205.31(b)(1)(iv), an estimate must be based on one of the following:

(i) For remittance transfers sent via international ACH that qualify for the exception in paragraph (b)(2) of this section, the most recent exchange rate set by the recipient country's central bank and reported by a Federal Reserve Bank;

(ii) The most recent publicly available wholesale exchange rate; or

(iii) The most recent exchange rate offered by the person making funds available directly to the designated recipient.

(2) *Transfer amount in the currency made available to the designated recipient.* In disclosing the transfer amount in the currency made available to the designated recipient, as required under § 205.31(b)(1)(v), an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section.

(3) *Other fees imposed by intermediaries.* In disclosing fees imposed by institutions that act as intermediaries in connection with an international wire transfer as required under § 205.31(b)(1)(vi), an estimate must be based on one of the following:

(i) The remittance transfer provider's most recent remittance transfer to the designated recipient's institution, or

(ii) The representations of the intermediary institutions along a representative route identified by the remittance transfer provider that the requested transfer could travel.

(4) *Other taxes imposed in the recipient country.* In disclosing taxes imposed in the recipient country as required under § 205.31(b)(1)(vi) that are

a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section and the estimated fees imposed by institutions that act as intermediaries in connection with an international wire transfer provided in accordance with paragraph (c)(3) of this section.

(5) *Amount of currency that will be received by the designated recipient.* In disclosing the amount of currency that will be received by the designated recipient as required under § 205.31(b)(1)(vii), an estimate must be based on the estimates provided in accordance with paragraphs (c)(1), (3), and (4) of this section, as applicable.

§ 205.33 Procedures for resolving errors.

(a) *Definition of error*—(1) *Types of transfers or inquiries covered.* For purposes of this section, the term *error* means:

(i) An incorrect amount paid by a sender in connection with a remittance transfer;

(ii) A computational or bookkeeping error made by the remittance transfer provider relating to a remittance transfer;

(iii) The failure to make available to a designated recipient the amount of currency stated in the disclosure provided to the sender under § 205.31(b)(2) or (b)(3), unless the disclosure stated an estimate of the amount to be received in accordance with § 205.32;

(iv) The failure to make funds in connection with a remittance transfer available to a designated recipient by the date of availability stated in the disclosure provided to the sender under § 205.31(b)(2) or (b)(3), unless the failure to make the funds available resulted from:

(A) Circumstances outside the remittance transfer provider's control; or

(B) The sender providing incorrect information in connection with a remittance transfer to the remittance transfer provider, so long as the provider gives the sender the opportunity to correct the information and send the transfer at no additional cost; or

(v) The sender's request for documentation required by § 205.31 or for additional information or clarification concerning a remittance transfer, including a request a sender makes to determine whether an error exists under paragraph (a)(1)(i) through (iv) of this section.

(2) *Types of transfers or inquiries not covered.* The term *error* does not include:

(i) An inquiry involving a transfer of $15 or less;

(ii) An inquiry about the status of a remittance transfer, except where the funds from the transfer were not made available to a designated recipient by the stated date of availability as described in paragraph (a)(1)(iv) of this section; or

(iii) A request for information for tax or other recordkeeping purposes.

(b) *Notice of error from sender*—

(1) *Timing; contents.* A remittance transfer provider shall comply with the requirements of this section with respect to any oral or written notice of error from a sender that:

(i) Is received by the remittance transfer provider no later than 180 days after the stated date of availability of the remittance transfer;

(ii) Enables the provider to identify:

(A) The sender's name and telephone number or address;

(B) The recipient's name, and if known, the telephone number or address of the recipient; and

(C) The remittance transfer to which the notice of error applies; and

(iii) Indicates why the sender believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests for documentation, additional information, or clarification described in paragraph (a)(1)(v) of this section.

(2) *Request for documentation or clarification.* When a notice of error is based on documentation, additional information, or clarification that the sender requested under paragraph (a)(1)(v) of this section, the sender's notice of error is timely if received by the remittance transfer provider no later than 60 days after the provider sent the documentation, information, or clarification requested.

(c) *Time limits and extent of investigation*—

(1) *Time limits for investigation and report to consumer of error.* A remittance transfer provider shall investigate promptly and determine whether an error occurred within 90 days of receiving a notice of error. The remittance transfer provider shall report the results to the sender, including notice of any remedies available for correcting any error that the provider determines has occurred, within three business days after completing its investigation.

(2) *Remedies.* If the remittance transfer provider determines an error occurred, the provider shall, within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy, correct the error as designated by the sender by:

(i) Refunding to the sender the amount of funds tendered by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(ii) Making available to the designated recipient, without additional cost to the sender or to the designated recipient, the amount appropriate to resolve the error; and

(iii) In the case of an error asserted under paragraph (a)(1)(iv) of this section, refunding to the sender any fees imposed for the remittance transfer.

(d) *Procedures if remittance transfer provider determines no error or different error occurred.* In addition to following the procedures specified in paragraph (c) of this section, the remittance transfer provider shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the sender.

(1) *Explanation of results of investigation.* The remittance transfer provider's report of the results of the investigation shall include a written explanation of the provider's findings and shall note the sender's right to request the documents on which the provider relied in making its determination. The explanation shall also respond to the specific complaint of the sender.

(2) *Copies of documentation.* Upon the sender's request, the remittance transfer provider shall promptly provide copies of the documents on which the provider relied in making its error determination.

(e) *Reassertion of error.* A remittance transfer provider that has fully complied with the error resolution requirements of this section has no further responsibilities under this section should the sender later reassert the same error, except in the case of an error asserted by the sender following receipt of information provided under paragraph (a)(1)(v) of this section.

(f) *Relation to other laws*—(1) *Relation to Regulation E § 205.11 for incorrect EFTs from a sender's account.* If an alleged error involves an incorrect electronic fund transfer from a sender's account in connection with a remittance transfer, and the sender provides a notice of error to the account-holding institution, the account-holding institution shall comply with the requirements of § 205.11 governing error resolution rather than the requirements of this section, provided that the account-holding institution is not also

the remittance transfer provider. If the remittance transfer provider is also the financial institution that holds the consumer's account, then the error-resolution provisions of this section apply when the sender provides such notice of error.

(2) *Relation to Truth in Lending Act and Regulation Z.* If an alleged error involves an incorrect extension of credit in connection with a remittance transfer, and the sender provides a notice of error to the creditor holding the credit card account, the provisions of Regulation Z, 12 CFR 226.13, governing error resolution apply to the creditor, rather than the requirements of this section, even if the creditor is the remittance transfer provider. If the sender instead provides a notice of error to the remittance transfer provider, then the error-resolution provisions of this section apply to the remittance transfer provider.

(3) *Unauthorized remittance transfers.* If an alleged error involves an unauthorized electronic fund transfer for payment in connection with a remittance transfer, §§ 205.6 and 205.11 apply with respect to the account-holding institution. If an alleged error involves an unauthorized use of a credit card for payment in connection with a remittance transfer, the provisions of Regulation Z, 12 CFR 226.12(b) and 226.13, apply with respect to the creditor.

