

**BUREAU OF CONSUMER FINANCIAL PROTECTION****12 CFR Part 1005**

[Docket No. CFPB–2011–0009]

RIN 3170–AA15

**Electronic Fund Transfers (Regulation E)****AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Proposed rule; request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation, which interprets the requirements of Regulation E. The proposal is related to a final rule, published elsewhere in today's **Federal Register**, that implements section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The proposal requests comment on whether a safe harbor should be adopted with respect to the phrase "normal course of business" in the definition of "remittance transfer provider." This definition determines whether a person is covered by the rule. The proposal also requests comment on several aspects of the final rule regarding remittance transfers that are scheduled in advance, including preauthorized remittance transfers. In developing the final rule, the Bureau believes that these issues would benefit from further public comment.

**DATES:** Comments must be received on or before April 9, 2012.**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2011–0009 or RIN 3170–AA15, by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006.
- **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 20006.

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 20006, 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:**

Mandie Aubrey, Dana Miller, or Stephen Shin, Counsels, or Krista Ayoub and Vivian Wong, Senior Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006, at (202) 435–7000.

**SUPPLEMENTARY INFORMATION:****I. Overview**

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>1</sup> mandates a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule (January 2012 Final Rule) elsewhere in today's **Federal Register** to implement the new regime. The Bureau is publishing this notice of proposed rulemaking to seek comment on whether to provide additional safe harbors and flexibility in applying the final rule to certain transactions and remittance transfer providers.

The Dodd-Frank Act, which was enacted July 21, 2010, amends the Electronic Fund Transfer Act (EFTA)<sup>2</sup> to create a multi-faceted regime governing most electronic transfers of funds sent by consumers in the United States to recipients in other countries. For covered transactions conducted by "remittance transfer providers" as defined by the statute, the regime requires: (i) The provision of disclosures concerning the exchange rate and amount to be received by the remittance recipient, prior to and at the time of payment by the consumer for the transfer; (ii) Federal rights regarding transaction cancellation periods; (iii)

investigation and remedy of errors by remittance transfer providers; and (iv) standards for the liability of remittance transfer providers for the acts of their agents. Authority to implement the new Dodd-Frank Act provisions transferred from the Board of Governors of the Federal Reserve System (Board) to the Bureau effective July 21, 2011.<sup>3</sup>

This proposal has two parts. First, it seeks comment on addition of a possible safe harbor to the definition of the term "remittance transfer provider" to make it easier to determine when certain companies are excluded from the statutory scheme because they do not provide remittance transfers in "the normal course of business." Second, it seeks comment on a possible safe harbor and other refinements to disclosure and cancellation requirements for certain transfers scheduled in advance, including "preauthorized" remittance transfers that are scheduled in advance to recur at substantially regular intervals. The Bureau believes that providing additional guidance on these issues may help both to reduce compliance burden for providers and to increase the benefits of the disclosure and cancellation requirements for consumers.

The final rule adopted by the Bureau provides a one-year implementation period. The Bureau expects to complete any further rulemaking on matters raised in this proposal on an expedited basis before the January 2013 effective date for the final rule. As detailed in the **SUPPLEMENTARY INFORMATION** to the January 2012 Final Rule, the Bureau will work actively with consumers, industry, and other regulators in the coming months to facilitate implementation of the new regime.

**II. Summary of Final Rule**

Elsewhere in today's **Federal Register**, the Bureau is publishing the final rule (January 2012 Final Rule) to implement the remittance transfer provisions in section 1073 of the Dodd-Frank Act. The final rule largely adopts the proposal as published in the May 2011 Proposed Rule, with several amendments and clarifications based on commenters' suggestions. The final rule incorporates the definitions of "remittance transfer," "sender," "remittance transfer provider," and "designated recipient" set forth in the statute. With regard to statutory language excluding any person

<sup>1</sup> Public Law 111–203, 124 Stat. 1376, section 1073 (2010).

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

<sup>3</sup> Because the Dodd-Frank Act requires that regulations to implement certain provisions be issued by January 21, 2012, the Board issued a Notice of Proposed Rulemaking in May 2011 (May 2011 Proposed Rule) with the expectation that the Bureau would complete the rulemaking process. 76 FR 29902 (May 23, 2011).

that does not provide remittance transfers in the “normal course of its business” from the definition of “remittance transfer provider,” the rule adopts a facts and circumstances test.

The final rule generally requires a remittance transfer provider to provide a written pre-payment disclosure to a sender containing information about the specific transfer requested by the sender, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. Under the final rule, the remittance transfer provider also is required generally to provide a written receipt when payment is made for the transfer, which is when the payment is authorized. The receipt must include the information provided on the pre-payment disclosure, as well as additional information such as the date of availability, the recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Consistent with the statute, which permits remittance transfer providers to provide estimates only in two narrow circumstances, the final rule generally requires that disclosures provide the actual exchange rate and amount to be received.

The final rule also sets forth special requirements for the timing and accuracy of disclosures with respect to “preauthorized remittance transfers,” which are defined as remittance transfers authorized in advance to recur at substantially regular intervals. As explained in the **SUPPLEMENTARY INFORMATION** to the January 2012 Final Rule, the Bureau recognizes that the market for preauthorized remittance transfers is still developing. The Bureau is concerned that if providers were required to provide accurate disclosures for subsequent preauthorized remittance transfers at the time those transfers are authorized, in many cases providers would not be able to offer preauthorized remittance transfer products, which could limit consumer access to a potentially valuable product.

The final rule treats the first transaction in a series of preauthorized remittance transfers the same as all other remittance transfers. Accordingly, the provider must issue a pre-payment disclosure at the time the sender requests the transfer and a receipt at the time when payment for the transfer is authorized, and the disclosures must be accurate when payment for the transfer is authorized, unless the statutory exceptions apply.

But in recognition of the potential risks associated with setting exchange rates and the potential difficulty of determining the amount to be provided

to a designated recipient weeks or months in advance of subsequent transfers, the final rule does not require that disclosures for the entire series of preauthorized transfers be provided at the time of the consumer's initial request and payment authorization. Instead, providers must issue pre-payment disclosures and receipts for each subsequent transfer at later times. Specifically, under the final rule, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer. The receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made. However, if the transfer involves the transfer of funds from the sender's “account” (as defined by Regulation E) held by the provider, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not required. The pre-payment disclosure and receipt for each subsequent transfer must be accurate when the respective transfer is made, unless the statutory exceptions apply.

The final rule also provides senders specified cancellation and refund rights. Under the final rule, a sender generally has 30 minutes after payment for the transfer is made to cancel the transfer. The final rule, however, contains special cancellation procedures for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, including preauthorized remittance transfers. In that case, the sender must notify the provider at least three business days before the scheduled date of the transfer to cancel the transfer.

### III. Summary of the Proposed Rule

The proposal relates to two provisions in the January 2012 Final Rule. First, the proposal solicits comment on a possible safe harbor to define when a person does not provide transfers in the “normal course of business” for purposes of the definition of “remittance transfer provider.” Second, the proposal solicits comment on possible changes to the rules applicable to remittance transfers that are scheduled in advance, including preauthorized remittance transfers. In developing the January 2012 Final Rule, the Bureau recognized that additional safe harbors and flexibility for providers in complying with certain requirements related to these provisions may be needed to facilitate compliance with the final rule, and to minimize compliance

burden. In addition, the Bureau wants to ensure that the disclosures required under the final rule for preauthorized remittance transfers are beneficial to senders, and are provided at a time that is most useful to senders in understanding the terms of the transfers. Moreover, the Bureau wants to ensure that the special cancellation procedures for remittance transfers scheduled in advance as set forth in the final rule provide appropriate protections for senders and do not impose undue burden on providers. The Bureau also wants to ensure that senders are informed properly of the right to cancel a transfer and the deadline to cancel, without undue burden on providers in providing these disclosures. The Bureau believes that these issues would benefit from further public comment, as summarized below.

#### *Definition of “Remittance Transfer Provider”*

Consistent with the statute, the January 2012 Final Rule provides that a “remittance transfer provider” means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. A “remittance transfer provider,” as defined in the final rule, is required to comply with the disclosure and substantive protections set forth in subpart B of Regulation E relating to remittance transfers. The final rule provides guidance in the commentary regarding the phrase “normal course of business” using a facts and circumstances test, but does not give a numerical threshold.

The proposal solicits comment on whether the Bureau should adopt a safe harbor for determining whether a person is providing remittance transfers in the “normal course of its business,” and thus is a “remittance transfer provider.” Under the proposed safe harbor, if a person makes no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business for the current year if it provides no more than 25 remittance transfers in the current year. If that person, however, makes a 26th remittance transfer in the current calendar year, the person would be evaluated under the facts and circumstances test to determine whether that person is a remittance transfer provider for that transfer and any additional transfers provided through the rest of the year. The Bureau requests comment on the proposed safe harbor generally, and, if such a safe harbor is appropriate, whether the maximum

number of transfers per calendar year to qualify for the safe harbor should be higher or lower than 25 transfers, such as 10 or 50 transfers, or some other number.

#### *Disclosure Rules For Advance Remittance Transfers*

The January 2012 Final Rule sets forth special requirements for the timing and accuracy of disclosures relating to preauthorized remittance transfers, which are remittance transfers authorized in advance to recur at substantially regular intervals. This proposal seeks comment both on a relatively narrow question regarding whether to provide a safe harbor regarding certain timing requirements under the final rule and more broadly on whether to make further adjustments in the disclosure rules for preauthorized remittance transfers and certain other remittance transfers requested in advance of the transfer date (advance transfers). The options presented explore whether there are ways to better balance consumer benefits and potential industry compliance burdens in light of the potential costs of setting exchange rates and the potential difficulty of determining the amount to be received by designated recipients far in advance of a particular transfer.

The proposal first addresses whether the Bureau should modify the final rule for a transfer scheduled more than a certain number of days (e.g., 10 days) in advance of the consumer's requested transfer date, whether that transfer is a standalone transaction or the first in a series of preauthorized remittance transfers. The proposal also solicits comments on modifications of the final rule as applied to the first transfer in a series of preauthorized remittance transfers where the amount of the transfers can vary, and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The proposal then seeks comment on whether the Bureau should modify the disclosure rules for subsequent transfers in a preauthorized series.

#### *Initial Advance Transfers*

The January 2012 Final Rule treats the first transaction in a series of preauthorized remittance transfers the same as all other remittances transfers by requiring disclosure of the actual exchange rate and amount to be provided to the designated recipient unless one of the statutory exceptions permitting use of estimates applies. As the final rule recognizes with regard to subsequent transfers in the same preauthorized series, however, setting

exchange rates and determining the amount to be received far in advance may pose risks and remittance transfer providers may choose not to offer advance scheduling rather than developing new risk management strategies or finding partners that are willing to do so. The Bureau lacks data on how frequently consumers request transfers many days in advance, and seeks comment on whether further adjustment of the disclosure regime is warranted to address such situations.

The proposal therefore solicits comment on two potential changes to the disclosure requirements: (i) Whether a provider should be permitted additional flexibility to provide estimates for certain information in the pre-payment disclosure and receipt; and (ii) if additional estimates are permitted, whether a provider that uses this additional flexibility to provide estimates in the disclosures given at the time the transfer is requested and authorized should be required to provide a second receipt with accurate information closer to the time the transfer is scheduled to occur. The Bureau also solicits comment on whether in lieu of providing an estimate of the exchange rate on the disclosures for an advance transfer, the Bureau should allow a provider to disclose a formula that will be used to calculate the exchange rate that will apply to a transfer, and that is based on information that is publicly available prior to the time of transfer. The Bureau is contemplating these changes to minimize compliance burden on providers and to ensure that senders receive accurate information about transfers at a time that is most useful to them.

Specifically, the proposal solicits comment on whether use of estimates should be permitted in the following two circumstances: (i) A consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized; or (ii) a consumer enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. For the first proposed use of estimates, the Bureau has structured the proposed 10-day threshold to mesh with the safe harbor proposed below regarding provision of disclosures relating to subsequent preauthorized transfers within a "reasonable time" prior to the individual transfer. The Bureau requests comment on whether this linkage is appropriate and whether

10 days is the appropriate cut off for both purposes.

The Bureau also requests comment on whether a provider that uses estimates in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized in the two situations described above should be required to provide a second receipt with accurate information within a reasonable time prior to the scheduled date of the transfer. The Bureau requests comment on any tradeoffs between compliance burdens to providers of allowing an estimate-and-redisclosure option and the benefit to senders of receiving a second, more accurate disclosure. The Bureau also solicits comment on whether providing multiple disclosures (one pre-payment disclosure and two receipts) for each transfer described above would create information overload for consumers.

#### *Subsequent Advance Transfers*

Under the January 2012 Final Rule, a provider must provide a pre-payment disclosure and receipt for each subsequent transfer in a series of preauthorized remittance transfers. The pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer. The receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made. The proposal solicits comment on two alternative approaches to possible changes to the disclosures rules for subsequent transfers: (i) whether the Bureau should retain the requirement that a provider give a pre-payment disclosure for each subsequent transfer, and should provide a safe harbor interpreting the "within a reasonable time" standard for providing this disclosure; or (ii) whether the Bureau instead should eliminate the requirement to provide a pre-payment disclosure for each subsequent transfer.

With respect to the first alternative approach, the Bureau would retain the requirement that a provider mail or deliver a pre-payment disclosure within a reasonable time prior to the scheduled date of the transfer. The Bureau solicits comment on whether it should provide a safe harbor interpreting the "within a reasonable time" standard for providing this disclosure. The proposal specifically solicits comment on a safe harbor under which a provider would be deemed to have provided the pre-payment disclosure within a reasonable time prior to the scheduled date of a subsequent transfer, if the provider mails or delivers the pre-payment

disclosure not later than 10 days before the scheduled date of the respective subsequent transfer. The Bureau believes that this proposed safe harbor would facilitate compliance with the final rule with respect to the timing of the disclosures required for subsequent preauthorized remittance transfers. The Bureau requests comment on whether the length of time for the safe harbor should be longer or shorter than 10 days, and whether different safe harbors should be provided based on whether the disclosures are mailed or provided electronically.

With respect to the second alternative approach, the Bureau solicits comment on whether the Bureau instead should eliminate the requirement that a provider mail or deliver a pre-payment disclosure for each subsequent transfer. Specifically, the Bureau solicits comment on whether the benefit to senders of receiving a pre-payment disclosure for each subsequent transfer justifies the cost to providers of providing this disclosure for each subsequent transfer. The Bureau solicits comment on whether senders will find the pre-payment disclosures useful, for example, (i) to ensure that their deposit or other accounts have sufficient funds to cover the upcoming transfers; or (ii) to evaluate whether to cancel the subsequent transfers and discontinue the preauthorized remittance transfer arrangement. The Bureau also requests comment on the relative trade off in compliance burdens to providers in providing pre-payment disclosures for each subsequent transfer.

#### *Cancellation Requirements Applicable to Certain Remittance Transfers Scheduled in Advance, Including Preauthorized Remittance Transfers*

The January 2012 Final Rule provides senders specified cancellation and refund rights. Under the final rule, a sender generally has 30 minutes after payment for the transfer is made to cancel the transfer. The final rule, however, contains special cancellation procedures for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, including preauthorized remittance transfers. In that case, the sender must notify the provider at least three business days before the scheduled date of the transfer to cancel the transfer. In the final rule, the Bureau adopted special cancellation provisions for these transfers scheduled in advance (in lieu of the general 30 minute cancellation rule) because the Bureau believes it is appropriate to provide senders with additional time to change their minds about sending a transfer if,

for example, circumstances change between when the transfer is authorized and when the transfer is to be made. At the same time, the Bureau believes that it is necessary to give providers sufficient time to process any cancellation requests before a transfer is made.

