BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2012–0050]

RIN 3170–AA33

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend subpart B of Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation. The proposal would refine a final rule issued by the Bureau earlier in 2012 that implements section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The proposal addresses three narrow issues. First, the proposal would provide additional flexibility regarding the disclosure of foreign taxes, as well as fees imposed by a designated recipient's institution for receiving a remittance transfer in an account. Second, the proposal would limit a remittance transfer provider's obligation to disclose foreign taxes to those imposed by a country's central government. Third, the proposal would revise the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information, and, in particular, when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. The Bureau is also proposing to temporarily delay and extend the effective date of the rule.

DATES: Comments on the proposed temporary delay of the February 7, 2013 effective date of the rules published February 7, 2012 (77 FR 6194) and August 20, 2012 (77 FR 50244) must be received by January 15, 2013. Comments on the remainder of the proposal must be received by January 30, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0050 or RIN 3170–AA33, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Eric Goldberg or Lauren Weldon, Counsel, or Dana Miller, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Overview

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] amended the Electronic Fund Transfer Act (EFTA) [2] to create a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions sent by remittance transfer providers, section 1073 creates a new EFTA section 919, and generally requires: (i) The provision of disclosures prior to and at the time of payment by the sender for the transfer; (ii) cancellation and refund rights; (iii) the investigation and remedy of errors by providers; and (iv) liability standards for providers for the acts of their agents.

On February 7, 2012, the Bureau of Consumer Financial Protection (Bureau) published a final rule to implement section 1073 of the Dodd-Frank Act. 77 FR 6194 (February Final Rule).[3] On August 20, 2012, the Bureau published a supplemental rule adopting a safe harbor for determining which companies are not remittance transfer providers subject to the February Final Rule because they do not provide remittance transfers in the normal course of business, and modifying several aspects of the February Final Rule regarding remittance transfers that are scheduled before the date of transfer (August Final Rule, and collectively with the February Final Rule, the Final Rule). 77 FR 50244. The Final Rule has an effective date of February 7, 2013.

The Final Rule governs certain electronic transfers of funds sent by consumers in the United States to designated recipients in other countries and, for covered transactions, imposes a number of requirements on remittance transfer providers. In particular, the Final Rule implements EFTA sections 919(a)(2)(A) and (B), which require a provider to disclose, among other things, the amount to be received by the designated recipient in the currency to be received. The Final Rule requires a provider to provide a written pre-payment disclosure to a sender containing detailed information about the transfer requested by the sender, specifically including the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. In addition to the pre-payment disclosure, the provider also must provide a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information such as the date of availability of the funds, the designated recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Though the final rule permits providers to provide estimates in three narrow circumstances, the Final Rule generally requires that disclosures state the actual exchange rate that will apply to a remittance transfer and the actual amount that will be received by the designated recipient of a remittance transfer.

As noted above, the statute requires the disclosure of the amount to be received by the designated recipient. Because fees and taxes imposed on the remittance transfer by persons other than the provider can affect the amount received by the designated recipient, the Final Rule requires that remittance transfer providers take such fees and taxes into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii), and that such fees and taxes be disclosed under

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

[2] 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified in 15 U.S.C. 1693o–1.

[3] A technical correction to the February Final Rule was published on July 10, 2012. 77 FR 40459. For simplicity, that technical correction is incorporated into the term ''February Final Rule.''

§ 1005.31(b)(1)(vi). Comment 31(b)(1)–ii explains that a provider must disclose any fees and taxes imposed on the remittance transfer by a person other than the provider that specifically relate to the remittance transfer, including fees charged by a recipient institution or agent. Foreign taxes that must be disclosed include regional, provincial, state, or other local taxes, as well as taxes imposed by a country's central government.

In the February Final Rule, the Bureau recognized the challenges for remittance transfer providers in determining fees and taxes imposed by third parties, but believed that the statute specifically required providers to disclose the amount to be received and authorized estimates only in narrow circumstances. The Bureau also noted the significant consumer benefits afforded by these disclosures. The Bureau further stated its belief that it was necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to adopt § 1005.31(b)(1)(vi) to require the itemized disclosure of these fees and taxes in order to effectuate the purposes of the EFTA.

The Final Rule also implements EFTA sections 919(d) and (f), which direct the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies, as well as standards of liability for remittance transfer providers. The Final Rule thus defines in § 1005.33 what constitutes an error with respect to a remittance transfer, as well as the remedies when an error occurs. Of relevance to this proposal, the Final Rule provides that, subject to specified exceptions, an error includes the failure to make available to a designated recipient the amount of currency promised in the disclosure provided to the sender, as well as the failure to make funds available to a designated recipient by the date of availability stated in the disclosure. §§ 1005.33(a)(1)(iii) and (a)(1)(iv). Where the error is the result of the sender providing insufficient or incorrect information, § 1005.33(c)(2)(ii) specifies the two remedies available: The provider must either refund the funds provided by the sender in connection with the remittance transfer (or the amount appropriate to correct the error) or resend the transfer at no cost to the sender, except that the provider may collect third party fees imposed for resending the transfer. If the transfer is resent, comment 33(c)–2 explains that a request to resend is a request for a remittance transfer, and thus the provider must provide the disclosures required by § 1005.31. Under § 1005.33(c)(2), even if the provider cannot retrieve the funds once they are sent, the provider still must provide the stated remedies if an error occurred.

Consistent with the statute, the Final Rule applies to all remittance transfer providers, whether transfers are sent through closed network or open network systems, or some hybrid of the two. Generally, in closed networks, a principal provider offers a service through a network of agents or other partners that help collect funds in the United States and disburse the funds abroad. Through the provider's own contractual arrangements with those agents or other partners, or through the contractual relationships owned by the provider's business partner, the principal provider can exercise some control over the transfer from end-to-end. In general, closed networks can be used to send transfers that can be received in a variety of forms, but they are most frequently used to send transfers that are not received in accounts. In contrast, in an open network, no single provider has control over or relationships with all of the participants that may collect funds in the United States or disburse funds abroad. Under current practice, in open networks, there is generally no global practice of communications by intermediary and recipient institutions with originating entities regarding fees and exchange rates applied to transfers. Unlike closed networks, open networks are typically used to send funds to accounts. Though they are primarily used by depository institutions and credit unions, open networks also may be used by non-depository institutions.

In the February Final Rule, the Bureau stated that it would continue to monitor implementation of the new statutory and regulatory requirements. The Bureau has subsequently engaged in dialogue with both industry and consumer groups regarding implementation efforts and compliance concerns. Most frequently, and as discussed in more detail below in the Section-by-Section Analysis, industry has expressed concern about the costs and challenges to remittance transfer providers of: (1) The requirement to disclose certain fees imposed by recipient institutions on remittance transfers; (2) the requirement to disclose foreign taxes, including taxes charged by foreign regional, provincial, state, or other local governments; and (3) the inclusion as an error a failure to deliver a transfer where the error occurs because the sender provided an incorrect account number to the provider and funds are deposited into the wrong account.

With respect to both recipient institution fees and foreign taxes, industry has stated that, to determine the appropriate disclosure, remittance transfer providers may have to ask numerous questions of senders that senders may not understand, and to which both senders and providers may not reasonably be expected to know the answer. For example, industry has noted that certain recipient institution fees can vary based on the recipient's status with the institution (*i.e.,* a preferred customer status), the quantity of transfers received by the recipient, or other variables that neither the sender nor the provider are likely to know. Thus, industry has asserted that certain recipient institution fees and similar foreign taxes are impracticable to disclose under the Final Rule. Separately, industry has argued that it is exponentially more burdensome to research and disclose regional, provincial, state, and other local taxes (''subnational taxes'') than to research and disclose only those taxes imposed by a country's central government, and that there is little commensurate benefit to consumers gained by disclosure of subnational taxes.

Further, since the issuance of the February Final Rule, industry has expressed concerns about the remedies that apply with respect to errors that occur because the sender of a remittance transfer provided incorrect or insufficient information to the remittance transfer provider. Providers have stated that, while generally rare, in some cases when a sender provides an incorrect account number, the remittance transfer may be deposited into the wrong account and, despite reasonable efforts by the provider, cannot be recovered, thus requiring providers to bear the cost of the lost principal transfer amount. In addition, providers have expressed concern about the risks of fraudulent activity by senders attempting to take advantage of this part of the rule. With regard to cases in which there are errors, providers have also asked technical questions about how disclosures should be provided in certain circumstances where a sender designates a resend remedy when reporting an error, or never designates a remedy at all, particularly in situations where the provider is unable to make direct contact with the sender upon completing its investigation.

Concerns about recipient institution fees and remedies for account number errors stem in large part from the nature of the open networks used to transfer funds, as described above. However, while depository institutions and credit

unions that are remittance transfer providers are more likely to be affected by these concerns, other providers may also be impacted to the extent they offer the ability to transfer funds into a recipient's account abroad. For example, whereas providers that use closed networks to send remittance transfers typically are able to determine the fees imposed by paying agents that distribute funds in cash, originating providers (whether depository or non-depository) using open networks or other systems that deposit transfers into accounts generally cannot, under current practice, determine fees for receiving transfers imposed by institutions that provide accounts and assess fees pursuant to an agreement between the recipient institution and the recipient. In addition, the type of network used by the provider does not drive concerns about taxes, although the magnitude of the concern may be greater for providers that allow senders to send remittances to a broad range of geographic areas, which traditionally have included open network providers.

Upon further review and analysis, the Bureau believes it is appropriate to propose narrow adjustments to the Final Rule regarding these three issues. Due in part to the concerns expressed above, some remittance transfer providers and industry associations have indicated that some providers are considering exiting the market or reducing their offerings, such as by not sending transfers to corridors where tax or fee information is particularly difficult to obtain, or by limiting the size or type of transfers sent in order to reduce any risk associated with mis-deposited transfers. The Bureau is concerned that this would be detrimental to consumers, both in decreasing market competition and consumers' access to remittance transfer products. The Bureau believes that the proposed revisions may help to reduce or mitigate these risks. In each case, the Bureau believes that the proposed adjustments to the Final Rule would facilitate compliance, while maintaining the Final Rule's valuable new consumer protections and ensuring that these protections can be effectively delivered to consumers.

II. Summary of the Proposed Rule

The proposal would refine three narrow aspects of the Final Rule. First, the proposal would provide additional flexibility and guidance on how foreign taxes and recipient institution fees may be disclosed. If a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of foreign taxes imposed on the transfer, the proposal would continue to permit a provider to rely on a sender's representations regarding these variables. However, the proposal would separately permit providers to estimate by disclosing the highest possible foreign tax that could be imposed with respect to any unknown variable. Similarly, if a provider does not have specific knowledge regarding variables that affect the amount of fees imposed by a recipient's institution for receiving a remittance transfer in an account, the proposal would permit a provider to rely on a sender's representations regarding these variables. Separately, the proposal would also permit the provider to estimate by disclosing the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. If the provider cannot obtain such fee schedules or information from prior transfers, the proposal would allow a provider to rely on other reasonable sources of information.

Second, the Bureau proposes to exercise its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose foreign taxes at the regional, state, provincial or local level. Thus, under the proposal, a remittance transfer provider's disclosure obligation would be limited to foreign taxes imposed on the remittance transfer by a country's central government. Because the proposed changes regarding recipient institution fees and taxes, taken together, could mean that a provider could be making disclosures that are not exact, the proposal also solicits comment on whether the existing requirement in the Final Rule to state that a disclosure is ''Estimated'' when estimates are provided under § 1005.32 should be extended to scenarios where disclosures are not exact, to the extent permitted by the proposed revisions.

Third, the proposal also would revise the error resolution provisions that apply when a sender provides incorrect or insufficient information and, in particular, when a remittance transfer is not delivered to a designated recipient because the sender provided an incorrect account number to the remittance transfer provider and the incorrect account number results in the funds being deposited in the wrong account. Under the proposal, where the provider can demonstrate that the sender provided the incorrect account number and that the sender had notice that the sender could lose the transfer amount, the provider would be required to attempt to recover the funds but would not be liable for the funds if those efforts were unsuccessful. The Bureau also proposes to revise the existing remedy procedures in situations where a sender provides incorrect or insufficient information other than an incorrect account number to allow providers additional flexibility when resending funds at a new exchange rate. Under the proposed rule, providers would be able to provide oral, streamlined disclosures and need not treat the resend as an entirely new remittance transfer. The Bureau also proposes to make conforming revisions in light of the proposed revisions regarding recipient institution fees and foreign taxes.

Finally, the Bureau proposes to temporarily delay the effective date of the Final Rule. The Bureau further proposes to extend the Final Rule's effective date until 90 days after this proposal is finalized.

The Bureau solicits comment on all aspects of this proposal. In particular, the Bureau seeks for commenters to provide, in conjunction with any opinions expressed, specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts on both industry and consumers of either the Final Rule, this proposal, or alternatives suggested by the commenter. The Bureau emphasizes that the purpose of this rulemaking is to clarify and facilitate compliance with the Final Rule on these narrow issues, not to reconsider the general need for—or the extent of—the protections that the general rule affords consumers. The Bureau also believes the market would benefit from quicker resolution of these issues. Thus, commenters are encouraged to frame their submissions accordingly.

The proposed adjustments are intended to facilitate compliance in part due to concerns about the practicability of the Final Rule given market models and available information today. After any changes are finalized, and consistent with the Bureau's approach to the Final Rule, the Bureau will continue to monitor implementation efforts and market developments, including whether better information about recipient institution fees or foreign taxes becomes more available over time, whether communication mechanisms in open network systems improve, and whether there are developments in security and verification procedures and practices.

The Bureau expects to conduct a more comprehensive review of these issues and the status of the market over the next two years as it also evaluates whether to extend a temporary exception that permits insured institutions to estimate certain disclosures, as permitted by the Dodd-Frank Act.[4]

III. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of the EFTA and requires remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must give a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer, including the amount to be received by the designated recipient. The provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information. EFTA section 919(a).

In addition, EFTA section 919(d) provides for specific error resolution procedures and directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies. Except as described below, the proposed rule is proposed under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this **SUPPLEMENTARY INFORMATION.**

In addition to the Dodd-Frank Act's statutory mandates, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. As described in more detail below, § 1005.31(b)(1)(vi), 1005.32(b)(3) and (b)(4) are proposed pursuant to the Bureau's authority in EFTA section 904(c).

IV. Section-by-Section Analysis

Section 1005.31 Disclosures

EFTA sections 919(a)(2)(A) and (B) require a remittance transfer provider to disclose, among other things, the amount to be received by the designated recipient in the currency to be received. Because fees and taxes imposed on the remittance transfer by foreign institutions and governments can affect the amount ultimately received by the designated recipient, the Final Rule requires that providers take fees and taxes imposed by persons other than the provider into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii), and that such fees and taxes be separately disclosed under § 1005.31(b)(1)(vi).

Since the rule was finalized, industry has continued to express concern that, where a designated recipient's institution charges the recipient fees for receiving a transfer in an account, the remittance transfer provider would not reasonably know whether the recipient has agreed to pay such fees or how much the recipient has agreed to pay. Industry has also requested guidance on whether and how to disclose recipient institution fees that can vary based on the recipient's status with the institution, quantity of transfers received, or other variables that are not easily knowable by the sender or the provider.

Separately, industry has expressed concern about the disclosure of foreign taxes, in two respects. First, industry has argued that it is significantly more burdensome to research and disclose subnational taxes than foreign taxes imposed by a country's central government, with little commensurate benefit to consumers. Second, industry has suggested that the existing guidance on the disclosure of foreign taxes is insufficient where variables that influence the applicability of foreign taxes are not easily knowable by the sender or the provider.

With respect to both recipient institution fees and foreign taxes, industry has stated that, to determine the appropriate disclosure, remittance transfer providers may have to ask numerous questions of senders that senders may not understand; to which senders may not know the answer; and (with respect to fees) which may be unique to each recipient institution.

The Bureau has considered these concerns. Upon further review and analysis, the Bureau believes it is appropriate to provide additional flexibility and guidance on how fees and taxes imposed by a person other than the remittance transfer provider may be disclosed. The Bureau also believes it is appropriate to exercise its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose regional, provincial, state, and other local foreign taxes. Accordingly, the proposed rule would revise § 1005.31(b)(1)(vi) and the related commentary, and would add two new provisions to § 1005.32 (as discussed in more detail below). Given this additional flexibility, the proposed rule also would extend § 1005.31(d) to require providers to disclose to senders that amounts are estimated in these circumstances, and would make other conforming revisions to the Final Rule.

In each case, the Bureau believes that the proposed adjustments to the Final Rule would facilitate compliance, while maintaining the rule's valuable, new consumer protections and ensuring that they can be effectively delivered to consumers. Under the proposal, senders would continue to receive disclosures with important information about fees and taxes that may be imposed by the foreign country's central government. Although not quite as precise, this information is still useful to help consumers determine the minimum necessary to pay bills and to provide the intended funds to a recipient.