(g) *Error resolution standards and recordkeeping requirements*—(1) *Compliance program.* A remittance transfer provider shall develop and maintain written policies and procedures that are designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under this section. The provider must also take steps designed to ensure that an agent of the provider that performs any error resolution obligations on behalf of the provider, conducts such activity in accordance with the remittance transfer provider's policies and procedures.

(2) *Retention of error-related documentation.* The remittance transfer provider's policies and procedures required under paragraph (g)(1) of this section shall include policies and procedures regarding the retention of documentation related to error investigations. Such policies and procedures must ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error.

§ 205.34 Procedures for cancellation and refund of remittance transfers.

(a) *Sender right of cancellation and refund.* A remittance transfer provider shall comply with the requirements of this section with respect to any oral or written request to cancel a remittance transfer from the sender that is received by the provider no later than one business day from when the sender makes payment in connection with the remittance transfer if:

(1) The request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

(b) *Time limits and refund requirements.* A remittance transfer provider shall refund, at no additional cost to the sender, the total amount of funds tendered by the sender in connection with a remittance transfer, including any fees imposed in connection with the remittance transfer, within three business days of receiving a sender's request to cancel the remittance transfer.

§ 205.35 Acts of agents.

Alternative A

A remittance transfer provider is liable for any violation of this subpart by an agent when such agent acts for the provider.

Alternative B

A remittance transfer provider is liable for any violation of this subpart by an agent when such agent acts for the provider, unless:

(a) The remittance transfer provider establishes and maintains written policies and procedures designed to assure compliance with this subpart by its agents, including appropriate oversight practices; and

(b) The remittance transfer provider corrects the violation to the extent appropriate, including complying with the error resolution procedures set forth in § 205.33 and providing the sender the remedies set forth in § 205.33(c)(2). ◄

5. Amend Appendix A to Part 205 as follows:

a. Add Titles A–6 through A–8, and A–30 through A–41, and reserve A–10 through A–29 to the Table of Contents

b. Add Model Forms A–30 through A–41

The additions and revisions read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

Table of Contents

* * * * *

► A–6—Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 205.3(b)(2))
A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))
A–8—MODEL CLAUSE FOR ELECTRONIC COLLECTION OF RETURNED ITEM FEES (§ 205.3(b)(3))

* * * * *

A–10 through A–29—(Reserved)
A–30—Model form for pre-payment disclosures for remittance transfers exchanged into local currency (§ 205.31(b)(1))
A–31—Model form for receipts for remittance transfers exchanged into local currency (§ 205.31(b)(2))
A–32—Model form for combined disclosures for remittance transfers exchanged into local currency (§ 205.31(b)(3))
A–33—Model form for pre-payment disclosures for dollar-to-dollar remittance transfers (§ 205.31(b)(1))
A–34—Model form for receipts for dollar-to-dollar remittance transfers (§ 205.31(b)(2))
A–35—Model form for combined disclosures for dollar-to-dollar remittance transfers (§ 205.31(b)(3))
A–36—Model form for error resolution and cancellation disclosures (long) (§ 205.31(b)(4))
A–37—Model form for error resolution and cancellation disclosures (short) (§ 205.31(b)(2)(vi))
A–38—Model form for pre-payment disclosures—Spanish (§ 205.31(b)(1))
A–39—Model form for receipts—Spanish (§ 205.31(b)(2))
A–40—Model form for combined disclosures—Spanish (§ 205.31(b)(3))
A–41—Model form for error resolution and cancellation disclosures (long)—Spanish (§ 205.31(b)(4)) ◄

* * * * *

BILLING CODE 6210–01–P

A–30—Model form for pre-payment disclosures for remittance transfers exchanged into local currency (§ 205.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: 3/03/2011

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees and Taxes:	$10.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees and Taxes:	-40.00 MXN
Total to Recipient:	1,187.00 MXN

A–31—Model form for receipts for remittance transfers exchanged into local currency (§ 205.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: 3/03/2011

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: 3/04/2011

Transfer Amount:	$100.00
Transfer Fees and Taxes:	$10.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees and Taxes:	-40.00 MXN
Total to Recipient:	1,187.00 MXN

Problems or questions? Contact us within 180 days at 800-123-4567 or www.abccompany.com. You can contact us for a written explanation of your rights.

You can cancel for a full refund within 1 business day of payment, unless the funds have been picked up/deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.com

Consumer Financial Protection Bureau
800-555-9999
www.consumerfinance.gov

A–32—Model form for combined disclosures for remittance transfers exchanged into local currency (§ 205.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: 3/03/2011

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: 3/04/2011

Transfer Amount:	$100.00
Transfer Fees and Taxes:	$10.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees and Taxes:	-40.00 MXN
Total to Recipient:	1,187.00 MXN

Problems or questions? Contact us within 180 days at 800-123-4567 or www.abccompany.com. You can contact us for a written explanation of your rights.

You can cancel for a full refund within 1 business day of payment, unless the funds have been picked up/deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.com

Consumer Financial Protection Bureau
800-555-9999
www.consumerfinance.gov

A–33—Model form for pre-payment disclosures for dollar-to-dollar remittance transfers (§ 205.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: 3/03/2011

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees and Taxes:	$10.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees and Taxes:	-$5.00
Total to Recipient:	$95.00

A–34—Model form for receipts for dollar-to-dollar remittance transfers (§ 205.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: 3/03/2011

RECEIPT

SENDER: Pat Jones 100 Anywhere Street Anytown, Anywhere 54321 301-555-1212	RECIPIENT: Carlos Gomez 106 Calle XXX Mexico City Mexico PICK-UP LOCATION: ABC Company 65 Avenida YYY Mexico City Mexico
Confirmation Code:	ABC 123 DEF 456
Date Available:	3/04/2011
Transfer Amount:	$100.00
Transfer Fees and Taxes:	$10.00
Total:	$110.00
Transfer Amount:	$100.00
Other Fees and Taxes:	-$5.00
Total to Recipient:	$95.00

Problems or questions? Contact us within 180 days at 800-123-4567 or www.abccompany.com. You can contact us for a written explanation of your rights.

You can cancel for a full refund within 1 business day of payment, unless th funds have been picked up/deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.com

Consumer Financial Protection Bureau
800-555-9999
www.consumerfinance.gov

A–35—Model form for combined disclosures for dollar-to-dollar remittance transfers (§ 205.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: 3/03/2011

SENDER:	RECIPIENT:
Pat Jones	Carlos Gomez
100 Anywhere Street	106 Calle XXX
Anytown, Anywhere 54321	Mexico City
301-555-1212	Mexico
	PICK-UP LOCATION:
	ABC Company
	65 Avenida YYY
	Mexico City
	Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	3/04/2011

Transfer Amount:	$100.00
Transfer Fees and Taxes:	$10.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees and Taxes:	-$5.00
Total to Recipient:	$95.00

Problems or questions? Contact us within 180 days at 800-123-4567 or www.abccompany.com. You can contact us for a written explanation of your rights.