The Bureau wants to ensure that the special cancellation procedures for remittance transfers scheduled in advance as set forth in the final rule provide appropriate protections for senders and do not impose undue burden on providers. As a result, the Bureau solicits comment on whether the three-business-day deadline to cancel accomplishes these goals, or whether the deadline to cancel these transfers should be more or less than three business days before the scheduled date of the transfer.

#### *Notice of Deadline to Cancel*

The Bureau also wants to ensure that senders are informed properly of the right to cancel a transfer and the deadline to cancel, without undue burden on providers in providing these disclosures. The January 2012 Final Rule requires that a provider disclose the deadline to cancel in the receipt. Under the final rule, a provider must only disclose in the receipt for a transfer the deadline to cancel that is applicable to that transfer. Thus, for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a provider may solely disclose in the receipt information about the three-business-day deadline to cancel the transfer. For other transfers, the receipt may solely disclose the 30 minute deadline to cancel. In addition, in disclosing the three-business-day deadline to cancel, under the final rule, the provider is *not* required to disclose a specific date on which the right to cancel will expire, such as disclosing: “You can cancel for a full refund no later than [insert calendar date].” Thus, under the final rule, a provider could use a generic disclosure, such as disclosing: “You can cancel for a full refund no later than three business days prior to the scheduled date of the transfer.” The Bureau solicits comment on three issues related to the disclosure of the deadline to cancel as set forth in the final rule: (i) Whether the three-business-day deadline to cancel transfers scheduled in advance should be disclosed in a different manner to consumers, such as by requiring a provider to disclose in the receipt the specific date on which the right to cancel will expire; (ii) whether a provider should be allowed on a receipt to describe both the three-business-day

and 30 minute deadline-to-cancel time frames and either describe to which transfers each deadline to cancel is applicable, or alternatively, use a check box or other method to indicate which deadline is applicable to the transfer; and (iii) whether a provider should be required to disclose the deadline to cancel in the pre-payment disclosure for each subsequent transfer, rather than in the receipt given for each subsequent transfer.

#### **IV. Legal Authority**

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

In addition, EFTA section 919 provides for specific error resolution procedures. The Act directs the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies. EFTA section 919(d). Finally, EFTA section 919 requires the Bureau to establish standards of liability for remittance transfer providers, including those that act through agents. EFTA section 919(f). Except as described below, the proposed changes are 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 statutory mandates set forth in the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish “the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems” and to provide “individual consumer rights.” EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the

title, to prevent circumvention or evasion, or to facilitate compliance.

As described in more detail in the **SUPPLEMENTARY INFORMATION**, the provisions proposed in part or in whole pursuant to the Bureau's authority in EFTA sections 904(a) and 904(c) include:<sup>4</sup> § 1005.32(b)(2).<sup>5</sup> The Bureau also solicits comments on various regulatory provisions some of which would require use of EFTA sections 904(a) and (c) authority but for which proposed regulatory text is not provided.

## VI. Section-by-Section Analysis

### Section 1005.30 Remittance Transfer Definitions

#### 30(f) Remittance Transfer Provider

As adopted in the January 2012 Final Rule, § 1005.30(f) and the accompanying interpretations implement the definition of "remittance transfer provider" in EFTA section 919(g)(3). Section 1005.30(f) states that a "remittance transfer provider" means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. A "remittance transfer provider," as defined in § 1005.30(f), is required to comply with disclosure and substantive protections set forth in subpart B of Regulation E relating to remittance transfers.

Comment 30(f)-2 provides guidance interpreting the phrase "normal course of business" for purposes of the definition of "remittance transfer provider" in § 1005.30(f). Specifically, comment 30(f)-2 states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make international consumer wire transfers available to customers, but sends a couple of international consumer wire

transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes international consumer wire transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers multiple times each month, the institution provides remittance transfers in the normal course of business.

Under the final rule, comment 30(f)-2 does not provide any *de minimis* numerical threshold under which a person would be deemed not to be providing remittance transfers in the normal course of business, and thus would not be a "remittance transfer provider" for purposes of § 1005.30(f). However, the Bureau recognizes that a bright-line safe harbor may minimize compliance burden. Thus, the Bureau proposes to revise comment 30(f)-2 to provide that if a person provided no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business for the current calendar year if it provides no more than 25 remittance transfers in the current calendar year. If that person, however, makes a 26th remittance transfer in the current calendar year, the person would be evaluated under the facts and circumstances test to determine whether the person is a remittance transfer provider for that transfer and any other transfer provided through the rest of the year.

The proposed comment provides several examples to demonstrate how this proposed safe harbor would apply. For instance assume that in calendar year 2012, a person provided 20 remittance transfers. This person is not providing remittance transfers in the normal course of business for calendar year 2013 if it provides no more than 25 remittance transfers in calendar year 2013. Assume further that the person makes 15 transfers in calendar year 2013. Because this person limited its remittance transfers to no more than 25 in 2013, it would not be required to comply with the rules in subpart B for any of its transfers in 2013. However, if the person provides a 26th transfer in calendar year 2013, then the person will be evaluated under the facts and circumstances test for determining whether the person is a remittance transfer provider for that and any other transfer provided through the rest of the calendar year. In addition, if the person provides a 26th transfer for calendar year 2013, this person would not qualify

for the safe harbor in 2014 because the person did not make 25 or fewer remittance transfers in 2013. In this case, in 2014, the person would be evaluated under the facts and circumstances test in determining whether the person is a remittance transfer provider for all transfers made in 2014. Under the proposed safe harbor, a person would not be subject to the definition of "remittance transfer provider" and thus, would not be required to comply with the disclosure and substantive protections set forth in subpart B of Regulation E relating to remittance transfers if it made no more than 25 remittance transfers for each calendar year.

The proposed threshold number of no more than 25 transfers per calendar year for the safe harbor is consistent with the general threshold for coverage under the Bureau's Regulation Z, which relates to credit transactions. Under Regulation Z, 12 CFR part 1026, a "creditor" as defined by the regulation, must comply with certain disclosure requirements and substantive protections related to credit transactions contained in Regulation Z. Under Regulation Z, a creditor is an entity that regularly extends consumer credit under specified circumstances. Generally, under Regulation Z, a person regularly extends consumer credit in the current calendar year when it either extended consumer credit more than 25 times in the preceding calendar year or more than 25 times in the current calendar year.<sup>6</sup> See § 1026.2(a)(17) and comment 2(a)(17)(i)-4.<sup>7</sup> However, the Bureau solicits comment on whether a threshold safe harbor is appropriate in this context, and if so, whether other threshold numbers for the safe harbor, such as 10 or 50 transfers, may be appropriate as the threshold number to carve out persons that provide remittance transfers on a limited basis, primarily as an accommodation to the customers of its regular business.

Without a safe harbor, persons who currently provide remittance transfers, or are contemplating doing so, may face

<sup>4</sup> Throughout the **SUPPLEMENTARY INFORMATION**, the Bureau is citing its authority under both EFTA section 904(a) and EFTA section 904(c) for purposes of simplicity. The Bureau notes, however, that with respect to some of the provisions referenced in the text, use of only one of the authorities may be sufficient.

<sup>5</sup> The consultation and economic impact analysis requirement previously contained in EFTA sections 904(a)(1)-(4) were not amended to apply to the Bureau. Nevertheless, the Bureau consulted with the appropriate prudential regulators and other Federal agencies and considered the potential benefits, costs, and impacts of the rule to consumers and covered persons as required under section 1022 of the Dodd-Frank Act, and through these processes would have satisfied the requirements of these EFTA provisions if they had been applicable.

<sup>6</sup> Regulation Z in some cases provides additional protections for credit secured by a dwelling and certain high cost mortgages. For example, with respect to whether a person is a creditor, a person regularly extends consumer credit in the current calendar year if it either extended consumer credit for more than five times for transactions secured by a dwelling in the previous calendar year or more than five times in the current calendar year. In addition, a person regularly extends consumer credit if it extends consumer credit for just one high-cost mortgage in a 12 month period. See 12 CFR 1026.2(a)(17).

<sup>7</sup> The Bureau notes that it has issued a separate notice of request for information on whether it should revise these threshold numbers in Regulation Z. See 76 FR 75825 (Dec. 5, 2011).

uncertainty and litigation risk as to whether they meet the definition of “remittance transfer provider” when they provide a small number of transfers in a given year. These persons may decide to discontinue providing these transfers, or choose not to start making these transfers, to the detriment of their customers, rather than taking on the burden of complying with the remittance transfer rules for only a small number of transfers per year. The Bureau believes that the safe harbor may be particularly useful to relatively small financial services providers that provide remittance transfers on an infrequent basis.

The Bureau recognizes that if a safe harbor is adopted, in some cases, consumers would not receive the disclosures and protections set forth in the remittance transfer rules because the person providing these transfers would not be deemed a “remittance transfer provider” for purposes of subpart B of Regulation E. However, Congress itself created this result by providing that the disclosure and other provisions apply only to persons that provide remittance transfers in the normal course of business. The statutory language, by defining “remittance transfer provider” as any person that provides remittance transfers for a consumer in the normal course of its business, implies that there will be persons that provide remittance transfers *outside* the normal course of business that are not subject to the statutory disclosure and protection requirements related to remittance transfers. The Bureau believes that the inclusion of the phrase “normal course of business” in the statutory definition was meant to exclude persons that provide remittance transfers on a limited basis, such as an accommodation to the customers of its regular business. In addition, as described above, the Bureau is concerned that persons may discontinue providing a small number of transfers per year to accommodate customers of its regular business, or choose not to start making these transfers, to the detriment of their customers, rather than taking on the burden of complying with the remittance transfer rules for only a small number of transfers per year.

The Bureau notes that industry commenters in response to the Board’s May 2011 Proposed Rule provided suggestions for a *de minimis* threshold amount that were extremely high. Suggestions ranged from 1,200 or fewer transfers annually to 2,400 transfers annually, per method (*i.e.*, 2,400 wire transfers plus 2,400 international ACH transfers). The commenters did not provide any data on the overall

distribution and frequency of remittance transfers across various providers to support treating such high numbers of transactions as being outside the normal course of business. Nor did they suggest other means of determining when remittance transfer providers are engaging in transfers merely as an accommodation to occasional consumer requests rather than part of a business line of payment services. Absent significant additional information, the Bureau is skeptical that Congress intended to exclude companies averaging 100 or more remittance transfers *per month* from the statutory scheme. Based on the data presented by commenters, such a range would appear to exclude the majority of providers of open network transfers, such as international wire transfers and ACH transactions, from the rule. For example, one trade association commenter stated that most respondents to an information request said that they make fewer than 2,400 international transactions per year. As discussed in the

**SUPPLEMENTARY INFORMATION** to the January 2012 Final Rule, the Bureau believes that the statute clearly covers open network transfers, such as wire transfers and ACH transactions. Providing an exception based on the ranges suggested by these commenters would allow many financial institutions that arguably regularly and in the normal course of business provide remittance transfers to not be subject to the regulation. The Bureau believes in general that the term “normal course of business” covers remittance transfer activities at a level significantly lower than the ranges suggested by these commenters.

The Bureau requests comment on the proposed safe harbor. As discussed above, the Bureau requests comment on whether a threshold safe harbor is appropriate in this context, and whether the maximum number of transfers per calendar year to qualify for the safe harbor should be higher or lower than 25 transfers, and if so, what the maximum number should be and why. The Bureau also specifically seeks information regarding how many persons would likely qualify for any such a safe harbor; whether such a safe harbor would be more or less likely to apply to particular types of businesses, as compared to others; the potential benefits for consumers if a higher or lower number were chosen; and any specific costs that would be implicated by a higher or lower figure. The Bureau would benefit from comments both from companies or other persons that send far more than 25 transfers per year and

from companies or other persons that send around 25 transfers per year.

#### *Section 1005.31 Disclosures*

Section 1005.31 generally sets forth the disclosure requirements for remittance transfers, except for disclosures provisions for preauthorized remittance transfers which are set forth in § 1005.36. Under § 1005.31, remittance providers are required to provide two sets of disclosures to a sender in connection with a remittance transfer: (i) a pre-payment disclosure when a sender requests a transfer; and (ii) a written receipt to the sender when payment is made, which is when the payment is authorized. The pre-payment disclosure provides information about the transfer, such as the exchange rate, fees, and the amount to be received by the designated recipient. The receipt includes the information provided on the pre-payment disclosure, as well as additional information, such as the promised date of delivery, contact information for the designated recipient, and information regarding the sender’s error resolution rights. Consistent with the statute, which permits remittance transfer providers to provide estimates only in two narrow circumstances as set forth in § 1005.32, the final rule generally requires that disclosures provide the actual exchange rate and amount to be received.

For the reasons discussed in the section-by-section analysis to § 1005.36, the Bureau solicits comment on whether a provider should be permitted to use estimates for certain information in the pre-payment disclosures and receipts where a consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized. See proposed § 1005.32(b)(2). Also, as discussed in more detail in the section-by-section analysis to § 1005.36, the Bureau also solicits comment on whether a provider that uses estimates in the situation described above should be required to provide a second receipt with accurate information within a reasonable time prior to the scheduled date of the transfer.

#### *Section 1005.32 Estimates*

Generally, remittance transfer providers are not permitted to use estimates for the information provided in the pre-payment disclosures and receipts. The January 2012 Final Rule implements the two statutory exceptions that permit a remittance transfer provider to disclose an estimate of the amount of currency to be

received, as well as other information such as the exchange rate that is used to calculate the amount of currency. Section 1005.32(a) contains the first exception, which applies to depository institutions that cannot determine certain disclosed amounts for reasons beyond their control. Section 1005.32(b) contains the second exception, which applies when the provider cannot determine certain amounts to be disclosed because of: (i) the laws of a recipient country; or (ii) the method by which transactions are made in the recipient country.

To effectuate the purposes of the EFTA and facilitate compliance, the Bureau proposes to use its EFTA section 904(a) and (c) authority to add a third exception in a new § 1005.32(b)(2) that would provide additional flexibility for providers to use estimates in pre-payment disclosures and receipts where a consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized. This exception is discussed in more detail in the section-by-section analysis to § 1005.36 below. The current exception relating to transfers to certain countries that is contained in § 1005.32(b) would be moved to § 1005.32(b)(1), and conforming changes would be made to interpretation provisions that reference this exception.

#### *Section 1005.36 Transfers Scheduled in Advance*

The January 2012 Final Rule sets forth special requirements for the timing and accuracy of disclosures relating to preauthorized remittance transfers, which are remittance transfers authorized in advance to recur at substantially regular intervals. This proposal seeks comment both on a relatively narrow question regarding whether to provide a safe harbor regarding certain timing requirements under the final rule and more broadly on whether to make further adjustments in the disclosure rules for preauthorized remittance transfers and other remittance transfers requested more than a certain number of days (*e.g.*, 10 days) in advance of the transfer date (advance transfers). The options presented explore whether there are ways to better balance consumer benefits and potential industry compliance burdens in light of the potential risks associated with setting exchange rates and the potential difficulty of determining the amount to be received by designated recipients far in advance of a particular transfer. The proposal first considers modification of the final rule as applied to a transfer

scheduled more than a certain number of days (*e.g.*, 10 days) in advance of the consumer's requested transfer date, whether that transfer is a standalone transaction or the first in a series of preauthorized remittance transfers. The proposal also solicits comment on modifications of the final rule for the first transfer in a series of preauthorized remittance transfers where the amount of the preauthorized remittance transfers can vary, and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The proposal then also requests comment on whether the Bureau should modify the disclosure rules for subsequent transfers in a preauthorized series.