As noted above, the proposed adjustments to the required fee and tax disclosures are intended to facilitate compliance in part due to concerns about the practicability of the Final Rule. The Bureau solicits comment on whether additional guidance is necessary to address similar practical or operational questions as those described here. After any changes are finalized, and consistent with the Bureau's prior approach, the Bureau will continue to monitor implementation efforts and market developments, including whether better information about recipient institution fees or foreign taxes becomes more readily available over time.

31(b) Disclosure requirements

31(b)(1) Pre-Payment Disclosures

Comment 31(b)(1)–1 Fees and Taxes

Comment 31(b)(1)–1 provides guidance on the disclosure of all fees and taxes, both foreign and domestic. Comment 31(b)(1)–1.ii focuses more specifically on how to disclose fees and taxes imposed on the remittance transfer

[4] Pursuant to the statute, that temporary exception sunsets on July 21, 2015, but the Bureau may extend that date for no more than five years if the Bureau determines that termination of the exception would negatively affect the ability of depository institutions and credit unions to send remittances to locations in foreign countries.

by a person other than the remittance transfer provider. Specifically, the comment explains that fees and taxes imposed on the remittance transfer include only those fees and taxes that are charged to the sender or designated recipient and that are specifically related to the remittance transfer. Under this framework, a provider must disclose fees imposed on a remittance transfer by the receiving institution or agent at pick-up for receiving the remittance transfer, fees imposed on a remittance transfer by intermediary institutions in connection with an international wire transfer, and taxes imposed on a remittance transfer by a foreign country's central government. However, a provider need not disclose, for example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt, because these charges are not specifically related to the remittance transfer.

Since the issuance of the Final Rule, industry has requested guidance on whether and how to disclose various recipient institution fees, including those that can vary based on the recipient's status with the institution, the quantity of transfers received, or other variables that are unlikely to be known by the sender or the provider. As stated in existing comment 31(b)(1)–1.ii, fees that are specifically related to the remittance transfer must be disclosed, including fees that are imposed by a recipient's institution for receiving a wire transfer. For example, flat per-transfer incoming wire transfer fees must be disclosed, including flat fees that are tied to a particular transfer but charged at a later date (such as a ''November 4 wire'' fee that is not assessed until the end of the November billing cycle), as these fees are clearly linked to a particular remittance transfer.

While the proposal would generally provide further flexibility on how these fees may be determined, as discussed below with respect to proposed comment 31(b)(1)(vi)–4, the Bureau believes it would facilitate compliance to provide additional clarification in comment 31(b)(1)–1.ii on other types of recipient institution fees that are or are not specifically related to a remittance transfer. As the proposed guidance would significantly lengthen the existing comment, the proposal divides comment 31(b)(1)–1.ii into new subsections 31(b)(1)–1.ii through –1.v. The Bureau also proposes minor wording adjustments to ensure consistency with other comments in the Final Rule.

Proposed comment 31(b)(1)–1.iii first revises the reference to taxes imposed by a foreign government to taxes imposed by a foreign country's central government, to conform to the proposal to eliminate the requirement to disclose subnational taxes, discussed below. The proposed comment also builds on the guidance described above, and clarifies that account fees are not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Thus, where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance fee, that fee is not specifically related to a remittance transfer.

Proposed comment 31(b)(1)–1.iv then explains that a fee that specifically relates to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming wire fee on most customers' accounts, but not on preferred accounts, the Bureau believes such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, the Bureau believes such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month. In both situations, while additional variables may determine whether a fee is imposed or waived in a particular case, the fee itself is assessed specifically for receiving a particular transfer. In either case, the fee would be subject to disclosure under § 1005.31(b)(1)(vi), but as discussed below, § 1005.32(b)(4) would offer providers some flexibility in how to disclose the fee.

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

Section 1005.31(b)(1)(vi) contains the Final Rule's requirement to disclose any fees and taxes imposed on the remittance transfer by a person other than the remittance transfer provider, in the currency in which the funds will be received by the designated recipient. Specifically with respect to taxes, the Final Rule currently requires the disclosure of any applicable foreign taxes, including regional, provincial, state, or other local taxes as well as taxes imposed by a country's central government.

After further consideration, and for the reasons discussed below, the Bureau believes that it is appropriate to propose revising the Final Rule regarding foreign tax disclosures. The proposal would revise § 1005.31(b)(1)(vi) to state that only foreign taxes imposed by a country's central government on the remittance transfer need be disclosed. New proposed comment 31(b)(1)(vi)–3 would further clarify that regional, provincial, state, or other local foreign taxes need not be disclosed, although the provider could choose to disclose them.

Since the adoption of the Final Rule, the Bureau has continued to monitor the availability to remittance transfer providers of pertinent foreign tax information. The Bureau believes that, while significant efforts are likely to permit industry members in general to access reliable and current information on the relevant foreign taxes imposed by a country's central government, there does not appear to be a reasonable prospect that comparable resources will soon exist across the market to permit access to reliable and current information on foreign taxes imposed at the subnational level (including confirmation of the absence of such taxes in most jurisdictions). Industry has suggested that subnational taxes on remittance transfers are comparatively infrequent as compared with such taxes at the national level, and that when they do exist, the tax rates at the subnational level are typically lower. Moreover, the number of potential taxing jurisdictions is exponentially larger at the subnational level, and the Final Rule would imply compliance obligations to assess tax incidence and rates relating to all such subnational jurisdictions to which a provider sends remittance transfers.

The Bureau is concerned that if disclosure of foreign subnational taxes is required, a number of remittance transfer providers could exit the market or significantly reduce their offerings because of the current lack of ongoing reliable and complete information sources. The Bureau also believes that the loss of these market participants would be detrimental to consumers, in decreasing market competition and the convenient availability of remittance transfer services.

Accordingly, the Bureau believes the proposed elimination of the requirement to disclose subnational taxes is an exception that is necessary and proper under EFTA section 904(c) both to effectuate the purposes of the EFTA and to facilitate compliance. Under the proposed revision, remittance transfer providers would remain required to disclose only those foreign taxes imposed by a country's central

government. The Bureau believes the revision would mitigate the compliance cost imposed on providers, and potentially passed on to their customers, that may be associated with the required disclosure of subnational tax information. Particularly if there is a comparatively infrequent incidence and lesser amount of subnational taxes, the Bureau believes that elimination of the compliance costs associated with subnational tax disclosures and the reduced risk of market departures (or other limitations) owing to such compliance costs would effectuate the purposes of the statute and facilitate compliance.

While the revised § 1005.31(b)(1)(vi) would provide that only the amount of foreign taxes imposed by a country's central government on the remittance transfer needs to be disclosed, a remittance transfer provider would remain free to disclose an amount that includes subnational taxes of which it is aware.

The Bureau seeks comment on whether limiting the required disclosures of foreign taxes to taxes imposed by a country's central government strikes the appropriate balance between easing compliance burden and protecting consumers, or whether there are circumstances in which a provider should be required to disclose additional foreign tax information. In particular, the Bureau seeks comment on whether resources have developed or are developing (and if so, how quickly) for remittance transfer providers to obtain reliable foreign subnational tax rate information. The Bureau also seeks comment on the practical significance to consumers if remittance service providers are not required to disclose such information under the rule, including any information on the incidence and magnitude of foreign subnational taxes, particularly in countries that receive substantial flows of remittance transfers.

Comment 31(b)(1)(vi)–2

Comment 31(b)(1)(vi)–2 of the Final Rule provides guidance on how to determine taxes for purposes of the disclosure required by § 1005.31(b)(1)(vi). In particular, the existing comment states that if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables. Further, the comment states that if a sender does not know the information relating to the variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed for the remittance transfer with respect to any unknown variable. The Bureau adopted this comment in the Final Rule in response to industry comments that taxes can vary depending on a number of variables, such as the tax status of the sender or recipient, or the type of accounts or financial institutions involved in the transfer. In adopting comment 31(b)(1)(vi)–2, the Bureau stated its belief that it is necessary to provide a reasonable mechanism by which the provider may disclose the foreign tax where information may not be known by the sender or the provider.

As discussed in more detail below, the Bureau is proposing to provide additional flexibility regarding the determination of foreign taxes where applicability may be impacted by certain variables in a new § 1005.32(b)(3). Accordingly, the Bureau is proposing to delete portions of the guidance in existing comment 31(b)(1)(vi)–2 as being superseded by the new proposed provision and related guidance.

Comment 31(b)(1)(vi)–2 would continue to state that if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables. The Bureau believes providers should continue to be permitted to rely on senders' representations regarding variables that affect foreign taxes, because providers should be permitted to take senders' representations as true, and because such representations could result in a more accurate approximation of the applicable taxes. Accordingly, as discussed below regarding the error resolution requirements in proposed § 1005.33(a)(2)(iv) and comment 33(a)(2)(iv)–9, to the extent a provider relies on a sender's representations in this manner, any resulting discrepancy between the amount disclosed and the amount actually received would not constitute an error. Thus, for example, it would not be an error if reliance on a sender's representations results in a disclosed foreign tax amount that is less than what is actually imposed on the transfer. As discussed below, the proposed revisions would provide the same result with regard to situations in which providers rely on a sender's representations regarding possible recipient institution fees in accordance with proposed comment 31(b)(1)(vi)–4.

Comment 31(b)(1)(vi)–3

New proposed comment 31(b)(1)(vi)–3 is described above in the discussion of the proposed revisions to § 1005.31(b)(1)(vi) concerning disclosure of foreign taxes imposed by a country's central government.

Comment 31(b)(1)(vi)–4

While the Final Rule provided guidance in comment 31(b)(1)(vi)–2 on how to determine foreign taxes where variables could affect the amount to be disclosed, the rule did not provide guidance with respect to variables that could affect the fees imposed on the designated recipient by the recipient's institution for receiving the transfer in an account. For the reasons discussed below, the Bureau is proposing to provide additional flexibility in a new proposed § 1005.32(b)(4) regarding the determination of such fees.

In addition, the Bureau believes it is appropriate to provide similar guidance regarding reliance on a sender's representations with respect to recipient institution fees, as exists addressing foreign taxes. New proposed comment 31(b)(1)(vi)–4 is structured similarly to proposed comment 31(b)(1)(vi)–2. The proposed comment explains that in some cases, where a remittance transfer is sent to a designated recipient at an account at a financial institution, the institution imposes a fee on the remittance transfer pursuant to an agreement with the recipient. The amount of the fee imposed by the institution may vary based on whether the designated recipient holds a preferred status account with a financial institution, the quantity of transfers received, or other variables. In this scenario, if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by the recipient's institution for receiving a transfer in an account, the proposed comment would allow the provider to rely on a sender's representations regarding these variables.

§ 1005.31(d) Estimates

Under the Final Rule, remittance transfer providers generally must disclose exact amounts, except under the limited circumstances permitted by § 1005.32. Therefore, under § 1005.31(d) of the Final Rule, where providers estimate disclosures under § 1005.32, the estimated disclosure must be described using the term ''Estimated'' or a substantially similar term, which appears in close proximity to the disclosure.

Due to the proposed revisions to § 1005.31(b)(1)(vi) and the related

commentary concerning subnational foreign taxes, as described above, remittance transfer providers would be permitted to disclose as the total amount of transfer pursuant to § 1005.31(b)(1)(vii) an amount that would not match the amount actually received by the designated recipient. Thus, the Bureau proposes amending § 1005.31(d) to require that a provider also use the term ''Estimated'' on disclosure forms if it is not disclosing regional, provincial, state, or local foreign taxes, as permitted by § 1005.31(b)(1)(vi). As § 1005.31(d) already references § 1005.32, the same requirement would apply to proposed §§ 1005.32(b)(3) and (b)(4), discussed below, which would provide further flexibility for determining foreign taxes and recipient institution fees. The proposal would make conforming revisions to comment 31(d)–1.

The proposed comment would further explain that, if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of fees disclosed under § 1005.31(b)(1)(vi), and is not otherwise providing estimated disclosures, § 1005.31(d) does not apply and therefore no ''Estimated'' label is required. The Bureau believes that providers that rely on sender's representations regarding variables should be able to take the information provided as representations that lead to exact disclosures, even if the representations later turn out to be incorrect. For similar reasons, the proposed comment also explains that § 1005.31(d) does not apply to foreign tax disclosures if the provider discloses all applicable taxes (including applicable regional, provincial, state, or other local foreign taxes), if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of foreign taxes imposed by a country's central government, and if the provider is not otherwise providing estimated disclosures.

The Bureau believes that the use of the term ''Estimated,'' either when subnational taxes are not disclosed or when foreign tax and recipient institution fee estimates are provided in accordance with proposed §§ 1005.32(b)(3) and (b)(4), would provide sufficient disclosure to the sender to warn that disclosed amounts may not be precise, without requiring substantial changes to the disclosure form that could delay implementation of the statutory scheme. Further, the Bureau anticipates that compared to other mechanisms for giving senders notice, this proposed mechanism for alerting senders that amounts received may not be exact will minimize the systems changes that could be required, because the Final Rule already sets forth circumstances in which the term ''Estimated'' (or a substantially similar term) must be used.

At the same time, the Bureau is concerned that, particularly where subnational taxes are not disclosed, senders may receive disclosures that use the term ''Estimated'' the vast majority of the time, which could impair their ability to compare disclosures among remittance transfer providers, and could have an adverse impact on the exercise of error resolution rights. An alternative approach would be to require that a more specific statement be added to the disclosure to note, for instance, that ''Additional taxes by regional or local governments may apply'' rather than to require use of the ''Estimated'' label for every case in which a provider has decided not to disclose any subnational taxes. However, it is unclear whether such a disclosure would substantially benefit consumers over the simpler label, whether it would be understandable to consumers, and how much additional time and expense would be required for providers to modify their forms in this way.

Thus, the Bureau solicits comment on whether remittance transfer providers should be required to indicate those circumstances in which subnational taxes are not disclosed or in which fees and taxes are estimated in accordance with proposed § 1005.32(b)(3) or (4) with an ''Estimated'' label, and in particular, whether such labeling should be required in circumstances where amounts disclosed would be exact, but for the non-disclosure of foreign subnational taxes. To the extent foreign subnational taxes apply less frequently than foreign taxes imposed by a central government, or if such taxes tend to be lower than taxes imposed by central governments in the same country, the Bureau seeks comment on whether disclosures may be clearer without much detriment to accuracy if providers do not use the term ''Estimated.'' The Bureau solicits comment on the extent to which either circumstance is true, and also solicits comment on alternative disclosures that could be provided, and on the time and expense to implement either the ''Estimated'' label or a more detailed disclosure.

Section 1005.32 Estimates

31(b) Permanent Exceptions

32(b)(3) Permanent Exception Where Variables Affect Taxes Imposed by a Person Other Than the Provider

For the reasons described above, comment 31(b)(1)(vi)–2 of the Final Rule provides guidance on how to determine taxes for purposes of the disclosure required by § 1005.31(b)(1)(vi). Industry has requested further guidance on how to disclose foreign taxes where variables that influence the applicability of taxes are not easily knowable by the sender or the remittance transfer provider. Industry has expressed concern that under the current guidance, to determine the appropriate disclosure, providers may have to ask numerous questions of senders that senders may not understand, and to which senders may not know the answer.

The Bureau agrees that there may be certain variables that a sender and a remittance transfer provider may not reasonably be expected to know, and that further guidance is appropriate. The Bureau believes that providing an additional mechanism for disclosing foreign taxes will facilitate compliance with the rule. Thus, the Bureau believes it is appropriate to exercise its exception authority under section 904(c) of the EFTA to propose a new permanent exception in § 1005.32(b)(3). Proposed § 1005.32(b)(3) states that, for purposes of determining the taxes to be disclosed under § 1005.31(b)(1)(vi), if a provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable.

Proposed comment 32(b)(3)–1 clarifies the exception. The proposed comment explains that the amount of taxes imposed by a person other than the provider may depend on certain variables. Under proposed § 1005.32(b)(3), a provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable. For example, if a tax may vary based upon whether a recipient's institution is grandfathered under existing law, or whether the recipient has reached a transaction threshold above which taxes are assessed, the provider may simply assume that the tax applies without having to ask the sender first. In such a case, the proposed comment explains that the provider should disclose the

highest possible tax that could be imposed. If the provider expects that variations may result from differing interpretations of law or regulation by the paying agent or recipient institution, the provider may assume that the highest possible tax that could be imposed applies.

The Bureau believes that permitting remittance transfer providers to make assumptions about variables as a distinct alternative to asking senders for information (as discussed in comment 31(b)(1)(vi)–2) would provide additional flexibility and would resolve concerns about senders not understanding or knowing the answer to questions about the variables. Permitting providers to disclose the highest possible tax that could be imposed also would allow providers to make assumptions about variables that providers themselves do not know, such as those discussed in the proposed examples. As a result, the Bureau believes that proposed § 1005.32(b)(3) would provide a more practicable mechanism for disclosing foreign taxes than current comment 31(b)(1)(vi)–2, discussed above.