You can cancel for a full refund within 1 business day of payment, unless the funds have been picked up/deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.com

Consumer Financial Protection Bureau
800-555-9999
www.consumerfinance.gov

A–36—Model form for error resolution and cancellation disclosures (long) (§ 205.31(b)(4))

What To Do If You Think There Has Been An Error or Problem:

If you think there has been an error or problem with your remittance transfer:

- Call us at [insert telephone number][; or]
- Write us at [insert address][; or]
- [E-mail us at [insert electronic mail address].

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

(1) Your name and address [or telephone number];

(2) The error or problem with the transfer, and why you believe it is an error or problem;

(3) The name of the person receiving the funds, and if you know it, his or her telephone number or address; [and]

(4) The dollar amount of the transfer; [and

(5) The confirmation code or number of the transaction.]

We will determine whether an error occurred within 90 days after you contact us and we will correct any error promptly. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

What To Do If You Want To Cancel A Remittance Transfer:
You have the right to cancel a remittance transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or e-mail address] above within one business day of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three business days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient's account.

A–37—Model form for error resolution and cancellation disclosures (short) (§ 205.31(b)(2)(vi))

Problems or questions? Contact us within 180 days at 800-123-4567 or www.abccompany.com. You can contact us for a written explanation of your rights.

You can cancel for a full refund within 1 business day of payment, unless the funds have been picked up/deposited.

For questions or complaints about ABC Company, contact:

A–38—Model form for pre-payment disclosures—Spanish (§ 205.31(b)(1))

```
          ABC Company
        1000 XYZ Avenue
     Anytown, Anystate 12345

Fecha:                      3/03/2011

      NO ES UN RECIBO

Cantidad de Envío:          $100.00
Tarifas e Impuestos:         $10.00
Total:                      $110.00

Tasa de Cambio:    US$1.00 = 12.27 MXN

Cantidad de Envío:        1,227.00 MXN
Otras Tarifas e Impuestos:  -40.00 MXN
Total a Destinatario:     1,187.00 MXN
```

A–39—Model form for receipts—Spanish (§ 205.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3/03/2011

RECIBO

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

RETIRAR EN:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Código de Confirmación:ABC 123 DEF 456

Fecha Disponible: 3/04/2011

Cantidad de Envío:	$100.00
Tarifas e Impuestos:	$10.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otras Tarifas e Impuestos:	-40.00 MXN
Total a Destinatario:	1,187.00 MXN

¿Problemas o preguntas? Contáctenos dentro de 180 días a 800-123-4567 o www.abccompany.com. Puede contactarnos para una explicación escrita de sus derechos.

Puede cancelar para un reembolso total dentro de un día hábil del pago, a no ser que los fundos han sido retirados o depositados.

Para preguntas o presentar una queja en ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.com

Consumer Financial Protection Bureau
800-555-9999
www.consumerfinance.gov

A–40—Model form for combined disclosures—Spanish (§ 205.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3/03/2011

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

RETIRAR EN:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Código de Confirmación:ABC 123 DEF 456

Fecha Disponible: 3/04/2011

Cantidad de Envío:	$100.00
Tarifas e Impuestos:	$10.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otras Tarifas e Impuestos:	-40.00 MXN
Total a Destinatario:	1,187.00 MXN

¿Problemas o preguntas? Contáctenos dentro de 180 días a 800-123-4567 o www.abccompany.com. Puede contactarnos para una explicación escrita de sus derechos.

Puede cancelar para un reembolso total dentro de un día hábil del pago, a no ser que los fundos han sido retirados o depositados.

Para preguntas o presentar una queja en ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.com

Consumer Financial Protection Bureau
800-555-9999
www.consumerfinance.gov

A–41—Model form for error resolution and cancellation disclosures (long) —Spanish (§ 205.31(b)(4))

Lo Que Usted Debe Hacer Si Cree Que Haya Un Error O Problema:

Si cree que haya un error o problema con su envío de dinero:

- Llámenos a [inserte número de teléfono][; o]
- Escribanos a [inserte dirección][; o]
- [Mándenos un e-mail a [inserte dirección de correo electrónico].

Debe contactarnos dentro de 180 días de la fecha que se le prometió que los fundos estarían disponibles al destinatario. Cuando se comunique con nosotros, por favor provee la siguiente información:

(1) Su nombre y dirección [o número de teléfono];

(2) El error o problema con su envío de dinero, y porque cree que haya un error o problema;

(3) El nombre del destinatario, y si lo sabe, su número de teléfono o dirección; [y]

(4) El monto a enviar en dólares; [y

(5) El código de confirmación o el número de la transacción.]

Nosotros determinaremos si haya un error dentro de 90 días después de usted nos contacta y corrigiéremos el error rápidamente. Le diremos los resultados dentro de tres días hábiles después de terminar nuestra investigación. Si decidimos que no había un error, le mandaremos a usted una explicación escrita. Puede pedir copias de los documentos que usamos en nuestra investigación.

Lo Que Usted Debe Hacer Si Quiere Cancelar Un Envío De Dinero:
Tiene el derecho de cancelar un envío de dinero y obtener un reembolso de todo el dinero, incluyendo tarifas o gastos que usted nos pagó. Para cancelar, debe contactarnos al [número de teléfono o dirección de correo electrónico] que se encuentra arriba dentro de un día hábil del pago para el envío de dinero.

Cuando nos contacte, debe proveernos con información que nos ayudará a identificar el envío de dinero que quiere cancelar, inclusivo la cantidad del envió y el lugar donde fue enviado. Le reembolsamos su dinero dentro de tres días hábiles de su petición de cancelar a no ser que los fundos han sido retirados o depositados en la cuenta del destinatario.

BILLING CODE 6210–01–C

6. In Supplement I to part 205:

a. Add new Commentary for Sections 205.30, 205.31, 205.32, 205.33, 205.34, and 205.35.

b. Under subheading Appendix A, paragraph (2) *Use of forms* is revised and paragraph (4) is added.

The revision and additions read as follows:

Supplement I to Part 205—Official Staff Interpretations

* * * * *

► Section 205.30—Remittance Definitions

30(b) Business Day

1. *General.* With respect to Subpart B, a business day includes the entire 24-hour period ending at midnight, and a notice required by any section of Subpart B is effective even if given outside of normal business hours. No section of Subpart B requires that a remittance transfer provider make telephone lines available on a 24-hour basis.

30(c) Designated Recipient

1. *Person.* A designated recipient can be either a natural person or a business. *See* § 205.2(j) (definition of person).

2. *Located in a foreign country.* 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 § 205.2(l).

30(d) Remittance Transfer

1. *Electronic transfer of funds.* The definition of remittance transfer requires an electronic transfer of funds. The term electronic has the meaning given in Section 106(2) of the Electronic Signatures in Global and National Commerce Act. There may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer. However, where a sender mails funds directly to a recipient, or provides funds to a courier for delivery to a foreign country, there has not been an electronic transfer of funds. Therefore, non-electronic remittance methods are not remittance transfers.