The Bureau recognizes that the market for preauthorized remittance transfers is still developing. The Bureau is concerned that without specific rules and flexibility for providers in complying with certain disclosure requirements, providers may either discontinue providing preauthorized remittance transfer products, or may not begin to offer those products in the future, to the detriment of senders who may enjoy the convenience that these products provide. The final rule provides remittance transfer providers some relief by allowing them to shift their obligation to provide pre-payment disclosures for subsequent transfers to a "reasonable time" prior to the particular transfer; this provision should reduce the potential costs associated with setting exchange rates far in advance of a transfer. However, the Bureau recognizes that similar issues may arise in situations in which a consumer schedules the first in a series of preauthorized transfers or a single standalone transfer significantly in advance of the transfer date.

The Bureau also solicits comment on possible changes to the cancellation requirements for certain remittance transfers scheduled in advance. The Bureau wants to ensure that the three-business-day deadline to cancel remittance transfers scheduled in advance as set forth in the final rule provides appropriate protections for senders and does not impose undue burden on providers, and that senders are informed properly of the right to cancel a transfer.

#### *Timing and Accuracy Requirements for Disclosures About Initial Advance Transfers*

The January 2012 Final Rule treats the first transaction in a series of preauthorized remittance transfers the same as all other remittances transfers by requiring disclosure of the actual

exchange rate and amount to be provided to the designated recipient unless one of the statutory exceptions permitting use of estimates applies. The final rule recognizes for subsequent transfers in the same preauthorized series, however, that setting exchange rates far in advance may require more sophisticated risk management strategies and remittance transfer providers may choose not to offer advance scheduling rather than developing such strategies (or finding partners that are willing to do so). The Bureau lacks data on how frequently consumers request transfers many days in advance, and seeks comment on whether further adjustment of the disclosure regime is warranted to address such situations.

As discussed in more detail below, the proposal solicits comment on whether use of estimates should be permitted in the following two circumstances: (i) A consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized; or (ii) a consumer enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary, and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The Bureau also solicits comment on whether a provider that uses estimates in the two situations described above should be required to provide a second receipt with accurate information within a reasonable time prior to the schedule date of the transfer.

#### *Estimates Where the Transfer Is Scheduled To Occur More Than 10 Days After the Transfer Is Authorized*

The Bureau proposes to add an exception in § 1005.32 that would provide additional flexibility for providers to use estimates in disclosures for certain transfers scheduled in advance. Under proposed § 1005.32(b)(2)(i), a provider would be permitted to use estimates for certain information in the pre-payment disclosure and receipt for a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized. Specifically, under proposed § 1005.32(b)(1)(i), a provider generally would be allowed to provide estimates in accordance with § 1005.32(c) for the following information contained in the pre-payment disclosure and receipt, as applicable: (i) The exchange rate used by the provider for the remittance



transfer; (ii) the amount that will be transferred to the designated recipient, in the currency in which the funds will be received by the designated recipient, if required to be disclosed under § 1005.31(b)(1)(v); (iii) 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; and (iv) the amount that will be received by the designated recipient, in the currency in which the funds will be received. *See* §§ 1005.36(b)(1), 1005.31(b)(1)(iv) through (vii), 1005.31(b)(2) and 1005.31(f); *see also* proposed comment 32–1.

Under proposed § 1005.32(b)(2)(ii), a provider would be permitted to estimate 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, for transfers scheduled more than 10 days in advance only if those taxes are a percentage of the amount transferred to the designated recipient. Thus, a provider would be permitted to estimate taxes imposed in a recipient country only if they are calculated as a percentage of the estimated amount transferred to the designated recipient. The provider does not need additional flexibility to estimate taxes imposed in a recipient country in other cases, because in such instances, the taxes do not depend on an estimate of the amount of the funds transferred to the recipient.

Under proposed § 1005.32(b)(2)(iii), fees 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, may be estimated in only two circumstances: (i) Where the fees are calculated as a percentage of the estimated amount transferred to the designated recipient, as described in § 1005.31(b)(1)(v); or (2) where an “insured institution” as defined in § 1005.32(a)(3) is permitted to estimate fees under the temporary exemption in § 1005.32(a). *See* proposed comment 32(b)(2)–1. Thus, a provider would not be permitted to estimate these fees for transfers scheduled more than 10 days in advance if the fees are a specific sum fee, unless a depository institution is otherwise allowed to estimate that fee under the temporary exemption in § 1005.32(a).

The Bureau believes that a provider might be reluctant to allow a sender to schedule a transfer too far in advance if the provider is required to fix the exchange rate that will apply to the transfer (*i.e.*, the retail rate) at the time that it is scheduled. This reluctance

could arise due to the risk associated with participating in foreign exchange markets, and the manners in which providers and their partners manage such risk. Many retail exchange rates are set through reference to wholesale currency markets in which rates can fluctuate frequently.<sup>8</sup> As a result, whenever there are time lags in between the time when the retail rate applied to a transfer is set, the time when the relevant foreign currency is purchased, and the time when funds are delivered, a provider (and/or its business partner) may face losses due to unexpected changes in the value of the relevant foreign currency. Providers (and/or their partners) generally use a variety of pricing, business processes, or hedging techniques to manage or minimize this exchange rate risk. For some, and perhaps many providers (or their partners), the task of managing or minimizing exchange risk may become more complicated or more costly if the amount of time between when the rate is set for a customer and when the transfer is sent increases. Setting the retail rate that applies to a transfer far in advance of when that transfer is sent may require the provider or other parties involved in processing the remittance transfer to use additional or more sophisticated risk management tools.

As a result, the Bureau is concerned that providers—particularly relatively small remittance transfer providers—may choose not to offer remittance transfers scheduled too far in advance, particularly preauthorized remittance transfers that may extend over a series of months. The Bureau believes that the market for preauthorized remittance transfers is still in its nascent stages. Reluctance to further develop and/or offer such products could reduce consumers’ access to the convenience of advance transfers. In other cases, providers may pass any additional costs of risk management on to consumers who schedule preauthorized transfers, in the form of less favorable exchange rates or higher fees.

The proposal would give providers an option to schedule advance remittance transfers, while potentially limiting the need for additional exchange rate risk assumption, management, or minimization techniques. Under the proposal, if a transfer is scheduled to

occur more than 10 days after the transfer is authorized, a provider could disclose an estimate of the exchange rate, and other information that depends on the exchange rate. The proposal links the time frame for use of estimates to the proposed safe harbor described below for when a provider would be deemed to have provided the pre-payment disclosure for subsequent preauthorized transfers within a “reasonable time” prior to the scheduled transfer of the respective subsequent transfer. Accordingly, remittance transfer providers would be able to use estimates under proposed § 1005.32(b)(2) only where a consumer requests a transfer more than 10 days in advance, but would be expected to provide actual exchange rates and the amount to be provided to the recipient if the transfer is scheduled 10 or fewer days in advance. To effectuate the purposes of the EFTA and facilitate compliance, the Bureau proposes to use its authority under EFTA sections 904(a) and (c) to permit this additional flexibility to provide estimates.

The Bureau solicits comment on the proposed changes allowing providers additional flexibility to provide estimates on pre-payment disclosures and receipts when the transfer is scheduled by the sender to be made more than 10 days after it is authorized. Specifically, the Bureau requests comment on whether estimates should be allowed in such cases, and if so, the number of days in each case should be more or less than 10 days and why. The Bureau specifically seeks information and comment regarding the nature of any burden or cost associated with setting exchange rates more than 10 days in advance of a payment, and the potential effect on consumers to doing so. The Bureau has structured the proposed threshold number of days to mesh with the safe harbor proposed below regarding provision of disclosures relating to subsequent preauthorized transfers within a “reasonable time” prior to the individual transfer. The Bureau requests comment on whether this linkage is appropriate and whether 10 days is the appropriate cut off for both purposes.

The Bureau also recognizes that compared to disclosure of exact exchange rates, disclosure of estimated exchange rates will likely provide consumers less clear information about the service that they are buying, and whether that service is more or less expensive than the services offered by competitors. The Bureau therefore also solicits comment as described below on whether remittance transfer providers should be required to provide a follow-

<sup>8</sup> Some foreign exchange rates are set by monetary authorities. There are a variety of business models that providers use to purchase currency and fund transfers that are received in foreign currency. The timing of when foreign currency is purchased, the role of the provider in such a purchase, and the role of other intermediaries, partners, agents, and other parties can vary.



up disclosure listing the actual exchange rate and related numbers. Finally, the Bureau solicits comment on whether in lieu of providing an estimate of the exchange rate on the disclosures for an advance transfer, the Bureau should allow a provider to disclose a formula that will be used to calculate the exchange rate that will apply to a transfer, and that is based on information that is publicly available prior to the time of transfer, such that a sender could use that formula to calculate the exchange rate that will apply to the transfer.

#### Estimates When the Amount of the Preauthorized Remittance Transfers Can Vary

In some cases, a sender may set up a preauthorized remittance transfer arrangement where the amount of the first transfer and the scheduled date of the first transfer are not known at the time the arrangement is established. This may occur where the preauthorized remittance transfer arrangement is established to pay a bill each month (such as a utilities bill) and the amount of the bill and the date the bill is due may vary each month. In this case, the sender may not have received the next bill at the time the sender is establishing the preauthorized remittance transfer arrangement, and thus would not know the amount of the next bill and the date it is due.

The Bureau requests comment on whether a provider should be given flexibility to estimate certain information in the disclosures for the first scheduled transfer where the preauthorized remittance transfers can vary in amount, and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. Specifically, the Bureau requests comment on whether the Bureau should allow providers in this case to use estimates for the following information included on the pre-payment disclosure and receipt given at the time the first transfer is requested and authorized: (i) The amount of the transfer (in the currency in which the transfer is funded); (ii) fees and taxes if they depend on the amount of the transfer; (iii) the total amount of the transfer and fees; (iv) the date in the foreign country on which the funds will be available, if the provider does not know the exact due date of the next bill; (v) the exchange rate used by the provider for the remittance transfer; (vi) the amount that will be transferred to the designated recipient, in the currency in which the funds will be received by the designated recipient, if required to be disclosed under § 1005.31(b)(1)(v);

(vii) 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; and (viii) the amount that will be received by the designated recipient, in the currency in which the funds will be received. To effectuate the purposes of the EFTA and facilitate compliance, the Bureau proposes to use its authority under EFTA sections 904(a) and (c) to permit this additional flexibility to provide estimates.

If these estimates are allowed, what should be the basis for the estimates for the transfer amount and the date the funds will be available? Should a provider be allowed to rely on estimates from the consumer of the transfer amount and the date the next bill is due? Section 1005.32(c) sets forth a basis for estimating the other disclosures described above. Where the amount of the preauthorized remittance transfers can vary, will providers need the flexibility to estimate the amount of the first transfer where the transfer is scheduled to occur within 10 days of when the preauthorized remittance transfer was established? Or in this case is it likely that senders at the time of establishing the preauthorized remittance transfer arrangement will have received the next bill to be paid under this arrangement and thus, would know the exact amount of the first transfer and when it is due?

As discussed above, the Bureau solicits comment on whether a provider should be permitted to estimate the date in the foreign country on which the funds will be available, if the amount of the transfers under the preauthorized transfers arrangement varies, and the provider does not know the exact amount of the first transfer and the exact due date of the next bill at the time the disclosures are given for the first transfer. The Bureau solicits specific comment on whether this additional flexibility to estimate the date in the foreign country on which the funds will be available is necessary. The Bureau notes that under the January 2012 Final Rule, a provider must disclose in the receipt the date in the foreign country on which the funds will be available and may provide a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term “may be available sooner” or a substantially similar term. See § 1005.31(b)(2)(ii). In the case described above, will providers have sufficient information to know the time frame of when the next bill will be due (such that the next bill will be due within the next month), even if the

provider does not know the exact date the next bill is due at the time the disclosures are given? If so, the Bureau solicits comment on whether the January 2012 Final Rule already provides providers with sufficient flexibility to handle situations where the provider does not know the exact date the next bill is due when the disclosures are given for the first transfer. Similarly, the Bureau also solicits comments on whether there are preauthorized remittance arrangements where the amount of the transfers will not vary, but the date on which the bills are due each payment period varies. If so, do providers need additional flexibility for the first transfer to estimate the date in the foreign country on which the funds will be available, if the provider does not know the exact due date of the next bill at the time the disclosures for the first transfer are given?

#### Second Receipt

As discussed above, the proposal solicits comment on whether providers should be allowed additional flexibility to provide estimates for certain information in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized if: (i) The transfer is scheduled to occur more than 10 days after the transfer is authorized; or (ii) the amount of the transfers under the preauthorized remittance transfer arrangement can vary, and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The Bureau recognizes that if providers are allowed to provide estimates in these two situations, there is an increased likelihood that the pre-payment disclosure and receipt given at the time the sender requests the transfer will contain estimates.

If estimates are used, the sender will not receive precise information related to the exchange rate, the amount of currency to be received, and other information for that transfer, unless the provider is required to provide another disclosure to the sender with accurate information closer to the time the transfer is scheduled to occur. For example, assume a transfer is scheduled to occur more than 10 days after the transfer is authorized. Under the proposal, a provider would be permitted to use an estimate of the exchange rate and other information that depend on the exchange rate, such as the amount of currency to be received by the designated recipient, in providing the pre-payment disclosure and receipt that are given at the time the transfer is requested and authorized. Under the

final rule, these are the only disclosures that a sender would receive about the transfer, and the sender would not receive precise information about the exchange rate, the amount of currency to be received by the designated recipient, and other information about the transfer. Thus, if the Bureau allows providers additional flexibility to use estimates in the two situations described above in disclosures for the transfer that are given at the time the transfer is requested and authorized, the Bureau requests comment on whether it should also require a provider to provide a second receipt with accurate information within a reasonable time prior to the scheduled date of the transfer.

The Bureau contemplates that this second receipt would be required only if the provider uses estimates because: (i) The transfer is scheduled to occur more than 10 days after the transfer is authorized; or (ii) the amount of the transfers under the preauthorized remittance transfer arrangement can vary, and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. In other words, this second receipt would be required only for certain transfers that are one-time or the first transactions in series of preauthorized transfers. To effectuate the purposes of the EFTA and facilitate compliance, the Bureau proposes to use its authority under EFTA sections 904(a) and (c) to require this second receipt if a provider uses estimates in the two situations described above. The Bureau does not contemplate that this second receipt would be required if providers are otherwise permitted to use estimates under current §§ 1005.32(a) and (b). See discussion of § 1005.32 above.