Even with these proposed changes, senders would continue to receive tax disclosures. The Bureau believes it is appropriate to continue to focus the guidance on providing the highest possible tax that could be imposed, so that the sender is not surprised by a deduction for taxes that is larger than the amount disclosed (except in cases in which taxes other than those imposed by central governments may apply).[5] As stated in the February Final Rule, the Bureau believes that tax information is useful to consumers who are trying to make sure that they send enough money, *e.g.,* to assist a family member or pay a bill. The Bureau believes that the proposed revisions would preserve the intent and valuable consumer benefits of the statute while balancing the need to provide a reasonable disclosure mechanism.

In addition to factual questions regarding variables, industry has also expressed concern about remittance transfer providers' ability to determine the applicable foreign tax given variations in the application of foreign tax requirements. For example, industry has suggested that foreign payout agents or recipient institutions may interpret and apply foreign tax requirements differently from one another, which may result in some uncertainty around whether a tax will be assessed, and if so, what precisely it will be. Thus, proposed comment 32(b)(3)–1 states that if the provider expects that variations may result from differing interpretations of law or regulation by the paying agent or recipient institution, the provider may assume that the highest possible tax that could be imposed applies. Under this proposed revision, providers would continue to be responsible for researching and identifying applicable foreign tax laws assessed by a country's central government. However, the proposed revision would provide flexibility by allowing providers to disclose the highest amount revealed by their research.

Under the Final Rule and this proposal, providers generally must provide accurate tax information. While the Bureau expects that changes in foreign tax law are generally announced in advance of their effective date, thus affording providers time to update their disclosures, the Bureau is concerned that this may not always be the case. The Bureau therefore requests comment on whether the Final Rule should be revised to incorporate a grace period for implementing changes in foreign tax law, and if so, how long.

32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees

As noted above, the Final Rule did not provide guidance on how to determine fees imposed by the designated recipient's institution for receiving the transfer in an account. As with foreign taxes, industry has expressed concern that in some cases, a remittance transfer provider would not know whether the recipient has agreed to pay such fees or how much the recipient may have agreed to pay. Industry has also requested clarification on whether and how to disclose recipient institution fees that can vary based on the recipient's status with the institution, the quantity of transfers received, or other variables that are not easily knowable by the sender or the provider. Without further guidance and flexibility, industry has argued that the requirement to disclose recipient institution fees is impracticable, which could drive providers to exit the market or significantly reduce their offerings.

The Bureau acknowledges these concerns and agrees that, for recipient institution fees that are specifically related to a remittance transfer and therefore required to be disclosed, additional flexibility in determining how to disclose these fees would facilitate compliance with the rule without significantly undermining its benefits. Accordingly, the Bureau believes it is appropriate to exercise its exception authority under section 904(c) of the EFTA to propose a new § 1005.32(b)(4). Proposed § 1005.32(b)(4)(i) would state that, for purposes of determining the fees to be disclosed under § 1005.31(b)(1)(vi), if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account, the provider may disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. Proposed comment 32(b)(4)–1 explains proposed § 1005.32(b)(4)(i) and adds as an example that if a provider relies on an institution's fee schedules, and the institution offers three accounts with different incoming wire fees, the provider should take the highest fee and use that as the basis for disclosure.

Proposed § 1005.32(b)(4)(ii) states that, if the provider cannot obtain such fee schedules or does not have such information, a provider may rely on other reasonable sources of information, if the provider discloses the highest fees identified through the relied-upon source. Proposed comment 32(b)(4)–2 states that reasonable sources of information include: Fee schedules published by competitor institutions; surveys of financial institution fees; or information provided by the recipient institution's regulator or central bank.

Proposed § 1005.32(b)(4) would only address fees for receiving transfers in an account that are based on an agreement between the recipient institution and the recipient. Currently, determination of these fees by originating providers (whether depository or non-depository) is particularly difficult or impracticable due to the nature of open networks. In contrast, providers using closed networks can generally exercise some control over transfers from end-to-end and are often not making transfers into accounts, making determination of fees assessed by payout agents more practicable.

The proposed mechanism for determining these fees differs from the mechanism in proposed § 1005.32(b)(3) for determining foreign taxes in recognition of the fact that, while identifying applicable foreign taxes presents challenges, these taxes are based on laws or regulations that are generally publicly available in some form, even if information may be

[5] To the extent that subnational taxes are not applicable, then the disclosure of foreign taxes would be complete.

difficult to ascertain in some instances. In contrast, the Bureau understands that foreign institutions may be prohibited by law from sharing, or unwilling to share, specific accountholder fee information. Further, it may be impracticable to obtain a fee schedule for every recipient, or to contact institutions in real time. Thus, the Bureau believes that proposed § 1005.32(b)(4) will provide a more practicable mechanism for disclosing recipient institution fees.

The Bureau further believes that a recipient institution's fee schedule, and information ascertained from prior transfers to the same recipient institution, are likely the best resources for estimating the fees that would be applicable to a remittance transfer, and thus providers should rely upon those sources, if available. However, in some cases, foreign institutions may not be willing to share institution-level fee schedules, or such schedules may not be easily obtainable. Accordingly, the proposed rule provides for alternative reasonable sources of information upon which providers can rely.

The Bureau acknowledges that permitting providers to base disclosures on sources other than institution-specific sources may result in a provider disclosing fees that underestimate those charged by an individual recipient institution. Nonetheless, the Bureau believes that the sources of information set out in the proposed comment should result in a reasonable approximation of the amount of fees that could be assessed, and provide the sender sufficient information about the amount to be received. For example, competitor institutions likely charge fees within a similar range as the recipient institution, and thus their fee schedules may provide an indication as to market practice. Further, the Bureau believes that the flexibility provided by the proposed rule and related comment should encourage providers to remain in the market. The Bureau solicits comment on whether the sources of information set forth in proposed § 1005.32(b)(4) and proposed comment 32(b)(4)–1 should be included, and whether additional reasonable sources of information should be added. In any case, for similar reasons, as discussed above with respect to proposed § 1005.32(b)(3), the Bureau believes that it is appropriate to focus the guidance on providing the highest possible fees that could be imposed.

As proposed, the sources of information set forth in proposed § 1005.32(b)(4) and the related commentary are not time-limited. The Bureau believes that reliance on the most updated source would provide the sender with the best information. However, the Bureau is concerned that imposing a duty to update relied-upon sources on a frequent basis could become unduly burdensome, particularly as providers are working to implement the rule, and because resources collecting this information have not yet fully developed or become widely available to providers. The Bureau solicits comment on whether reasonable sources of information should be time-limited. For example, should the rule require relied-upon fee schedules to have been published or confirmed as valid within the last year?

Even if proposed § 1005.32(b)(4) is adopted, senders will continue to receive fee disclosures. Some remittance transfer providers have suggested that the Bureau exercise its exception authority under the EFTA to eliminate the requirement to disclose recipient institution fees mandated by the statute. As stated in the February Final Rule, the Bureau believes that this fee information provides valuable consumer benefits by ensuring that senders are aware of the impact of back-end fees, including knowing whether the amount received will be sufficient to pay important expenses. These disclosures also provide senders with greater transparency regarding the costs of remittance transfers, and assist senders in comparing costs among providers, for example, where such fees may impact a sender's decision whether to send funds for cash pick-up or to an account, or where a recipient may have accounts at different institutions and the sender is deciding to which account to send funds.

Further, eliminating the requirement to disclose recipient institution fees would create inconsistency between the disclosures provided for transfers where fees are imposed by a designated recipient's institution for receiving a transfer in an account, and those provided for other types of transfers, such as where fees are charged by paying agents, regarding which the Bureau does not think it is appropriate to adjust the requirement under the Final Rule. Notably, during the Federal Reserve Board's consumer testing on remittances, consumer participants cited unexpected third-party fees as a source of concern.[6] Therefore, the Bureau does not believe that it is appropriate to exercise its exception authority to eliminate the disclosure of recipient institution fees altogether. The Bureau believes that the proposed revisions would preserve the intent and consumer benefits of the statute while balancing the need to provide a reasonable mechanism for determining applicable fees.

Section 1005.33 Procedures for Resolving Errors

EFTA section 919(d) provides that remittance transfer providers shall investigate and resolve errors where a sender provides a notice of an error within 180 days of the promised date of delivery of a remittance transfer. The statute generally does not define what types of transfers and inquiries constitute errors, but rather gives the Bureau the authority to define ''error'' and to prescribe standards for the error resolution process. In the Final Rule, the Bureau adopted § 1005.33 to implement new error resolution requirements for remittance transfers.

Since the issuance of the Final Rule, industry has expressed concerns about the remedies available when a sender of a remittance transfer provides an incorrect account number to the remittance transfer provider. Providers have stated that in some cases, a remittance transfer may be deposited into the wrong account and, despite reasonable efforts, cannot be recovered. Under the Final Rule, a provider is obligated to resend or refund the total amount of the remittance transfer regardless of whether it can recover the funds. Industry has noted that this problem is of particular concern with respect to transfers of large sums, particularly for smaller institutions that might have more difficulty bearing the cost of the entire transfer amount. In addition, providers have expressed concern that the Final Rule creates a potential for fraud, despite an exception in the Final Rule for fraud. *See* § 1005.33(a)(1)(iv)(C). Due to these and other concerns, discussed in detail below, the Bureau is proposing to amend § 1005.33 and the accompanying commentary.

The Bureau is also proposing several other changes to the error resolution procedures in § 1005.33 to address questions about how remittance transfer providers should provide remedies to senders under the Final Rule's error resolution provisions, and to streamline providers' provision of remedies. In addition, the Bureau is proposing conforming changes to the error resolution procedures in light of proposed revisions regarding the disclosure of foreign taxes and recipient

[6] ICF Macro International, Inc., *Summary of Findings: Design and Testing of Remittance Disclosures,* at iv (Apr. 2011), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512_ICF_Report_Remittance_Disclosures_(FINAL).pdf.*

institution fees, and to make several technical, non-substantive changes.

33(a) Definition of Error

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

Section 1005.33(a)(1) lists the type of transfers or inquiries that constitute ''errors'' under the Final Rule. The types of errors relevant to this proposal are discussed in detail below.

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

The Bureau proposes to revise comment 33(a)–4 to make technical corrections to the comment. Comment 33(a)–4, which addresses the extraordinary circumstances exception to the error defined in § 1005.33(a)(1)(iii), improperly cites to § 1005.33(a)(1)(iv) instead of § 1005.33(a)(1)(iii)(B). The proposed revisions to comment 33(a)–4 correct this error and a related error regarding the description of the exception.

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

Section 1005.33(a)(1)(iv) defines ''error'' to include a remittance transfer provider's failure to make funds available to the designated recipient by the date of availability stated on the receipt or combined disclosure, subject to three listed exceptions, including an exception for remittance transfers made with fraudulent intent by the sender or any person acting in concert with the sender. *See* § 1005.33(a)(1)(iv)(C). Comment 33(a)–5 explains the scope of the error in § 1005.33(a)(1)(iv) and notes that the error includes, among other things, the late delivery of funds, the total non-delivery of a remittance transfer, and the delivery of funds to the wrong account. *See* comments 33(a)–5.i and .ii.

Although several industry commenters had objected that remittance transfer providers should not have to bear the cost of mistakes caused by parties outside the provider's control, the Bureau noted in the February Final Rule that a number of other federal consumer financial protection regimes require financial service providers to investigate and correct errors for which they may not be at fault. The Bureau also noted that providers are generally in a better position than consumers to identify errors and to seek recovery from downstream institutions. Furthermore, the Bureau noted that placing responsibility on providers to resolve errors strengthens their incentives to develop policies, procedures, and controls to reduce and minimize errors in the first instance and similarly to work with downstream institutions and business partners to improve controls and to develop contractual solutions to address errors.

In particular, however, with regard to situations in which the sender provides incorrect or insufficient information, the Bureau acknowledged that there were unique equities. Specifically, the Bureau concluded that it was important that error resolution procedures apply to such cases, but also agreed with commenters that a sender's mistake should not obligate a remittance transfer provider to bear all of the costs for resending a transfer, including the principal transfer amount. Accordingly, the Final Rule sets forth special remedy provisions that allow providers to collect third-party fees a second time when resending a remittance transfer that had previously not been delivered due to incorrect or insufficient information provided by the sender.

The Final Rule does not differentiate, however, between those situations where the sender's mistake regarding the account number results in a deposit to the wrong account and those situations in which the remittance transfer simply does not go through. In the former situation, where the transfer results in a deposit into the wrong account, if a remittance transfer provider is unable to recover the money from the account after working with the recipient institution, the Final Rule requires that the provider, at its own expense, resend or refund the funds, depending on which remedy was selected by the sender. The Bureau noted that situations in which funds cannot be recovered after a deposit to the wrong account appear to be quite rare, and explained that it believed that the approach adopted with respect to errors by senders would encourage providers and other involved parties to develop security procedures to limit further the risk of funds being deposited in an account when the designated recipient named in the receipt does not match the name associated with the account number. In addition, the Bureau expected that the exception for transfers made with fraudulent intent by the sender or those working in concert with the sender in § 1005.33(a)(1)(iv)(C) of the Final Rule would address industry's concerns about the risk of fraud created by the error rules.

Nevertheless, upon further analysis, and for the reasons discussed below, the Bureau is proposing to revise the definition of error in § 1005.33(a)(1)(iv) by adding a fourth, conditional exception. Proposed § 1005.33(a)(1)(iv)(D) would exclude from the definition of error a failure to make funds available to the designated recipient by the disclosed date of availability, where such failure results from the sender having given the remittance transfer provider an incorrect account number, provided that the provider meets the conditions set forth in proposed § 1005.33(h). These conditions, discussed in detail below, would require providers to notify senders of the risk that their funds could be lost, to investigate reported errors, and to attempt to recover funds that are deposited in the wrong account. However, if the proposed exception applies, providers would not be required to bear the cost of refunding or resending transfers if funds ultimately could not be recovered.

Since the Bureau published the February Final Rule, it has monitored industry's efforts towards implementing the rule. Industry has elaborated on its concerns expressed during the initial comment period that the systems used to send remittance transfers to foreign accounts do not allow remittance transfer providers to verify designated recipients' account numbers before remittance transfers are sent. More generally, many providers have also reported that they have not yet developed security procedures that enable them to be able to confirm the accuracy of account numbers provided by senders before sending a transfer.

Remittance transfer providers have explained that they send remittance transfers to accounts through a number of different systems. In many of these systems, intermediary and receiving institutions are permitted to rely on the account number provided by the sender of the remittance transfer to route the transfer. In using these systems, providers, as well as intermediary and recipient institutions, often do not cross-check account numbers with the name of the accountholder or other identifier in the remittance transfer to confirm that they match before transmitting or crediting the transfer to an account. Furthermore, providers and intermediary institutions' systems are designed to allow straight-through processing, whereby they process incoming transfers using automated systems that rely on account numbers and not the name of the recipient. Even where straight-through processing is not used, it may be common for providers and intermediary and recipient institutions to rely, as a matter of practice, on account numbers because it may be challenging for a foreign institution to verify a name on a payment order from the United States due to spelling and language variances,

truncation of long names, and other systems limitations.

The Bureau, therefore, believes that the proposed changes will more closely match existing practice. To the extent remittance transfer providers' existing methods for sending transfers do not allow or facilitate verification of account numbers before sending the remittance transfer, the Bureau is aware that individual providers, particularly smaller providers, sending transfers through an open network have limited ability to influence these global systems in the short term. The Bureau continues to believe it is important for industry to develop improved security procedures and expects to engage in a dialogue with industry about how to encourage the growth of improved controls and communication mechanisms, but the Bureau understands that such changes are unlikely to be implemented in the near future. The Bureau believes an interim disruption would not be in consumers' best interests and will instead continue to evaluate the development of procedures as it monitors providers' implementation of the rule.

Where there is a deposit into the wrong account, the Bureau believes that many, if not most, remittance transfer providers already attempt to recover the principal amount of the transfer. However, because providers have reported that they often do not have direct relationships with receiving institutions and that in some instances those institutions may be unresponsive, providers may face difficulties in recovering funds from the wrong account. The Bureau believes that, in many instances, to reverse these transactions requires the accountholder to authorize a debit from the account and, thus, the lack of this authority may prohibit a recipient institution from debiting the account in the amount of the incorrect deposit absent an authorization. Relatedly, a provider in the United States may be able to do little to assist the foreign institution in its attempt to persuade its accountholder to provide debit authorization due to the lack of privity between the provider and the recipient institution or the accountholder.