2. *Request by a sender.* The definition of remittance transfer requires a specific sender request that a remittance transfer provider send a remittance transfer. A deposit by a consumer into a checking or savings account does not itself constitute such a request, even if a person in a foreign country is an authorized user on that account, where the consumer retains the ability to withdraw funds in the account.

3. *To a designated recipient.* The definition of remittance transfer requires that the transfer be sent to a designated recipient. *See* comment 30(c)–1. There is no designated recipient unless the sender specifically identifies the recipient of a transfer. A transfer is sent to a designated recipient if, for example, the sender instructs a remittance transfer provider to send a prepaid card to a specified recipient in a foreign country, and the sender does not retain the ability to draw down funds on the prepaid card. In contrast, there is no designated recipient where the sender retains the ability to withdraw funds, such as when a person in a foreign country is made an authorized user on the sender's checking account, because the remittance transfer provider cannot identify the ultimate recipient of the funds.

4. *Sent by a remittance transfer provider.* i. The definition of remittance transfer requires that a transfer must be "sent by a remittance transfer provider." This means that there must be an intermediary actively involved in sending the transfer of funds. Examples include:

A. A person (other than the sender) sending an instruction to a receiving agent in a foreign country to make funds available to a recipient;

B. Executing a payment order pursuant to a consumer's instructions;

C. Executing a consumer's online bill payment request; or

D. Otherwise engaging in the business of accepting or debiting funds for transmission to a recipient and transmitting those funds.

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

5. *Examples of remittance transfers.*

i. Examples of remittance transfers include:

A. Transfers where the sender provides cash or another method of payment to a money transmitter or financial institution that directs funds to be sent to a specified payout location or account in a foreign country.

B. Consumer wire transfers, where a financial institution executes a payment order upon a sender's request to wire money from the sender's account to a designated recipient.

C. A sender's addition of funds to a prepaid card, which the prepaid card issuer sends or has previously sent to a designated recipient, if the sender does not retain the ability to withdraw such funds.

D. International ACH transactions sent by the sender's financial institution at the sender's request.

E. Online bill payments to foreign merchants made by the sender's financial institution at the sender's request.

ii. The term remittance transfer does not include:

A. A consumer's purchase of goods or services from a merchant in a foreign country with a credit or debit card.

B. A consumer's deposit of funds to his or her checking or savings account that can be withdrawn by an authorized user located in a foreign country, but where the consumer retains the ability to withdraw funds in the account.

C. Online bill payments made through the Web site of a merchant located in a foreign country.

30(e) Remittance Transfer Provider

1. *Agents.* An agent is not deemed to be a remittance transfer provider by merely providing remittance transfer services on behalf of the remittance transfer provider.

Section 205.31—Disclosures

31(a) General Form of Disclosures

Paragraph 31(a)(1)—Clear and Conspicuous

1. *Clear and conspicuous standard.* Disclosures are clear and conspicuous for purposes of Subpart B if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. To the extent permitted by §§ 205.31(a)(3) and (4), oral disclosures are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as "USD" to indicate currency in U.S. dollars or "MXN" to indicate currency in Mexican pesos.

Paragraph 31(a)(2)—Written and Electronic Disclosures

1. *E-Sign Act requirements.* If a sender electronically requests the remittance transfer provider to send a remittance transfer, pre-payment disclosures required by § 205.31(b)(1) may be provided to the sender in electronic form without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). If a sender electronically requests the provider to send a remittance transfer, receipts required by § 205.31(b)(2) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. *See* § 205.4(a)(1).

2. *Paper size.* Written disclosures may be provided on any size paper, as long as the disclosures are clear and

conspicuous. For example, disclosures may be provided on a register receipt or on an 8.5 inch by 11 inch sheet of paper.

3. *Retainable electronic disclosures.* A remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an on-line disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

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

1. *Transactions conducted partially by telephone.* For transactions conducted partially by telephone, disclosures may not be provided orally. For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated 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.

31(b) Disclosure Requirements

1. *Disclosures provided as applicable.* Disclosures required by § 205.31(b) need only be provided to the extent applicable. A remittance transfer provider may choose to omit an item of information required by § 205.31(b) if it is inapplicable to a particular transaction. Alternatively, a provider may disclose a term and state that an amount or item is "not applicable," "N/A," or "None." For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures required by § 205.31(b)(1)(ii) or (b)(1)(vi). Similarly, a Web site need not be disclosed under § 205.31(b)(2)(v) if the provider does not maintain a Web site. A provider need not provide the exchange rate disclosure required by § 205.31(b)(1)(iv) if a recipient receives currency in U.S. dollars or currency is delivered into an account in U.S. dollars, rather than in another currency.

2. *Substantially similar terms, language, and notices.* Some disclosures required by § 205.31(b) must be described using the terms set forth in § 205.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds to Colombia may describe a tax under § 205.31(b)(1)(vi) as a "Colombian Tax" in lieu of describing it as "Other Taxes." Foreign language disclosures required under § 205.31(g) must contain accurate translations of the terms, language, and notices required by § 205.31(b).

Paragraph 31(b)(1)—Pre-Payment Disclosures

1. *Fees and taxes.* i. Taxes imposed by the remittance transfer provider include taxes imposed on the remittance transfer by a state or other governmental body. A provider need only disclose fees or taxes required by § 205.31(b)(1)(ii) and (vi), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. *See* comment 31(b)–1. If both fees and taxes are imposed, the fees and taxes may be disclosed as one disclosure or as separate, itemized disclosures.

ii. The fees and taxes required to be disclosed by § 205.31(b)(1)(ii) include all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any state taxes imposed on the remittance transfer. In contrast, the fees and taxes required to be disclosed by § 205.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider. For example, a provider must disclose fees imposed by the receiving institution or agent at pick-up, fees imposed by intermediary institutions in connection with an international wire transfer, and taxes imposed by a foreign government. The terms used to describe the fees and taxes in § 205.31(b)(1)(ii) and (b)(1)(vi) must differentiate between such fees and taxes. For example, the terms used to describe fees disclosed under § 205.31(b)(1)(ii) and (b)(1)(vi) may not both be described as "Fees."

2. *Transfer amount.* Sections 205.31(b)(1)(i) and (b)(1)(v) require two transfer amount disclosures. First, under § 205.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the funds will be transferred to show the calculation of the total amount of the transaction. Typically, funds will be transferred in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if funds will be transferred, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. Second, under § 205.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if fees and taxes are not imposed on the remittance transfer under § 205.31(b)(1)(vi). The terms used to describe each transfer amount should be the same.

Paragraph 31(b)(1)(iv)—Exchange Rate

1. *Applicable exchange rate for estimates.* If the designated recipient will receive funds in a currency other than the currency in which it will be transferred, a remittance transfer provider must disclose an exchange rate. An exchange rate that is estimated must be disclosed pursuant to the requirements of § 205.32. A remittance transfer provider may not disclose, for example, that an estimated exchange rate is "unknown," "floating," or "to be determined."