The timing and accuracy standards for this second receipt would be the same as those that apply to the disclosure of the pre-payment disclosure for subsequent transfers. For example, the Bureau would require that this second receipt must be mailed or delivered within a reasonable time prior to the scheduled date of the transfer. The Bureau would provide a safe harbor for meeting the “reasonable time” standard consistent with the one proposed for subsequent transfers. Thus, the safe harbor could provide that a provider meets the “reasonable time” standard if the provider mails or delivers the second receipt no later than 10 days before the scheduled date of the transfer. The error resolution procedures in § 1005.33 would relate to information disclosed in this second receipt. This second receipt would ensure that senders receive accurate information

with respect to the transfer, where estimates are permitted in the two situations above. In this case, for certain transfers that are one-time transfers or the first transaction in a series of preauthorized transfers, the sender would receive three disclosures for a transfer: (i) A pre-payment disclosure given at the time the transfer is requested that contains estimated information about the transfer; (ii) a receipt given at the time the transfer is authorized that contains estimated information about the transfer; and (iii) a second receipt given within a reasonable time prior to the scheduled date of the transfer that contains accurate information about the transfer. The Bureau requests comment on the burden to providers of providing this second receipt and the benefit to senders of receiving this additional disclosure. Specifically, the Bureau requests comment on whether providing multiple disclosures (one pre-payment disclosure and two receipts) for each transfer described above would create information overload for consumers.

#### The Timing and Accuracy Requirements for Disclosures About Subsequent Transfers

For subsequent preauthorized remittance transfers under the January 2012 Final Rule, the remittance transfer provider must provide a pre-payment disclosure as described in § 1005.31(b)(1) to the sender for each subsequent transfer. The pre-payment disclosure must be mailed or delivered within a reasonable time prior to the scheduled date of each subsequent transfer. See § 1005.36(a)(2)(i). The remittance transfer provider also must provide a receipt as described in § 1005.31(b)(2) to the sender for each subsequent transfer. The receipt generally must be mailed or delivered to the sender no later than one business day after the date on which the transfer is made. If the transfer involves the transfer of funds from the sender’s “account” (as defined by Regulation E) held by the provider, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not required. See § 1005.36(a)(2)(ii). The pre-payment disclosure and the receipt provided for each subsequent transfer must be accurate when the respective subsequent transfer is made, except to the extent estimates are allowed under § 1005.32. See § 1005.36(b)(2).

The proposal solicits comment on two alternative approaches to possible changes to the disclosures rules for

subsequent transfers: (i) Whether the Bureau should retain the requirement that a provider give a pre-payment disclosure for each subsequent transfer, and should provide a safe harbor interpreting the “within a reasonable time” standard for providing this disclosure; or (ii) whether the Bureau instead should eliminate the requirement to provide a pre-payment disclosure for each subsequent transfer.

#### First Alternative Approach for Revising the Disclosure Requirements for Subsequent Transfers

As discussed above, § 1005.36(a)(2)(i) provides that the pre-payment disclosure for subsequent transfers must be mailed or delivered within a reasonable time prior to the scheduled date of the respective subsequent transfer. However, the final rule does not provide further guidance on what constitutes a “reasonable time.” With respect to the first alternative approach to revising the disclosure requirements for subsequent transfers, the Bureau would retain the requirement that a provider mail or deliver a pre-payment disclosure within a reasonable time prior to the scheduled date of the transfer. The Bureau solicits comment on whether it should provide a safe harbor interpreting the “within a reasonable time” standard for providing this disclosure. Specifically, the Bureau proposes to add comment 36(a)–1 to specify that if a provider mails or delivers the pre-payment disclosure not later than 10 days before the scheduled date of the respective subsequent transfer, the provider will be deemed to have provided that disclosure within a reasonable time prior to the scheduled date of the respective subsequent transfer. Without a safe harbor, providers may face uncertainty and litigation risk over whether they are complying with the requirement to provide the pre-payment disclosure within a reasonable time prior to the scheduled date of the respective subsequent transfer.

The Bureau is proposing 10 days for the safe harbor because it believes that this length of time ensures that a sender is provided timely advance notice of the upcoming transfer. The pre-payment disclosure would notify the sender of the amount of the upcoming transfer and other important information about the transfer. Senders may need time to make sure that sufficient funds are in their deposit or other accounts to fund the upcoming transfers. This pre-payment disclosure may be particularly useful in cases where the amount that will be transferred to the designated recipient will vary. The 10-day period

would also facilitate consumers' ability to exercise their cancellation rights as discussed further below.

The Bureau also notes that this 10-day period for the safe harbor is consistent with a 10-day notice provision in § 1005.10(d)(1) that relates to preauthorized EFTs. Specifically, under § 1005.10(d)(1), when a preauthorized EFT from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution must send the consumer written notice of the amount and date of the electronic fund transfer at least 10 days before the scheduled date of the transfer.<sup>9</sup>

The Bureau solicits comment on the proposed safe harbor in comment 36(a)–1. Specifically, the Bureau requests comment on whether the length of time for the safe harbor should be more or less than 10 days and if so, what the length of time for the safe harbor should be and why. In addition, the Bureau solicits comment on whether the safe harbor also should include a limit on how far in advance of the specified transfer the pre-payment disclosure may be given, such as also specifying that under the safe harbor the pre-payment disclosure could be given no earlier than a certain number of days before the scheduled date of the transfer. The Bureau also requests comment on whether two safe harbors should be provided—one applicable to disclosures that are mailed and one applicable to disclosures provided electronically—and if so, what the length of time for each safe harbor should be and why. The Bureau recognizes that a shorter time frame for a safe harbor for electronic disclosures may be appropriate, given that this safe harbor would not need to account for time needed for the disclosures to reach senders through the mail. The Bureau also requests comment on cases where the amount of the preauthorized remittance transfers can vary or the date the bill is due each payment period may vary. How far in advance will providers typically receive the next bill to be paid under preauthorized remittance arrangements? Are there cases where providers will not have received the next bill at least 10 days prior to when the bill must be paid, so that the providers will not know the amount of the transfer and the scheduled date of the transfer at least 10 days prior to the

scheduled date of the transfer? The Bureau solicits comment on whether a special safe harbor should be provided for preauthorized remittance transfers where the amount of the transfers may vary or the date the bill is due each payment period may vary, and if so, what the length of time for that safe harbor should be and why.

In setting the proper length of time for the safe harbor(s), the Bureau also requests comment on the potential impact on senders, and in particular whether senders are likely to use the pre-payment disclosures to decide whether to cancel preauthorized remittance transfers. As discussed in more detail below, the Bureau requests comment on whether the pre-payment disclosures will be useful to a sender in his or her decision about whether to continue the preauthorized remittance transfer arrangement. In setting the proper length of time for the safe harbor(s), is it important to ensure that a sender has sufficient time to review the disclosure and cancel the scheduled transfer in accordance with § 1005.36(c)? Or are senders likely to use the pre-payment disclosures only for other purposes, such as reminders of the upcoming transfers so that the senders can ensure that sufficient funds are in their deposit or other accounts to fund the upcoming transfers?

The Bureau also requests comment on the burden to providers of providing an accurate pre-payment disclosure 10 days before the scheduled date of the transfer, to the extent the provider is not allowed to use estimates for certain disclosures under § 1005.32, and how those benefits and burdens compare to those associated with a longer or shorter disclosure period. The Bureau notes that under § 1005.36(b)(2), the pre-payment disclosure for each subsequent transfer must be accurate when the transfer is made, except to the extent estimates are permitted by § 1005.32. The Bureau recognizes that the further in advance that the pre-payment disclosure is given, the greater need there may be for the provider or other parties involved in processing the remittance transfer to use more sophisticated risk management tools to protect themselves against exchange rate fluctuations.

#### Second Alternative Approach for Revising Disclosure Requirements for Subsequent Transfers

With respect to the second alternative approach for revising the disclosure requirements for subsequent transfers, the Bureau solicits comment on whether the Bureau instead should eliminate the requirement that a provider mail or deliver a pre-payment disclosure for

each subsequent transfer. To effectuate the purposes of the EFTA and facilitate compliance, the Bureau proposes to use its authority under EFTA sections 904(a) and (c) to eliminate this disclosure requirement for subsequent transfers.

The Bureau solicits comment on how the benefit to senders of receiving a pre-payment disclosure for each subsequent transfer compare to the cost to providers of providing this disclosure for each subsequent transfer. Specifically, the Bureau requests comment on how senders are likely to use pre-payment disclosures given for each subsequent transfer. Is a sender likely to use the pre-payment disclosure in preparing for each subsequent transfer? For example, a sender may need time to make sure that sufficient funds are in his or her deposit or other account to fund the subsequent transfer. The Bureau also solicits comment on whether the pre-payment disclosure would be helpful to a sender in verifying that the transfer is scheduled as expected (*e.g.*, that the amount to be transferred is accurate). Alternatively, the Bureau solicits comment on whether a pre-payment disclosure would be most useful to a sender in certain circumstances, such as when the amount that will be transferred to the designated recipient will vary, and the amount to be transferred for the upcoming transfer falls outside a specified range or differs by more than a specified amount from the most recent transfer.

The Bureau also requests comment on whether senders will likely use pre-payment disclosures for each subsequent transfer in deciding whether to continue preauthorized remittance transfer arrangements. For example, if a sender receives a pre-payment disclosure where the exchange rate seems significantly less advantageous to the sender than the exchange rate used for the previous transfer, will the sender cancel that transfer and end the entire preauthorized remittance transfer arrangement? Is it important that senders receive pre-payment disclosures for the purpose of deciding whether to continue preauthorized remittance transfer arrangements, or will the receipts that are provided for each subsequent transfer provide senders with sufficient information in a timely manner to make decisions about whether to continue the preauthorized remittance transfer arrangement? In evaluating whether to continue preauthorized remittance transfer arrangements, will senders tend to review the receipts over a period of time (*e.g.*, review the receipts they received in the past six months) to decide whether to continue the arrangements?

<sup>9</sup> The Bureau notes that there are several exceptions to the notice requirement in § 1005.10(d)(1) related to preauthorized EFTs, as set forth in § 1005.10(d)(2) and comment 10(d)(2)–2.

The Bureau also requests comment on the burden to providers in providing pre-payment disclosures for each subsequent transfer. The Bureau solicits comment on whether the benefit to senders of receiving a pre-payment disclosure for each subsequent transfer justifies the cost to providers of providing this disclosure for each subsequent transfer.

#### Cancellation of Certain Remittance Transfers Scheduled in Advance, Including Preauthorized Remittance Transfers

The January 2012 Final Rule implements a special cancellation rule for certain remittance transfers scheduled in advance by a sender, including preauthorized remittance transfers. Specifically, where the sender schedules a remittance transfer at least three business days<sup>10</sup> before the date of the transfer, the sender must notify the provider at least three business days before the scheduled date of the transfer to cancel the transfer. *See* § 1005.36(c). The general cancellation rule applies where the sender schedules a remittance transfer within three business days of the date of the transfer. In these cases, the sender must notify the provider within 30 minutes of when the sender makes payment in connection with the remittance transfer to cancel the transfer. *See* § 1005.34(a). For purposes of subpart B, payment is considered made when the payment is authorized. *See* comment 31(e)–2. In any event, the receipt for the transfer must include a disclosure of the deadline for cancelling the transfer. *See* § 1005.31(b)(2)(iv). As discussed in more detail below, the Bureau wants to ensure that the three-business-day deadline to cancel remittance transfers scheduled in advance as set forth in the final rule provides appropriate protections for senders and does not impose undue burden on providers, and that senders are informed properly of the right to cancel a transfer.

#### Three-Business-Day Deadline To Cancel

In the final rule, the Bureau adopted special cancellation provisions for transfers scheduled more than three-business-days in advance (in lieu of the general 30 minute cancellation rule) because the Bureau believes it is appropriate to provide senders with additional time to change their minds about sending a transfer if, for example, circumstances change between when

the transfer is authorized and when the transfer is to be made. At the same time, the Bureau believes that it is necessary to give providers sufficient time to process any cancellation requests before a transfer is made.

The Bureau wants to ensure that the special cancellation procedures for remittance transfers scheduled in advance as set forth in the final rule provide appropriate protections for senders and do not impose undue burden on providers. As a result, the Bureau solicits comment on whether the three-business-day deadline to cancel accomplishes these goals, or whether the deadline to cancel these types of remittance transfers should be set earlier or later than three business days prior to the scheduled date of the transfer, and if so, why. The current three-business-day deadline for cancelling this type of remittance transfer is consistent with the three-business-day deadline for cancelling a preauthorized EFT under § 1005.10(c)(1). Specifically, under § 1005.10(c)(1), a consumer may stop payment of a preauthorized EFT from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer. The Bureau requests comment on whether it is important to maintain consistency between the deadline for cancellation for preauthorized remittance transfers and the deadline for cancellation for preauthorized EFTs. The Bureau notes that the transfers that would be subject to the special cancellation rule in § 1005.36(c) would change depending on whether the deadline to cancel was earlier or later than three business days before the scheduled transfer. For example, if the deadline to cancel was no later than two business days prior to the scheduled date of the transfer, the transfers that would be subject to the special cancellation rule in § 1005.36 would be those where the sender schedules the remittance transfer at least two days before the date of the transfer.

#### Disclosure of Deadline To Cancel

The Bureau also wants to ensure that senders are informed properly of the right to cancel a transfer and the deadline to cancel, without undue burden on providers in providing these disclosures. The January 2012 Final Rule requires that a provider disclose the deadline to cancel in the receipt. Under the final rule, a provider must only disclose in the receipt for a transfer the deadline to cancel that is applicable to that transfer. Thus, for any remittance transfer scheduled by the sender at least three business days before the date of

the transfer, a provider may solely disclose in the receipt information about the three-business-day deadline to cancel the transfer. For other transfers, the receipt may solely disclose the 30 minute deadline to cancel. In addition, in disclosing the three-business-day deadline to cancel, under the final rule, the provider is *not* required to disclose a specific date on which the right to cancel will expire, such as disclosing: “You can cancel for a full refund no later than [insert calendar date].” Thus, under the final rule, a provider could use a generic disclosure, such as disclosing: “You can cancel for a full refund no later than three business days prior to the scheduled date of the transfer.” The Bureau solicits comment on three issues related to the disclosure of the deadline to cancel as set forth in the final rule: (i) Whether the three-business-day deadline to cancel transfers scheduled in advance should be disclosed in a different manner to consumers, such as by requiring a provider to disclose in the receipt the specific date on which the right to cancel will expire; (ii) whether a provider should be allowed on a receipt to describe both the three-business-day and 30 minute deadline-to-cancel time frames and either describe to which transfers each deadline to cancel is applicable, or alternatively, use a check box or other method to indicate which deadline is applicable to the transfer; and (iii) whether a provider should be required to disclose the deadline to cancel in the pre-payment disclosure for each subsequent transfer, rather than in the receipt given for each subsequent transfer.

#### Disclosure of Deadline To Cancel Transfers Scheduled in Advance

Under the final rule, where the sender schedules a remittance transfer at least three business days before the date of the transfer, the sender must notify the provider at least three business days before the scheduled date of the transfer to cancel the transfer. *See* § 1005.36(c). The term “business day” is defined in the final rule to mean “any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions.” *See* § 1005.30(b). Under the final rule, an abbreviated statement about the sender's cancellation rights generally must be disclosed in the receipt for the transfer. *See* § 1005.31(b)(2)(iv). Under the final rule, the provider is *not* required to disclose a specific date on which the right to cancel will expire, such as disclosing: “You can cancel for a full refund no later than [insert calendar date].” Thus,

<sup>10</sup> The term “business day” is defined in the January 2012 Final Rule to mean “any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions.” *See* § 1005.30(b).

under the final rule, in disclosing the three-business-day deadline to cancel, a provider could use a generic disclosure, such as disclosing: "You can cancel for a full refund no later than three business days prior to the scheduled date of the transfer." As discussed above, the current three-business-day deadline for cancelling this type of remittance transfer set forth in the January 2012 Final Rule is consistent with the three-business-day deadline for cancelling a preauthorized EFT under § 1005.10(c)(1). In addition, the generic disclosure of the current three-business-day deadline for cancelling this type of remittance transfer set forth in the January 2012 Final Rule is consistent with the generic disclosure that is permitted under § 1005.10(c)(1) in disclosing the three-business-day deadline for cancelling a preauthorized EFT.

