January 30, 2013

Via Electronic Delivery

Monica Jackson, Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW, Washington, DC 20552

Re: Docket No. CFPB-2012-0050 and RIN 3170-AA33; Proposed Revisions to Remittance Transfer Rules

Dear Ms. Jackson:

The Clearing House Association L.L.C., the American Bankers Association, the Consumer Bankers Association, The Financial Services Roundtable, the Independent Community Bankers of America, NACHA – the Electronic Payments Association, and the National Association of Federal Credit Unions (collectively, the "Associations")[1] respectfully submit to the Bureau of Consumer Financial Protection ("the Bureau") this comment letter in response to the Bureau's proposal, published in the *Federal Register* on December 31, 2012 ("December Proposed Rule"),[2] which would modify certain aspects of the final rules the Bureau issued to implement Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Final Rule").[3] Among other things, the Final Rule requires remittance transfer

[1] Information regarding each of the Associations is provided in Appendix B to this comment letter.
[2] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 77188 (Dec. 31, 2012).
[3] On February 7, 2012, the Bureau issued a final rule to implement Section 1073 of the Dodd-Frank Act, which amended the Electronic Fund Transfer Act to create new requirements regarding "remittance transfers" ("February Final Rule"). Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194 (Feb. 7, 2012). On August 20,

providers to provide senders of remittance transfers with detailed disclosures, including with respect to third party fees and foreign taxes, and to investigate and remedy errors.

I. Introduction

The Bureau issued the December Proposed Rule to "clarify and facilitate compliance" with the Final Rule by proposing adjustments in three areas: (i) foreign tax disclosures; (ii) recipient institution fee disclosures; and (iii) liability for a sender's incorrect or insufficient information. The Bureau noted that in its monitoring of the remittance transfer market it learned that compliance challenges related to these three issues are substantial enough to lead certain providers to exit the market or reduce their service offerings. We agree, and have previously commented,[4] that if left unchanged, the Final Rule will have significant adverse consequences for consumers and decrease the availability of remittance transfer services and products. Accordingly we fully support the Bureau's decision to reconsider these issues.

Moreover, we acknowledge and appreciate the Bureau's efforts to respond to the specific concerns and suggestions the Associations previously provided to the Bureau.[5] While we clearly recognize the flexibility that the Bureau has intended to provide in the December Proposed Rule, our discussions with our members have revealed that the proposed changes do not sufficiently solve the issues that put the remittance transfer market at risk. Specifically, the Associations are concerned that the requirement to include recipient institution fees and foreign taxes in remittance transfer disclosures will impair consumers' ability to effectively comparison shop between providers and cause consumers to unnecessarily overfund transfer amounts. In addition, with respect to the error resolution provisions, the Associations believe that there are simple modifications that the Bureau could make to ensure that liability is appropriately allocated and to reduce complexity in the process.

Based on these findings and as more fully explained below, the Associations respectfully offer the following recommendations:

- **Recipient Bank Fee Disclosures.** As these fees are already transparent to the recipient, serve no comparison shopping purpose for the sender, cannot be practically known or meaningfully estimated, and are likely to lead consumers to overfund transfer amounts, this disclosure requirement should be removed or be replaced with a statement that recipient bank fees may apply. [6]

- **Foreign Tax Disclosures.** As there is no practical means to accurately disclose even national level taxes, attempts to estimate such taxes are more likely to misinform than inform, and as foreign

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2012, the Bureau issued a supplemental rule that modified certain aspects of the February Final Rule ("August Final Rule"). Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 50244 (Aug. 20, 2012). The February Final Rule and the August Final Rule are referred to collectively herein as the "Final Rule."

[4] Letter to Director Richard Cordray, Consumer Financial Protection Bureau from The Clearing House Association, L.L.C., the American Bankers Association, the Consumer Bankers Association, the Independent Community Bankers of America and NACHA – The Electronic Payments Association (Oct. 17, 2012).

[5] *Id*.

[6] We have provided suggested "may apply" language for disclosures regarding recipient bank fees and foreign taxes in Appendix A.

taxes are not a significant component of cost, consumers will be better served by a simple statement that foreign taxes may apply to their transfers.

- **Sender error.**
  - It is reasonable that senders bear responsibility for the accuracy of the information they provide, including all routing and account crediting information.
  - Regardless of the form of sender error, if a provider has correctly executed a sender's instructions and the sender's error has caused delay or resulted in unexpected costs, the sender and not the provider should bear any loss.
  - In lieu of the complicated resend disclosures the Bureau has proposed, we recommend as a more practical and workable course that when a sender's error results in the rejection or non-receipt of a transfer, a provider that is notified of the failed transaction should (i) make reasonable efforts to notify the sender that the transfer has failed, within a reasonable time from learning of the failed transaction; (ii) credit any returned funds to the sender's account; and (iii) let the sender choose whether to initiate a new transfer, for which new disclosures would be provided.

II. Disclosure of Foreign Taxes and Recipient Institution Fees

A. December Proposed Rule

1. Recipient Institution Fees

To address concerns raised by industry regarding the determination of recipient institution fees, the Bureau proposed new § 1005.32(b)(4) (permanent exception where variables affect recipient institution fees). The proposed exception would permit a provider that does not have specific knowledge about variables that may affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account to disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable.[7] This determination must be based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution.[8] If, however, a provider cannot obtain such fee schedules or does not have such information, the provider may rely on other reasonable sources of information (e.g., schedules published by competitor institutions), if the provider discloses the highest fees identified through the relied-upon source.[9]

2. Foreign Taxes

In response to industry's concerns regarding the difficulties associated with researching and disclosing subnational taxes, the December Proposed Rule would revise § 1005.31(b)(1)(vi) to state that only foreign taxes imposed by a country's central government need to be disclosed. The December Proposed Rule would also add a new § 1005.32(b)(3) (permanent exception where variables affect taxes

[7] Proposed § 1005.32(b)(4)(i).
[8] *Id*.
[9] Proposed § 1005.32(b)(4)(ii); *see also* proposed comment 32(b)(4)-2 (explaining that for purposes of this provision, reasonable sources of fee information include: schedules published by competitor institutions, surveys of financial institution fees, or information provided by the recipient institution's regulator or central bank).

imposed by a person other than the provider). The proposed new permanent exception would permit providers that do not have specific knowledge regarding variables that affect the amount of taxes imposed by other persons to disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable.[10]

B. Comments and Recommendations

Although the Associations appreciate the flexibility the Bureau intends to provide in response to issues regarding the difficulty associated with disclosing recipient institution fees and foreign taxes, we think the proposed approach would result in misleading and confusing disclosures and unnecessary over-funding of transfers by consumers. Further, we continue to be concerned that the challenges associated with these disclosure requirements will decrease the availability of remittance transfer services and products for consumers, including the likelihood that some providers will exit the market, curtail availability of services, increase costs for providing services, or limit the countries and recipient institutions to which they are willing to send remittance transfers, among other consequences.