2. *Rounding.* The exchange rate used by the provider for the remittance transfer is required to be rounded to the nearest 1/100th of a decimal point. However, an exchange rate need not be expressed to the nearest 1/100th of a decimal point if the amount need not be rounded. For example, if one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must disclose that the U.S. dollar exchanges for 11.95 Mexican pesos. However, if one U.S. dollar exchanges for 11.9 Mexican pesos, the provider may disclose that "US$1 = 11.9 MXN" in lieu of "US$1 = 11.90 MXN."

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

1. *Fees and taxes disclosed in the currency in which the funds will be received.* Section 205.31(b)(1)(vi) requires the disclosure of fees and taxes in the currency in which the funds will be received by the designated recipient. A fee or tax required by § 205.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider should calculate the fee or tax to be disclosed using the exchange rate required by § 205.31(b)(1)(iv). For example, an intermediary institution in an international wire transfer may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. Here, the provider would disclose the fee to the sender expressed in Euros, calculated using the exchange rate used by the provider for the remittance transfer.

Paragraph 31(b)(1)(vii)—Amount Received

1. *Amount received.* The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect all charges that affect the amount received, including the exchange rate and all fees and taxes imposed by the remittance transfer provider, the receiving institution, and any other party in the transmittal route of a remittance transfer. The disclosed amount received must be reduced by the amount of any fee or tax that is imposed by a person other than the provider, even if that amount is imposed or itemized separately from the transaction amount.

Paragraph 31(b)(2)—Receipt

1. *Date of availability.* The date of availability of funds to the designated recipient is the date in the foreign country on which the funds will be available to the designated recipient. A remittance transfer provider does not comply with the requirements of § 205.31(b)(2)(ii) if it provides a range of dates that the remittance transfer may be available or an estimate of the date on which funds will be available. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. For example, if funds may be available on January 3, but are not certain to be available until January 10, then January 10 should be disclosed as the date of availability. However, a remittance transfer provider may also disclose that funds "may be available sooner" or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed. For example, a provider may disclose "January 10 (may be available sooner)."

31(c) Specific Format Requirements

Paragraph 31(c)(1)—Grouping

1. *Grouping.* Information is grouped together for purposes of Subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably determine how to calculate the total amount of the transaction, and the amount that will be received by the designated recipient. Model Forms A–30 through A–35 in Appendix A illustrate how information may be grouped to comply with the rule, but a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation.

Paragraph 31(c)(4)—Segregation

1. *Segregation.* Disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on a notice by outlining them in a box or series of boxes, bold print dividing lines, or a different color background.

2. *Directly related.* For purposes of § 205.31(c)(4), the following is directly related information:

i. The date and/or time of the transaction;

ii. The sender's name and contact information;

iii. The location at which the designated recipient may pick up the funds;

iv. The confirmation or other identification code;

v. A company name or logo;

vi. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;

vii. A designated area for signatures or initials; and

viii. A statement that funds may be available sooner, as permitted by § 205.31(b)(2)(ii).

31(d) Estimates

1. *Terms.* A remittance transfer provider may provide estimates of the amounts required by § 205.31(b), to the extent permitted by § 205.32. An estimate must be described using the term "Estimated" or a substantially similar term and in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as "Estimated Transfer Amount," "Other Estimated Fees and Taxes," or "Total to Recipient (Est.)."

31(e) Timing

1. *Request to send a remittance transfer.* 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 remittance transfer. Whether a sender has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. For example, a sender who asks the provider to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer. A sender who solely inquires about that day's rates and fees, however, has not requested the provider to send a remittance transfer.

2. *When payment is made.* A receipt required by § 205.31(b)(2) is required to be provided to the sender when payment is made for the remittance transfer. For example, a remittance transfer provider could give the sender a receipt after the consumer pays for the remittance transfer, but before the sender leaves the counter. A provider could also give the sender a receipt immediately before the sender pays for the transaction.

3. *Telephone transfer from an account.* A sender may transfer funds from his or her account, as defined by § 205.2(b), that is held by the remittance transfer provider. For example, a financial institution may send an international wire transfer for a sender using funds from the sender's account with the institution. If the sender conducts such a transfer entirely by telephone, the institution may provide a written receipt on or with the sender's next regularly scheduled periodic statement or within 30 days after payment is made for the remittance transfer if a periodic statement is not required.

31(f) Accurate When Payment Is Made

1. *No guarantee of disclosures provided before payment.* Disclosures required by § 205.31(b) are required to be accurate when a sender pays for the remittance transfer. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required by § 205.31(b) for any specific period of time. However, if any of the disclosures required by § 205.31(b) are not accurate when a sender pays for the remittance transfer, a provider must give new disclosures before receiving payment for the remittance transfer.

31(g) Foreign Language Disclosures

1. *Number of foreign languages used in written disclosure.* Section 205.31(g)(1) does not limit the number of languages that may be used on a single document, but a single written document containing more than three languages is not likely to be helpful to a consumer. Section 205.31(g)(3), however, does limit the languages that may be used on the written receipts provided to the sender to English and, if applicable, the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction. *See* comment 31(g)–2 for guidance on the language a sender

primarily uses with the remittance transfer provider to conduct the transaction. Under § 205.31(g)(1), a remittance transfer provider may, but need not, provide the consumer with a written or electronic disclosure that is in English and in each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market either orally, in writing, or electronically, at that office. Alternatively, the remittance transfer provider may provide the disclosure solely in English and, if applicable, the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error, provided such language is principally used by the remittance transfer provider to advertise, solicit, or market either orally, in writing, or electronically, at that office. If the remittance transfer provider chooses the alternative method, it may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language. The following examples illustrate this concept.

i. A remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office. The remittance transfer provider may provide all of its consumers with disclosures in English, Spanish, and Vietnamese, regardless of the language the sender uses with the remittance transfer provider to conduct the transaction or assert an error.

ii. Same facts as i. If a sender primarily uses Spanish with the remittance transfer provider to conduct a transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure in English and Spanish, whether in a single document or two separate documents. If the sender primarily uses English with the remittance transfer provider to conduct the transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure solely in English. If the sender primarily uses a foreign language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at that office, the remittance transfer provider may provide a written or electronic disclosure solely in English.

2. *Primarily used.* The language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used by the sender with the remittance transfer provider to convey the information necessary to complete the transaction. Similarly, the language primarily used by the sender with the remittance transfer provider to assert the error is the primary language used by the sender with the remittance transfer provider to provide the information required by § 205.33(b) to assert an error. For example:

i. A sender initiates a conversation with a remittance transfer provider with a word of greeting in English and expresses interest in sending a remittance transfer to Mexico in English. If, based on that knowledge, the remittance transfer provider offers to communicate with the sender in Spanish and the sender conveys the other information needed to complete the transaction, including the designated recipient's information and the amount and funding source of the transfer, in Spanish, then Spanish is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

ii. A sender initiates a conversation with the remittance transfer provider with a word of greeting in English and states in English that there was a problem with a prior remittance transfer to Vietnam. If, based on that knowledge, the remittance transfer provider offers to communicate with the sender in Vietnamese and the sender uses Vietnamese to convey the information required by § 205.33(b) to assert an error, then Vietnamese is the language primarily used by the sender with the remittance transfer provider to assert the error.