The Bureau is concerned that senders may have difficulty determining the specific date the right to cancel expires for a particular remittance transfer. This difficulty might arise because the sender may not know the exact business days of the provider. For example, assume the scheduled date of the transfer is Monday, March 11, 2013. Also, assume that a provider's business days are Monday through Saturday, except for State and Federal holidays. In this example, if a sender believed that the provider's business days generally were Monday through Friday, the sender might calculate the deadline to cancel as Wednesday, March 6, 2013, when the deadline to cancel actually is Thursday, March 7, 2013. If the sender believed that the provider's business days generally were Monday through Sunday, the sender might calculate mistakenly the deadline to cancel as Friday, March 8, 2013. In addition, the fact in this example that a provider's business days do not include State and Federal holidays could also make it difficult for senders to calculate the exact date on which the right to cancel a particular transfer expires. For example, assume in the example above that Friday is a State holiday. The sender would need to know that Friday is a State holiday in calculating the date the right to cancel expires.

The Bureau solicits comments on whether the disclosure in the final rule of the three-business-day deadline to cancel adequately informs senders of their right to cancel. The Bureau also solicits comments on alternatives for disclosing the three-business-day deadline to cancel. Under the first alternative, the Bureau solicits comment on whether a provider should be required to disclose its business days on

the receipt, so that senders will know this information and could use it in calculating the deadline to cancel the particular transfer. In the example above, the provider would disclose in the receipt that its business days are Monday through Saturday, excluding State and Federal holidays. The Bureau notes that under Regulation E, in § 1005.7(b)(3), a financial institution is required to disclose its business days in the disclosures required at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account. Nonetheless, not all providers are "financial institutions," as that term is defined in § 1005.2(i). In addition, even in cases where a financial institution has provided a disclosure of its business days to a sender under § 1005.7(b)(3), the sender may not recall this information when a remittance transfer is conducted at a significantly later time than when the consumer contracts for an electronic fund transfer service.

Specifically, the Bureau solicits comment on whether disclosure of a provider's business days in receipts are necessary for senders to determine the date the right to cancel expires for a particular transfer. Are senders likely to be familiar with the State and Federal holidays to know when to take them into account in calculating the deadline? Will senders that are contemplating cancelling transfers consult the receipt and attempt to calculate the three-business-day deadline to cancel based on information in the receipt, or will senders typically call providers to find out when the right to cancel expires for those transfers?

Under a second alternative, the Bureau solicits comment on whether the provider should be required to disclose in the receipt a specific date on which the right to cancel will expire, such as disclosing "You can cancel for a full refund no later than [insert calendar date]." This alternative would relieve senders from the potential difficulty of calculating the deadline to cancel. The provider would know its business days and would be able to calculate the deadline date for the sender.

Nonetheless, the Bureau solicits comments on any operational burdens on providers in providing the specific deadline on the receipt. As noted above, the current three-business-day deadline for cancelling remittance transfers scheduled in advance is consistent with the three-business-day deadline for cancelling a preauthorized EFT under § 1005.10(c)(1). The Bureau requests comment on whether it is important to maintain consistency between the

deadline for cancellation for preauthorized remittance transfers and the deadline for cancellation for preauthorized EFTs.

The Bureau also solicits comment on other alternatives for improving the disclosure of the deadline to cancel for transfers scheduled in advance. The Bureau notes that it considered whether the deadline to cancel might be easier for the sender to calculate if the deadline to cancel were based on calendar days instead of business days. For example, in this case, the deadline to cancel could be three calendar days prior to the scheduled date of the transfers, instead of three business days. Nonetheless, the Bureau is concerned that if calendar days were used to calculate the deadline to cancel, the date of deadline could fall on a non-business day for the provider. For example, assume the scheduled date of the transfer is Wednesday, February 20, 2013 and that Monday, February 18, 2013 is a Federal holiday. Also, assume that a provider's business days are Monday through Friday, except for State and Federal holidays. In addition, assume that a sender could cancel the transfer no later than three calendar days prior to scheduled date of the transfer. In this example, the deadline to cancel would be Sunday, February 17, 2013. In this case, though, Sunday is not a business day for the provider. The sender may not be able to exercise his or her right to cancel on that Sunday because the provider would not be open for business that day. In addition, to the extent a sender could notify the provider of the desire to cancel on Sunday, such as sending an email to the provider, the provider may not have sufficient time to process the cancellation once it receives the notice. In this example, the next business day would be Tuesday, February 19, 2013 (because Monday, February 18, 2013 is a Federal holiday), and the provider would have only one business day to act on this cancellation. Thus, the Bureau does not believe that using calendar days is an alternative to business days for structuring the deadline to cancel, but solicits comment on this.

The Bureau also considered whether redefining the term "business day" for purposes of the deadline to cancel might help senders better understand how to calculate the deadline to cancel. For example, the Bureau could define "business day" for purposes of calculating the deadline to cancel as "Monday through Friday excluding Federal holidays." Nonetheless, it is not clear that redefining "business day" in this way would help senders calculate the deadline to cancel. Senders would

still need to know that a particular date is a Federal holiday in calculating the deadline to cancel for a particular transfer. In addition, redefining the term “business day” in this way might actually in some cases cause the deadline to cancel to be set earlier than if the provider’s actual business days were used (*i.e.*, any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions). For example, assume that a provider’s actual business days were Monday through Saturday, except Federal and State holidays. Assume also that the scheduled date of a transfer is Monday, March 11, 2013. If the term “business day” was defined as “Monday through Friday, excluding Federal holidays” for purposes of the deadline to cancel, the deadline to cancel would be Wednesday, March 6, 2013. Nonetheless, if the provider’s actual business days were used to calculate the deadline to cancel, the deadline to cancel would be Thursday, March 7, 2013. Thus, the Bureau does not believe that redefining the term “business day” in this way is a preferable alternative, but the Bureau solicits comment on this.

#### Disclosure of Both the Three-Business-Day Deadline and the 30 Minute Deadline in Same Receipt

Under the final rule, the notice of the deadline to cancel a transfer must be disclosed in the receipt for the transfer. Under the final rule, a provider must disclose in the receipt for a transfer the deadline to cancel that is applicable to that transfer. Thus, for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a provider may solely disclose in the receipt information about the three-business-day deadline to cancel the transfer. For other transfers, the receipt may solely disclose the 30 minute deadline to cancel. Thus, under the final rule, a provider that offers both types of transfers must create two receipts—one that contains the three-business-day deadline to cancel and one that contains the 30 minute deadline to cancel. The provider also must ensure that it gives the sender the proper receipt.

To ease burden on providers in developing two different receipts and making sure they give a sender the proper receipt, the Bureau is requesting comment on whether a provider that provides both types of transfers should be permitted to describe both cancellation provisions on one receipt. For example, the provider could disclose on the receipt both the three-business-day and the 30 minute time

frames and either: (i) describe to which transfers each deadline is applicable; or (ii) use a check box or other method to indicate which deadline is applicable to the transfer. A provider using the option in the first scenario would provide, on one receipt, the language describing each deadline to cancel and describe to which types of transfers each deadline applies. A provider using the option in the second scenario would describe both cancellation provisions on one receipt, but would also use a check box or other method to indicate which deadline is applicable to the transfer. The Bureau solicits comment on whether senders receiving this type of notice under either the first scenario or the second scenario would be able to understand easily which deadline to cancel applies to their particular transfers. The Bureau also solicits comment on the operational burdens on providers to comply with the final rule, if the providers make both types of transfers. The Bureau recognizes that whether the Bureau should adopt this type of provision depends on how the three-business-day day deadline to cancel is disclosed to the sender, such as whether it is a generic disclosure or a specific date, as discussed in more detail above.

#### Disclosure of Deadline To Cancel for Subsequent Transfers

Under the final rule, a sender may not receive a receipt for each subsequent transfer until the transfer has already occurred. When this happens, the deadline to cancel that transfer will have already expired by the time a sender receives the receipt for that subsequent transfer. As discussed above, the Bureau solicits comment on whether it should eliminate the requirement that a provider mail or deliver a pre-payment disclosure for each subsequent transfer. Nonetheless, to the extent the pre-payment disclosure requirement for each subsequent transfer is retained, the Bureau solicits comment on whether a provider should be required to disclose the deadline to cancel in the pre-payment disclosure for each subsequent transfer, rather than in the receipt given for each subsequent transfer, to ensure that senders receive disclosure of the deadline to cancel a subsequent transfer prior to the time that deadline expires. If the requirement to provide a pre-payment disclosure for each subsequent transfer is not retained, the Bureau would leave the disclosure of the deadline to cancel in the receipt for each subsequent transfer. In this case, the Bureau recognizes that it would be confusing to consumers to disclose the three-business-day deadline

to cancel as a specific date, rather than as a generic disclosure, where the pre-payment disclosure is not retained because the specific date by which the sender may cancel the transfer may have passed by the time the sender receives the receipt for the transfer. Nonetheless, a generic disclosure about the three-business-day deadline to cancel in the receipt may still provide helpful information to the sender about the deadline to cancel upcoming subsequent transfers and help ensure that senders are informed of their cancellation rights before the cancellation period has passed for those subsequent transfers.

### VII. Section 1022(b)(2) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.<sup>11</sup> The Bureau also consulted with appropriate Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.<sup>12</sup>

In this rulemaking, the Bureau is proposing to amend Regulation E, which implements the EFTA, and the official interpretation to the regulation, which interprets the requirements of Regulation E. The proposal is related to the January 2012 Final Rule, published elsewhere in today’s **Federal Register**, that implements section 1073 of the Dodd-Frank Act regarding remittance transfers. The proposal requests comment on a safe harbor with respect to the phrase “normal course of business” in the definition of “remittance transfer provider.” The proposal also requests comment on several aspects of the final rule regarding remittance transfers that are scheduled in advance, including preauthorized remittance transfers.

<sup>11</sup> Section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of its regulations to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services. The statute also requires the Bureau to consider the impact of proposed rules 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.

<sup>12</sup> Section 1022(b)(2)(B) of the Dodd-Frank Act requires that the Bureau consult with the appropriate prudential regulators or other Federal Agencies prior to proposing a rule and during the comment process regarding consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The analysis below considers the benefits, costs and impacts of each proposed provision and the additional proposed modifications. It bears note that one of the purposes of the proposed provisions and the additional proposed modifications is to remove barriers to the development of the market for remittance transfers that are scheduled in advance. Since the market for these services is still developing, there is little information with which to evaluate the proposed provisions and modifications that will be most useful to providers and consumers. The Bureau generally requests comment on the proposed provisions and additional proposed modifications and on the Bureau's assessment of the benefits, costs and impacts of the proposed provisions and additional proposed modifications.

The analysis generally examines the benefits, costs and impacts of the provisions of the proposed provisions and additional proposed modifications against the baseline of the January 2012 Final Rule published elsewhere in today's **Federal Register**. This baseline focuses the discussion of benefits, costs and impacts on the incremental effect of this rulemaking on the development of the market for remittance transfers scheduled in advance.

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and additional proposed modifications before finalizing the proposal. The Bureau asks interested parties to provide general information, data, and research results on the number of firms that schedule remittance transfers in advance, the number of transfers they schedule over a given period of time, the characteristics of the transfers (e.g., the typical amount of the transfers and whether multiple transfers are scheduled in advance), the revenue earned from these transfers, and related general information. The Bureau also requests specific information on the number and characteristics of consumers who send remittance transfers via remittance transfer providers who would meet the conditions of the safe harbor for normal course of business in the proposed rule, information on the number and characteristics of the remittance transfer providers just described, and the quantitative and qualitative characteristics of the service provided

and the transfers. The Bureau asks for similar factual information regarding consumers who schedule remittance transfers in advance, the number and characteristics of providers of this service, and the quantitative and qualitative characteristics of the service and the transfers.

#### *Costs and Benefits to Consumers and Covered Persons*

The analysis below discusses (i) the proposed provisions; and (ii) the additional proposed modifications.

#### *Proposed Provisions*

Each specific proposed provision reduces the cost of complying with the January 2012 Final Rule for some remittance transfer providers and leaves the costs of other providers unaffected. The proposed rule provisions therefore provide only benefits to covered persons and no costs.

The proposed provisions include a proposed revision to comment 30(f)-2 of the January 2012 Final Rule. Comment 30(f)-2 in the January 2012 Final Rule states that whether a person provides remittance transfers in the "normal course of business" depends on the "facts and circumstances." The proposed revision provides a safe harbor under which this facts and circumstances test is met. Specifically, a person that performs 25 or fewer remittance transfers in the previous calendar year will not be deemed to be providing remittance transfers "in the normal course of business" on the first 25 remittance transfers in the current year. If that person, however, makes a 26th remittance transfer in the current calendar year, the person would be evaluated under the facts and circumstance test to determine whether the person is a remittance transfer provider for that transfer and any additional transfers provided through the rest of the year.

Consumers may experience benefits and costs from the proposed safe harbor provision for "normal course of business." Some consumers will benefit if the entities they use to send remittance transfers would stop offering remittance transfers if not for the safe harbor. Other consumers may incur costs associated with not receiving the disclosures and protections set forth in the remittance transfer rules from entities who do not provide remittance transfers "in the normal course of business." Businesses should only benefit. The proposed provision removes the burden from businesses that perform few remittance transfers from having to argue that they meet a general facts and circumstances test.

This reduces the cost of complying with the January 2012 Final Rule. The proposed provision imposes no new burden on providers that do not meet the safe harbor. Thus, these other providers are not affected by the proposed provision.

Proposed § 1005.32(b)(2) mitigates the burden on providers imposed by §§ 1005.31(f) and 1005.36(b)(1) of the January 2012 Final Rule. This proposed provision allows providers to estimate certain amounts in the pre-payment disclosure and receipt for certain standalone transfers or the first scheduled transfer in a series of preauthorized transfers. Specifically, proposed § 1005.32(b)(2) would permit estimates for these transfers when they are scheduled by the sender more than 10 days in advance of the consumer's requested transfer date.

There may be both benefits and costs for consumers from the proposed provision relative to the January 2012 Final Rule. Certain providers may not schedule transfers more than 10 days in advance without the option of estimating certain information in the disclosures. Consumers who want to schedule transfers more than 10 days in advance may therefore find it easier to find a provider or they may find more competition among providers of this service. Some consumers may incur costs from receiving estimated disclosures instead of accurate disclosures. The cost would depend on the size of any discrepancy between estimated and accurate disclosures.

Providers can only benefit from the proposed provision. The proposed provision removes from providers the burden of having to give accurate pre-payment disclosures and receipts for transfers scheduled more than 10 days in advance. The proposed provision does not affect providers that would not allow senders to schedule transfers more than 10 days in advance, and it benefits all others.