Section 1073 of the Dodd-Frank Act does not specifically require remittance transfer providers to disclose fees and taxes imposed on a remittance transfer by a person other than the provider. Rather, the Bureau used its authority under sections 904(a) and (c) of the Electronic Fund Transfer Act ("EFTA") to establish this requirement. In doing so, the Bureau reasoned that this requirement will benefit consumers by "making senders aware of the impact of these fees and taxes" and providing "senders with a greater transparency regarding the cost of a remittance transfer."[11] The Bureau also stated that senders "need to know the amount of such fees and taxes to determine whether to use the same provider for any future transfers."[12] However, for the reasons discussed herein, we urge the Bureau to reconsider these assumptions and to use its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose recipient institution fees and foreign taxes as specific amounts.

1. Recipient Institution Fees

a. **Transparency**: *Disclosing Recipient Institution Fees Does Not Add Transparency That Benefits the Sender*

While we understand and agree with the central tenet of Section 1073, that transparency of accurate and relevant costs enables consumers to make informed choices, we believe that only a provider's own fees, the exchange rate, and intermediary bank fees are relevant and useful information to the sender. Further, these are costs that the provider can disclose or estimate with reasonable accuracy. Hence, the disclosure of these fees could add real value to the sender and serve to increase transparency.

In contrast, recipient institution fees are a matter of contract between the recipient and his or her financial institution. Hence, these fees are already transparent to the party to whom the cost is relevant. Further, we note that the fact that a *recipient's* fee arrangement with his or her financial institution is typically protected under consumer privacy laws from disclosure to third parties signals

[10] Proposed § 1005.32(b)(3).
[11] 77 Fed. Reg. 6194, 6224.
[12] *Id*.

that such fees are not logically a cost that should be included in a disclosure regime focused on protecting the *sender*.

b. **Comparison Shopping**: *Disclosing Fees That Do Not Vary by Provider Does Not Aid, and May Hinder, Comparison Shopping*

The preamble to the Final Rule states "[t]he new protections will significantly improve the predictability of remittance transfers and provide consumers with better information for comparison shopping."[13] However, because recipient institution fees are not controlled by and will not vary based upon who the provider is, they serve no comparison shopping purpose. Moreover, recipient fee information will not serve to better inform consumers as the disclosed fees will be based on assumptions about different variables that may or may not actually apply. Given the complexities and unknown variables of the fees, it is probable that different providers could disclose different recipient institutions fees for the same transfer. Such inconsistent disclosures between providers will mislead senders into believing that recipient institution fees actually vary by provider when, in fact, they do not.

For example, one provider may determine, based on a published fee schedule, that the highest recipient institution fee that could be imposed by a particular recipient institution is $25 (or the equivalent in the respective foreign currency), and disclose that amount. Another provider, working with a contact at the same recipient institution, may uncover an unusual scenario in which the highest fee that could be imposed may be $30, and would indicate such on the disclosures provided to senders. A consumer who wants to compare the "cost" of sending the same transfer to the same beneficiary from one of these two providers would come to the incorrect conclusion that the total fees are higher at the provider that disclosed the $30 fee than at the provider that disclosed the $25 fee. Hence, rather than adding transparency and value to the consumer, the disclosure of this fee will have made comparison shopping more confusing and misleading.

Further, the Associations are concerned that any such fee estimates that remittance transfer providers may disclose – whether based on a recipient institution's actual published rates, the individual provider's experience, or on another reliable source – will bear a significant risk of being inaccurate since they will be based upon uncertain and changeable information. As the Bureau has acknowledged, recipient institution fees are highly variable and are often based on a series of conditions that are unknowable and uncontrollable from the perspective of either the sender or the provider. Thus, the Bureau has proposed letting providers rely on a series of proxies and then assume the highest possible amounts based on those proxies. As a result, providers are likely to produce disclosures with over-estimated recipient fee information that differs both from the fee information disclosed by other providers for the same transfer and the actual amount of the recipient institution fees imposed on the transfer.

c. **Over-Funding**: *Disclosing Recipient Institution Fees May Lead Senders to Unnecessarily Over-Fund Transfers*

We note that the fees a recipient pays his or her own financial institution for an incoming transfer are not a cost that senders are expected to cover. Nonetheless, we think that by disclosing

[13] 77 Fed. Reg. 6194.

these fees, consumers may feel compelled to "gross up" [14] the transfer amount to cover these irrelevant costs. For example, a merchant likely does not intend for a receipt fee charged by the merchant's bank to be paid by the merchant's customer (i.e., the sender). Such charges would be the equivalent of "overhead" costs for its business. Hence, the merchant has very likely already recouped for the cost of such overhead in its pricing to the consumer. However, if such a recipient bank account fee is disclosed to the sender (i.e., the merchant's customer), the sender may end up overpaying the merchant.

For example, a sender might request to transfer $100 to a merchant who is charged a $15 fee on a quarterly basis for the receipt of incoming wire transfers. Although the merchant does not expect the consumer to cover this fee, which is not deducted from the principal amount of the transfer, a consumer may be led to believe that he or she is responsible for covering this fee and overfund the transfer by $15. This is especially likely if a provider uses the Bureau's model disclosure form.

In fact, in testing the Final Rule's disclosure requirements in a trial program, one bank found that customers assumed that they were responsible for paying the "other fees" and grossed up their transfers so that the "total to recipient" would match the amount they wanted the recipient to receive. This resulted in a high degree of dissatisfaction when the customers later found out that the actual amount that was deposited into the recipient's account was more than what had been disclosed as the "total to recipient" because the recipient institution fee had not been deducted from the principal of the remittance transfer. It should be noted that these customers *were sophisticated senders who frequently send high value, international transfers*. Thus, the Associations are very concerned that the inclusion of recipient institution fees is certain to confuse and misinform senders, especially less sophisticated senders.

In addition to compelling senders to gross up for fees that are not their responsibility, because providers will estimate the highest possible recipient institution fee under proposed § 1005.32(b)(4), senders will be grossing up based on highest-possible amounts.

d. **Availability of Services**: *If Enacted as Proposed, the Rule Will Negatively Impact the Availability of Remittance Transfer Services*

We also continue to be concerned that the challenges associated with the requirement to disclose recipient institution fees will negatively impact the availability of remittance transfer services and products for consumers, including the likelihood that some providers will exit the market, curtail availability of services, increase costs for providing services, or limit the countries and financial institutions to which they are willing to send remittance transfers, among other consequences.