Paragraph 31(g)(1)—General

1. *Principally used.* i. All relevant facts and circumstances determine whether a foreign language is principally used by the remittance transfer provider to advertise, solicit, or market under § 205.31(g)(1). Generally, whether a foreign language is considered to be principally used by the remittance transfer provider to advertise, solicit, or market is based on:

A. The frequency with which the foreign language is used in advertising, soliciting, or marketing of remittance transfer services at that office;

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services in that foreign language at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer service at that office.

ii. For example, an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for a sentence advising consumers to "Ask us about our foreign remittance services" in a foreign language, may create an expectation that a consumer could receive information on remittance transfer services in the foreign language used in the advertisement. The foreign language used in such an advertisement would be considered to be principally used at that office based on the prominence of the advertising and the specific foreign language terms inviting consumers to inquire about remittance transfer services. In contrast, an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for one word of greeting in a foreign language, may not create an expectation that a consumer could receive information on remittance transfer services in the foreign language used for such greeting. The foreign language used in such an advertisement is not considered to be principally used at that office based on the incidental specific foreign language term used.

2. *Advertise, solicit, or market.* i. Any commercial message in a foreign language, appearing in any medium, that promotes directly or indirectly the availability of remittance transfer services constitutes advertising, soliciting, or marketing in such foreign language for purposes of § 205.31(g)(1). Examples illustrating when a foreign language is used to advertise, solicit, or market include:

A. Messages in a foreign language in a leaflet or promotional flyer at an office.

B. Announcements in a foreign language on a public address system at an office.

C. On-line messages in a foreign language, such as on the Internet.

D. Printed material in a foreign language on any exterior or interior sign at an office.

E. Point-of-sale displays in a foreign language at an office.

F. Telephone solicitations in a foreign language.

ii. Examples illustrating when a foreign language is not principally used to advertise, solicit, or market include:

A. Communicating in a foreign language (whether by telephone, electronically, or otherwise) about remittance transfer services in response to a consumer-initiated inquiry.

B. Making disclosures in a foreign language that are required by Federal or other applicable law.

3. *Office.* An office includes any physical location, telephone number, or Web site of a remittance transfer provider where remittance transfer services are offered to consumers. The location need not exclusively offer remittance transfer services. For example, if an agent of a remittance transfer provider is located in a grocery store, the grocery store is considered an office for purposes of § 205.31(g)(1).

4. *At that office.* Any advertisement, solicitation, or marketing is considered to be made at that office if such advertisement, solicitation, or marketing is posted, provided, or made: at a physical office of a remittance transfer provider; on a Web site of a remittance transfer provider; or during a telephone call with the remittance transfer provider. For disclosures provided pursuant to § 205.33 for error resolution purposes, the relevant office is the office in which the sender first asserts the error, not the office where the transaction was conducted.

Section 205.32—Estimates

32(a) Temporary Exception for Insured Institutions

Paragraph 32(a)(1)—General

1. *For reasons beyond its control.* An insured institution cannot determine exact amounts "for reasons beyond its control" when:

i. The exchange rate required to be disclosed under § 205.31(b)(1)(iv) is set by a person with which the insured institution has no correspondent relationship after the insured institution sends the remittance transfer; or

ii. Fees required to be disclosed under § 205.31(b)(1)(vi) are imposed by intermediary institutions along the transmittal route and the insured institution has no correspondent relationship with those institutions.

2. *Examples of scenarios that qualify for the temporary exception.* The following examples illustrate when an insured institution cannot determine an exact amount "for reasons beyond its control" and, thus, would qualify for the temporary exception.

i. *Exchange rate.* An insured institution cannot determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) for an international wire transfer if the insured institution does not set the exchange rate, and the rate is instead later set by the designated recipient's institution with which the insured institution does not have a correspondent relationship. The insured institution will not know the date on which funds will be deposited into the recipient's account, and will not know the exchange rate that will be applied on that date.

ii. *Other fees.* An insured institution cannot determine the exact fees required to be disclosed under § 205.31(b)(1)(vi) if an intermediary institution or the designated recipient's institution, with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee.

iii. *Other taxes.* An insured institution cannot determine the exact taxes required to be disclosed under § 205.31(b)(1)(vi) if the insured institution cannot determine the applicable exchange rate or fees as described in i. and ii. above, and the recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees.

3. *Examples of scenarios that do not qualify for the temporary exception.* The following examples illustrate when an insured institution can determine exact amounts and, thus, would not qualify for the temporary exception.

i. *Exchange rate.* An insured institution can determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets.

ii. *Other fees.* An insured institution can determine the exact fees required to be disclosed under § 205.31(b)(1)(vi) if it has negotiated specific fees with a correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient's institution.

iii. *Other taxes.* An insured institution can determine the exact taxes required to be disclosed under § 205.31(b)(1)(vi) if:

A. The recipient country imposes a tax that is a percentage of the amount transferred to the designated recipient, less any other fees, and the insured institution can determine the exact amount of the applicable exchange rate and other fees; or

B. The recipient country imposes a tax that is a flat amount that is not tied to the amount transferred.

32(b) Permanent Exception for Transfers to Certain Countries

Paragraph 32(b)(1)

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

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

ii. Set when the designated recipient claims the funds.

2. *Examples illustrating application of the "laws of the recipient country" exception.*

i. The "laws of the recipient country" do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) when, for example, the government of the recipient country sets the exchange rate daily and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the "laws of the recipient country" permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) when, for example, the government of the recipient country pegs the value of its currency to the U.S. dollar.

Paragraph 32(b)(2)

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

2. *Examples of illustrating application of the "methods" exception.*

i. The "method by which transactions are made in the recipient country" does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 205.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 205.32(b)(2) "methods" exception if it sends a remittance transfer via international ACH on terms negotiated

between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 205.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the § 205.32(b)(2) "methods" exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank before the sender requests a transfer.

32(c) Bases for Estimates

Paragraph 32(c)(1)(i)

1. *Most recent exchange rate for qualifying international ACH transfers.* If the exchange rate for a remittance transfer sent via international ACH that qualifies for the § 205.32(b)(2) exception is set the following business day, the most recent exchange rate available for a transfer will be the exchange rate set for the day that the disclosure is provided, *i.e.* the current business day's exchange rate.

Paragraph 32(c)(1)(ii)

1. *Publicly available.* Examples of publicly available sources of information containing the most recent wholesale exchange rate for a currency include U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times, a recipient country's national news services, and a recipient country's central bank or other government agency.

Paragraph 32(c)(3)(ii)

1. *Potential transmittal routes.* A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under § 205.31(b)(1)(vi) pursuant to the § 205.32(a) temporary exception, an insured institution may rely upon the representations of the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

Paragraph 32(c)(4)

1. *Other taxes imposed in a recipient country that are a percentage.* Section 205.32(c)(4) sets forth the basis for providing an estimate of only those taxes imposed in a recipient country that are a percentage of the amount transferred to the designated recipient because a remittance transfer provider can determine the exact amount of other taxes, such as a flat tax.