Proposed comment 36(a)-1 provides guidance on the "within a reasonable time" requirement for pre-payment disclosures in § 1005.36(a)(2)(i). Under § 1005.36(a)(2)(i), a provider must provide a pre-payment disclosure for each subsequent transfer (after the first scheduled transfer) in a series of preauthorized remittance transfers, and the pre-payment disclosure for each subsequent transfer must be provided "within a reasonable time" prior to the scheduled date of the transfer. The proposed comment clarifies that a provider is deemed to have provided a pre-payment disclosure within a reasonable time prior to the scheduled date of the transfer if the provider mails



or delivers the disclosure 10 or more days prior to the scheduled date of the transfer.

There may be both benefits and costs for consumers from the proposed provision relative to the January 2012 Final Rule. Consumers will benefit from the proposed provision relative to the January 2012 Final Rule if some consumers use providers that would not schedule transfers in advance without clarification of the “within a reasonable time” requirement. It is possible that a provider might shorten the time between the issuance of the pre-payment disclosure and the transfer because of the safe harbor (e.g., from more than 10 days without the safe harbor to just 10 days with it). This might impose a cost on some consumers who benefit from having the longer period between receiving the pre-payment disclosure and the transfer.

Providers can benefit from the proposed provision relative to the January 2012 Final Rule. The proposed provision removes the burden of uncertainty and litigation risk from providers that meet the terms of the proposed provision in regards to whether they are complying with the requirement to provide the pre-payment disclosure within a reasonable time prior to the scheduled date of the respective subsequent transfer. The proposed provision does not impact providers that choose not to comply with the safe harbor.

Regarding access to remittance transfer services by consumers, each proposed provision reduces the cost of complying with the January 2012 Final Rule for some remittance transfer providers and leaves other providers unaffected. For this reason, the Bureau believes that all provisions of this rulemaking will tend to increase access by consumers to consumer financial products or services.

As stated above, in finalizing the proposal, the Bureau will further consider the benefits, costs and impacts of the provisions of the proposed rule. The Bureau asks interested parties to provide data, research results and other factual information that may be useful for this analysis.

#### *Additional Proposed Modifications to the January 2012 Final Rule*

The Bureau is requesting for comment on a number of additional proposed modifications to the final rule but has not included specific regulatory or commentary language in the proposal on them. In addition, the Bureau requests comment on whether to allow providers to provide estimates in the pre-payment disclosure and receipt for

certain standalone transfers or the first scheduled transfer in a series of preauthorized transfers, subject to the requirement that providers who disclose estimates give a second and accurate receipt. Consumers would benefit from this proposed modification to the extent that the additional option to provide initial disclosures with estimates and a second accurate receipt after the transfer causes more providers to schedule remittance transfers in advance compared to the final rule, which requires that they provide accurate pre-payment disclosures and receipts at the time the transfer is requested and authorized. Even more providers might schedule remittance transfers in advance if the proposed modification did not require the second receipt, but, in that circumstance, the proposed modification would provide greater access but less precise disclosures. Providers are no worse off under these proposed modifications to the January 2012 Final Rule compared with the requirements under the final rule since they would still have the option to provide accurate disclosures at the time the transfers are authorized, as currently required under the final rule. Providers in this case would not be required to provide a second receipt.

The Bureau is also requesting comment on an additional proposed modification to mitigate the burden on providers imposed by § 1005.36(b)(1) of the final rule by allowing providers to use estimates for the first preauthorized remittance transfer if the amount of the transfer can vary. Another additional proposed modification to the proposal would require providers who use estimates for this purpose to give a second and accurate receipt. The analysis of these additional proposed modifications are identical to the analysis for proposed § 1005.32(b)(2) and the additional proposed modification to that provision discussed above.

The Bureau is also requesting comment on mitigating the burden on providers imposed by § 1005.31(b)(1) in the January 2012 Final Rule as it pertains to subsequent transfers by eliminating the pre-payment disclosure for transfers that occur after the first transfer in a series of preauthorized remittance transfers. See § 1005.36(a)(2)(i). Consumers may benefit from the proposed modification insofar as it provides an incentive for more providers to offer preauthorized remittance transfers. However, consumers would forego any benefits from the reminder that a transfer is going to occur and from knowing some of the terms of the transfer prior to the

transfer. The proposed provision would not impose any additional costs on providers.

The Bureau is also soliciting comment on whether changes should be made to the cancellation rights for certain transfers, as provided for in § 1005.36(c). Under the January 2012 Final Rule, when a sender schedules a remittance transfer at least three business days before the date of the transfer, the provider must cancel the transfer if the sender notifies the provider to cancel the transfer at least three business days before the scheduled date of the transfer. Requiring providers to allow senders to cancel the transfer less than three business days before the date of the transfer likely provides greater benefits to consumers but imposes greater costs on providers. Senders may benefit from the flexibility to cancel the transfer closer to the transfer date if circumstances change for the senders, and they decide they do not want to complete the transfer. On the other hand, providers may have difficulty processing the sender's request to cancel the transfer in time to stop the transfer if the notice of cancellation is given too close to the date of the transfer. Requiring senders to cancel the transfer more than three business days from the date of the transfer likely has the opposite benefits and costs for consumers and providers, respectively, compared with a shorter cancellation period.

The remaining issues on which the Bureau is soliciting comment concern the disclosure of the sender's cancellation rights (deadline to cancel). Under § 1005.31(b)(2)(iv) in the January 2012 Final Rule, a provider must only disclose the deadline to cancel that is applicable to a transfer in the receipt for the transfer. Thus, under the January 2012 Final Rule, providers must prepare receipts with different descriptions of cancellation rights for remittance transfers scheduled more than three business days before the date of the transfer and for remittance transfers scheduled within three business days of the date of the transfer and make sure they give the sender the proper receipt.

One modification on which the Bureau is requesting comment allows a provider that provides both types of transfers to describe both cancellation provisions on one receipt. For example, the provider could disclose on the receipt both the three-business-day and the 30 minute time frames and either: (i) describe to which transfers each deadline is applicable; or (ii) use a check box or other method to indicate which deadline is applicable to the transfer.

A provider using the option in the first scenario would provide, on one receipt, the language describing each deadline to cancel and describe to which types of transfers each deadline applies. Relative to the January 2012 Final Rule, providers would be relieved of the burden of developing two different receipts and making sure they give a sender the proper receipt. This option may lower costs for providers. This additional proposed modification would be optional, such that providers might, at their discretion, instead comply with the notice provision in the January 2012 Final Rule. Thus, this additional proposed modification to the January 2012 Final Rule would not increase costs for providers relative to the January 2012 Final Rule. On the other hand, it is possible that senders given the type of notice permitted by the additional proposed modification would not understand which deadline to cancel applied to their particular transfers compared with the notice requirements under the January 2012 Final Rule. The Bureau solicits comment on this consideration of costs and benefits.

A provider using the option in the second scenario under the additional proposed modification would describe both cancellation provisions on one receipt, but would also use a check box or other method to indicate which deadline is applicable to the transfer. This disclosure would therefore be customized to the particular transaction. The cost of this option might be lower than the cost of the notice provision in the January 2012 Final Rule. In addition, under the additional proposed modification, providers could, at their discretion, still comply with the notice provision in the January 2012 Final Rule. Thus, the additional proposed modification to the January 2012 Final Rule would not increase costs for providers relative to the January 2012 Final Rule.

The Bureau does not have data from which it could evaluate whether the disclosure in the second scenario or the disclosure required under the January 2012 Final Rule provides senders with a better understanding of the deadline to cancel for their particular transfers. Both disclosures are customized to the transaction, but the customization is different. Both of them may cause senders to better understand which deadline to cancel applies to their transaction than would the disclosure from the first scenario, which may be the least expensive for providers. Again, the Bureau solicits comments on this consideration of costs and benefits.

The Bureau is also requesting comment on whether a provider should be required to provide the disclosure of the deadline to cancel in the pre-payment disclosure for transfers subsequent to the first in a series of preauthorized remittance transfers. Under the January 2012 Final Rule, a sender may not receive a receipt for transfers subsequent to the first (and with it, the disclosure of the deadline to cancel) until the transfer has already occurred. At that point, the deadline to cancel will generally have expired. See §§ 1005.31(b)(2)(iv) and 1005.36(a)(2)(ii).

This proposed modification to the January 2012 Final Rule requires providers to have two standard types of pre-payment disclosures and possibly three standard types of receipts. One pair of disclosures would be used for individual remittance transfers and the first transfer in a series of preauthorized remittance transfers that are scheduled within three business days of the scheduled date of the transfer. The 30-minute deadline to cancel would be on the receipt only. Another pair of disclosures would be used for individual remittance transfers and the first transfer in a series of preauthorized remittance transfers that are scheduled more than three business days prior to the scheduled date of the transfer. The three-business-day deadline to cancel would appear only on the receipt. The final pair would be used for transfers subsequent to the first in a series of preauthorized remittance transfers. The three-business-day deadline to cancel would be on the pre-payment disclosure. Relative to the January 2012 Final Rule, the provider would have the additional cost of preparing another type of pre-payment disclosure and possibly another type of receipt and ensuring that senders receive the correct pre-payment disclosure and receipt for each type of transfer. Providers would not have to prepare a third standard type of receipt, however, if they could use the receipt with the three-business-day deadline to cancel as the receipt for both the first and for transfers subsequent to the first in a series of preauthorized remittance transfers.

On the other hand, under these additional proposed modifications to the January 2012 Final Rule, consumers sending preauthorized remittance transfers would receive a disclosure that would more effectively inform them of their cancellation rights. However, consumers who wished to cancel would benefit from the proposed modification only insofar as they are not already aware of the deadline to cancel from

prior disclosures, including prior receipts.

Finally, the Bureau is considering two modifications to make consumers aware of when they can cancel a remittance transfer scheduled more than three days in advance of the transfer. Under the January 2012 Final Rule, consumers can cancel these transactions up to three business days before the transfer. Consumers also receive a disclosure on the receipt stating their cancellation rights. The statement of rights contains the term "business day," however, and consumers may not know a particular provider's business days.

The Bureau is requesting comment on whether a provider should be required to state the provider's business days on the receipt. There may be little cost to this modification, since under the January 2012 Final Rule providers must already generate a different receipt for transfers scheduled more than three days in advance from receipts for transfers scheduled within three business days of the transfer date. Under the additional proposed modification, however, providers would have to update the form if they were to change their business days.

The Bureau is also soliciting comment on whether the receipt should actually state the specific date on which the right to cancel expires. This proposed modification would provide the sender with the most precise information about cancellation rights. The cost to providers of this modification would likely be greater, however, than a disclosure of the provider's business days because it would require customization for each transfer.

#### *Potential Reduction of Access by Consumers to Consumer Financial Products or Services*

Regarding access to consumer financial products and services by consumers, each proposed provision would reduce the cost of complying with the January 2012 Final Rule for some remittance transfer providers and leave other providers unaffected. For this reason, the Bureau believes that all proposed provisions would tend to increase access by consumers to consumer financial products or services. However, some of the additional proposed modifications on which the Bureau is soliciting comment would provide greater consumer protections that might increase certain costs of certain providers. These include modifications to allow consumers to cancel remittance transfers scheduled in advance to cancel less than three days before the transfer, to require providers to disclose the deadline to cancel in the

pre-payment disclosure instead of the receipt for subsequent preauthorized transfers, and to provide consumers with a specific expiration date for the right to cancel when the transfer is scheduled more than three days in advance of the transfer. The Bureau therefore asks interested parties to provide data, research results and other factual information that may be useful for further analysis of the effect of the proposed provisions and the additional proposed modifications on access by consumers to consumer financial products and services.

*Impact of the Proposed Provisions and the Additional Proposed Modifications on Depository Institutions and Credit Unions With Total Assets of \$10 Billion or Less as Described in Section 1026*

All depository institutions and credit unions that provide 25 or fewer remittance transfers per year would benefit from the proposed safe harbor provision, which would deem them not to be providing remittance transfers in the “normal course of business.” All depository institutions and credit unions that schedule remittance transfers in advance would benefit from the option to estimate certain information in disclosures given for standalone transfers or the first transfer in a series of preauthorized remittance transfers that are scheduled by the sender more than 10 days in advance. All depository institutions and credit unions that schedule remittance transfers in advance would benefit from the clarification of the “within a reasonable time” requirement in the proposal for pre-payment disclosures given for subsequent preauthorized remittance transfers.

As discussed above, some of the additional proposed modifications on which the Board is seeking comment provide greater consumer protections that may increase certain costs of providers. These include modifications to allow consumers to cancel remittance transfers scheduled in advance to cancel less than three days before the transfer, to require providers to disclose the deadline to cancel in the pre-payment disclosure instead of the receipt for subsequent preauthorized transfers, and to provide consumers with a specific expiration date for the right to cancel when the transfer is scheduled more than three days in advance of the transfer.

The Bureau does not have data to estimate how many depository institutions and credit unions with total assets of \$10 billion or less as described in section 1026 of the Dodd-Frank Act will incur the benefits and costs

provided by the proposed rule and additional proposed modifications to the final rule. The Bureau therefore asks interested parties to provide data, research results, and other factual information useful for the further consideration of the impact of the proposed provisions and additional proposed modifications to the January 2012 Final Rule.

*Impact of the Proposed Provisions and the Additional Proposed Modifications on Consumers in Rural Areas*

Consumers in rural areas may experience benefits from the proposed provisions that are different in certain respects to those experienced by consumers in general. If consumers in rural areas choose among fewer remittance transfer providers than do consumers elsewhere, these consumers may benefit more from the tendency of the proposed provisions to reduce the costs of compliance than do consumers elsewhere.

Similarly, the benefits and costs to consumers from the additional proposed modifications to the January 2012 Final Rule may be different for consumers in rural areas. The demand by consumers for remittance transfers scheduled in advance, including preauthorized remittance transfers, may be different in rural areas. As a result, the impact on consumers of the additional proposed modifications that may improve certain rights and disclosures but may also increase the costs to providers may be different in rural areas.

The Bureau will further consider the impact of the proposed provisions and additional proposed modifications on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results, and other factual information on the numbers and characteristics of rural consumers who send remittance transfers, the types of businesses through which they send these transfers, and the quantitative and qualitative characteristics of the service provided and the transfers.

## VIII. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to, “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The analysis below first discusses the proposed provisions before discussing the additional proposed modifications.

The analysis generally examines the regulatory impact of the provisions of the proposed rule and additional proposed modifications against the baseline of the January 2012 Final Rule published elsewhere in today’s **Federal Register**.

### *Proposed Provisions*

The proposal sets forth regulation text or commentary on three specific provisions. First, the proposal provides a safe harbor through which a person can establish that it is not a “remittance transfer provider” because it does not provide remittance transfers in the normal course of business and thus is not required to comply with the remittance transfer rules set forth in Subpart B of Regulation E. Second, the proposal allows providers to estimate certain amounts in the pre-payment disclosure and receipt for a standalone transfer or the first scheduled transfer in a series of preauthorized remittance transfers, where those transfers are scheduled more than 10 days in advance. Third, the proposal provides a safe harbor for complying with the requirement to provide a pre-payment disclosure for subsequent preauthorized remittance transfers “within a reasonable time” prior to the scheduled date of the transfer.

These three proposed provisions are designed to facilitate compliance with the January 2012 Final Rule and ease possible compliance burden. All methods of compliance under the January 2012 Final Rule would remain available to remittance transfer providers if these provisions were adopted. However, certain business practices that may not be compliant, or about which a provider is uncertain whether they are compliant, under the January 2012 Final Rule would be deemed compliant under the proposal. Thus, the effect of these provisions is to give remittance transfer providers additional certainty about how to comply, flexibility in complying with the final rule, and additional methods for complying.