In addition to these concerns, the Bureau also believes that the proposed changes will adhere more closely state law as it existed prior to EFTA § 919. In particular, Uniform Commercial Code (UCC) Article 4A covers the transfer of money between banks, including transfers by banks on behalf of customers, and into institutions have incorporated many of its provisions into existing policies and disclosures to customers.[7] UCC 4A–207 generally addresses those circumstances where a supplied account number refers to an incorrect account; that is, the account number identifies an account that differs from the named designated recipient's account. Under UCC 4A–207, when a sender provides an incorrect account number and funds are transmitted to an incorrect account and cannot be recovered, it is the sender—not the bank—that can lose the transfer amount if the bank has met certain conditions. While the UCC is a U.S. state law regime, industry has stated that many foreign countries' laws and/or banking agreements also contain analogous rules.

Remittance transfer providers have also stated that the Final Rule's fraud exception in § 1005.33(a)(1)(iv)(C) is difficult to apply in practice because, due to their limited ability to know what occurs at a recipient's institution, a provider may have difficulty determining whether the holder of an account into which a transfer was mis-deposited is attempting to commit a fraud, including by working in concert with the sender. Although providers do not believe such fraud is widespread today, they have expressed concerns that the Final Rule will enable fraudulent activity to flourish because providers may have to send the transfer amount again without first recovering it from the foreign institution, which is a departure from current practice.

To the extent remittance transfer providers believe they can neither verify account numbers nor prevent fraud, many have indicated that they may limit which of their customers can send remittance transfers and/or the value of those transfers or even withdraw from the market altogether. Absent such limitations (or even despite them), some providers have indicated to the Bureau that they may have difficulties managing the risk posed by this part of the Final Rule. Particularly for smaller institutions, the impact of even one large transaction where the provider would have to resend or refund funds it did not recover, could be substantial.

That said, the Bureau does harbor some doubts about the extent of the fraud risk posed by the Final Rule. To be successful, a sender with fraudulent intent would first need to supply funds for the initial transfer and then report an error. If the provider claimed that the sender acted with fraudulent intent, the fraudulent sender would need to pursue his or her claim in court, something the Bureau believes many criminals are unlikely to do.

Additionally, the Bureau believes that deposits into the wrong account resulting from a sender's error that cannot be recovered occur relatively infrequently today, largely due to three factors. First, remittance transfer providers typically take steps to ensure that senders carefully enter and review account numbers. Second, most incorrect account numbers do not correspond to an actual account at the recipient's institution. In those situations, the Bureau understands that the transactions are typically reversed and the funds returned. Third, the Bureau understands that some recipient institutions take further measures to limit transfers being deposited into the wrong account, such as by developing systems that allow for additional verification of account numbers or by working with senders to improve accuracy at the time transfers are requested.

Nevertheless, the Bureau understands that the uncertainty created by existing § 1005.33(a)(1)(iv), if left unchanged, could decrease consumers' access to remittance transfers if a number of remittance transfer providers exit the market rather than risk liability, or limit their service offerings in order to minimize their exposure. Overall, the Bureau intends for proposed revisions to create appropriate incentives for providers to prevent these errors from occurring and to assist senders as much as practicable if an incorrect deposit occurs, while relieving tension with other laws and existing practice and reducing risk to providers. The Bureau thus seeks comment on whether proposed § 1005.33(a)(1)(iv)(D) achieves these goals, or whether the existing rules or another alternative is preferable.

To clarify the application of this new exception, the Bureau is also proposing new comment 33(a)–7. Proposed comment 33(a)–7 provides that the exception in proposed § 1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number that results in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account. The proposed comment further provides that this exception does not apply

[7] UCC Article 4A generally applies to wire transfers but not automated clearinghouse (ACH) transfers or transfers that are not to an account. UCC Article 4A–108 provides that UCC Article 4A does not apply ''to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act.'' When EFTA section 919, as implemented by this rule, becomes effective, wire transfers sent on a consumer's behalf that are remittance transfers will be governed in part by the EFTA. The February Final Rule (77 FR 6194, 6210–12 (Feb. 7, 2012)) contains a more detailed discussion regarding UCC Article 4A and remittance transfers.

where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information other than an incorrect account number.

The Bureau is limiting the scope of proposed § 1005.33(a)(1)(iv)(D) because the Bureau believes that, compared to other types of sender mistakes, the provision of an incorrect account number poses unique problems for remittance transfer providers, in that such incorrect information may result in remittance transfers being deposited into the wrong account. In particular, the proposed exception does not include a sender's provision of an incorrect routing number designating the recipient institution. The Bureau believes that in many instances, providers either already verify routing numbers or are in a position to do so when sending transfers to accounts. However, the Bureau seeks comment on whether the concerns identified above regarding incorrect account numbers apply equally to incorrect routing numbers, and if so, whether the proposed exception should be expanded to include a sender's provision of an incorrect routing number.

Similarly, the Bureau believes that other types of sender mistakes in connection with transfers to accounts also do not pose the same risks as incorrect account numbers, because remittance transfers with other types of mistakes are unlikely to result in a deposit in the wrong account. Thus, it should be significantly easier for a remittance transfer provider to unwind the transfer under the existing error resolution procedures. For example, where a sender misidentifies the designated recipient or the designated recipient's institution but provides a correct account number, the Bureau believes that the remittance transfer is still likely to be deposited into the designated recipient's account, due to the practice of relying on account numbers rather than this other information, as described above. Accordingly, the Bureau does not believe such mistakes by a sender are likely to result in a deposit into the wrong account or other ''error'' as defined under the regulation. Nor does the Bureau think that mistakes by senders in connection with transfers that are not deposited into accounts pose these problems, because these transfers generally do not involve unverified information, such as account numbers. Nevertheless, the Bureau also seeks comment on whether other types of mistakes by senders pose a similar risk to providers as a mistake in providing an incorrect account number and whether modified remedies would be appropriate.

33(a)(2) Types of Inquiries and Transfers Not Covered

Section 1005.33(a)(2) and the accompanying commentary address circumstances that do not constitute errors in the Final Rule. Section 1005.33(a)(2)(iv) of the Final Rule provides that an error does not include a change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3), if the remittance transfer provider relied on information provided by the sender as permitted by the commentary accompanying § 1005.31 in making such disclosure. Comment 33(a)–8 of the Final Rule provides two illustrative examples, including that, where a provider relies on the sender's representations regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the change in the amount of currency the designated recipient actually receives due to the taxes actually imposed does not constitute an error.

Given the proposed revisions to § 1005.31(b)(1)(vi) and the accompanying commentary, the proposed rule would make consistent revisions to § 1005.33(a)(2)(iv) and comment 33(a)–8 (redesignated as comment 33(a)–9) and other non-substantive revisions for clarity.[8] As revised, § 1005.33(a)(2)(iv) would add that there is no error if there is a change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) because the provider did not disclose foreign taxes other than those imposed by a country's central government.

Revised comment 33(a)–9 would explain that under § 1005.31(b)(1)(vi), providers need not disclose regional, provincial, state, or other local foreign taxes. Further, under the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. The revised comment would explain that any discrepancy between the amount disclosed and the actual amount received resulting from the provider's reliance upon these provisions does not constitute an error under § 1005.33(a)(2)(iv). The proposed comment would revise the illustrative example to explain that, if the provider relies on the sender's representations regarding variables that affect the amount of recipient institution fees or taxes imposed by a person other than the provider for purposes of determining fees or taxes required to be disclosed under § 1005.31(b)(1)(vi), or does not disclose regional, provincial, state, or other local foreign taxes, as permitted by § 1005.31(b)(1)(vi), the change in the amount of currency the designated recipient actually receives due to the recipient institution fees or foreign taxes actually imposed does not constitute an error. The proposed revision to the comment also makes conforming changes to internal cross-references and other minor, non-substantive edits for clarity.

33(c) Time Limits and Extent of Investigation

33(c)(2) Remedies

Section 1005.33(c)(2) implements EFTA section 919(d)(1)(B) and establishes procedures and remedies for correcting an error under the rule. In particular, where there has been an error under § 1005.31(a)(1)(iv) for failure to make funds available to a designated recipient by the disclosed date of availability, § 1005.33(c)(2)(ii) permits a sender to choose either: (1) to obtain a refund of the amount tendered in connection with the remittance transfer that was not properly transmitted, or an amount appropriate to resolve the error, or (2) to have the remittance transfer provider resend to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or designated recipient. *See* §§ 1005.33(c)(2)(ii)(A). However, if the error resulted from the sender providing incorrect or insufficient information, § 1005.33(c)(2)(ii)(A)(*2*) permits third party fees to be imposed for resending the remittance transfer with the corrected information.

Comment 33(c)–2 in the Final Rule provides additional guidance regarding remedies in circumstances where a remittance transfer provider's failure to make funds available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer. The comment then gives, as one example of incorrect or insufficient information provided by a sender, a sender erroneously identifying the recipient's account number. In light of

[8] In light of new proposed comment 33(a)–7 (discussed above), existing comment 33(a)–7 and 33(a)–8 are proposed to be redesignated as comments 33(a)–8 and –9, respectively.

the proposal to revise the definition of ''error'' in § 1005.33(a)(1)(iv), proposed comment 33(c)–2 removes this example, and replaces it with examples of a sender erroneously identifying the designated recipient's address or by providing insufficient information to enable the entity distributing the funds to identify the correct designated recipient.[9] As with existing comment 33(c)–2, the Bureau does not intend proposed comment 33(c)–2 to contain an exhaustive list of incorrect or insufficient information that a sender could provide or fail to provide. The Bureau is also proposing language, in accordance with proposed § 1005.33(a)(1)(iv)(D), to clarify that a sender does not provide incorrect or insufficient information if the sender provides an incorrect account number that results in a mis-deposit and the provider has satisfied the requirements of § 1005.33(h).

In addition, existing comment 33(c)–2 also explains the procedure for resending funds when an error occurred due to incorrect or insufficient information provided by the sender. The procedure explained in comment 33(c)–2 is distinct from the procedure used for all other situations in which funds are to be resent to resolve an error. For most of these other errors, comment 33(c)–3 explains that the resend is to occur at no additional cost to the sender and that the provider is to apply the same exchange rate, fees and taxes stated in the disclosure provided under § 1005.31(b)(2) or (3). By contrast, existing comment 33(c)–2 explains that for errors under § 1005.33(a)(1)(iv), where the error occurred due to incorrect or insufficient information provided by the sender, a request to resend is a request for a remittance transfer, that the provider must provide the disclosures required by § 1005.31 for a resend, and that the provider must use the exchange rate it is using for such transfers on the date of the resend if funds were not already exchanged in the first unsuccessful remittance transfer attempt.

Since the Bureau issued the Final Rule, industry has requested more guidance as to the timing and content of the disclosures that must be provided for resends following errors that occurred because a sender provided incorrect or insufficient information. Specifically, industry has asked how to provide disclosures where a sender either designates a remedy at the time that the sender reports the error or never designates a remedy, particularly in situations where the provider does not make direct contact with the sender when providing a § 1005.33(c)(1) report.[10]

In addition, as originally adopted, comment 33(c)–2 has created uncertainty for remittance transfer providers, as it does not provide guidance on how or when to provide the § 1005.31 disclosures to senders, how providers can reasonably ensure the accuracy of the disclosures to the extent providers must disclose and guarantee an exchange rate for the resend, and how providers should administer senders' cancellation rights. Specifically, the Final Rule may not have adequately addressed potential operational tensions between the timing and accuracy provisions in §§ 1005.31(e) and (f), as referenced in comment 33(c)–2, and comments 33(c)–3 and 33(c)–4. Comment 33(c)–3 explains that a sender may designate a remedy when first reporting an error, while comment 33(c)–4 explains that a provider may implement a default remedy if a sender does not select one. To address these issues, the proposed rule proposes additional revisions to comment 33(c)–2, adds proposed § 1005.33(c)(3), which provides for streamlined disclosures, and adds new comment 33(c)–11 explaining the proposed provision.

First, the Bureau proposes to make additional revisions to comment 33(c)–2. As noted, the existing comment states that a request to resend is a request for a remittance transfer and, therefore, that a remittance transfer provider must provide the disclosures required by § 1005.31 for a resend of a remittance transfer. Further, the comment states that the provider must use the exchange rate it is using for such transfers on the date of the resend if funds were not already exchanged in the first unsuccessful remittance transfer attempt. The proposed revision deletes the bulk of these references, retaining only the language stating that a provider should use the exchange rate on the date of the resend when resending the funds and clarifies that this is only necessary to the extent currency must be exchanged when resending the funds. The Bureau also proposes to revise a corresponding reference in § 1005.33(c)(2)(ii)(A)(*2*).

Second, in lieu of the above-referenced language in comment 33(c)–2 that states that a request to resend is a request for a remittance transfer, the Bureau proposes to add new § 1005.33(c)(3). Proposed § 1005.33(c)(3) provides that if an error under § 1005.33(a)(1)(iv) occurred because the sender provided incorrect or insufficient information, and if the sender has not previously designated a refund remedy pursuant to § 1005.33(c)(2)(ii)(A)(*1*), then the provider must comply with § 1005.33(c)(3)(i) or (c)(3)(ii).

Proposed § 1005.33(c)(3)(i) provides that if the remittance transfer provider does not make direct contact with the sender when providing the report required by § 1005.33(c)(1), the provider shall provide, orally or in writing, as applicable, the following disclosures: (A) The disclosures required by §§ 1005.31(b)(2)(i) through (iii) for remittance transfers and the date the provider will complete the resend, using the term ''Transfer Date'' or a substantially similar term.[11] These disclosures must be accurate when the resend is made except that these disclosures may contain estimates to the extent permitted by § 1005.32(a) or (b) for remittance transfers; and (B) If this transfer is scheduled three or more business days before the date of transfer, a statement about the rights of the sender regarding cancellation reflecting the requirements of § 1005.36(c), the requirements of which shall apply to the resend. Proposed § 1005.33(c)(3)(ii) provides that if the provider makes direct contact with the sender at the same or after the provider provides the report required by § 1005.33(c)(1), the provider shall provide, orally or in writing, as applicable, the disclosures required by §§ 1005.31(b)(2)(i) through (iii) for remittance transfers. These disclosures must be accurate when the resend is made except that the disclosures may contain estimates to the extent permitted by § 1005.32(a), (b)(1), or proposed § 1005.32(b)(3) or (b)(4) for remittance transfers.

The Bureau expects that proposed § 1005.33(c)(3) and the proposed changes to the commentary would facilitate compliance in a number of ways. First, if remittance transfer providers are unable to directly contact the sender when providing the error report, the transfer date would generally be set in the future and the provider

[9] As noted below, while the Bureau does not believe that other mistakes by a sender are likely to result in a mis-deposit, other mistakes, such as an incorrect recipient address, still could prevent a transfer from being completed.

[10] Section 1005.33(c)(1) requires a remittance transfer provider to report the results to the sender of the provider's investigation into a reported error. This report, which may be provided orally, must include notice of any remedies available for correcting any error that the provider determines has occurred.

[11] Section 1005.31(b)(2)(i) requires all of the applicable disclosures contained in the prepayment disclosure (§ 1005.31(b)(1)), (b)(2)(ii) requires disclosure of the date in the foreign country on which funds will be available, and (b)(2)(iii) requires disclosure of the name, and if provided by the sender, address of the designated recipient.

would be permitted to disclose an estimated exchange rate pursuant to § 1005.32(b)(2). Second, once the disclosure was delivered, the provider need not provide anything additional to the sender. Third, the cancellation rules of § 1005.34(a), which otherwise would allow the sender thirty minutes to cancel the resend, would not apply (though, in certain cases, the alternate cancellation rule in § 1005.36(c) would apply).

At the same time, the proposed changes would ensure that senders receive notice and an ability to cancel in cases in which the exchange rate that would be applied to the resent remittance transfer is not the rate that was initially disclosed to the sender (even if the sender has already chosen to have the funds resent).[12] The Bureau believes this would be helpful to consumers and consistent with the intent of the original comment. For this reason, the Bureau is adapting, in proposed § 1005.33(c)(3)(i), the procedures used in § 1005.36 for remittance transfers scheduled before the date of transfer. The Bureau believes the proposed revisions will balance senders' interests in obtaining notice in situations where the exchange rate may change with their interest in swift error resolution. The proposal would, for example, permit providers to leave phone messages, or to mail, or email the required disclosures. Under the Final Rule, this may have been impracticable because of the need to provide an exact exchange rate and to determine when the sender's right to cancel begins and ends.

Proposed § 1005.33(c)(3)(i) will allow remittance transfer providers to set a future date of transfer, and to disclose estimates pursuant to § 1005.32(b)(2) if the provider does not make direct contact with the sender.[13] A sender would be able to cancel the remittance transfer once the sender received the § 1005.33(c)(1) and (3)(i) notices, up to three business days before the date of transfer. However, the revised disclosure regime would not indefinitely delay the resend beyond the date of transfer if the provider does not receive confirmation from the sender and either the default remedy was to resend, or the sender elected resend when reporting the error. Where the provider does make direct contact, proposed § 1005.33(c)(3)(ii) would require the provider to disclose the exchange rate used for remittance transfers on the date of the resend.