Section 205.33—Procedures for Resolving Errors

33(a) Definition of Error

1. *Incorrect amount of currency sent.* Section 205.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total transaction amount, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under § 205.31(b)(2) or (b)(3). Such error may be asserted by a sender regardless of the form or method of payment tendered, including when a debit, credit, or prepaid card is used to fund the transfer and an excess amount is paid. For example, if a remittance transfer provider incorrectly charged a sender's credit card account for $150 to send $120 to the sender's relative in a foreign country, plus a transfer fee of $10, and the provider sent only $120, the sender could assert an error with the remittance transfer provider for the incorrect charge under § 205.33(a)(1)(i).

2. *Incorrect amount of currency received—coverage.* Section 205.33(a)(1)(iii) covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified on the disclosures provided to the sender, except where the disclosure stated an estimate of the amount of currency to be received in accordance with § 205.32. A designated recipient may receive an amount of currency that differs from the amount of currency disclosed, for example, if an exchange rate other than the disclosed rate is applied to the remittance transfer or if the provider fails to account for fees or taxes that may be imposed by the provider or a third party before the transfer is picked up by the designated recipient or deposited into the recipient's account in the foreign country. Section 205.33(a)(1)(iii) also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender.

3. *Incorrect amount of currency received—examples.* For purposes of the following examples illustrating the error for an incorrect amount of currency received under § 205.33(a)(1)(iii), assume that none of the circumstances permitting an estimate under § 205.32 apply (unless otherwise stated).

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender's payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate disclosed on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect additional foreign taxes that will be imposed in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed on the receipt, an error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed on the receipt, an error has occurred.

iv. A consumer requests to send US$250 to a relative in India to an U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US$200, resulting in a smaller deposit to the designated recipient's account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US$100 to a relative in Brazil to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to Brazilian law requiring that the exchange rate be set by the

Brazilian central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt. Because § 205.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under § 205.32(c).

4. *Failure to make funds available by stated date of availability—coverage.* Section 205.33(a)(1)(iv) generally covers disputes about the failure to make funds available in connection with a remittance transfer to a designated recipient by the stated date of availability. The following are examples of errors for failure to make funds available by the stated date of availability (assuming that neither of the exceptions in § 205.33(a)(1)(iv)(A) or (B) apply).

i. Late or non-delivery of a remittance transfer;

ii. Delivery of funds to the wrong account;

iii. The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient;

iv. The recipient agent or institution's retention of funds in connection with a remittance transfer, instead of making the funds available to the designated recipient.

5. *Extenuating circumstances.* Under § 205.33(a)(1)(iv)(A), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the stated date of availability is not an error if such failure was caused by circumstances beyond the provider's control. Examples of circumstances beyond a remittance transfer provider's control under § 205.33(a)(1)(iv)(A) include circumstances such as war or civil unrest, natural disaster, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or garnishment or attachment of funds after the transfer is sent.

6. *Incorrect information provided for transfer.* Under § 205.33(a)(1)(iv)(B), a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the stated date of availability is not an error if such failure occurred because the sender provided incorrect information in connection with the transfer, such as by erroneously identifying the designated recipient or the recipient's account number, provided that the remittance transfer provider also gives the sender the opportunity to correct the information and send the transfer at no additional cost. However, an error may be asserted under § 205.33(a)(1)(iv) if the failure to make funds available was caused by the provider's miscommunication of information necessary for the designated recipient to pick up the transfer. For example, an error under § 205.33(a)(1)(iv) could occur if the provider discloses the incorrect location where the transfer may be picked up or gives the wrong confirmation number/code for the transfer.

33(b) Notice of Error From Sender

1. *Person asserting or discovering error.* The error resolution procedures of this section apply only when a notice of error is received from the sender, and not when a notice of error is received from the designated recipient or when the remittance transfer provider itself discovers and corrects an error.

2. *Content of error notice.* The notice of error is effective so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the transfer.

3. *Address on notice of error.* A remittance transfer provider may request, or a sender may provide, the sender's or designated recipient's e-mail address, as applicable, instead of a physical address, on a notice of error if such e-mail address would be sufficient to enable the provider to identify the remittance transfer to which the notice applies.

4. *Effect of late notice.* A remittance transfer provider is not required to comply with the requirements of this section for any notice of error from a sender that is received by the provider more than 180 days from the stated date of availability of the remittance transfer to which the notice of error applies.

5. *Notice of error provided to agent.* A notice of error provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under § 205.33(b)(1)(i) when received by the agent.

6. *Consumer notice of error resolution rights.* Section 205.31 requires a remittance transfer provider to include an abbreviated notice of the consumer's error resolution rights on the receipt or combined notice given under § 205.31(b)(2) or (b)(3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the sender's error resolution rights that is substantially similar to the model error resolution and cancellation notice set forth in Appendix A of this part (Model Form A–36).

33(c) Time Limits and Extent of Investigation

1. *Notice to sender of finding of error.* If the remittance transfer provider determines during its investigation that an error occurred as described by the sender, the remittance provider may inform the sender of its findings either orally or in writing. However, if the provider determines that no error or a different error occurred, the provider must provide a written explanation of its findings under § 205.33(d)(1).

2. *Designation of requested remedy.* Under § 205.33(c)(2), the sender may choose to obtain a refund of the amount of funds that was not properly transmitted or delivered to the designated recipient or request redelivery of the amount appropriate to correct the error at no additional cost. Upon receiving the sender's request, the remittance transfer provider shall correct the error within one business day or as soon as reasonably practicable, applying the same currency rate and fees stated in the disclosure provided under § 205.31(b)(2) or (b)(3), if the sender requests delivery of the amount appropriate to correct the error. The remittance transfer provider may also request that the sender indicate the preferred remedy at the time the sender provides notice of the error. However, if the sender does not indicate the desired remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the report provided under § 205.33(c)(1) if the provider determines an error occurred.

3. *Remedies for incorrect amount paid.* If an error asserted under § 205.33(a)(1)(i) occurred as alleged by the sender, the sender may request a refund of the amount necessary to resolve the error from the remittance provider under § 205.33(c)(2)(i) or that the remittance transfer provider make that amount available to the designated recipient at no additional cost under § 205.33(c)(2)(ii).

4. *Correction of an error if funds not available by stated date.* If the remittance transfer provider determines an error occurred as asserted under § 205.33(a)(1)(iv), it must correct the error including refunding any fees

imposed for the transfer, whether the fee was imposed by the provider or a third party involved in sending the transfer, such as an intermediary bank involved in sending a wire transfer or the institution from which the funds are picked up.

5. *Charges for error resolution.* If an error occurred, whether as alleged or in a different amount or manner, the remittance transfer provider may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation).

6. *Correction without investigation.* A remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements of § 205.33.