Even with the additional flexibility afforded by the December Proposed Rule, the resources that a remittance transfer provider will need to dedicate to obtaining fee information to comply with the requirement to estimate the highest possible recipient institution fees would be substantial given the sheer number of potential recipient institutions. For example, the SWIFT Bank Directory Plus lists unique identifiers for over 135,000 financial institutions outside the United States. However, this is a just a subset of total foreign recipient institutions. The Bureau notes in the preamble that it is "concerned that imposing a duty to update relied-upon sources on a frequent basis could become unduly burdensome,

[14] "Grossing up" is generally defined to mean increasing a net amount to include deductions, such as taxes, that would be incurred by the recipient.

particularly as providers are working to implement the rule, and because resources collecting this information have not yet fully developed or become widely available to providers."[15] The Associations agree that a requirement to monitor and frequently update fee information for all potential recipient institutions in foreign countries would be a massive endeavor[16] and note that there is no existing resource for comprehensive recipient institution information of this sort.[17]

It is also important to reiterate that as is discussed below with respect to foreign taxes, knowledge of the recipient institution's fees, whether estimated or exact, does not put a sender in a better position to comparison-shop. In the overwhelming majority of transfers, a sender will not be able to choose the recipient institution. As with taxes, the efforts towards precision would not be justified by a corresponding benefit to the consumer.

We urge the Bureau to eliminate this additional and potentially misleading disclosure altogether or that it be replaced by a simple "may apply" statement that is similar to the language we have suggested in Appendix A.

2. Foreign Taxes

a. **Comparison Shopping**: *Foreign Taxes are of Limited Relevance to Senders, and Disclosing Such Taxes Does Little to Aid Comparison Shopping*

As we have previously stated, the Associations believe that the disclosure of foreign tax information provides little, if any, benefit to consumers.[18] As the amount of foreign taxes imposed on a transfer often will not vary by provider,[19] the disclosure of such taxes does little to aid a consumer's ability to comparison shop between providers.

It must be acknowledged that remittance transfer providers have no special knowledge of foreign taxes, that tax laws are extremely complex in application, and that foreign taxes are not necessarily published in a manner that makes them accessible to providers or anyone else. As a result, requiring providers to develop foreign tax disclosures, even when estimated, obligates remittance transfer providers to hire tax firms, lawyers and consultants to develop the information. Each of these

[15] 77 Fed. Reg. 77188, 77196.

[16] Please see Appendix A for an example of one bank's experience in trying to obtain recipient institution fee information.

[17] We note that over the past several years, the World Bank has developed a Remittance Prices Worldwide database that provides data on the cost of sending and receiving remittance transfers from one country to another with respect to 219 "country corridors." The website is maintained by a team of six persons and is updated approximately every six months. Notably, *even with a team of six persons* working to update and maintain the database, the site provides only *average cost information* regarding the total cost of a transfer from one country to another and does not provide recipient institution fee information. In other words, *despite a dedicated team of six staffers*, the site does not include the type of specific fee and tax information that remittance transfer providers must disclose under the Final Rule, or information that would permit providers to comply with the new estimate provisions of the December Proposed Rule.

[18] Please see Appendix A for an example that illustrates the cost of foreign taxes for a transfer sent to Colombia.

[19] The only reason we are aware of that actual taxes would vary by provider is in the case of value added taxes, which some countries assess on intermediary bank fees. To the extent a provider sent a transfer by a means in which no intermediary bank fees would be assessed, no value added taxes would be applicable to the transfer.

parties may interpret a nation's tax laws differently (including with respect to the rate itself, as well as any exceptions, variables and other factors that affect the amount of taxes imposed). This means that most providers will be reliant upon third party sources of foreign tax information and that these sources may come to different conclusions about applicable taxes and their variables.[20]

We further believe that disclosing estimates of foreign tax amounts will be even less helpful, as different providers will disclose different tax estimates based on their information sources and assumptions, rather than actual tax differences. In addition, with respect to subnational tax rates, proposed comment 31(b)(1)(vi)-3 would add to this confusion and further result in inconsistent disclosures across the industry, as some providers may include sub-national taxes in their disclosures while others may not. Under the December Proposed Rule, institutions would be permitted to disclose different tax rates at the national level (ranging from the actual national tax rate, to the highest possible national tax rate pursuant to proposed § 1005.32(b)(3), to the inclusion of sub-national taxes, to the exclusion of sub-national taxes).

A disclosure regime that results in such inconsistent disclosures will be confusing to consumers and will inhibit rather than support the ability of consumers to comparison shop for remittance transfer services, one of the key purposes underlying Section 1073. Consumers may be led to incorrectly believe, and base their decision to utilize a specific provider, on the appearance that one provider has better tax rates than another. Such a result is inconsistent with Section 1073's central tenet of informed decision making.

b. **Availability of Services**: *Requiring Disclosure of Foreign National Taxes Will Negatively Impact the Availability of Remittance Transfer Services*

Although the elimination of the requirement to disclose subnational taxes will relieve some of the challenges associated with the disclosure requirements of the Final Rule, the Associations remain concerned that requiring the disclosure of foreign taxes, even of only those imposed by a country's central government, will impose an extraordinary compliance challenge that will constrain institutions' participation in the market or limit the countries to which they are willing to send remittance transfers. The requirement that providers survey, analyze, understand and apply foreign tax laws – and monitor foreign tax laws on a going forward basis – remains incredibly expensive and requires the deployment of significant resources to develop the appropriate knowledge, expertise and monitoring capabilities *even in cases where the maximum rate will be disclosed*. This is challenging for all institutions, but we expect that it will have a more harmful impact on smaller providers. Even if a provider (or its third party vendor) is able to catalogue and accurately interpret the tax laws imposed by the central government of every foreign country to which it sends remittance transfers[21], those laws are subject to change.

Given the challenge of disclosing foreign taxes, even if the disclosure requirement is limited to taxes imposed by a foreign country's central government, we believe that a practical solution is to simply alert senders to the fact that foreign taxes may apply, as we have suggested in Appendix A. At a

[20] Please see Appendix A for one financial institution's experience in trying to gather tax information for one country.

[21] The Clearing House notes that in discussions with potential vendors for a shared foreign tax database, even the largest international vendors have indicated that there a some countries for which they are unable to provide tax information.

minimum we would suggest this approach until it is determined whether meaningful and consistent disclosure of national level taxes is feasible through an industry or Bureau sponsored solution and whether the information is helpful or confusing to senders.[22]

3. Other Disclosure Issues

As stated above, we believe that the best approach for consumers and providers alike is to require providers to include in the required disclosures a statement that foreign taxes (and, if necessary, recipient institution fees) "may apply." If, however, the Bureau chooses not to use its exception authority under section 904(c) of the EFTA (despite the important concerns outlined above), the Associations have a number of additional comments regarding the disclosure provisions of the December Proposed Rule, which are set forth below.

a. The Commentary Should State that Providers are not Required to Rely on Sender Representations

While the Final Rule provided guidance on how to determine foreign taxes where variables could affect the amount to be disclosed (in comment 31(b)(1)(vi)-2),[23] the rule did not provide guidance with respect to variables that could affect recipient institution fees. The December Proposed Rule would add new comment 31(b)(1)(vi)-4, which would provide guidance regarding reliance on a sender's representations with respect to recipient institution fees. This proposed new comment is structured similar to comment 31(b)(1)(vi)-2 and states that "[i]f a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by the recipient's institution for receiving a transfer in an account, the provider may rely on a sender's representations regarding these variables."