The Bureau is not proposing to require the disclosures in proposed § 1005.33(c)(3) every time a remittance transfer provider resends funds when remedying an error. Rather, the Bureau intends that disclosures pursuant to proposed § 1005.33(c)(3) are only required if the exchange rate used for the resent remittance transfer is not the exchange rate originally disclosed and currency must be exchanged to complete the resend. Moreover, a resend under this proposed provision can only occur when the error occurred due to incorrect or insufficient information provided by the sender.

The Bureau is also proposing a conforming change to § 1005.33(c)(2), to allow for situations in which proposed § 1005.33(c)(3)(i) permits resends to occur later than one business day after, or as soon as reasonably practicable, after receiving the sender's instructions or the provider determines an error had occurred. Separately, the Bureau notes that in the Final Rule, § 1005.33(c)(2)(ii)(A)(2) allows a provider to impose third party fees for resending the remittance transfer when an error occurred because the sender provided incorrect or insufficient information. The Bureau seeks comment on whether the provider should also be permitted to also impose taxes incurred when resending funds for the same reason.

Finally, proposed comment 33(c)–11 explains that the disclosures in proposed § 1005.33(c)(3) need not be provided either if the sender has elected a refund remedy or if the remittance transfer provider's default remedy is a refund and the sender has not selected a remedy prior to the time the provider is providing the § 1005.33(c)(1) report. Furthermore, to the extent that the resend is not properly transmitted, the initial error has not been resolved and the provider's duty to resolve it remains not fully satisfied. Proposed comment 33(c)–11.i further clarifies that, for purposes of determining the date of transfer for disclosures made in accordance with proposed § 1005.33(c)(3)(i), if the provider is unable to speak to or otherwise make direct contact with the sender, the provider may use the same date on which it would provide a default remedy (*i.e.* one business day after 10 days after the provider has sent the report provided under § 1005.33(c)(1)). *See* comment 33(c)–4. Proposed comment 33(c)–11.ii explains that if the provider makes direct contact with the sender at the same time or after providing the report required by § 1005.33(c)(1), and if the time to cancel a resend disclosed pursuant to § 1005.33(c)(3)(i)(B) has not passed, § 1005.33(c)(2) requires the provider to resend the funds the next business day or as soon as reasonably practicable thereafter if the sender elects a resend remedy. For such a resend, the provider must provide the disclosures required by proposed § 1005.33(c)(3)(ii) and use the exchange rate it is using for such transfers on the date of resend to the extent that currency must be exchanged when resending funds. When providing disclosures pursuant to proposed § 1005.33(c)(3)(ii), the provider need not allow the sender to cancel the resend.

To illustrate, assume that when an error is first reported, a sender elects to have the remittance transfer provider resend the funds should an error be found to have occurred. Upon completion of the investigation, the provider provides an oral or written report on February 1, in accordance with § 1005.33(c)(1), informing the sender that an error occurred and that it was a result of incorrect information provided by the sender, that currency must be exchanged on the resend, and thus the exchange rate may change. At the same time and if no direct contact is made, pursuant to proposed § 1005.33(c)(3)(i), the provider will also deliver notice that it will resend the remittance transfer on February 12 (assuming that is a business day) and that a sender's request to cancel must be received by three business days prior to the date of transfer. If necessary, the provider also would disclose the estimated exchange rate pursuant to § 1005.32(b)(2), among other required items. Any time before February 9 (the deadline to exercise cancellation rights), the sender may contact the provider and request that the remittance transfer be completed within one business day, if reasonably possible. If earlier resend occurs, the provider will then provide the disclosures required by proposed § 1005.33(c)(ii). If the sender does not contact the provider, the funds will be resent, as disclosed, on February 12.

The Bureau seeks comment on whether, in lieu of the proposed regime outlined above, the Bureau should adjust the procedure for resending funds

[12] As proposed, disclosures would be required by proposed § 1005.33(c)(3) even if the rate that would be disclosed in connection with the resend happens to be the same rate that was initially disclosed to the sender. Furthermore, in addition to providing estimates pursuant to § 1005.32(b)(2), proposed § 1005.33(c)(3)(i) permits providers to disclose estimates pursuant to § 1005.32(a), (b)(1), and proposed § 1005.32(b)(3) and (b)(4).

[13] Section 1005.32(b)(2) permits a remittance transfer provider to estimate certain information in the pre-payment disclosure and the receipt provided when payment is made for a remittance transfer. Pursuant to § 1005.32(d), an estimated exchange rate in this circumstance generally must be based on the exchange rate that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

to resolve an error described in § 1005.33(a)(1)(iv) that occurred because the sender provided incorrect or insufficient information (other than an incorrect account number). In adopting the Final Rule, the Bureau explained that when the sender providing incorrect or insufficient information causes the error, the Bureau believed that it is appropriate generally to put the provider and the sender in the same position as if the first unsuccessful remittance transfer had never occurred. Thus, the provider would use the exchange rate it is using for such transfers on the date of the resend. Nevertheless, the Bureau seeks comment on whether it would be preferable to adopt instead the resend procedure that exists for other errors, *see* § 1005.33(c)(2)(ii)(A)(*1*), or another alternative. Using the procedure for other errors would require a provider to resend funds at the original exchange rate, but it could further simplify the rule by eliminating the need to provide disclosures required by proposed § 1005.33(c)(3).

33(h) Incorrect Account Number Provided by the Sender

The Bureau proposes to add a new § 1005.33(h), which would contain the conditions a remittance transfer provider must satisfy before the new exception to the definition of error in proposed § 1005.33(a)(1)(iv)(D) could apply to situations in which a sender provides a wrong account number, which results in a mis-deposit. Proposed § 1005.33(h) provides that no error has occurred pursuant to § 1005.33(a)(1)(iv) for the failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) if the provider can satisfy each of the conditions in proposed §§ 1005.33(h)(1) through (4).

Proposed § 1005.33(h)(1) provides the first condition that must be met for no error to have occurred pursuant to proposed § 1005.33(a)(1)(iv)(D). Specifically, this condition could be satisfied if the remittance transfer provider can demonstrate that the sender provided an incorrect account number to the provider in connection with the remittance transfer. Under proposed § 1005.33(h)(1), if the provider did not know or could not demonstrate that the sender provided an improper account number, then the failure to deliver the transfer by the promised date of availability because of an incorrect account number would continue to be an error to which existing error procedures and remedies would apply. The Bureau does not believe that this is a substantial change from the existing rule, which already provides an incentive for providers to document whether the sender has provided inaccurate information in order to invoke the ability to charge certain related fees in connection with the resent transaction. *See* § 1005.33(c)(2)(ii)(A)(*2*). The Bureau does believe, however, that this proposed change further incentivizes providers to implement procedures to limit the possibility of a sender providing an incorrect account number.

Proposed § 1005.33(h)(2) contains the second condition, which is that the remittance transfer provider be able to demonstrate that the sender had notice that, in the event the sender provided an incorrect account number, that the sender could lose the transfer amount. The Bureau believes it is important for senders to be notified that they could potentially be required to bear the cost of providing an incorrect account number. The Bureau understands that many providers' current practices incorporate such a notice to senders in their disclosures in connection with their obligation under UCC Article 4A. In particular, under UCC 4A–207, a sender cannot bear the cost of a mistake if the provider did not notify the sender that the payment on the transfer order might be made even if the sender's account number specifies a person different from the named beneficiary. The UCC does not specify the form of the notice. *See* UCC 4A–207(c)(2). The Bureau similarly has not specified the form of the notice required by proposed § 1005.33(h)(2) but seeks comment on whether the Bureau should specify the form of the notice and how and when it should be delivered.

Proposed § 1005.33(h)(3) provides the third condition for the exception in proposed § 1005.33(a)(1)(iv)(D) to apply. It provides that the incorrect account number resulted in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account. The Bureau believes that once a remittance transfer is deposited into the wrong account, a remittance transfer provider is much less likely to be able to recover the funds. The Bureau does not believe that similar concerns exist for transfers that are sent to accounts and are either rejected by the recipient institution or otherwise reversed before deposit. In such cases, the Bureau believes that the provider would be much more likely to be able to recover the funds and either refund or resend the transfer and the proposed exception in proposed § 1005.33(a)(1)(iv)(D) would be unnecessary.

Proposed § 1005.33(h)(4) provides the fourth condition for the exception in proposed § 1005.33(a)(1)(iv)(D) to apply. It states that a remittance transfer provider to promptly use reasonable efforts to recover the amount that was to be received by the designated recipient. Currently, the Bureau believes that as a customer service, many providers attempt to recover transfers even when they are not transfer deposited into the correct account. Thus, the Bureau does not believe proposed § 1005.33(h)(4) constitutes a significant departure from market practice in many cases today.

Proposed comment 33(h)–1 explains that proposed § 1005.33(h)(4) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. The proposed comment accounts for the fact that the options available to a provider to recover funds may vary depending on the method used to send the remittance transfer, the destination of the remittance transfer, the provider's relationship with the receiving institution, and when and by whom the error was discovered. The proposed comment also provides examples of how a provider might use reasonable efforts: (i) The provider promptly calls or otherwise contacts the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the incorrectly credited accountholder; (ii) the provider promptly uses a messaging service through a funds transfer system to contact the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account; and (iii) in addition to the methods outlined above, to the extent that a correspondent institution, other service providers to

the recipient institution, or the recipient institution requests documentation or other supporting information, the provider promptly provides such documentation or other supporting information to the extent available.

The Bureau does not believe it is appropriate to propose specific methods that a remittance transfer provider must use to recover the funds due to the varying ways in which providers and other institutions communicate. For example, in many instances, financial institutions might use correspondent networks to send remittance transfers to designated recipients' accounts abroad. In these instances, the provider, its correspondent institution, other intermediary institutions, and possibly the recipient institution may communicate through a shared messaging system. It is through this system that a provider might attempt to recover a mis-deposited remittance transfer. In this circumstance, mandating other efforts—such as directly contacting the recipient's institution—might not be as feasible or productive, although in some instances, a provider might determine it to be reasonable to contact the foreign institution directly. The Bureau solicits comment on the proposed examples and whether there are additional examples of how a provider might use reasonable efforts to recover funds.

Finally, proposed comment 33(h)–2 explains that § 1005.33(c)(1) requires a remittance transfer provider to act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. While promptness may depend on the circumstances, generally a provider acts promptly when it does not delay in seeking recovery of the mis-deposited funds. For example, if the sender informs the provider of the error before the date of availability disclosed pursuant to § 1005.31(b)(2)(ii), the provider should act to contact the recipient's institution before the date of delivery, if possible, as doing so may prevent the funds from being mis-deposited. In other circumstances as well, prompt reasonable efforts will increase the chances that the funds remain in the incorrect account. Generally, the Bureau believes that providers will be more successful in securing the return of mis-deposited funds if providers act quickly.

Miscellaneous Conforming Edits

Given the proposed revisions to § 1005.31(b)(1)(vi) and new proposed §§ 1005.32(b)(3) and (4), conforming revisions are proposed in the following provisions of the Final Rule as necessary: § 1005.36(b)(3); comment 32–1; comment 32(d)–1; comment 33(a)–3.ii; and comment 36(b)–3.

Effective Date

The Final Rule is scheduled to be effective on February 7, 2013, which is one year after publication of the February Final Rule in the **Federal Register**. However, in light of this proposal, the Bureau is proposing to extend the effective date in two steps.

First, the Bureau is proposing to temporarily delay the effective date of the Final Rule until the Bureau finalizes this proposal. The Bureau realizes that regardless of how or whether the Final Rule is changed, remittance transfer providers' preparations for its implementation may be affected until the Bureau finalizes the rule. The Bureau seeks comment on the proposal to temporarily delay the effective date of the Final Rule, by issuing a temporary extension before February 7, 2013. The Bureau requests comment on this aspect of the proposed rule only by January 15, 2013.

Second, the Bureau is also proposing that the Final Rule, and any revisions thereto resulting from this proposal, would become effective 90 days after the Bureau finalizes this proposal. Given the limited scope of the proposed revisions, the Bureau believes that this 90-day period will be sufficient for providers to implement any necessary changes to their systems. The Bureau also believes that providers should be working toward implementing those portions of the Final Rule unaffected by this proposal during the interim period, for instance by continuing to research foreign central governments' taxes. Thus, the Bureau believes that, apart from the temporary delay, this proposed 90-day extension period would balance the need for consumers to receive the protections afforded by the rule as quickly as possible with industry's need to make adjustments to comply with the provisions of the rule. The Bureau seeks comment on whether the rule should be effective 90 days after the Bureau finalizes this proposal.[14]

V. Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts[15] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.[16]

The analysis below considers the benefits, costs, and impacts of the key provisions of the proposal against the baseline provided by the Final Rule. Those provisions regard: Recipient institution fees and foreign taxes, incorrect or insufficient information regarding transfers, and the effective date. With respect to these provisions, the analysis considers the benefits and costs to senders (consumers) and remittance transfer providers (covered persons).[17] The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau notes at the outset that quantification of the potential benefits, costs, and impacts of the proposal is not possible due to the lack of available data. As discussed in the February Final Rule, there is a limited amount of data about remittance transfers and remittance transfer providers that are publicly available and representative of the full market. Similarly, there are limited data on consumer behavior, which would be essential for quantifying the benefits or costs to consumers. Furthermore, the Final Rule is not yet effective and providers are still in the process of implementing its requirements. Therefore, the analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. As discussed in more detail below, the Bureau expects that the proposed provisions will generally benefit providers by facilitating compliance, while maintaining the Final Rule's valuable new consumer protections and ensuring that these protections can be effectively delivered to consumers.

[14] Comments on this second aspect of the proposal may be submitted within the comment period applicable to the remainder of the proposal.

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

[16] The Bureau also solicited feedback from other agencies regarding the proposed rule.

[17] Benefits and costs incurred by remittance transfer providers may, in practice, be shared among providers' business partners, such as agents, correspondent banks, or foreign exchange providers. To the extent that any of these business partners are covered persons, the proposal could have benefits or costs for these covered persons as well.

B. Potential Benefits and Costs to Consumers and Covered Persons

1. Recipient Institution Fees and Foreign Taxes

a. Benefits and Costs to Covered Persons

Compared to the Final Rule, the proposal would benefit remittance transfer providers by giving them options that could reduce the cost of providing required disclosures. Allowing providers to rely on senders' representations regarding certain recipient institution fees, or to estimate such fees and foreign taxes based on certain assumptions or sources of information would reduce the cost of preparing required disclosures. The proposal would further reduce the cost of gathering information by limiting providers' obligation to disclose foreign taxes to those imposed by a country's central government.

The proposed changes regarding fee and tax disclosures might additionally benefit remittance transfer providers by facilitating their continued participation in the market. Industry has suggested that due in part to the Final Rule's third party fee and foreign tax disclosure requirements, some providers might eliminate or reduce their remittance transfer offerings, such as by not sending transfers to countries where tax or fee information is particularly difficult to obtain, due to the lack of ongoing reliable and complete information sources. By reducing the amount of information needed to provide disclosures, the proposal could encourage more providers to retain their current services (and thus any associated profit, revenue and customers).

To take advantage of the new flexibility that would be provided by the proposed rule, some remittance transfer providers might choose to bear some modest cost to modify their systems to calculate disclosures using the new methods permitted by the proposal, or to describe certain disclosures using the term ''Estimated'' or a substantially similar term. However, the Bureau believes that any such cost would generally be small. Any modification would be to existing forms and systems changes would be particularly minimal for many providers, because the Final Rule already sets forth certain circumstances in which the term ''Estimated'' or a substantially similar term must be used. Furthermore, the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the Final Rule, and thus may be able to incorporate any changes into previously planned work.

Any alternative disclosures could also impose costs on any providers that chose to take advantage of the flexibility permitted by the proposal. The relative magnitude would depend on the type of disclosure required. But in any case, these costs would be optional; providers could disclose fees and taxes as required by the Final Rule.

The Bureau expects that the proposed provisions regarding fee and tax disclosures would mostly affect depository institutions, credit unions, and broker-dealers that are remittance transfer providers. These types of providers tend to send most or all of their remittances transfers to foreign accounts, for which recipient institution fees may be charged. Furthermore, due to the mechanisms they use to send money, they generally have the ability to send transfers to virtually any destination country (for which tax research might be required). By contrast, money transmitters that are providers are more likely to send remittance transfers to be received in cash, for which recipient institution fees would not be relevant. Furthermore, most money transmitters, and particularly small ones, generally send transfers to a limited number of countries and institutions.

b. Benefits and Costs to Consumers

The proposed changes regarding recipient institution fees and foreign taxes would benefit senders to the extent that remittance transfer providers pass along any cost savings in the form of lower prices. Also, if the proposal facilitates providers' continued participation in the market, it would facilitate senders' access to remittance transfers, by giving them a wider set of options for sending transfers, preserving competition, and thus possibly avoiding increased prices.