33(d) Procedures if Remittance Transfer Provider Determines no Error or Different Error Occurred

1. *Error different from that alleged.* When a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, it must comply with the requirements of both §§ 205.33(c) and (d), as applicable. The provider may give the notice of correction and the explanation separately or in a combined form.

33(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The remittance transfer provider has no further error-resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. A sender who has withdrawn an allegation of error has the right to reassert the allegation unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The sender must do so, however, within the original 180-day period from the stated date of availability.

33(f) Relation to Other Laws

1. *Concurrent error obligations.* Section 205.33(f)(1) applies only when an error may be asserted under both §§ 205.11 and 205.33 with a financial institution that is also the remittance transfer provider. For example, if a sender asserts an error under § 205.11 with a remittance transfer provider that holds the sender's account, and the error is not also an error under § 205.33 (such as in the case of the omission of an EFT on a periodic statement), then the error-resolution provisions of § 205.11 exclusively apply to the error.

2. *Assertion of same error with multiple parties.* If a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), and subsequently asserts the same error with another party, that party has no further responsibilities to investigate the error because the sender has received sufficient credit to correct the error. For example, assume that a sender initially asserts an error with a remittance transfer provider with respect to a remittance transfer alleging that $130 was debited from his checking account, but the sender only requested a remittance transfer for $100, plus a $10 transfer fee. If the remittance transfer provider refunds $20 to the sender to correct the error, and the sender subsequently asserts the same error with his account-holding institution, the account-holding institution has no error resolution responsibilities under Regulation E because the consumer sender has already received sufficient credit to correct the error. In addition, nothing in this section prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if a consumer receives more than one credit to correct the same error. For example, assume that a sender concurrently files notice of error with his or her account-holding institution and remittance transfer provider for the same error, and the sender receives credit from the account-holding institution for the error within 45 days of the notice of error. If the remittance transfer provider subsequently provides a credit to the sender for the same error, the account-holding institution may reverse the amounts it had previously credited to the consumer's account even after the 45-day error resolution period under § 205.11.

33(g) Error Resolution Standards and Recordkeeping Requirements

1. *Record retention requirements.* Remittance transfer providers are subject to the record retention requirements under § 205.13, and must retain documentation, including documentation related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider. A remittance transfer provider need not maintain records of individual disclosures that it has provided to each sender; it need only retain records that ensure that it can comply with a sender's request for documentation or other information relating to a particular remittance transfer, including a request for supporting documentation to enable the sender to determine whether an error exists with respect to that transfer.

Section 205.34—Procedures for Cancellation and Refund of Remittance Transfers 34(a) Sender Right of Cancellation and Refund

1. *Content of cancellation request.* A request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the transfer. A remittance transfer provider may also request, or the sender may provide, the sender's e-mail address instead of a physical address, so long as the remittance transfer provider is able to identify the transfer to which the request to cancel applies.

2. *Consumer notice of cancellation right.* Section 205.31 requires a remittance transfer provider to include an abbreviated notice of the consumer's right to cancel a remittance transfer on the receipt or combined disclosure given under § 205.31(b)(2) or (b)(3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer that is substantially similar to the model error resolution and cancellation notice set forth in Appendix A of this part (Model Form A–36).

34(b) Time Limits and Refund Requirements

1. *Form of refund.* At its discretion, a remittance transfer provider may issue a refund in cash or in the same form of payment that was initially tendered by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the amount of the payment.

2. *Fees refunded.* If a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must refund all funds tendered by the sender in connection with the remittance transfer, including any fees that have been imposed for the transfer, whether the fee was assessed by the

provider or a third party, such as an intermediary institution or the receiving agent or bank.

Section 205.35—Acts of Agents

Alternative A

1. *General.* Remittance transfer providers must comply with the requirements of this subpart, including, but not limited to, providing the disclosures set forth in § 205.31 and providing any remedies as set forth in § 205.33, even if a remittance transfer provider performs its functions through an agent, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

Alternative B

1. *General.* Remittance transfer providers generally must comply with the requirements of this subpart, including, but not limited to, providing the disclosures set forth in § 205.31 and remedying any errors as set forth in § 205.33, even if a remittance transfer provider performs its functions through an agent, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

2. *Policies and procedures.* Under § 205.35(a), a remittance transfer provider that performs its functions through an agent must establish and maintain written policies and procedures for compliance with this subpart applicable to its agents. Maintenance of policies and procedures includes periodic review of and, as needed, updates to such policies and procedures. Appropriate oversight practices include, for example, regular audits, training, and other measures designed to ensure an agent's compliance with this subpart. Under these circumstances, a provider has not violated its obligations under Subpart B if its agent fails to follow the policies and procedures in an individual case, so long as the remittance transfer provider makes the consumer whole for any error resulting from an agent's acts, including as set forth under the error resolution provisions in § 205.33.◀

Appendix A—Model Disclosure Clauses and Forms

* * * * *

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions ►and remittance transfer providers◀ to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), [and] 205.18(c)(1) and (c)(2)►, and § 205.31(b)◀. The use of appropriate clauses in making disclosures will protect a financial institution ►and a remittance transfer provider◀ from liability under sections [915 and] 916 ►and 917◀ of the act provided the clauses accurately reflect the institution's EFT services ►and the provider's remittance transfer services, respectively◀.

* * * * *

►4. *Altering the model forms for remittance transfers.* This appendix contains twelve model forms for use in connection with remittance transfers. These model forms are intended to demonstrate several formats a remittance transfer provider may use to comply with the requirements of § 205.31(b). Model Forms A–30 through A–32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A–33 through A–35 demonstrate how a provider could provide the required disclosures for dollar-to-dollar remittance transfers. These forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of §§ 205.31(c)(1) and (2), in both a register receipt format and an 8.5 inch by 11 inch format. Model Form A–36 provides long-form model error resolution and cancellation disclosures required by § 205.31(d), and Model Form A–37 provides short-form model error resolution and cancellation disclosures required by § 205.31(b)(2)(iv). Model Forms A–38 through A–41 provide language for Spanish language disclosures.

i. The model forms contain information that is not required by Subpart B, such as a confirmation code and the sender's name and contact information. Additional information not required by Subpart B may be presented on the model forms as permitted by § 205.31(c)(4). Any additional information must be presented consistent with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of §§ 205.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A–30 to A–41.

iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information entered into the model forms intended to demonstrate how to complete the information in the model forms—such as names, addresses, and Web sites; dates; numbers; and state-specific contact information—with information applicable to the remittance transfer.

B. Eliminating disclosures that are not applicable to the transfer, as permitted under § 205.31(b).

C. Correcting or updating telephone numbers, mailing addresses, or Web site addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to "estimated" in close proximity to the specified terms in §§ 205.31(b)(1) and (b)(2), as permitted under § 205.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of § 205.31(g).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by § 205.31(c)(4).◀

By order of the Board of Governors of the Federal Reserve System, May 11, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–12019 Filed 5–20–11; 8:45 am]

BILLING CODE 6210–01–P