With respect to both existing comment 31(b)(1)(vi)-2 and proposed comment 31(b)(1)(vi)-4, it is our understanding that under the December Proposed Rule, a provider is not obligated to seek out or rely on a sender's representations regarding variables that may impact the fees or taxes imposed on a transfer. We ask that the Bureau confirm that remittance transfer providers have the option to rely on sender representations under existing comment 31(b)(1)(vi)-2 and proposed comment 31(b)(1)(vi)-4, but are not required to rely on such representations if the provider chooses to instead utilize proposed § 1005.32(b)(3) and/or proposed § 1005.32(b)(4). Here it is important to note that representations by senders could be incorrect and could contradict information that the provider has regarding relevant estimated fees or taxes, and providers may not have the means or ability to verify such representations. Absent verification, providers may be reluctant to take on the risk of relying upon details the sender represents. In addition, it will be burdensome for providers to document that a sender made representations that the provider relied upon, and expensive and time consuming to develop and build

[22] For example, certain foreign taxes are imposed on the recipient and are not a cost the sender would typically be expected to cover. However, similar to recipient institution fees, the disclosure of such "other taxes" may lead a sender to believe that he or she is responsible for paying them and to gross up the transfer accordingly.

[23] Comment 31(b)(1)(vi)-2 states that "[i]f a provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables." The comment also states that "[i]f a sender does not know the information relating to the variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed for the remittance transfer with respect to any unknown variable."

the systems necessary to do so, and it would certainly take much greater than 90 days to implement such a procedure.[24] We expect such systems would need to be far reaching, and include extensive technological builds and comprehensive training and quality control for every point of contact that a sender could potentially have with a provider. Being required to rely on representations made by a sender would therefore involve additional costs being passed on to the sender. Also, being forced to rely on a sender's representation puts the provider in the position of having limited means to control risk involved with the transaction. Such an approach would also necessitate that the Bureau clarify that a provider is permitted to have a sender sign a disclosure or other form that indicates that the amount of the fees or taxes are based solely on the sender's representations.

b. The Rule Should Provide a One Year Grace Period for Foreign Tax Law Changes

The Bureau requested comment on whether the Final Rule should be revised to incorporate a grace period for implementing changes in foreign tax law, and if so, how long that period should be. As discussed above, the Associations believe that the best approach for consumers and providers would be to require providers to state that foreign taxes "may apply," as we have suggested in Appendix A. Under any required disclosure of foreign taxes, we believe that a minimum one year grace period would be necessary and appropriate and that providers should deemed to be in compliance with the rule if they disclose foreign taxes based on information regarding foreign taxes that was accurate within a one year period prior to the date of the disclosure. We note that the Bureau has proposed a similar one year period with respect to the requirement to disclose recipient institution fees under proposed § 1005.32(b)(4).[25]

c. The Rule Should Not Require Providers to First Attempt to Obtain Published Fee Schedules Before They May Rely on Other Reasonable Sources of Information

The Bureau has proposed new § 1005.32(b)(4), which would permit providers that do not have specific knowledge regarding variables that affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account to disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable.[26] This determination must be based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution.[27] If, however, a provider cannot obtain such fee schedules or does not have such information, the provider may rely on other reasonable sources of information (e.g., schedules published by competitor institutions), if the provider discloses the highest fees identified through the relied-upon source.[28]

The Associations request clarification on the meaning of the phrase "cannot obtain" in proposed § 1005.32(b)(4)(ii) and agree with the Bureau's statement in the preamble of the December Proposed

[24] The only alternative would be for providers to develop a complex application form with space for a sender to indicate any variables that it might know which could affect the transfer, a step that is only likely to confuse consumers and extremely unlikely to elicit the information needed for providers to act appropriately.

[25] 77 Fed. Reg. 77188, 77196.

[26] Proposed § 1005.32(b)(4)(i).

[27] *Id*.

[28] Proposed § 1005.32(b)(4)(ii); *see also* proposed comment 32(b)(4)-2 (explaining that for purposes of this provision, reasonable sources of fee information include: schedules published by competitor institutions, surveys of financial institution fees, or information provided by the recipient institution's regulator or central bank).

Rule that it may be "impracticable" for remittance transfer providers to attempt to obtain published fee schedules from all of the possible recipient institutions around the world. We believe that the proposed provision should be clarified to indicate that the rule does not require remittance transfer providers to first attempt to obtain published fee schedules from every potential recipient institution (which, as noted, could include many tens of thousands of financial institutions)[29] prior to being permitted to rely on "other reasonable sources of information" under proposed § 1005.32(b)(4)(ii). Instead, the final rule should clearly permit providers to rely on a reasonable source and not be required to demonstrate that the information was not available from the recipient's institution.

In addition, the Bureau solicited comment on whether the sources of information set forth in proposed § 1005.32(b)(4) and proposed comment 32(b)(4)-1 should be included in the final version of the December Proposed Rule, and whether additional reasonable sources of information should be added. The Associations believe that recipient institution fee information that is obtained by a provider from a correspondent bank should be viewed as a "reasonable source of information" under this proposed provision.

With respect to disclosing "other fees" to be estimated, we note that it is our understanding that where a provider estimates either recipient institution fees pursuant to proposed § 1005.32(b)(4) or any "other fees" pursuant to the "temporary exception" (§ 1005.32(a)(1)), the amount of the "other fees" disclosed under § 1005.31(b)(1)(vi) may be disclosed as an estimated amount even where a component of that total is an exact amount.

Finally, we note that, with respect to proposed comment 32(b)(4)-2, we believe that a reference to "similarly-situated institutions" is more suitable than "competitor institutions."

d. <u>The Bureau Should Authorize a "Safe Harbor" Resource or Methodology for Fee and Tax Information</u>

The Final Rule (even if modified to eliminate the requirement to disclose subnational taxes), will likely require remittance transfer providers to rely on third parties that have foreign tax expertise to develop and maintain comprehensive foreign tax databases, which to our knowledge do not currently exist. These databases will be expensive to construct and maintain and are likely to be expensive for remittance transfer providers to access. We believe that many providers also are likely to rely on third parties to obtain recipient fee information. Thus, another problem with a requirement for disclosure of specific foreign tax and recipient institution fee amounts will be the need to have a system or methodology to ensure the provision of consistent disclosures. It is equally important that such a system be accompanied by a safe harbor for providers when utilizing shared information sources that lead to such disclosures. We would welcome further dialogue with the Bureau on the development of a safe harbor methodology or resource that providers may use when determining and disclosing foreign taxes and recipient institution fees.