The proposal might impose costs on senders to the extent that it makes disclosures less accurate, or if different remittance transfer providers were to use substantially different approaches to identifying the recipient institution fees or foreign taxes that would apply. Different approaches might make comparison shopping more difficult. Less accurate information could make it more difficult for a sender to know whether a designated recipient is going to receive an intended sum of money, or how much the sender must spend to deliver a specific amount of foreign currency to a recipient.

However, the Bureau expects that costs associated with reduced accuracy could be mitigated. First, the Bureau expects that competition might give providers incentives to disclose exact recipient institution fees and foreign taxes (at least those assessed by central governments) when reasonably possible, as in some cases this would allow providers to disclose lower fees and taxes than they would if they relied on the proposal's provisions. Second, in circumstances where providers did take advantage of the flexibility permitted by the proposal, senders might still be able to engage in comparison shopping. To the extent that different providers used similar information and assumptions to estimate foreign taxes and recipient institution fees, the disclosures that senders received would generally remain useful for determining which provider is cheapest or for making decisions that trade off cost for other considerations. Finally, if foreign subnational taxes are imposed less frequently and in smaller amounts than foreign taxes assessed by central governments, then the Bureau believes that even with the proposed changes to the Final Rule, senders generally would have the most important information about the prices of remittance transfers. Even though the proposal would allow providers to rely on fee information that may not be specific to a recipient institution, the proposal's focus on informing senders of the highest possible amount of foreign taxes or recipient institution fees that could be imposed would limit the circumstances in which senders might be surprised by deductions that are larger than what is disclosed. Senders would still generally receive a reasonable approximation of the foreign taxes and recipient institution fees that might be charged, and sufficient information to help them know whether they are sending enough money to cover recipients' needs.

The use of the term ''Estimated'' (or a substantially similar term) in cases in which subnational taxes were not disclosed or the new estimate provisions are used could aid senders, by indicating that disclosed amounts may differ from the amount received. But the use of the term ''Estimated'' in the vast majority of cases could impair senders' ability to compare disclosures and have an adverse impact on the exercise of error resolution rights because it is difficult to know the reasons why two disclosures with estimates differ. In instances in which subnational taxes were not disclosed, alternative methods of alerting senders that figures are not exact (or not requiring any such notice) might impose fewer costs on senders.

2. Incorrect or Insufficient Information

a. Benefits and Costs to Covered Persons

The proposal includes two sets of proposed changes related to errors caused by the provision of incorrect or insufficient information. It would create a new exception to the definition of error. It would also adjust the requirements for resending remittance transfers in certain situations in which funds may be resent to correct errors.

The exception to the definition of error would benefit remittance transfer providers in instances in which senders' account number mistakes, which would have resulted in errors under the Final Rule, would not constitute errors, provided that providers could satisfy the conditions enumerated in proposed § 1005.33(h). To the extent that the new exception applied, providers would no longer bear the costs of funds that they could not recover. The magnitude of the benefit would depend on the frequency of senders' account number mistakes that result in funds being deposited in the wrong account with the provider unable to recover funds, and the sizes of those lost transfers.[18] The magnitude would also depend on the extent to which providers maintain procedures necessary to satisfy the conditions enumerated in proposed § 1005.33(h).

Remittance transfer providers might further benefit if the proposal reduced the potential for fraudulent account number mistakes made by unscrupulous senders, which providers have cited as a risk under the Final Rule. By reducing the remedies available in such cases, the proposal would reduce the direct costs of fraud and the indirect costs of fraud prevention and facilitate providers' continued participation in the remittance transfer market, without (or with fewer) new limitations on service. Industry has indicated that, at least in part, due to the risk of such fraud under the Final Rule, providers might exit the market or limit the size or type of transfers sent. The magnitude of these benefits would depend on the magnitude of the actual and perceived risk of account number-related fraud under the Final Rule.[19]

The new exception to the definition of error would not impose any new requirements on remittance transfer providers and therefore would not directly impose costs on providers. But, to ensure that they can satisfy the conditions enumerated in proposed § 1005.33(h) and thus trigger the new exception, providers may choose to bear some costs. For instance, providers might change their customer contracts or other communications to provide to senders the notice contemplated by proposed § 1005.33(h)(2). However, the Bureau expects that the cost of doing so would be modest, particularly because the proposed rule does not mandate any particular notice wording, form, or format, and the Bureau expects that many providers would integrate any such notice into existing communications.

The Bureau expects that providers would generally not experience any other costs if they chose to satisfy the remainder of the conditions in proposed § 1005.33(h), because their existing practices generally would already satisfy those conditions. In particular, based on outreach, the Bureau believes that keeping records or other documents that could demonstrate the conditions described in § 1005.33(h) would generally match providers' usual and customary practices to serve their customers, to manage their risk, and to satisfy the requirements under the Final Rule to retain records of the findings of investigations of alleged errors. *See* § 1005.33(g)(2).

The extent to which remittance transfer providers would choose to bear any costs related to proposed § 1005.33(h) and the magnitude of such costs would depend on providers' individual business practices, their expectations about the frequency and size of transfers that are deposited into the wrong accounts and not recovered because of account number mistakes by senders, their expectations about the risk of fraud, as well as the extent to which providers have already begun adapting their practices to the Final Rule. The Bureau expects that providers would only develop their practices to comply with § 1005.33(h) if doing so would benefit the providers by more than the costs of implementing these practices. The Bureau believes that this could be the case for most providers that make transfers to accounts, particularly because the practices described in § 1005.33(h) closely match existing practice, as well as, for the most part, the practices that providers would develop to comply with the Final Rule.

The proposed changes regarding requests to resend for certain errors would also benefit remittance transfer providers. In instances in which they are applicable, as discussed above, the proposed changes would, in many cases, allow a provider to resend a transfer with less uncertainty about when and how to resend it and possibly to do so using an estimated exchange rate. The proposed changes also could mean that in the narrow circumstances in which they would apply, providers would not need to provide as many written disclosures as under the Final Rule. Providers could also benefit from the alternative on which the Bureau is seeking comment, to adjust the Final Rule's remedy provisions so that anytime a remittance transfer is resent to resolve an error, the exchange rate would remain the rate stated in the original disclosure. This alternative would eliminate any cost of additional disclosures related to the covered resends. Unlike the Final Rule, however, the alternative would not permit a provider to charge the sender again for third party fees incurred when the transfer was sent the first time. Furthermore, the alternative could expose providers to additional exchange rate risk. When funds are resent, a provider might either gain or lose money related to the change in market exchange rates between the time of the original transfer and the time of the resend.

Either the proposed changes regarding resend remedies, or the alternative on which the Bureau seeks comment, could impose a cost on remittance transfer providers to revise their procedures. Providers might also change their systems to generate the proposed streamlined disclosures, which could include the date of transfer, an element that is currently required on disclosures only for some remittance transfers. *See* §§ 1005.30(b)(2)(vii) and 1005.36(d). However, the Bureau expects these costs to be modest, because the modifications could be made based on an existing disclosure form. The Bureau also expects that many providers would incorporate such modifications into others they would carry out to comply with the Final Rule.

b. Benefits and Costs to Consumers

The new exception to the definition of error would benefit senders to the extent that remittance transfer providers pass along any cost savings in the form of lower prices. The new exception would also benefit senders, to the extent it would enable more providers to stay in the market or preserve the breadth of their current offerings, thus preserving competition.

Under certain conditions, a sender who provided an incorrect account number resulting in funds being delivered to the wrong account would

[18] Prior to the February Final Rule, the Credit Union National Association reported a rate of less than 1% for international wire ''exceptions.''

[19] A similar analysis regarding benefits would likely apply if the Bureau expanded the proposed exception to apply in instances in which a failure to make funds available to the designated recipient by the disclosed date of availability resulted from a mistake by a sender other than providing an incorrect account number. Any optional costs might depend on the nature of any such extension.

bear the costs of those mis-deposited funds. However, as discussed above, the Bureau expects that the incidence of such losses would be rare; furthermore, any such cost may be mitigated, because senders would have stronger incentives to ensure the accuracy of account number information to the extent possible.[20]

The Bureau expects that the proposed changes regarding remittance transfers that are resent would have very small impacts on senders. As described above, the Bureau expects that the circumstances in which the proposed changes would apply will arise infrequently. In instances in which the proposed changes would apply, the Bureau believes that senders, like remittance transfer providers, would benefit from the reduced uncertainty. However, the proposed changes would impose a modest cost on senders because they would reduce the disclosure requirements for the covered resends, including by allowing providers to give senders estimated rather than actual exchange rates under certain circumstances. Senders might experience some additional modest benefits or costs under the alternative on which comment is sought, to resend transfers at the original exchange rate. Unlike the Final Rule, the alternative would not permit a provider to charge the sender again for any third party fees that were incurred when the transfer was sent originally. But this alternative would eliminate the requirement for additional disclosures related to the resend of the transaction.[21] However, the Bureau expects that under either scenario, and particularly the latter, the cost would be modest, as senders would have received pertinent information with the original remittance transfer.

3. Effective Date

The proposed temporary delay and extension of the Final Rule's effective date would generally benefit remittance transfer providers by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible. Senders would benefit to the extent that the changes eliminated any disruptions in the provision of remittance transfer services. But the proposed changes would impose costs on senders by delaying the time when they would receive the benefits of the Final Rule.

C. Access to Consumer Financial Products and Services

As discussed above, the Bureau expects that the proposal would not decrease and could increase consumers' (senders') access to consumer financial products and services. By reducing the costs that remittance transfer providers must bear to provide disclosures and resolve errors, the proposal could lead providers to reduce their prices, compared to what they might have charged under the Final Rule. By facilitating providers' participation in the market, the proposal could give senders a wider set of options for sending transfers, as well as preserve competition.

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

Given the lack of data on the characteristics of remittance transfers, the ability of the Bureau to distinguish the impact of the proposal on depository institutions and credit unions with $10 billion or less in total assets (as described in section 1026 of the Dodd-Frank Act) from the impact on depository institutions and credit unions in general is quite limited. Overall, the impact of the proposal on depository institutions and credit unions would depend on a number of factors, including whether they are remittance transfer providers, the importance of remittance transfers for the institutions, how many institutions or countries they send to, the cost of complying with the Final Rule, and the progress made toward compliance with the Final Rule.

However, information that the Bureau obtained prior to finalizing the August Final Rule suggests that among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and the number of remittance transfers sent by the institution are positively, though imperfectly, related. There are several inferences that can be drawn from this relationship. First, the Bureau expects that among depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers, compared to larger such institutions, a greater share will qualify for the safe harbor related to the definition of ''remittance transfer provider'' and therefore would be entirely unaffected by this proposal because they are not subject to the requirements of the Final Rule. *See* § 1005.30(f)(2). Second, the Bureau believes that depository institutions and credit unions with $10 billion or less in total assets that are covered by the Final Rule would experience, on a per-institution basis, less of the variable benefits and costs described above because they generally perform fewer remittance transfers than larger institutions. However, to the extent that the proposal would reduce any fixed costs of compliance, such as the costs of gathering information on taxes and fees if these institutions were to attempt to do that themselves, these institutions may experience more of the benefits described above, on a per-transfer basis.

Additionally, the Bureau believes that the magnitude of the proposal's impact on smaller depository institutions and credit unions would be affected by these institutions' likely tendency to rely on correspondents or other service providers to obtain third party fee and foreign tax information, as well as provide standard disclosure forms. In some cases, this reliance would mitigate the impact on these providers of the proposal's provisions regarding such information.

E. Impact of the Proposal on Consumers in Rural Areas

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

F. Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposal before finalizing the proposal. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis. This includes comment or data regarding the number and characteristics of affected entities and consumers; providers' current practices, their plans to implement the Final Rule; how this proposal might change their current practices or their planned practices

[20] A similar analysis would likely apply if the Bureau expanded the proposed exception to apply in instances in which a failure to make funds available to the designated recipient by the disclosed date of availability resulted from a mistake by a sender other than an incorrect account number.

[21] Under this alternative, for any individual remittance transfer that is resent, a sender (like a remittance transfer provider) might either gain or lose money related to the change in market exchange rates between the time of the original transfer and the time of the resend.

under the Final Rule; and any other portions of this analysis.

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

VI. Regulatory Flexibility Act

A. Overview

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required. 5 U.S.C. 609.

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Affected Small Entities

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[22] The proposal would apply to entities that satisfy the definition of ''remittance transfer provider'': Any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. *See* § 1005.30(f).[23] Potentially affected small entities include insured depository institutions and credit unions that have $175 million or less in assets and that provide remittance transfers in the normal course of their business, as well as non-depository institutions that have average annual receipts that do not exceed $7 million and that provide remittance transfers in the normal course of their business.[24] These affected small non-depository entities may include state-licensed money transmitters, broker-dealers, and other money transmission companies.[25]

This analysis examines the benefits, costs, and impacts of the key provisions of the proposal relative to the baseline provided by the Final Rule. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

C. Recipient Institution Fees and Foreign Taxes

The proposal would provide remittance transfer providers additional flexibility regarding the disclosure of certain recipient institution fees and foreign taxes. It would allow providers to rely on senders' representations regarding such fees, and to estimate such fees and foreign taxes based on certain assumptions and information. The proposal would also limit a provider's obligation to disclose foreign taxes to those imposed by a country's central government. Under the proposal, if providers chose not to disclose subnational taxes, or to take advantage of the new estimation provisions, they would be required to describe the relevant disclosures using the term ''Estimated'' or a substantially similar term.

The proposed provisions would not require small entities to make any changes in practice. Remittance transfer providers would still be in compliance if they disclosed foreign taxes and recipient institution fees in accordance with the Final Rule. If small providers decided to take advantage of the proposed provisions, they might bear some cost to modify their systems to calculate disclosures using the new methods permitted by the proposal, or to describe certain disclosures using the term ''Estimated'' or a substantially similar term. However, the Bureau believes that any cost would generally be small. Any modification would be to existing forms and systems changes would be particularly minimal because the Final Rule already sets forth certain circumstances in which the term ''Estimated'' (or a substantially similar term) must be used. Also, the Bureau expects that many small depository institutions and credit unions will rely on correspondent institutions or other service providers to provide recipient institution fees and foreign tax information, as well as standard disclosure forms; as a result, related costs would often be spread across multiple institutions. Furthermore, the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the Final Rule, and thus may be able to incorporate any changes into previously planned work.

Any alternative disclosures could also impose cost on any providers that chose to take advantage of the flexibility permitted by the proposal. The relative magnitude would depend on the type of disclosure required. If no disclosure were required in instances in which foreign subnational taxes were not disclosed, the cost could be less for some entities. If some alternative form of disclosure were required for providers that chose to take advantage of the new flexibility that the proposal would permit, the cost might be higher.

In either case, the proposed changes regarding the disclosure of recipient institution fees and foreign taxes may provide meaningful benefits to remittance transfer providers that decide to take advantage of them. The Bureau expects that small entities generally would choose to incur the costs associated with the proposed provisions only if they concluded that the benefits of doing so were greater than the costs. The potential benefits include a reduced cost to prepare required disclosures. Furthermore, industry has suggested that due in part

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

[23] The definition of ''remittance transfer provider'' includes a safe harbor that means that if a person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer such transfers in the current calendar year, it is deemed not to be provided remittance transfers for a consumer in the normal course of its business, and is thus not a remittance transfer provider. *See* § 1005.30(f)(2).

[24] Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Effective March 26, 2012.

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

to the Final Rule's third party fee and foreign tax disclosure requirements, some providers might eliminate or reduce their remittance transfer offerings, such as by not sending to countries where tax or fee information is particularly difficult to obtain, due to the lack of ongoing reliable and complete information sources. By reducing the amount of information needed to provide disclosures, the proposal could encourage more providers (including small entities) to retain their current services (and thus any associated profit, revenue and customers).

The Bureau expects that the proposed provisions would mostly affect depository institutions, credit unions, and broker-dealers that are remittance transfer providers. These types of providers tend to send most or all of their remittances transfers to foreign accounts, for which recipient institution fees may be charged. Furthermore, due to the mechanisms they use to send money, they generally have the ability to send transfers to virtually any destination country (for which tax research might be required). By contrast, money transmitters that are providers are more likely to send remittance transfers to be received in cash, for which recipient institution fees would not be relevant. Furthermore, most money transmitters, and particularly small ones, generally send transfers to a limited number of countries and institutions.

D. Incorrect or Insufficient Information

The proposal includes two sets of proposed changes related to errors caused by the provision of incorrect or insufficient information. It would create a new exception to the definition of the error. It would also streamline the requirements for resending remittance transfers in certain situations in which funds may be resent to correct errors.

The Bureau expects that a number of small remittance transfer providers would be unaffected by the proposed changes regarding the definition of error; they would only apply to remittance transfers that are received in accounts. Though some money transmitters send money to be deposited into bank accounts, the Bureau's outreach suggests that, unlike most small depository institutions, credit unions, and broker-dealers, many small money transmitters only send money to be received in cash.

With regard to small remittance transfer providers that do send money to accounts, the proposed new exception to the definition of error would not impose any mandatory costs. Under the proposal, certain account number mistakes would no longer generate ''errors'' if the provider satisfied certain conditions enumerated in proposed § 1005.33(h). Instead of satisfying these conditions, providers could continue under the Final Rule's definition of error.