### *Normal Course of Business*

Comment 30(f)–2 under the January 2012 Final Rule states that whether a

person provides remittance transfers in the normal course of business depends on the facts and circumstances. The proposal would amend this comment to provide a safe harbor through which a person can establish that it does not provide remittance transfers in the normal course of business. Under the proposed safe harbor provision, if a person makes no more than 25 remittance transfers in the previous calendar year, the person will not be deemed to be providing remittance transfers in the normal course of business for the current year if it provides no more than 25 remittance transfers in the current year. The proposed safe harbor provision relieves the person of having to meet the facts and circumstances test.

Under the proposed provision, small businesses that meet the pattern and frequency requirements of the proposed safe harbor would be relieved of uncertainty about whether they provide remittance transfers in the normal course of business. In particular, those businesses that provide 25 or fewer remittance transfers in a particular year (including 2012, before providers must comply with the January 2012 Final Rule) and continue to do so in the subsequent year (e.g., 2013) would benefit by being relieved of the obligation to evaluate their activities under the facts and circumstances test for that subsequent year. Small businesses that provide more than 25 remittance transfers in a particular year would not experience any impact from the proposed provision. Thus, small businesses that provide remittance transfers would only benefit from the proposed provision.

#### *Transfers Scheduled in Advance*

Proposed § 1005.32(b)(2) allows providers to estimate certain amounts in the pre-payment disclosure and receipt for a standalone transfer or the first scheduled transfer in a series of preauthorized remittance transfers where the transfer is scheduled more than 10 days in advance. This provision would remove the burden to providers of having to give an accurate, as opposed to an estimated, pre-payment disclosure and receipt for a standalone transfer scheduled more than 10 days in advance of the transfer date or the first scheduled transfer in a series of preauthorized remittance transfers scheduled more than 10 days in advance of the transfer date. The provision would not impact providers providing a standalone transfer within 10 days of the scheduled transfer date or the first scheduled transfer in a series of preauthorized remittance transfers

scheduled within 10 days of the transfer date. For those transfers, providers would still be required under the January 2012 Final Rule to provide accurate pre-payment disclosures and receipts.

Proposed comment 36(a)–1 would provide guidance on the “within a reasonable time” requirement for pre-payment disclosures in § 1005.36(a)(2)(i). Under § 1005.36(a)(2)(i) of the January 2012 Final Rule, a provider must provide a pre-payment disclosure for each subsequent transfer (after the first scheduled transfer) in a series of preauthorized remittance transfers within a reasonable time prior to the scheduled date of the transfer. The proposed comment would clarify that a provider is deemed to have provided the pre-payment disclosure within a reasonable time prior to the scheduled date of the transfer if the provider mails or delivers the pre-payment disclosure 10 or more days prior to the scheduled date of the transfer. For providers that meet this condition, this proposed provision would remove the burden of uncertainty and litigation risk regarding whether they are complying with the requirement to provide the pre-payment disclosure within a reasonable time prior to the scheduled date of the respective subsequent transfer. The proposed provision would not impact providers that choose not to comply with the safe harbor; they would still need to meet the “within a reasonable time” requirement in providing the pre-payment disclosure for subsequent transfers under the January 2012 Final Rule. This provision imposes no burden on small providers that do not provide preauthorized remittance transfers.

With respect to proposed § 1005.32(b)(2) and proposed comment 36(a)–1, small providers that currently permit standalone transfers to be scheduled more than 10 days in advance or that provide preauthorized remittance transfers would benefit from the proposed provisions. Other small remittance transfer providers would not experience any impact from these proposed provisions. Thus, small businesses that provide remittance transfers would only benefit from these proposed provisions.

#### *Additional Proposed Modifications to the Final Rule*

The Bureau has asked for comment on a number of additional modifications to the January 2012 Final Rule but did not include specific regulatory or commentary language in the proposal on these modifications.

As discussed above, the Bureau is proposing to allow providers to estimate certain amounts in the pre-payment disclosure and receipt for certain standalone transfers or the first scheduled transfer in a series of preauthorized transfers for transfers scheduled (*see* proposed § 1005.32(b)(2)). Additionally, the Bureau is requesting comment on whether providers taking advantage of such ability to estimate should be required to give a second and accurate receipt.<sup>13</sup> This proposed modification to the January 2012 Final Rule would have no negative impact on small providers since they would still have the option to provide accurate disclosures at the time the transfers are authorized, as required under the January 2012 Final Rule.<sup>14</sup>

The Bureau is also requesting comment on a proposed modification to mitigate the burden on providers imposed by § 1005.36(b)(1) of the January 2012 Final Rule by allowing providers to use estimates for the first preauthorized remittance transfer if the amount of the transfer can vary. Similar to the proposed modification in connection with the ability to estimate under proposed § 1005.32(b)(2) for transfers scheduled more than 10 days in advance, the Bureau is further seeking comment on a proposed modification under which providers may use estimates for the first preauthorized remittance transfer if the amount of the transfer can vary, provided they give a second and accurate receipt closer to the date of transfer. The Bureau is also seeking comment on whether, for an advance transfer, a provider should be allowed to disclose a formula that will be used to calculate the exchange rate that will apply to a transfer. The analysis of these proposed modifications is identical to the analysis for proposed § 1005.32(b)(2) and the modification to that provision discussed above. Again, the proposed modification to the final rule would have no negative impact on small providers since they would still have the option to provide accurate disclosures at the time the transfers are authorized.

The Bureau is also requesting comment on mitigating the burden on providers imposed by § 1005.31(b)(1) in the January 2012 Final Rule as it pertains to subsequent transfers that occur after the first transfer in a series

<sup>13</sup> This proposed modification to the final rule is the same as the proposed provision that allows estimated disclosures discussed above with the addition of the second disclosure requirement.

<sup>14</sup> Providers in this case would not be required to provide a second receipt.

of preauthorized remittance transfers by eliminating the pre-payment disclosure for such transfers. See § 1005.36(a)(2)(i). The proposed modification to the January 2012 Final Rule would have no negative impact on small providers since it reduces the number of disclosures they must provide.

The Bureau is also soliciting comment on whether changes should be made to the cancellation rights for certain transfers, as provided for in § 1005.36(c). Under the January 2012 Final Rule, when a sender schedules a remittance transfer at least three business days before the date of the transfer, the provider must cancel the transfer if the sender notifies the provider to cancel the transfer at least three business days before the scheduled date of the transfer. The Bureau is soliciting comment on whether the deadline to cancel should be more or less than three business days. The net impact of any change in this deadline is difficult to predict, because the Bureau has no data from which to predict how a change in the cancellation period will affect consumers' likelihood of cancellation or a providers' costs relative to the cancellation deadline. In any case, the Bureau believes that few providers, including small providers, have a large share of their business in transfers scheduled at least three business days in advance of the transfer. Thus, the Bureau does not believe that the proposed modification to the January 2012 Final Rule would cause a substantial number of small providers to incur a significant increase in overall costs.

The remaining issues on which the Bureau is soliciting comment concern the disclosure of the sender's cancellation rights (deadline to cancel). Under § 1005.31(b)(2)(iv) in the January 2012 Final Rule, a provider must only disclose in the receipt for a transfer the deadline to cancel that is applicable to that transfer. Thus, under the January 2012 Final Rule, providers must prepare a different receipt for remittance transfers scheduled more than three business days before the date of the transfer from the one they use for remittance transfers scheduled within three business days of the date of the transfer and make sure they give the sender the proper receipt.

One modification on which the Bureau is requesting comment allows a provider that provides both types of transfers to describe both cancellation provisions on one receipt. For example, the provider could disclose on the receipt both the three-business-day and the 30 minute time frames and either: (i)

describe to which transfers each deadline is applicable; or (ii) use a check box or other method to indicate which deadline is applicable to the transfer.

A provider using the option in the first scenario would provide, on one receipt, the language describing each deadline to cancel and describe to which types of transfers each deadline applies. Relative to the January 2012 Final Rule, providers would be relieved of the burden of developing two different receipts and making sure they give a sender the proper receipt. This option may lower costs for providers. Under the additional proposed modification, rather than comply with the modified provision providers could, instead, at their discretion, comply with the notice provision in the January 2012 Final Rule. Thus, this additional proposed modification to the January 2012 Final Rule would not have a negative impact on small providers.

A provider using the option in the second scenario would need to describe both cancellation provisions on one receipt and use a check box or other method to indicate which deadline is applicable to the transfer. This disclosure would therefore be customized to the particular transaction. Under the additional proposed modification, rather than comply with the modified provision providers could, instead, at their discretion, comply with the notice provision in the January 2012 Final Rule. Therefore, this proposed modification to the January 2012 Final Rule would not increase costs for providers relative to the final rule. Thus, this proposed modification to the January 2012 Final Rule would have no negative impact on small providers.

The Bureau is also requesting comment on whether providers should be required to disclose the deadline to cancel in the pre-payment disclosure for transfers subsequent to the first in a series of preauthorized remittance transfers, rather than being required to provide this disclosure in the receipt for such transfers. Under the January 2012 Final Rule, a sender may not receive a receipt for transfers subsequent to the first (and with it the disclosure of the deadline to cancel) until the scheduled date of transfer has passed. At that point, the deadline to cancel will generally have expired. See §§ 1005.31(b)(2)(iv) and 1005.36(a)(2)(ii).

This proposed modification to the January 2012 Final Rule would require providers to have two standard types of pre-payment disclosures and possibly three standard types of receipts. One pair of disclosures would be used for

individual remittance transfers and the first transfer in a series of preauthorized remittance transfers that are scheduled within three business days of the scheduled date of the transfer. The 30-minute deadline to cancel would be on the receipt only. Another pair of disclosures would be used for individual remittance transfers and the first transfer in a series of preauthorized remittance transfers that are scheduled more than three business days prior to the scheduled date of the transfer. The three-business-day deadline to cancel would appear only on the receipt. The final pair would be used for transfers subsequent to the first in a series of preauthorized remittance transfers. The deadline to cancel would be on the pre-payment disclosure. A third standard type of receipt would not be required if a provider were permitted to include the disclosure of the deadline to cancel in the receipt, in addition to the pre-payment disclosure.

Under the additional proposed modification, relative to the January 2012 Final Rule, the provider would have the additional cost of preparing another type of pre-payment disclosure and possibly another type of receipt and ensuring that the sender received the correct pre-payment disclosure and receipt for each type of transfer. However, the Bureau believes that few providers, including small providers, have a large share of their business in preauthorized remittance transfers. Thus, the Bureau does not believe that the proposed modification to the final rule would cause a substantial number of small providers to incur a significant increase in overall costs.

Finally, the Bureau is considering two modifications to make consumers aware of when they can cancel a remittance transfer scheduled more than three business days in advance of the transfer. Under the January 2012 Final Rule, consumers can cancel these transactions up to three business days before the transfer. Consumers also receive a disclosure on the receipt stating their cancellation rights. The statement of rights contains the term "business day," however, and consumers may not know a particular provider's business days.

The Bureau is requesting comment on whether a provider should be required to state the provider's business days on the receipt. There may be little cost to this modification relative to the January 2012 Final Rule, since under the final rule providers must already generate a different receipt for transfers scheduled more than three days in advance from receipts for transfers scheduled within three business days of the transfer date. Providers would have to change the

form if they changed their business days, however. The Bureau does not believe that this proposed modification to the January 2012 Final Rule would cause a substantial number of small providers to incur a significant increase in overall costs.

The Bureau is also soliciting comment on whether the receipt should actually state the specific date on which the right to cancel expires. This modification would provide the sender with the most precise information about cancellation rights. The cost to providers could be greater than a disclosure of the provider's business days because it would require customization for each transfer, which might not be automated in all circumstances. However, as stated above, the Bureau believes that few providers, including small providers, have a large share of their business in remittance transfers scheduled at least three business days in advance of the transfer. Thus, the Bureau does not believe that the proposed modification to the January 2012 Final Rule would cause a substantial number of small providers to incur a significant increase in overall costs.

#### Certification

Accordingly, the Director of the Bureau of Consumer Financial Protection hereby certifies that if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The Bureau invites comment from members of the public who believe there will be a significant impact on a substantial number of small entities.

#### IX. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Paperwork Reduction Act, the Bureau may not conduct or sponsor, and a person is not required to respond to, this information collection unless the information collection displays a currently valid control number. Comments on the collection of information requirements should be sent to the Office of Management and Budget, Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to [http://oira\\_submission@omb.eop.gov](http://oira_submission@omb.eop.gov), with copies to the Bureau at the address previously specified.

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.

The collection of information that is subject to the Paperwork Reduction Act in this proposed regulation is in 12 CFR part 1005. The Bureau's OMB control number for Regulation E is 3170-0014. This information collection is required to provide benefits for consumers and is mandatory. *See* 15 U.S.C. 1693 *et seq.* The respondents and/or recordkeepers are financial institutions and entities involved in the remittance transfer business, including small businesses. Respondents are required to retain records for 24 months, but this proposed regulation does not specify the types of records that must be maintained.

This information is required to provide pre-payment disclosures and receipts to consumers in the United States who wish to send a remittance transfer to a recipient in a foreign country. The disclosures provide pricing information and information regarding cancellation and error resolution rights. This information can be used by consumers for budgeting and shopping purposes and by consumers and Federal agencies to determine when violations of the underlying rules and statute have occurred.

As detailed in the **SUPPLEMENTARY INFORMATION** above, the Bureau is publishing the January 2012 Final Rule elsewhere in today's **Federal Register** to implement the remittance transfer provision in section 1073 of the Dodd-Frank Act. The Bureau is publishing this notice of proposed rulemaking to seek comment on whether to provide additional safe harbors and flexibility in applying the January 2012 Final Rule to certain transfers and remittance transfer providers. The proposal, if adopted, and the January 2012 Final Rule will be implemented on the same date.

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional

proposed modifications). Disclosures provided under the proposed provisions (new disclosures) would replace certain disclosures already required by the January 2012 Final Rule (old disclosures) and are not in addition to them. The new disclosures required under the proposed provisions are generally similar in format and content requirements to the old disclosures, except respondents may provide estimates of information in certain circumstances.

Specifically, in proposed § 1005.32(b)(2), providers would be permitted to estimate certain information in pre-payment disclosures and receipts given at the time of the request and authorization for standalone transfers or the first scheduled transfer in a series of preauthorized transfers that are scheduled by the sender more than 10 days in advance of the consumer's requested transfer date.

The proposed provisions also provide guidance on the "within a reasonable time" requirement for when pre-payment disclosures must be mailed or delivered for each subsequent transfer (after the first scheduled transfer) in a series of preauthorized remittance transfers. Specifically, proposed comment 36(a)-1 provides a safe harbor under which a provider is deemed to have provided a pre-payment disclosure within a reasonable time prior to the scheduled date of the transfer if the provider mails or delivers the disclosure 10 or more days prior to the scheduled date of the transfer. In addition, the proposed provisions provide respondents with additional flexibility that would also reduce burden, such as providing a safe harbor to determine when certain respondents are excluded from the rule because they are not deemed to be providing remittance transfers in the "normal course of business." *See* proposed comment 30(f)-2.