[29] As explained above, the SWIFT Bank Directory Plus lists unique identifiers for over 135,000 financial institutions outside the United States. However, this is a just a subset of total foreign recipient institutions. Accordingly, depending on the destinations to which a remittance transfer provider sends funds, the relevant recipient institutions could number in the many tens of thousands – or more.

e. The Bureau Should Clarify the Meaning of "Central Government"

The December Proposed Rule would revise § 1005.31(b)(1)(vi) to state that only foreign taxes imposed by a country's central government need to be disclosed. We note that under this approach the Bureau should provide or endorse a list of all such central governments so that providers know precisely which central taxes they must disclose. For example, in the United Kingdom, it is unclear whether the governments of Scotland, Wales, England, and Northern Ireland would each be considered a central government.

III. Procedures for Resolving Errors

A. Definition of "Error"

1. December Proposed Rule

The December Proposed Rule would revise the definition of error in § 1005.33(a)(1)(iv) by adding a fourth, conditional exception that is intended to address concerns regarding instances in which a sender provides incorrect or insufficient information with a transfer and, as a result of the sender's mistake, the funds are deposited into the wrong account. The proposed provision would exclude from the definition of error a failure to make funds available to the designated recipient by the disclosed date of availability, if the provider can demonstrate that:

- the sender provided an incorrect account number to the remittance transfer provider in connection with the remittance transfer;
- the sender had notice that, in the event the sender provided an incorrect account number, that the sender could lose the transfer amount;
- the incorrect account number resulted in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account; and
- the provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

2. Comments and Recommendations

The Associations appreciate the Bureau's efforts to revise the error resolution requirements that apply in situations that result from a sender's mistake. We believe that the existing rule is unworkable, inequitable, creates the potential for fraud,[30] and, if left unchanged, will cause a significant number of institutions to exit the remittance transfer business or otherwise engage in risk-mitigation efforts that

[30] While the Bureau implies in the preamble to the December Proposed Rule that the incidences of sender fraud are infrequent today, the industry believes that absent the proposed changes, the potential risk of fraud created by the Final Rule is far greater than what occurs today. The Final Rule, by switching liability for a sender "error" to the provider, serves to change the current equation and will significantly increase the risk of fraud by unscrupulous senders.

would affect the cost and availability of services. We agree that the proposed exception to the definition of error for failing to make funds available by the disclosed date of availability is appropriate and necessary, as remittance transfer providers should not be responsible for the principal amount of a transfer that is deposited into the wrong account and cannot be recovered, where the provider has acted in accordance with the account number provided by the sender.

a. The Provision of an Incorrect Account Number is Not the Only Type of Sender Mistake that May Result in Loss

While we welcome the Bureau's decision to address the problem of imposing liability on a provider for a sender's incorrect account number instruction, we believe that the proposed exception is too narrow in scope. The Bureau states in the preamble that it "believes that, compared to other types of sender mistakes, the provision of an incorrect account number poses unique problems for remittance transfer providers, in that such incorrect information may result in remittance transfers being deposited into the wrong account. In particular, the proposed exception does not include a sender's provision of an incorrect routing number designating the recipient institution."

However, the provision of an incorrect account number is not the only type of sender mistake that may result in a remittance transfer being credited to the wrong account. Sender mistakes regarding the name of the recipient bank or the name of the recipient account, bank identifier ("routing number" is a term used only in the U.S.) or International Bank Account Number ("IBAN") (the international standard for identifying international bank accounts across national borders), among other things, may similarly result in a credit to the incorrect account. For example, in Canada, a SWIFT BIC is used to route a SWIFT message to a bank's head office. A second code known as a CC (Clearing Code) is required to identify the branch where the account to be credited is located. In at least one Canadian bank, the same account number sequence is used for all branch locations, meaning that if the sender provides an incorrect Clearing Code with the correct account number, the funds would go to the incorrect branch and be deposited to an incorrect account.

The Bureau states that it "believes that in many instances, providers either already verify routing numbers or are in a position to do so when sending transfers to accounts." This is not true. We note that transfers to foreign banks are generally routed using foreign bank identifiers and that there is no single standard for such identifiers. Moreover, financial institutions generally cannot validate foreign country bank identifiers as this is not information that is either easily obtainable or built into their systems. While, if given the complete and correct name of a recipient institution, SWIFT participants (generally larger financial institutions) can validate that a SWIFT BIC exists and matches the recipient bank name, SWIFT participants cannot validate that the BIC is associated with the intended account number.

While global financial institutions that directly participate in the foreign country's clearing system will have access to foreign bank identifiers, this knowledge would be limited to those systems the global financial institutions participate in. Also, unless the institution has a single global payment system, the information available to one branch's operations may not be available to another. In other words, just because a bank's London affiliate may be able to validate UK sort codes in its London operations, does not mean its U.S. business has the same capability. Even in instances where a provider has the ability to verify a bank identifier, the existing systems require such verification to be done manually. Such manual verification is an inefficient and cumbersome process that would substantially

delay the transfer of funds and run counter to the purpose of a wire transfer, which is intended to be a quick and efficient transaction.

We also note that incorrect reference information provided by a sender and included in a transfer could lead to the misapplication of the transferred funds by the recipient and we do not believe that the provider should be responsible for providing the sender with a remedy under such circumstances. For example, a sender could provide reference information indicating that the transferred funds are to pay the rent for Apartment 123A, even though the sender intended the funds to be used to pay the rent for Apartment 132A.

b. *The Rule Should Exclude from the Definition of Error Any Sender Mistake that Results in Credit to an Incorrect Account, Delay of a Transfer, Rejection and Return of a Transfer, or Any Other Loss When the Provider Has Properly Executed the Sender's Instructions*

The Associations are grateful that the Bureau has agreed to address the Final Rule's inequitable allocation of liability related to a sender's incorrect account number instruction. However, we believe that this particular problem illustrates a larger principle about loss allocation. Hence, we strongly encourage the Bureau to expand the proposed exception to apply to *any sender mistake* that results in a credit to the incorrect account, delay of a transfer, rejection and return of a transfer, or any other loss when the provider has properly executed the sender's instructions.