If remittance transfer providers did choose to satisfy the conditions enumerated in proposed § 1005.33(h), they might incur some costs, such as changing the terms of their consumer contracts or other communications to provide senders the notice contemplated by proposed § 1005.33(h)(2). However, the Bureau expects that the cost of doing so would be modest, particularly because the proposed rule does not mandate any particular notice wording, form, or format, and the Bureau expects that many providers would integrate any such notice into existing communications.

The Bureau believes that satisfying the remainder of the conditions in proposed § 1005.33(h) would not impose new costs on providers because their existing practices generally would already satisfy those conditions. In particular, based on outreach, the Bureau believes that that keeping records or other documents that could demonstrate the conditions described in § 1005.33(h) would generally match providers' usual and customary practices to serve their customers, to manage their risk, and to satisfy the requirements under the Final Rule to retain records of the findings of investigations of alleged errors. *See* § 1005.33(g)(2).

In any case, the Bureau expects that remittance transfer providers would only develop their practices to comply with § 1005.33(h), and thus take advantage of the proposed new exception to the definition of error, if doing so would reduce the costs of losses due to account number mistakes by senders or account number fraud by more than the costs of implementing these practices. The Bureau believes that for most providers, including small ones, the proposed changes to the definition of error likely would provide benefits that outweigh implementation costs. If the new exception applied, providers would no longer bear the cost of funds that they could not recover. Providers would further benefit if the proposal reduced the potential for fraudulent account number mistakes made by unscrupulous senders, which providers have cited as a risk under the Final Rule. By reducing the remedies available in such cases, the proposal would reduce the direct costs of fraud and the indirect costs of fraud prevention and facilitate providers' continued participation in the remittance transfer market, without (or with fewer) new limitations on service. Industry has indicated that, at least in part, due to the risk of such fraud under the Final Rule, providers might exit the market or limit the size or type of transfers sent.[26]

The proposed change regarding requests to resend for certain errors would also benefit small remittance transfer providers, though the Bureau expects that the benefits would be small because the circumstances covered by the proposed change will arise very infrequently.[27] In instances in which it is applicable, the proposed changes would allow a provider to resend a transfer with less uncertainty about when and how to resend a transfer and possibly to do so using an estimated exchange rate. The proposed changes also could mean that in the narrow circumstances that they apply, providers would not need to provide as many written disclosures as under the Final Rule. Providers, including small entities, could also benefit from the alternative on which the Bureau is seeking comment, to adjust the Final Rule's remedy provisions so that anytime a remittance transfer is resent to resolve an error, the exchange rate would remain the rate stated in the original disclosures. This alternative would eliminate any cost of additional disclosures related to the resend. Unlike the Final Rule, however, the alternative would not permit a provider to charge the sender again for third party fees incurred when the transfer was sent the first time. Furthermore, the alternative could expose providers to additional exchange rate risk. When funds are resent, a provider might either gain or lose money related to the change in market exchange rates between the time of the original transfer and the time of the resend. The Bureau expects that the

[26] A similar analysis regarding benefits would likely apply if the Bureau expanded the proposed exception to apply in instances in which a failure to make funds available to the designated recipient by the disclosed date of availability resulted from a mistake by a sender other than providing an incorrect account number. Any optional costs might depend on the nature of any such extension.

[27] The Bureau expects that remittance transfer providers will generally experience low error rates. Prior to the February Final Rule, the Credit Union National Association reported a rate of less than 1% for international wire ''exceptions.'' The proposed changes would address only resends that occur under certain circumstances for certain types of errors. Specifically, the proposed change in the comment would apply in instances in which the error is a failure to make funds available to a designated recipient by the date of availability and such an error is due to incorrect or insufficient information provider by a sender.

saved disclosure costs, as well as the costs of third party fees or related exchange rate risk, would be very small because the covered circumstances would arise infrequently.

Either the proposed changes regarding certain instances in which remittance transfer providers resend transactions to correct errors, or the alternative on which the Bureau seeks comment, could impose a cost on providers to revise their procedures. Providers might also change their systems to generate the proposed streamlined disclosures, which could include the date of transfer, an element that is required on disclosures only for some remittance transfers. *See* §§ 1005.30(b)(2)(vii) and 1005.36(d). However, the Bureau expects these costs to be modest, because modifications could be made based on an existing disclosure form. Also, given the small percentage of transactions to which the provisions would apply, the Bureau expects that many small providers might implement the relevant provisions in the Final Rule or the proposed modifications manually, rather than through software-based automations. Finally, the Bureau expects that many small providers (or their software vendors) would incorporate such modifications into the modifications they would carry out to comply with the Final Rule.

E. Effective Date

The proposal would temporarily delay the February 7, 2013 effective date of the Final Rule and extend it to 90 days after this proposal is finalized. This change would generally benefit small remittance transfer providers, by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible.

F. Certification

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

VII. Paperwork Reduction Act

The Bureau's collection of information requirements contained in this proposal, and identified as such, will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) on or before publication of this proposal in the **Federal Register**. Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The proposed collections of information that are subject to the PRA in this proposal amend portions of 12 CFR Part 1005 (''Regulation E''). Regulation E currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014.

A. Overview

The title of these information collections is Electronic Fund Transfer Act (Regulation E) 12 CFR 1005. The frequency of collection is on occasion. As described below, the proposed rule would amend portions of the collections of information currently in Regulation E. Some portions of these information collections are required to provide benefits for consumers and are mandatory. However, some portions are voluntary because certain information collections under this proposal would simply give remittance transfer providers optional methods of compliance. Because the Bureau does not collect any information under the proposed rule, no issue of confidentiality arises. The likely respondents are remittance transfer providers, including small businesses. Respondents are required to retain records for 24 months, but this proposed regulation does not specify the types of records that must be maintained.

Under the proposed rule, the Bureau generally would account for the paperwork burden associated with Regulation E for the following respondents pursuant to its administrative enforcement authority: insured depository institutions and insured credit unions with more than $10 billion in total assets, and their depository institution and credit union affiliates (together, ''the Bureau depository respondents''), and certain non-depository remittance transfer providers, such as certain state-licensed money transmitters (''the Bureau non-depository respondents'').

Using the Bureau's burden estimation methodology, the Bureau estimates that the total one-time burden for the estimated 5,753 respondents potentially affected by the proposal would be approximately 420,000 hours.[28] The Bureau estimates that the ongoing burden to comply with Regulation E would be reduced by approximately 268,000 hours per year by the proposal. The aggregate estimates of total burdens presented in this analysis are based on estimated costs that are averages across respondents. The Bureau expects that the amount of time required to implement the proposed changes for a given remittance transfer provider may vary based on the size, complexity, and practices of the respondent.

For the 153 Bureau depository respondents, the Bureau estimates for the purpose of this PRA analysis that the proposal would increase one-time burden by approximately 11,000 hours and reduce ongoing burden by approximately 7,300 hours per year. For the estimated 300 Bureau non-depository respondents, the Bureau estimates that the proposal would increase one-time burden by 21,900 hours and reduce ongoing burden by 6,300 hours per year.[29] The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions under Regulation E, including state-licensed money transmitters. The Bureau has allocated to itself half of its estimated burden to

[28] The decrease in respondents relative to the PRA analysis for the August Final Rule reflects a change in the number of insured depository institutions and credit unions supervised by the Bureau, a focus on the Bureau's estimate of the number of insured depository institutions and credit unions that would qualify as remittance transfer providers, and a revision by the Bureau of the estimated number of state-licensed money transmitters that offer remittance services. The revised estimate of the number of state-licensed money transmitters that offer remittance services is based on subsequent analysis of publicly available state registration lists and other information about the business practices of licensed entities. The decrease in burden relative to what was previously reported for the Final Rule from this revision is not included in the change in burden reported here. However, the revised entity counts are used for the purpose of calculating other changes in burden that would arise from the proposal.

[29] The Bureau's estimate of non-depository respondents is based on an estimate of the number of state-licensed money transmitters that are remittance transfer providers. The Bureau notes that there may be other entities that are not insured depository institutions or credit unions and that serve as providers, such as broker-dealers or money transmission companies that are not state-licensed. However, the Bureau does not have an estimate of the number of any such entities. Furthermore, the Bureau notes that while its analysis in the February Final Rule attributed burden to the agents of state-licensed money transmitters, in this case, the Bureau expects that the changes in burden discussed in this PRA analysis would generally be borne only by money transmitters themselves, not their agents. In particular, the Bureau believes that money transmitters will generally gather and prepare recipient institution fee and foreign tax information centrally, rather than requiring their agents to do so. Similarly, the Bureau expects that money transmitters will generally investigate and respond to errors centrally, rather than asking their agents to take responsibility for such functions. Comment 30(f)–1 states that a person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

Bureau non-depository respondents, which is based on an estimate of the number of state-licensed money transmitters that are remittance transfer providers. The FTC is responsible for estimating and reporting to OMB its total paperwork burden for the institutions for which it has administrative enforcement authority. It may, but is not required to, use the Bureau's burden estimation methodology.

B. Analysis of Potential Burden

1. Recipient Institution Fees and Foreign Taxes

As described in parts V and VI above, to take advantage of the new flexibility that would be provided by the proposal with regard to the disclosure of recipient institution fees and foreign taxes, remittance transfer providers might choose to bear some cost of modifying their systems to calculate disclosures using the new methods permitted by the proposal, or to describe certain disclosures using the term ''Estimated'' or a substantially similar term. Though the proposal would not require such modification, for purposes of this analysis, the Bureau assumes that all remittance transfer providers would decide to take advantage of the new flexibility permitted due to the related benefits. The Bureau believes that in many instances providers would have already modified their systems to use the term ''Estimated'' or a substantially similar term in other cases, in order to comply with the Final Rule. The Bureau also expects that many depository institutions and credit unions will rely on correspondent institutions or other service providers to provide recipient institution fee and foreign tax information, as well as standard disclosure forms; as a result, any development cost associated with the proposal would be spread across multiple institutions. Furthermore, the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the Final Rule, and thus may be able to incorporate any changes into previously accounted-for work. In the interest of providing a conservative estimate, however, the Bureau assumes that all providers would need to modify their systems to calculate disclosures and to add the term ''Estimated'' or a substantially similar term to a pre-payment disclosure form and a receipt. The Bureau estimates that making revisions to systems to calculate disclosures would take 40 hours per provider. Because the forms to be modified are existing forms, the Bureau estimates that adding the term ''Estimated'' or a substantially similar term would require eight hours per form per provider.

On the other hand, the proposal would give remittance transfer providers options that may reduce the ongoing cost of obtaining and updating information on taxes and fees. By taking advantage of the new flexibility permitted by the proposal, the Bureau estimates that insured depository institutions and credit unions would save, on average, 48 hours per year and non-depository institutions would save, on average, 21 hours per year.

The Bureau is particularly seeking comment on whether or not to adopt an alternative to the term ''Estimated,'' or to require no disclosure, in instances in which foreign subnational taxes were not disclosed. The relative cost of any such alternative would depend on the form of the requirement; if no disclosure were required, the above calculated burden could be less, but if some alternative form of disclosure were required for providers that chose to take advantage of the new flexibility that the proposal would permit, the cost might be higher.

2. Incorrect or Insufficient Information

As described in parts V and VI above, the Bureau expects that remittance transfer providers that send money to accounts, in order to benefit from the proposed changes to the definition of the term error, may choose to provide senders with notice that if they provide incorrect account numbers, they could lose the transfer amount, and providers may also choose to maintain sufficient records to satisfy, wherever possible, the conditions enumerated in proposed § 1005.33(h) (though no such recordkeeping is required). These enumerated conditions regard being able to demonstrate facts regarding senders' responsibility for any account number mistake; the above-referenced notice; the results of an incorrect account number; and the provider's effort to recover funds.

Because this will likely involve modifications to existing communications, the Bureau estimates that providing senders with the notice described above would require a one-time burden of eight hours per provider and would not generate any ongoing burden. With regard to demonstrating facts related to the conditions enumerated in proposed § 1005.33(h), the Bureau believes that any related record retention would be a usual and customary practice by providers under the Final Rule, and that therefore there would be no additional burden associated with these aspects of the proposal.[30]

In certain circumstances when a remittance transfer provider resends a remittance transfer to correct an error caused by incorrect or insufficient information provided by a sender, the proposal would require that the provider give the sender a single simplified set of disclosures rather than the pre-payment disclosures and receipt generally required by the Final Rule. In some cases, the proposal would permit providers to rely solely on information that is already required to be included on pre-payment disclosures and receipts; under other circumstances, the proposal would require the simplified disclosures to include one additional piece of information that is not required on existing disclosures: The date that the provider will make the remittance transfer. Though the Bureau expects that some providers may avoid these circumstances altogether or incorporate modifications into those they would carry out to comply with the Final Rule, in the interest of providing a conservative estimate, the Bureau estimates that the modified disclosure requirement would require a one-time change to an existing form that would take each provider eight hours to make.

The Bureau also estimates that to reflect the proposed changes regarding certain errors, remittance transfer providers would spend, on average, one hour, to update written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to providers, pursuant to § 1005.33(g).

The Bureau expects that the proposed requirement for a simplified set of disclosures would also reduce providers' ongoing burden, by eliminating the need to provide both a pre-payment disclosure and a receipt under covered circumstances. However, because the Bureau expects that the covered circumstances would arise very infrequently, the Bureau expects that this burden reduction would be minimal.

Alternatively, the Bureau seeks comment on whether to change the error resolution procedures such that, among other things, no additional disclosures would be required when remittance transfers providers resend transfers in order to correct errors. Under that alternative scenario, the Bureau expects that a similar analysis would apply. Providers would need to make small

[30] The Bureau seeks comment on whether the proposed provisions regarding account number mistakes should be expanded to apply to other sender mistakes. Any associated PRA burden might depend on the nature of any such extension.

systems changes to eliminate required disclosures, as well as update their error resolution procedures; the burden on providers would be reduced minimally, due to the need to send fewer disclosures in a very small number of circumstances.

C. Comments Requested

Comments on this analysis must be received by January 30, 2013. With regard to this PRA analysis, comments are specifically requested concerning:

(i) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(ii) The accuracy of the estimated burden associated with the proposed collections of information;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology.

All comments will become a matter of public record.

Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to *oira_submission@omb.eop.gov,* with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov.*

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is shown inside bold brackets.

List of Subjects in 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Bureau proposes to amend 12 CFR part 1005, as added February 7, 2012 (77 FR 6285), and amended August 20, 2012 (77 FR 5028) as set forth below:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

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

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

Subpart B—Requirements for Remittance Transfers

2. Amend § 1005.31 to revise paragraphs (b)(1)(vi) and (d) to read as follows:

§ 1005.31 Disclosures.

* * * * *

(b) *Disclosure requirements.* * * *

(1) * * *

(vi) ►Except as set forth in this paragraph, any◄**[**Any**]** fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient, using the terms ''Other Fees'' for fees and ''Other Taxes'' for taxes, or substantially similar terms. ►With respect to tax disclosures, only taxes imposed on the remittance transfer by a foreign country's central government need be disclosed. ◄The exchange rate used to calculate these fees and taxes is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate; and

* * * * *

(d) *Estimates.* Estimated disclosures may be provided to the extent permitted by § 1005.32. Estimated disclosures must be described using the term ''Estimated'' or a substantially similar term in close proximity to the estimated term or terms. ►The term ''Estimated'' also must be used if a provider is not disclosing regional, provincial, state, or other local foreign taxes, as permitted by paragraph (b)(1)(vi) of this section.◄

* * * * *

3. Amend § 1005.32 to add paragraphs (b)(3) and (b)(4) to read as follows:

§ 1005.32 Estimates.

* * * * *

(b) *Permanent Exceptions.* * * *

►(3) *Permanent exception where variables affect taxes imposed by a person other than the provider.* For purposes of determining the taxes to be disclosed under § 1005.31(b)(1)(vi), if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable.

(4) *Permanent exception where variables affect recipient institution fees.* (i) For purposes of determining the fees to be disclosed under § 1005.31(b)(1)(vi), if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account, the provider may disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution.

(ii) If the provider cannot obtain such fee schedules or does not have such information, a provider may rely on other reasonable sources of information, if the provider discloses the highest fees identified through the relied-upon source.◄

* * * * *

4. Amend § 1005.33 to revise paragraphs (a)(2)(iv), (c)(2) introductory text, (c)(2)(ii)(A)(*2*) and to add paragraphs (a)(1)(iv)(D), (c)(3) and (h) to read as follows:

§ 1005.33 Procedures for resolving errors.