Because the proposed provisions provide safe harbors and additional flexibility to provide estimates that respondents may use at their option in order to reduce compliance burden, the proposed provisions do not impose any additional burden on respondents for PRA purposes. Accordingly, the proposed provisions would not increase the one-time or ongoing burden estimates provided by the Bureau for PRA purposes in the January 2012 Final Rule. Section IX of the **SUPPLEMENTARY INFORMATION** to the January 2012 Final Rule, which is published elsewhere in today's **Federal Register**, sets forth the Bureau's analysis and determinations under the PRA with respect to the burden associated with aspects of the

January 2012 Final Rule. Because the proposed provisions, if adopted, do not increase the Bureau's estimates in Section IX of the **SUPPLEMENTARY INFORMATION** of the January 2012 Final Rule, the Bureau continues to rely on that analysis and determination for the purposes of this rulemaking.

The Bureau's current annual burden to comply with the provision of Regulation E is estimated to be 4,003,000 hours for the 155 large depository institutions and credit unions (including their depository and credit union affiliates) and money transmitters (accounting for the Bureau's allocation of burden) supervised by the Bureau that are deemed to be respondents for the purposes of the PRA.

The Bureau expects that the amount of time required to implement the proposed provisions for a given provider may vary based on the size and complexity of the respondent as well as whether the respondent qualifies for and elects to use the proposed safe harbors or additional flexibility to provide estimates. However, as discussed above, the Bureau believes that the burden associated with providing disclosures under the proposed provisions is already accounted for in the Bureau's January 2012 Final Rule estimates because the final rule already requires certain disclosures addressed by the proposed provisions. Specifically, the Bureau expects respondents that rely on proposed § 1005.32(b)(2) to provide estimates for certain disclosures would incorporate these changes into the updates to their systems already required in order to comply with the disclosure requirements addressed in § 1005.31. Accordingly, for the reasons stated above, the Bureau estimates that there would be no increase in the one-time or ongoing burden to comply with the requirements under proposed § 1005.32(b)(2).

However, the Bureau notes that some of the additional proposed modifications to the January 2012 Final Rule could affect the burden for PRA purposes. As discussed above in the **SUPPLEMENTARY INFORMATION** to the proposal, the proposal solicits comment on whether use of estimates should be permitted in the following two circumstances: (i) a consumer schedules a one-time transfer or the first in a series of preauthorized transfers to occur more than 10 days after the transfer is authorized; or (ii) a consumer enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary and the provider does not know the exact

amount of the first transfer at the time the disclosures for that transfer are given. The Bureau also requests comment on whether in lieu of providing an estimate of the exchange rate on the disclosures for an advance transfer, a provider may disclose a formula and whether a provider that uses estimates in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized in the two situations described above should be required to provide a second receipt with accurate information within a reasonable time prior to the scheduled date of the transfer.

The Bureau notes these proposed modifications would provide additional flexibility and that the second receipt would only be required if the provider used estimates (or formula), at their option, in the two circumstances described above. Generally, these proposed modifications could lower ongoing costs from estimating certain amounts in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized instead of determining accurate amounts; however, the additional accurate receipt could increase burden for PRA purposes. The Bureau notes, however, that this potential increase in burden would be voluntary.

The Bureau estimates that for the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau, these proposed modifications would increase the one-time burden by 620 hours and would increase the ongoing burden by 7,440 hours. In addition, the Bureau estimates that for money transmitters, these proposed modifications would increase the one-time burden by 24,000 hours and would increase the ongoing burden by 44,468 hours.

The Bureau is soliciting comment concerning the disclosure of the sender's cancellation rights (deadline to cancel). One proposed modification allows, at their option, providers that provide both transfers scheduled more than three business days in advance and within three business days before the date of transfer to describe both cancellation provisions on one receipt. Under another proposed modification, the Bureau is requesting comment on whether providers should be required to disclose the deadline to cancel in the pre-payment disclosure for transfers subsequent to the first in a series of preauthorized remittance transfers, instead of being required to make that disclosure in the receipt for the transfer.

The Bureau estimates that for the 155 large depository institutions and credit

unions (including their depository and credit union affiliates) supervised by the Bureau, the first proposed modification would increase the one-time burden by 620 hours and the ongoing burden by 7,440 hours. In addition, the Bureau estimates that for money transmitters, the proposed modification would increase the one-time burden by 24,000 hours and the ongoing burden by 44,468 hours. The Bureau estimates that for the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau, the second proposed modification would increase the one-time burden by 1,240 hours and the ongoing burden by 14,880 hours. In addition, the Bureau estimates that for money transmitters, the second proposed modification would increase the one-time burden by 48,000 hours and the ongoing burden by 88,936 hours.<sup>15</sup>

The Bureau also is soliciting comment on whether the disclosure of the three-business-day deadline to cancel in the receipt for these transfers should include a description of the provider's business days or whether the provider should be required to disclose in the receipt the specific date on which the right to cancel that transfer expires.

The Bureau estimates that for the 155 large depository institutions and credit unions (including their depository and credit union affiliates) supervised by the Bureau, the proposed modification to provide a specific date on the receipt would increase the one-time burden by 620 hours and the ongoing burden by 7,440 hours. In addition, the Bureau estimates that for money transmitters, the proposed modification would increase the one-time burden by 24,000 hours and the ongoing burden by 44,468 hours.

The Bureau is requesting comment on mitigating the burden on providers imposed by § 1005.31(b)(1) as it pertains to subsequent transfers by eliminating the pre-payment disclosure for transfers that occur after the first transfer in a series of preauthorized remittance transfers. See § 1005.36(a)(2)(i). The Bureau is also soliciting comment on whether changes should be made to the three-business-day cancellation deadline that applies to transfers

<sup>15</sup> The Bureau notes that there may be other entities that serve as remittance transfer providers and that are not depository institutions, credit unions, or money transmitters, as traditionally defined. These entities could include, for example, brokerages that send remittance transfers. Though the Bureau does not have an estimate of the number of any such providers, the Bureau believes that they would account for a number of entities that is significantly less than the sum of money transmitters and their agents.



scheduled by the sender more than three business days prior to the scheduled date of the transfer, such as whether the deadline to cancel these transfers should be earlier or later than three business days. The Bureau believes that these proposed modifications, if adopted, would not increase the one-time or ongoing burden for PRA purposes. However, the Bureau solicits comment on these modifications or any other aspect of the proposal for purposes of the PRA.

#### Text of Proposed Revisions

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

#### List of Subjects in 12 CFR Part 1005

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

#### Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection proposes to amend 12 CFR part 1005, as amended February 7, 2012 and effective February 7, 2013, as follows:

#### PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

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

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601; Pub. L. 111–203, 124 Stat. 1376 (2010).

#### Subpart B—Requirements for Remittance Transfers

2. In § 1005.32, revise paragraph (b) to read as follows:

##### § 1005.32 Estimates.

\* \* \* \* \*

(b) ► *Permanent exceptions.*  
(1) ◄ [ *Permanent exception for t* ] ► *T* ◄ *ransfers to certain countries.* ►  
(i) ◄ [ (1) ] *General.* For disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for transfers to certain countries in accordance with paragraph (c) of this section for the amounts required to be disclosed under §§ 1005.31(b)(1)(iv) through (vii), if a remittance transfer provider cannot determine the exact amounts at the time the disclosure is required because:

► (A) ◄ [ (i) ] The laws of the recipient country do not permit such a determination, or

► (B) ◄ [ (ii) ] The method by which transactions are made in the recipient country does not permit such determination.

► (ii) ◄ [ (2) ] *Safe harbor.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether estimates may be provided under paragraph (b)(1) of this section, unless the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount.

► (2) *Transfers scheduled in advance.* (i) Except as provided in paragraphs (ii) and (iii) of this section, for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1), estimates may be provided in accordance with paragraph (c) of this section for the amounts to be disclosed under §§ 1005.31(b)(1)(iv) through (vii), if the transfer is scheduled by a sender to be made more than 10 days after the date on which the sender authorizes the transfer.

(ii) Taxes described in § 1005.31(b)(1)(vi) may be estimated under paragraph (i) of this section only if those taxes are a percentage of the amount transferred to the designated recipient, as described in § 1005.31(b)(1)(v).

(iii) Fees described in § 1005.31(b)(1)(vi) may be estimated under paragraph (i) of this section only if:

(A) The fees are calculated as a percentage of the amount transferred to the designated recipient, as described in § 1005.31(b)(1)(v); or

(B) A remittance transfer provider is an insured institution as defined in § 1005.32(a)(3), the provider cannot determine the exact amount of the fees for reasons beyond its control, and the remittance transfer is sent from the sender's account with the institution. This paragraph (b)(2)(iii)(B) of this section expires on July 21, 2015. ◄

\* \* \* \* \*

3. In Supplement I to part 1005:

a. Under Section 1005.30—Remittance Transfer Definitions, 30(f) *Remittance Transfer Provider*, paragraph 2 is revised.

b. Under Section 1005.32—Estimates:

1. Paragraph 1 is revised;  
2. The heading 32(b) *Permanent Exceptions for Transfers to Certain Countries* is revised to read as 32(b) *Permanent Exceptions*;

3. Under 32(b) *Permanent Exceptions*, a new heading 32(b)(1) *Transfers to Certain Countries* is added.

4. Under new heading 32(b)(1) *Transfers to Certain Countries*, paragraphs 4, 5, and 7 are revised;

5. Under 32(b) *Permanent Exceptions*, a new heading 32(b)(2) *Transfers Scheduled in Advance* is added.

6. Under new heading 32(b)(2) *Transfers Scheduled in Advance*, paragraph 1 is added;

7. Under 32(c) *Bases for Estimates*, 32(c)(1) *Exchange Rate*, paragraph 1 is revised; and

8. Under 32(c)(3) *Other Fees*, paragraph 1 is revised.

c. Under Section 1005.36—Transfers Scheduled in Advance:

1. The heading 36(a) *Timing* and paragraph 1 is added; and

2. The heading 36(b) *Accuracy* and paragraph 1 is added.

The revisions and additions read as follows:

#### Supplement I to Part 1005—Official Interpretations

\* \* \* \* \*

#### Section 1005.30—Remittance Transfer Definitions

\* \* \* \* \*

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

\* \* \* \* \*

2. *Normal course of business.* Whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make international consumer wire transfers available to customers, but sends a couple of international consumer wire transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes international consumer wire transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers multiple times per month, the institution provides remittance transfers in the normal course of business. ► If a person provided no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business for the current calendar year if it provides no more than 25 remittance transfers in that year. If that person, however, makes a 26th remittance transfer in the current calendar year, the person would be evaluated under the facts and circumstances test to determine whether the person is a remittance transfer provider for that transfer and any other transfer provided through the rest of the year. For instance, assume that in calendar year 2012, a person provided 20 remittance transfers. This person is not providing remittance transfers in the normal course of business for calendar year 2013 if it provides no more than 25 remittance transfers in calendar year 2013. Assume further that the

person makes 15 transfers in calendar year 2013. Because this person limited its remittance transfers to no more than 25 in 2013, it would not be required to comply with the rules in subpart B of this regulation for any of its transfers in 2013. On the other hand, assume the person provides 25 transfers by July 2013 and a 26th transfer in August 2013. In that case, the person would be evaluated under the facts and circumstances test to determine whether the person is a remittance transfer provider for the 26th transfer and any other transfer provided through the rest of the calendar year. In addition, if the person provides a 26th transfer for calendar year 2013, this person would not qualify for the safe harbor in 2014 because the person did not make 25 or fewer remittance transfers in 2013. In this case, in 2014, the person would be evaluated under the facts and circumstances test in determining whether the person is a remittance transfer provider for all transfers made in 2014. ◀

\* \* \* \* \*

#### Section 1005.32—Estimates

1. *Disclosures where estimates can be used.* Sections 1005.32(a) and (b)▶(1)◀ permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). To the extent permitted in §§ 1005.32(a) and (b)▶(1)◀, estimates may be used in the pre-payment disclosure described in § 1005.31(b)(1), the receipt disclosure described in § 1005.31(b)(2), the combined disclosure described in § 1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in §§ 1005.36(a)(1) and (a)(2). ▶Section 1005.32(b)(2) permits estimates to be used for certain information if the transfer is scheduled by a sender to be made more than 10 days after the date on which the sender authorizes the transfer, for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1). To the extent permitted by § 1005.32(b)(2), estimates may be used in the pre-payment disclosure described in § 1005.31(b)(1), the receipt disclosure described in § 1005.31(b)(2), the combined disclosure described in § 1005.31(b)(3), and the pre-payment disclosure and receipt disclosure for the first preauthorized remittance transfer described in § 1005.36(a)(1). Section 1005.32(b)(2) does not apply to the pre-payment disclosures and receipt disclosures for subsequent preauthorized remittance transfers described in § 1005.36(a)(2). ◀

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#### ▶32(b) Permanent Exceptions◀

32(b)▶(1)◀ [Permanent Exception for] Transfers to Certain Countries

\* \* \* \* \*

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to

determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)▶(i)(B)◀[(ii)] methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)▶(i)(B)◀[(ii)] methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under § 1005.32(b)▶(1)(ii)◀[(2)], a remittance transfer provider may provide estimates of the amounts to be disclosed under §§ 1005.31(b)(1)(iv) through (vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under § 1005.32(b)(1)▶(i)◀ if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

\* \* \* \* \*

7. *Change in laws of recipient country.* i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)▶(i)◀ even if that country does not appear on the list published by the Bureau.

\* \* \* \* \*

#### ▶32(b)(2) Transfers Scheduled in Advance

1. *Fees imposed on the remittance transfer by a person other than the provider.* The exception in § 1005.32(b)(2)(iii) only allows estimates for fees disclosed in § 1005.31(b)(1)(vi) in two circumstances: (i) where the fees are calculated as a percentage

of the amount transferred to the designated recipient, as described in § 1005.31(b)(1)(v); or (ii) where an "insured institution" as defined in § 1005.32(a)(3) is permitted to estimate fees under the temporary exemption in § 1005.32(a). See § 1005.32(a) and accompanying comments. ◀

#### 32(c) Bases for Estimates

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

1. *Most recent exchange rate for qualifying international ACH transfers.* If the exchange rate for a remittance transfer sent via international ACH that qualifies for the § 1005.32(b)(1)▶(i)(B)◀[(ii)] exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, i.e. the current business day's exchange rate.

\* \* \* \* \*

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

1. *Potential transmittal routes.* A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under § 1005.31(b)(1)(vi) pursuant to the § 1005.32(a) temporary exception ▶or the § 1005.32(b)(2) exemption◀, an insured institution may rely upon the representations of the designated recipient's institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

\* \* \* \* \*

#### Section 1005.36—Transfers Scheduled in Advance

\* \* \* \* \*

##### ▶36(a) Timing.

1. *Reasonable time.* If a provider mails or delivers the pre-payment disclosure not later than 10 days before the scheduled date of the subsequent transfer, the provider is deemed to have provided that disclosure within a reasonable time prior to the scheduled date of the respective subsequent transfer.

##### 36(b) Accuracy

1. *Estimates.* In providing the disclosures described in § 1005.36(a), providers may use estimates to the extent permitted by §§ 1005.32(a) and (b)(1). In addition, § 1005.32(b)(2) provides that providers may use estimates for certain information for the first scheduled preauthorized

remittance transfer, if this transfer is scheduled by a sender to be made more than 10 days after the date on which the sender authorizes the transfer. When

estimates are permitted, they must be disclosed in accordance with § 1005.31(d). ◀

Dated: January 23, 2012.

**Richard Cordray,**

*Director, Consumer Financial Protection Bureau.*

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