We believe that requiring a remittance transfer provider to make a sender whole when the information provided by the sender is the cause of the loss is inequitable and inconsistent with the Bureau's stated rationale underlying the liability allocation approach in the Final Rule. Specifically, in the preamble to the Final Rule, the Bureau stated that "consistent with other error resolution procedures in Federal financial consumer protection laws, the Bureau believes that where *neither a sender nor a remittance transfer provider [is] necessarily at fault*, a provider generally is in a better position than a sender to identify, and possibly recover from, the party at fault."[31] Even assuming that logic justifies allocating liability to a provider under circumstances when neither party is at fault, there is no rationale that supports a similar allocation of liability *when the sender is at fault for his or her loss.* Furthermore, allocating liability for sender mistakes to a provider is inconsistent with existing consumer protection laws.[32]

We also believe that imposing a certain level of responsibility on the sender for these transfers will ensure that senders take a proper level of care in their instructions to a provider. On the other hand, if a sender bears no risk for his or her own mistakes, he or she might be careless in providing necessary information. Finally, the Associations believe that imposing liability on remittance transfer providers for

[31] 77 Fed. Reg. 6194, 6249 (emphasis added).

[32] We are aware that Bureau staff have previously justified the Final Rule's imposition of liability on the provider for the sender's incorrect account instruction by stating that Regulation E imposes liability on banks for unauthorized EFTs, even when consumers have been careless with their PIN. However, unauthorized transfers are an entirely different kind of error than an authorized but incorrect payment instruction and have different policy underpinnings. Further, consumers do share liability with banks for unauthorized EFTs and have a responsibility to mitigate loss by reporting lost or stolen access devices.

sender mistakes is likely to harm consumers as providers may refuse to send transfers over a certain amount, substantially increase the cost of services based on the principles of risk based pricing, or engage in other risk-mitigation practices that would affect the cost and availability of services.

c. *The Bureau Should Modify § 1005.33(h) to Account for Circumstances Beyond a Provider's Control and All Forms of Sender Error*

As noted above, the proposed exception to the definition of error in § 1005.33(a)(1)(iv) would apply if the provider met certain conditions, which are set forth in proposed § 1005.33(h). The Associations believe that the proposed conditions should be modified to apply to the broader exception to "error" that we have suggested above.[33] While we urge the Bureau to adopt a broader exception to the definition of error (and appropriate conditions that correspond to the broader exception), we also have comments regarding the specific conditions set forth in the December Proposed Rule.

The second condition (proposed § 1005.33(h)(2)) is that the provider be able to demonstrate that the sender had notice that, in the event the sender provided an incorrect account number, the sender could lose the transfer amount. The Bureau has not specified the form of the notice required by proposed § 1005.33(h)(2) but seeks comment on whether it should specify the form of the notice and how and when it should be delivered. We believe that the Bureau should adopt an approach consistent with existing industry practice under UCC 4A-207 and that a provider should be able to give the notice referenced in proposed § 1005.33(h)(2) in a funds transfer or other account agreement. We also believe that providers should be permitted, but not obligated, to provide this notice in the disclosures required by the Final Rule (i.e., the prepayment disclosure and receipt, or combined disclosure).

The third condition in proposed § 1005.33(h) is that the provider be able to demonstrate that the incorrect account number resulted in the deposit of the remittance transfer into an account at the recipient institution other than the designated recipient's account. However, a recipient institution may be unwilling to disclose the specific account into which the funds were deposited, which would make this condition very hard to demonstrate. Thus, we believe that this condition should be modified to account for circumstances in which a recipient institution is unwilling or unable to share information with the remittance transfer provider that is necessary to demonstrate that an incorrect account number resulted in a deposit to the wrong account. Under such circumstances, we believe that a provider should be permitted to satisfy this condition by demonstrating that it made reasonable efforts to obtain information from the recipient's institution about the incorrectly credited funds, but was unable to obtain such information for reasons beyond its control.

Finally, we believe that the Bureau should revise this condition (and proposed comment 33(a)-7) to refer to a "credit" to the wrong account, as the term "deposit" suggests that the condition would only be applicable in the case of a deposit account.

[33] Appendix A contains suggested language for conditions to the broader exception to the definition of "error" that we have proposed.

B. Streamlined Disclosures for Resends

1. December Proposed Rule

To address concerns regarding the application of existing comment 33(c)-2, the December Proposed Rule would delete certain language from the comment and add new § 1005.33(c)(3), which states that if an error under § 1005.33(a)(1)(iv) occurred because the sender provided incorrect or insufficient information, and if the sender has not previously designated a refund remedy, then the provider must comply with one of two new remedy provisions (§ 1005.33(c)(3)(i) or (c)(3)(ii)), which call for "streamlined disclosures" when funds are resent to remedy an error.[34]

2. Comments and Recommendations: *The Bureau Should Adopt a Simplified Approach to Resends that Is Focused on Notification to Senders*

We appreciate the Bureau's efforts to address the uncertainty surrounding the application of the language in existing comment 33(c)-2, though we note that certain aspects of the proposed requirements are unclear. For example, the Bureau explains in the preamble to the December Proposed Rule that it "is not proposing to require the disclosures in proposed § 1005.33(c)(3) every time a remittance transfer provider resends funds when remedying an error. Rather, the Bureau intends that disclosures pursuant to proposed § 1005.33(c)(3) are *only required if the exchange rate used for the resent remittance transfer is not the exchange rate originally disclosed* and currency must be exchanged to complete the resend."[35] However, the language of proposed § 1005.33(c)(3) and related commentary do not appear to limit the scope of the provision in this way. Furthermore, the language of footnote 12 in the preamble to the proposal appears to directly contradict the Bureau's statement in the preamble. Specifically, footnote 12 states that "[a]s proposed, disclosures would be required by proposed § 1005.33(c)(3) *even if the rate that would be disclosed in connection with the resend happens to be the same rate that was initially disclosed to the sender*."[36]

In any event, the Associations are concerned that rather than streamlining providers' error resolution efforts and facilitating compliance with the rule, proposed § 1005.33(c)(3) would establish an unnecessary and complicated process for resends following failed transfers that occurred because of a sender's mistake. We agree that in circumstances where funds are not made available to the designated recipient because of the sender's mistake and those funds are returned to the provider, the

[34] Proposed § 1005.33(c)(3)(i) states that if the remittance transfer provider does not make direct contact with the sender when providing the report of its investigation of an alleged error, the provider must provide, orally or in writing, as applicable: the disclosures required by §§ 1005.31(b)(2)(i) through (iii) for remittance transfers and the date provider will complete the resend; and if the transfer is scheduled three or more business days before the date of transfer, a statement about the sender's cancellation rights reflecting the rule for transfers scheduled at least three days in advance (§ 1005.36(c)), which shall apply to the resend. Proposed § 1005.33(c)(3)(ii) provides that if the provider makes direct contact with the sender at the same or after the provider provides the report of its investigation of an alleged error, the provider shall provide, orally or in writing, as applicable, the disclosures required by §§ 1005.31(b)(2)(i) through (iii) for remittance transfers.