* * * * *

(a) *Definition of Error.* (1) *Types of transfers or inquiries covered.* * * *

(iv) * * *

►(D) The sender having given the remittance transfer provider an incorrect account number, provided that the remittance transfer provider meets the conditions set forth in paragraph (h) of this section; or ◄

* * * * *

(2) *Types of transfers or inquiries not covered.* * * *

(iv) A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) ►because◄**[**if**]** the remittance transfer provider ►did not disclose foreign taxes other than those imposed by a country's central government, or◄ relied on information provided by the sender as permitted under § 1005.31 in making such disclosure.

* * * * *

(c) * * *

(2) *Remedies.* **[**If**]** ►Except as provided in paragraph (c)(3) of this section, if◄ * * *

* * * * *

(ii) * * *

(A) * * *

(*2*) Making available to the designated recipient the amount appropriate to resolve the error. Such amount must be made available to the designated recipient without additional cost to the sender or to the designated recipient unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer, in which case, third party fees may be imposed for resending the [remittance transfer] ►funds◄ with the corrected or additional information; and

* * * * *

►(3) *Disclosures where refund not previously chosen.* If an error under paragraph (a)(1)(iv) of this section occurred because the sender provided incorrect or insufficient information, and if the sender has not previously designated a refund remedy pursuant to paragraph (c)(2)(ii)(A)(*1*) of this section, then:

(i) If the remittance transfer provider does not make direct contact with the sender when providing the report required by paragraph (c)(1) of this section, the provider shall provide, orally or in writing, as applicable, the following disclosures:

(A) The disclosures required by § 1005.31(b)(2)(i) through (iii) for remittance transfers and the date the remittance transfer provider will complete the resend, using the term ''Transfer Date'' or a substantially similar term. These disclosures must be accurate when the resend is made except that the disclosures may contain estimates to the extent permitted by § 1005.32(a) or (b) for remittance transfers; and

(B) If the transfer is scheduled three or more business days before the date of transfer, a statement about the rights of the sender regarding cancellation reflecting the requirements of § 1005.36(c), the requirements of which shall apply to the resend; or

(ii) If the remittance transfer provider makes direct contact with the sender at the same time or after providing the report required by paragraph (c)(1) of this section, the provider shall provide, orally or in writing, as applicable, the disclosures required by § 1005.31(b)(2)(i) through (iii) for remittance transfers. These disclosures must be accurate when the resend is made except that the disclosures may contain estimates to the extent permitted by § 1005.32(a), (b)(1), (b)(3) or (b)(4) for remittance transfers.◄

* * * * *

►(h) *Incorrect account number provided by the sender.* No error has occurred under paragraph (a)(1)(iv) of this section for failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) if the remittance transfer provider can demonstrate that:

(1) The sender provided an incorrect account number to the remittance transfer provider in connection with the remittance transfer;

(2) The sender had notice that, in the event the sender provided an incorrect account number, that the sender could lose the transfer amount;

(3) The incorrect account number resulted in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account; and

(4) The provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.◄

* * * * *

5. Amend § 1005.36 to revise paragraph (b)(3) to read as follows:

§ 1005.36 Transfers scheduled before the date of transfer.

* * * * *

(b) * * *

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a)[or] ►,◄ (b)(1)►, (b)(3) or (b)(4)◄.

6. In Supplement I to part 1005:

a. Under *Section 1005.31 Disclosures,*

i. Under subheading *31(b)(1) Pre-Payment Disclosures,* revise paragraph 1.ii and add paragraphs 1.iii through v.

ii. Under subheading *31(b)(1)(vi) Fees and Taxes imposed by a Person Other than the Provider,* revise paragraph 2 and add paragraphs 3 and 4.

iii. Under subheading 31(d) *Estimates,* revise paragraph 1.

b. Under *Section 1005.32 Estimates,*

i. Revise comment 32–1.

ii. Under subheading *32(b) Permanent Exceptions,* add new subheading *32(b)(3) Permanent Exception Where Variables Affect Foreign Taxes* and add new comment 32(b)(3)–1.

iii. Under subheading *32(b) Permanent Exceptions,* add new subheading *32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees* and add new comments 32(b)(4)–1 and 32 (b)(4)–2.

iv. Under subheading *32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer,* revise the second sentence of comment 32(d)–1 and add a new sentence immediately following it.

c. Under Section 1005.33, *Procedures for Resolving Errors,*

i. Under subheading *33(a) Definition of Error,* revise the second sentence of comment 33(a)–3.ii and comment 33(a)–4, redesignate comments 33(a)–7 and 33(a)–8 as comments 33(a)–8 and 33(a)–9 respectively, revise newly redesignated comment 33(a)–9, and add new comment 33(a)–7.

ii. Under subheading *33(c) Time Limits and Extent of Investigation,* revise comment 33(c)–2 and add new comment 33(c)–11.

iii. Add new subheading *33(h) Incorrect Account Number Supplied* and add paragraphs 1 and 2 under the subheading.

d. Under Section 1005.36, under subheading *36(b) Accuracy,* revise the second sentence of comment 36(b)–3.

The additions and revisions read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

Section 1005.31—Disclosures

* * * * *

31(b) Disclosure Requirements

* * * * *

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

1. *Fees and taxes.* * * *

ii. The fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) include all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any State taxes imposed on the remittance transfer. In contrast, the fees and taxes required to be disclosed by § 1005.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider.

►iii.◄ Fees and taxes imposed on the remittance transfer include only those fees and taxes that are charged to the sender or designated recipient and are specifically related to the remittance transfer. For example, a provider must disclose fees imposed on a remittance transfer by the [receiving] ►recipient's◄ institution or agent at pick-up for receiving the transfer, fees imposed on a remittance transfer by intermediary institutions in connection with an international wire transfer, and taxes imposed on a remittance transfer by a foreign ►country's central◄ government. However, a provider need not disclose, for example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt, because these charges are not specifically related to the remittance transfer. ►Account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance

fee, that fee is not specifically related to a remittance transfer.◄ Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not charged to the sender or designated recipient. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer need not be disclosed.

►iv. A fee that specifically relates to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming wire fee on most customers' accounts, but not on preferred accounts, such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month. In either case, the fee is subject to disclosure under § 1005.31(b)(1)(vi); *see* comment 31(b)(1)(vi)–4 regarding how to make such disclosures.

v.◄ The terms used to describe the fees and taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi) must differentiate between such fees and taxes. For example, the terms used to describe fees disclosed under § 1005.31(b)(1)(ii) and (vi) may not both be described solely as ''Fees.''

* * * * *

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

* * * * *

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

►3. *Taxes imposed by a country's central government.* A provider need only disclose foreign taxes assessed on the transfer by a country's central government. Regional, provincial, state, or other local foreign taxes need not be disclosed, although a provider may choose to disclose them.

4. *Determining recipient institution fees.* In some cases, where a remittance transfer is sent to a designated recipient's account at a financial institution, the institution imposes a fee on the remittance transfer pursuant to an agreement with the recipient. The amount of the fee imposed by the institution may vary based on whether the designated recipient holds a preferred status account with a financial institution, the quantity of transfers received, or other variables. If a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by the recipient's institution for receiving a transfer in an account, the provider may rely on a sender's representations regarding these variables. ◄

* * * * *

31(d) Estimates

1. *Terms.* A remittance transfer provider may provide estimates of the amounts required by § 1005.31(b), to the extent permitted by § 1005.32. ►A provider also may choose not to disclose regional, provincial, state, or other local foreign taxes under § 1005.31(b)(1)(vi). This may also result in disclosures that do not match the amount actually received by the designated recipient. In both cases, the relevant disclosures◄ ❙An estimate❙ must be described using the term ''Estimated'' or a substantially similar term in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as ''Estimated Transfer Amount,'' ''Other Estimated Fees and Taxes,'' or ''Total to Recipient (Est.).'' ► However, if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of fees disclosed under § 1005.31(b)(1)(vi), and is not otherwise providing estimated disclosures, § 1005.31(d) does not apply. Section 1005.31(d) also does not apply to foreign tax disclosures if the provider discloses all applicable taxes (including applicable regional, provincial, state, or other local foreign taxes), if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of foreign taxes imposed by a country's central government, and if the provider is not otherwise providing estimated disclosures.◄

* * * * *

Section 1005.32—Estimates

1. *Disclosures where estimates can be used.* Section 1005.32(a)[and]►,◄ (b)(1)►, (b)(3) and (b)(4)◄ permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (b)(3) and 1005.36(a)(1) and (2). To the extent permitted in § 1005.32(a)[and]►,◄ (b)(1)►, (b)(3) and (b)(4)◄, * * *

* * * * *

32(b) Permanent Exceptions

* * * * *

►*32(b)(3) Permanent Exception Where Variables Affect Taxes Imposed by a Person Other Than the Provider*

1. *Application of exception.* The amount of taxes imposed by a person other than the provider may depend on certain variables. *See* comment 32(b)(1)(vi)–2. Under § 1005.32(b)(3), a provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable. For example, if a tax may vary based upon whether a recipient's institution is grandfathered under existing law, or whether the recipient has reached a transaction threshold above which taxes are assessed, the provider may simply assume that a tax applies without having to ask the sender first. In such a case, the provider should disclose the highest possible tax that could be imposed. If the provider expects that variations may result from differing interpretations of law or regulation by the paying agent or recipient institution, the provider may assume that the highest possible tax that could be imposed applies.

32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees

1. *Application of exception.* The amount of fees imposed by a designated recipient's institution for receiving a transfer in an account a person other than the provider may depend on certain variables. *See* comment 32(b)(1)(vi)–4. Under § 1005.32(b)(4)(i), a provider may disclose the highest possible fees that could be imposed on the remittance transfer with respect to any unknown variable based on, among other things, fee schedules made available by the recipient institution. For example, if a provider relies on an institution's fee schedules, and the institution offers three accounts with different incoming wire fees, the provider should take the highest fee and use that as the basis for disclosure.

2. *Reasonable sources of information.* Reasonable sources of information include: fee schedules published by competitor institutions; surveys of financial institution fees; or information provided by the recipient institution's regulator or central bank.◄

* * * * *

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

1. *In general.* * * *. If, for the same-day remittance transfer, the provider could utilize either of the [other two] exceptions permitting the provision of estimates in § 1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under § 1005.32(c).► The provider could also provide estimates in accordance with § 1005.32(b)(3) or (b)(4). ◄ * * *

Section 1005.33—Procedures for Resolving Errors

33(a) Definition of Error

* * * * *

3. *Incorrect amount of currency received—examples.* * * *

* * * * *

ii. * * *. 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]►by◄ Colombia►'s central government◄ on the transfer. * * *

* * * * *

4. *Incorrect amount of currency received–extraordinary circumstances.* Under ►§ 1005.33(a)(1)(iii)(B), a remittance transfer provider's failure to make available to a designated recipient the amount of currency stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) for the remittance transfer◄ **[**§ 1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability**]** is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under ►§ 1005.33(a)(1)(iii)(B)◄ **[**§ 1005.33(a)(1)(iv)(B)**]** include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided under § 1005.31(b)(2) or (3).

* * * * *

7. ►*Sender Account Number Error.* The exception in § 1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number that results in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account. This exception does not apply where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information other than an incorrect account number.◄

►8.◄ **[**7**]***Recipient-requested changes.*

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►9.◄ **[**8**]***Change from disclosure made in reliance on sender information* ►*or because only foreign taxes imposed by a country's central government disclosed*◄. Under ►§ 1005.31(b)(1)(vi), providers need not disclose regional, provincial, state, or other local foreign taxes. Further, under◄ the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. *See, e.g.* comments 31(b)(1)(iv)–1 **[**,**]** ►and◄ 31(b)(1)(vi)–1 **[**, and 31(b)(1)(vi)–2**]** ► through 31(b)(1)(vi)–4. Any discrepancy between the amount disclosed and the actual amount received resulting from the provider's reliance upon these provisions does not constitute an error under § 1005.33(a)(2)(iv).◄ For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient's account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error **[**pursuant to**]** ►as set forth in◄ § 1005.33(a)(2)(iv). Similarly, if the remittance transfer provider relies on the sender's representations regarding variables that affect the amount of ►recipient institution fees or◄ taxes imposed by a person other than the provider for purposes of determining ►fees or◄ **[**these**]** taxes► required to be disclosed under § 1005.31(b)(1)(vi), or does not disclose regional, provincial, state, or other local foreign taxes, as permitted by § 1005.31(b)(1)(vi), ◄the change in the amount of currency the designated recipient actually receives due to the ►recipient institution fees or foreign◄ taxes actually imposed does not constitute an error, **[**pursuant to**]** ►as set forth in◄ § 1005.33(a)(2)(iv).

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33(c) Time Limits and Extent of Investigation

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2. *Incorrect or insufficient information provided for transfer.* Under § 1005.33(c)(2)(ii)(A)(*2*), if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient►'s address◄ **[**or the recipient's account number**]** or by providing insufficient information to enable the entity distributing the funds to identify the correct designated recipient, the sender may choose to have the provider make funds available to the designated recipient and third party fees may be imposed for resending the remittance transfer with the corrected or additional information. The remittance transfer provider may not require the sender to provide the principal transfer amount again. ►When resending funds, the entire transfer amount is to be sent again except that § 1005.33(c)(2)(ii)(A)(*2*) permits a provider to deduct those third party fees that were actually incurred as part of the first unsuccessful remittance transfer attempt. While a request to resend is not a request for a remittance transfer, § 1005.33(c)(3) requires providers to provide certain disclosures◄. **[**Third parties fees that were not incurred during the first unsuccessful remittance transfer attempt may not be imposed again for resending the remittance transfer. A request to resend is a request for a remittance transfer. Therefore, a provider must provide the disclosures required by § 1005.31 for a resend of a remittance transfer, and**]** ►To the extent currency must be exchanged when resending funds, ◄ the provider must use the exchange rate it is using for such transfers on the date of the resend **[**if funds were not already exchanged in the first unsuccessful remittance transfer attempt**]**. A sender providing incorrect or insufficient information does not include a provider's miscommunication of information necessary for the designated recipient to pick-up the transfer ►nor does it include a sender providing an incorrect account number when the provider has satisfied the requirements of § 1005.33(h). *See* § 1005.33(a)(1)(iv)(D)◄. For example, a sender is not considered to have provided incorrect or insufficient information if the provider discloses the incorrect location where the transfer may be picked up or gives the wrong confirmation number/code for the transfer. The following examples illustrate these concepts.

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►11. *Procedure for resending a remittance transfer.* The disclosures in § 1005.33(c)(3) need not be provided either if the sender has elected a refund remedy or if the remittance transfer provider's default remedy is a refund and the sender has not selected a remedy prior to when the provider is providing the § 1005.33(c)(1) report. To the extent that the resend is not properly transmitted, the initial error has not been resolved and the provider's duty to resolve it is not fully satisfied.

i. For purposes of determining the date of transfer for disclosures made in accordance with § 1005.33(c)(3)(i), if the remittance transfer provider is unable to speak to or otherwise make direct contact with the sender, the provider may use the same date on which it would provide a default remedy (*i.e.* one business day after 10 days after the provider has sent the report provided under § 1005.33(c)(1)). *See* comment 33(c)-4.

ii. If the remittance transfer provider makes direct contact with the sender at the same time or after providing the report required by § 1005.33(c)(1), and if the time to cancel a resend disclosed pursuant to § 1005.33(c)(3)(i)(B) has not passed, § 1005.33(c)(2) requires the provider to resend the funds the next business day or as soon as reasonably practicable thereafter if the sender elects a resend remedy. For such a resend, the provider must provide the disclosures required by § 1005.33(c)(3)(ii) to use the exchange rate it is using for such transfers on the date of resend to the extent that currency must be exchanged when resending funds. When providing disclosures pursuant to § 1005.33(c)(3)(ii), the provider need not allow the sender to cancel the resend.◄

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►*33(h) Incorrect Account Number Supplied.*

1. *Reasonable efforts.* Section 1005.33(h)(4) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. The following are examples of how a provider might use reasonable efforts:

i. The remittance transfer provider promptly calls or otherwise contacts the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting

that the recipient institution obtain a debit authorization from the holder of the incorrectly credited accountholder.

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

iii. In addition to using the methods outlined above, to the extent that a correspondent institution, other service providers to the recipient institution, or the recipient institution requests documentation or other supporting information, the remittance transfer provider promptly provides such documentation or other supporting information to the extent available.

2. *Promptness of Reasonable Efforts.* Section 1005.33(h)(4) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. While promptness may depend on the circumstances, generally a remittance transfer provider acts promptly when it does not delay in seeking recovery of the mis-deposited funds. For example, if the sender informs the provider of the error before the date of availability disclosed pursuant to § 1005.31(b)(2)(ii), the provider should act to contact the recipient's institution before the date of availability, as doing so may prevent the funds from being mis-deposited.◄

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36(b) Accuracy

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3. *Receipts.* * * *. However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a)[or]►,◄ (b)(1)►, (b)(3) or (b)(4)◄. * * *

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Dated: December 21, 2012.

Richard Cordray,

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[FR Doc. 2012–31170 Filed 12–27–12; 11:15 am]

BILLING CODE 4810–AM–P