[35] 77 Fed. Reg. 77188, 77201 (emphasis added).

[36] *Id*. at FN 12 (emphasis added).

sender should have the ability to resend the funds.[37] However, as there has been no "error" by the provider, we do not think the resend should be considered a remedy for the failed transfer.

Rather, we propose that a simpler approach would be to require the provider to make reasonable efforts to notify the sender that the transfer has failed, within a reasonable time of learning of the failed transaction, and credit any returned funds to the sender's account. Such a notice should indicate that (i) the sender provided incorrect or insufficient information to complete the transfer and the transfer has been rejected and returned; (ii) the returned funds (which may be less than the original principal due to fees charged on the return trip and the reconversion of the funds back into the funding currency) have been credited to the sender's account; and (iii) if he/she would like to resend the funds by requesting a new remittance transfer, he/she may contact the provider to do so. The sender then can choose to initiate a new transfer for which new disclosures will be provided. In certain limited circumstances that are beyond the provider's control, a provider may not be notified that a transaction has been rejected or returned and, under such circumstances, the provider should not be required to provide the sender with this notice.

The Associations note that providers have already dedicated significant resources towards developing systems to comply with the existing disclosure and cancellation requirements, including the separate requirements for transfers scheduled in advance and preauthorized remittance transfers. Modifying the Final Rule to also require the "streamlined disclosures," which have distinct content, accuracy and timing requirements, will require the development of additional documents and systems and require further employee training, while providing little benefit to consumers.

We believe that the approach outlined above would simplify the error resolution obligations that apply to providers in instances where the transfer failure is the result of the sender's mistake, and at the same time would permit consumers to resend a transfer, while ensuring that they receive disclosures and may cancel the transfer.

IV. Effective Date

The Bureau has proposed that the Final Rule, and any revisions thereto resulting from the December Proposed Rule, become effective 90 days after the Bureau finalizes the December Proposed Rule. If, as we have suggested, the Bureau adopts a final rule that (i) permits a statement that foreign taxes and recipient institution fees "may apply," (ii) explicitly states that providers are not required to rely on sender representations, and (iii) simplifies the process for resends following transfers that result from sender mistakes as we have suggested in section III.B.2, then the Associations believe an effective date 90 days after the final rule is adopted is generally workable.

If, however, the Bureau adopts a final rule that is similar to the proposal, we strongly advise the Bureau to make the Final Rule effective 180 days after the Bureau finalizes the December Proposed Rule. Additional implementation time is needed because the December Proposed Rule will require technology changes across multiple applications, procedural changes across multiple customer-facing channels, operational changes to multiple departments, vendor changes, and for providers that offer

[37] As noted above in Section III.A., however, we encourage the Bureau to expand the proposed exception to the definition of error in § 1005.33(a)(1)(iv) to cover *all situations in which a sender's mistake results in a delay, return and rejection, mis-delivery, or other loss*.

correspondent services to smaller institutions, downstream third-party/customer integration and testing. For example, if the Bureau determines that providers must disclose recipient institution fees, many providers will have to go out again to their correspondents and respondents to request the data as well as search for other reasonable sources of fee information for all countries to which they plan to continue services. To the extent such information can be found, new databases will have to be built. Similarly, if the Bureau requires the new "streamlined" disclosures for resends, providers will have to make material changes to their claims handling and disclosure systems.

Of particular note, if a provider is obligated to incorporate sender representations regarding the variables that affect foreign taxes and recipient institution fees into its disclosures, providers must make far reaching changes as current systems do not give providers the ability to "enter" fees or taxes based on sender representations. We expect that this will include technology and vendor changes, and that the implementation of such changes will require no less than 180 days to develop, complete and test. This time frame is also needed to train branch and operational personnel who interact with consumers so that they know to inquire, describe, and collect the appropriate information from senders.

It should also be noted that smaller financial institutions that rely on larger institutions for correspondent services will only be able to implement compliance programs once the larger institutions have developed, tested and implemented their own systems.[38] Similarly, for smaller and regional institutions that use payment system providers for their ACH and wire systems, we understand that compliance solutions for the Bureau's remittance transfer rules are not expected until the third or fourth quarter of 2013. Further, certain SWIFT message changes that will enable providers to flag messages for special handling will not go into effect until the fourth quarter of 2013. Thus, we expect that smaller and regional institutions may require more than 180 days to implement systems to comply with the rule. Finally, we have heard from some small institutions that if the extension period does not provide them with sufficient time to utilize vendor resources and implement changes to their systems, they may exit the market for remittance transfer services and are unlikely to return. Such a result would be inconsistent with serving customers and encouraging the strength of community banks as financial services providers.

Separately, we ask that the Bureau use its statutory authority to extend the expiration date of the "temporary exception" an additional five years to July 21, 2020.[39] We believe that such an extension is appropriate because the termination of the temporary exception on July 21, 2015 will disrupt the ability of insured depository institutions to provide remittance transfer services to consumers. Specifically, given the complexity and challenges associated with the disclosure requirements of the rule, the Associations do not believe that insured depository institutions that send open network international transfers will have developed the systems and databases necessary to disclose *exact amounts* when the exception expires on July 21, 2015. In the alternative, given the delayed effective date of the rule, we ask that the Bureau extend the expiration date from July 21, 2015 for a period equal to the period allowed between issuance of the Final Rule and the new effective date.

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[38] Please see Appendix A for an example of an implementation timeline for a correspondent's remittance transfer solution.

[39] EFTA Section 919(a)(4)(B) states that if the Bureau determines that termination of the temporary exception would negatively affect the ability of insured depository institutions to send remittances to foreign countries, the Bureau may, by rule, extend the application of the temporary exception to ten years after the date of enactment of the Dodd-Frank Act (July 21, 2020).

* * * * *

Thank you for your consideration and review of this letter. If you have any questions or wish to discuss this letter, please do not hesitate to contact any of the undersigned using the contact information provided below.

Yours very truly,

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Appendix A – Suggested Language and Further Compliance and Implementation Details

Suggested "May Apply" Disclosures

Please note this disclosure does not include:

- Fees that may be charged to your recipient by the recipient's financial institution in connection with this transfer.
- Foreign taxes that may be imposed on "other fees" or on the transfer amount.

These fees and foreign taxes may reduce the amount received by your recipient or may be charged separately to your recipient after the transfer is received.

Suggested Conditions to Exception to Definition of Error

No error has occurred under § 1005.33(a)(1)(i),(iii) and (iv) if the remittance transfer provider can demonstrate that:

- the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer and the provider has properly executed the sender's instructions;

- the sender had notice that, in the event the sender provided incorrect or insufficient information in connection with the remittance transfer, that the funds may be lost or the remittance transfer could be delayed or returned and additional fees and costs may apply;

- the incorrect or insufficient information resulted in delay of the transfer, rejection of the transfer, or a credit to the incorrect account, or that a reasonable attempt was made to demonstrate that the incorrect or insufficient information resulted in the delay, rejection, or credit to the incorrect account and the provider is aware of no other factors that would have caused the delay, rejection, or credit to the incorrect account; and

- where funds were deposited into an account other than the designated recipient's account, the provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

Attempts to Gather Recipient Institution Fee Information

One bank that has conducted a number of surveys to better understand recipient institution fees has found that many of the bank's requests for information have gone unanswered. Further, recipient institutions that did respond provided very limited information and often alluded to a high degree of variability. In one response to the question of whether an institution charges a standard fee for incoming wires, the respondent said "yes, we do have a standard fee, and that would be decided by each bank branch manager." This foreign bank has hundreds of branches.

Example Illustrating Cost of Foreign Taxes for a Transfer to Colombia

Based on a ten country survey of foreign tax laws applicable to remittance transfers that The Clearing House had performed last summer, Colombia had the highest tax rates. According to the survey data, Colombia imposes (i) a transfer tax of .4% of the transfer amount, without taking into account any deductions from principal and (ii) a value added tax of 16% on any intermediary fees that are charged when a transfer is sent *between banks in Colombia*.

Below is an example for a $1000 transfer to Colombia. All amounts are given in $US rather than COP (Colombian pesos) for the sake of simplicity. The transfer tax would be $4 and the value added tax would be $3.20. Again, these are the highest taxes we are aware of. Together the taxes comprise only .72% (less than 1%) of the $1000 transfer amount.

		Cost as % of Transfer Amount
Transfer amount	US$ 1000	
Provider Fee	US$ 30	3%
Intermediary fee (first Colombian bank)	US $ 25	2.5%
Intermediary fee (second Colombian bank)	US $ 20	2%
Transfer tax (1000*.004)	US$ 4	.004%
Value added tax – only charged on second intermediary fee (20*.16)	US$ 3.20	.032%

We note that there is a laundry list of exemptions and exclusions that apply to these taxes (see below), but for the sake of the example, it was assumed that the taxes apply. However, under the December Proposed Rule, a provider would need to first review these exemptions and exclusions to determine whether it has specific knowledge regarding their application before the provider could assume that the taxes do apply.

Abridged List of Exemptions and Exclusions

The following transactions are excluded from Colombia's value added tax:

- Transactions in which the beneficiaries are the embassies, diplomatic agents, consular personnel and international organisms with credentials before the Colombian Government.
- Transactions between the Government of Colombia & the Government of the United States of America.
- Services provided or destined to San Andres and Providencia islands.
- Services rendered within the Amazonas department.

Attempts to Gather Foreign Tax Information

In preparing to comply with the rule one bank conducted several surveys of foreign institutions with which it has relationships to gauge their understanding of their country's tax law. The inquiring institution received responses from 20 top financial institutions in India (by market share) with regard to national tax requirements. In response to the question of whether taxes were levied on incoming international wire transfers, 11 respondents stated that taxes were levied, while 9 responded that taxes were not levied. Those that responded that taxes were levied were further asked how such taxes were charged. Some respondents stated that taxes were charged by the government and that banks are not part of the taxation process as it relates to incoming wire payments. Some stated that taxes were deducted from the principal amount of the payment, while others stated that taxes are charged to the beneficiary as a separate fee. Further, some respondents stated that the tax obligation is already incorporated into their fee. The institution that conducted this survey has indicated that it received similar results for other countries, which illustrates a lack of consistent interpretation and understanding of tax requirements by key local industry participants, which would be the institution's key partners in obtaining and maintaining foreign tax information.

Example Implementation Timeline for Correspondent Remittance Transfer Solution

Step	No. of Days	Accumulated Days	Final Rule is Released
1	3	3	Reading and Interpretation of Rule
2	3	6	Make Final Changes to Legal Agreement between 2 banks based upon rule changes
3	3	9	Send to Legal Agreement to Documentation Group for Standardization
4	5	14	Legal Document Approved Internally by Document Review Committee
5	2	16	Send Legal Document to Clients
6	8	24	Client review and may make comments
7	30	54	Negotiate legal document between parties
8	5	59	Signed document returned (getting appropriate signatures)
9	3	62	Implementation Department Notified to Set up Appointment with Bank Client
10	1	63	Send out Training Guide to Bank Client
11	10	72	Gather needed information from Bank Client to establish them on disclosure-related Systems
12	3	75	Needed Information transferred to various groups for providing entitlements
13	2	77	Entitlements on System 1
14	1	78	Entitlements on System 2
15	2	80	Entitlements on System 3
16	5	85	Arrange Training Sessions for Bank Clients (may need multiple for large numbers of employees)

18	10	95	Training Sessions for employees at Bank Client
19	5	100	Follow-Client Training Sessions Held
20	3	103	Set up Dates to do QA testing
21	3	106	Send client Guide for Testing
22	10	116	Do Testing
23	5	121	Work out any kinks in testing
24	0	121	Go Live

Appendix B – Association Descriptions

The Clearing House

Established in 1853, The Clearing House is the nation's oldest payments company and banking association. The Clearing House is owned by 21 of the largest commercial banks in America, which employ 1.4 million people domestically and hold more than half of all U.S. deposits. The Payments Company within The Clearing House clears and settles approximately $2 trillion daily, representing nearly half of the U.S. volume of ACH, wire and check image transactions. The Clearing House Association is a nonpartisan advocacy organization within The Clearing House that represents, through regulatory comment letters, amicus briefs and white papers, the interests of its owner banks on a variety of systemically important bank policy issues.

American Bankers Association

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

Consumer Bankers Association

The Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

The Financial Services Roundtable

The Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

Independent Community Bankers of America

The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1.2 trillion in assets, $960 billion in deposits, and $750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

NACHA – The Electronic Payments Association

NACHA manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and data. The ACH Network serves as a safe, secure, reliable network for direct consumer, business, and government payments, and annually facilitates billions of payments such as Direct Deposit and Direct Payment. Utilized by all types of financial institutions, the ACH Network is governed by the NACHA Operating Rules, a set of fair and equitable rules that guide risk management and create certainty for all participants. As a not-for-profit association, NACHA represents over 10,000 financial institutions via 17 regional payments associations and direct membership. Through its industry councils and forums, NACHA brings together payments system stakeholders to enable innovation that strengthens the industry with creative payment solutions. To learn more, visit www.nacha.org, www.electronicpayments.org, and www.payitgreen.org.

National Association of Federal Credit Unions

The National Association of Federal Credit Unions exclusively represents the interests of federal credit unions before the federal government. NAFCU represents nearly 800 federal credit unions, accounting for 63.9 percent of total FCU assets and 58 percent of all FCU member-owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs. Learn more at www.nafcu.org.