COMMENTS
to the
Federal Reserve Board
12 CFR Part 205
[Regulation E; Docket No. R-1419][1]
RIN 7100-AD76
Electronic Fund Transfers
New Protections for Remittances

by the
National Consumer Law Center
on behalf of its low income clients

as well as

Americans for Financial Reform
Coalition of Religious Communities
Consumer Action
Consumer Federation of America
Consumers Union
Empire Justice Center
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)
Massachusetts Law Reform Institute
MDC, Inc.
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Council of La Raza
Sargent Shriver National Center on Poverty Law
Virginia Citizens Consumer Council

The **National Consumer Law Center**[2] ("NCLC") submits the following comments on behalf of its low-income clients, as well as the above-listed national and state-wide advocacy

[1] 76 Fed. Reg 29902 (May 23, 2011).

[2] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws, including *Consumer Banking and Payments Law* (4d ed. 2009), which has several chapters devoted to electronic commerce, electronic deposits, access to funds in bank accounts, and electronic benefit transfers. NCLC also publishes bimonthly newsletters on a range of topics related to consumer credit and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal with the electronic delivery of government benefits, protection of exempt benefits, predatory

organizations that represent the interests of low and moderate income users of remittances. The Federal Reserve Board[3] has proposed a comprehensive set of regulations which generally tracks the statutory protections for remittances added to the Electronic Funds Transfer Act.[4] These regulations will provide meaningful and important protections for the first time to remittance senders.

I. Introduction

Our views on these proposed regulations are informed by our recognition that the new statute providing protections for remittances is intended to provide three important and separate new protections:

1. Remittance senders will be able to shop for the lowest cost remittances by receiving *before* the transaction a commitment for the total cost of the remittance. The cost and benefit of the transaction will be portrayed by a) the total cost of the remittance to the sender, and b) the total amount to be received by the recipient.

2. The sender will receive a receipt after the transaction which expresses the contract between sender and the remittance provider, with the information that had been provided before the transaction, as well as a commitment for a date by which the funds will be available, plus information about the error resolution rights provided by the statute.

3. The statute provides comprehensive and privately enforceable error resolution rights to senders which flow directly from the information disclosed in the receipt.

Tens of billions of U.S. dollars are sent every year by American residents to their relatives overseas. Remittances total at least three times official development assistance and are the largest source of external financing in many developing countries. While many remittance transfers flow between financial institutions without issues, there have been far too many instances of serious problems with remittances. These problems range from the remittance not reaching its intended recipient, to overcharging remittance fees and changing exchange rates.

The Dodd-Frank law amended the Electronic Fund Transfer Act to create a new set of enforceable requirements for all "senders" of remittances originated in the United States. These new rules, which require new disclosures, error resolution procedures and – particularly importantly – protections against loss through error or theft, will provide a substantial improvement to the legal framework governing remittances.

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lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s. NCLC's attorneys regularly provide comprehensive comments to the federal agencies on the regulations under these laws. These comments are written by NCLC attorney Margot Saunders.

[3] These proposed regulations were written and proposed by the Federal Reserve Board. Comments will be reviewed by, and final regulations issued by the Consumer Financial Protection Bureau. 76 Fed. Reg 29902 at 29906 (May 23, 2011).

[4] New section § 919 of the Electronic Fund Transfer Act, 15 USC §1693q, Public Law 111-203, 124 Stat. 1376 (2010).

In general, we applaud the proposed regulations. In some areas we have some suggestions for improvement of the disclosures. However, we have particular concerns regarding the following provisions in the proposed regulations. We believe that in these problematic provisions the Board has failed to follow the strict mandates of Congress:

- The proposal – in § 205.31(b)(2)(iv) – to allow remittance transfer providers to avoid informing remittance senders about their specific rights to error resolution procedures as explicitly required by the new statute.

- The proposal – in § 205.32 – to allow providers to use estimates without the specific delineation of those disclosures as estimates.

- The proposal – in § 205.32 – to permit providers to use estimates for transfers to certain countries based on the specific conditions in the country which make it difficult to know the full cost of the transfer; instead the Board is instructed by Congress to make the finding that estimates are necessary for each country to which estimates are permitted.

II. Recommendations

A. Coverage

Remittance transfer. We agree that the definition of remittance transfer in § 205.30(d) includes cash-based transfers sent through money transmitters as well as consumer wire transfers, regardless of whether the sender holds an account with the remittance provider and regardless of whether the transfer is an electronic transfer otherwise covered by the EFTA. These distinctions are consistent with the language and the purpose of the remittance protections in the statute.

Additionally, we agree with the following:

1. The exclusion from the definition of deposits by a consumer into a checking or savings account which the consumer has the ability to withdraw, even if a person in a foreign country also has the ability to withdraw funds from the account.

2. The exclusions for a) the use of a payment card network using a debit or credit card as the payment method to purchase goods or services from a foreign merchant; and b) the provision of a checking or other account number to a foreign merchant for payment for goods or services.[5]

3. The inclusion in the definition of remittance transfers for debit or credit card transactions for which the purpose is to transfer funds to the recipient's card.

[5] Proposed comments 30(d)-4.

The critical point in all of these distinctions is that when the payment is for goods or services it is generally meant to be excluded from the remittance definition, while the transfer of funds to another person is meant to be included.

The Board notes that, because of the language of UCC Article 4A, once any aspect of remittances is governed by the Dodd-Frank law, UCC Article 4A will be entirely inapplicable to remittance transactions. The result will be that UCC Article 4A will no longer govern the relationship between the industry players who implement the consumer's transfer of funds. This exclusion of wire transfer remittances from the UCC may leave the industry providing these transfers without clear rules governing responsibilities and liabilities between the industry players. While the Board proposes that the states act to fill in these gaps before the rules are effective sometime after July, 2012, this may be unrealistic. It generally takes far more than a year for the process of writing a model law and passing it all state jurisdictions. <u>A better alternative is for either the Board or the Consumer Financial Protection Bureau to adopt its own set of rules for wire transfers covered by the EFTA.</u> These rules would stand in the place of those provisions in Article 4A which are no longer applicable to wire transfers which are now remittances under the EFTA.

B. Disclosures

1. General comments

The regulation requiring the disclosures to be provided in writing and in a form the sender can keep (§ 205.31(a)(2)) is appropriate and required by the statute (§ 919(a)(1)). Similarly, the requirements and exceptions set out for disclosures required after telephone transactions and for electronic disclosures are appropriate and consistent with the statute.

We also *applaud* as particularly necessary for protection of consumers as well as compliance with the statute the following specific disclosure requirements:

a) The requirement for prepayment disclosure in § 205.31(b)(1). This is particularly necessary to allow consumers to shop between remittance providers. This disclosure will allow a consumer to be sure she understands exactly what her relative will be receiving in return for the money she is turning over for the remittance. The disclosure of the "Transfer Amount" as a separately delineated term is essential for the consumer to understand the total amount of funds she is required to pay in order for the recipient to receive the promised "Total to Recipient."

b) The "Date Available" as required by subsection § 205.31(b)(2) on the receipt provided to the sender *after* the transaction has been completed.

c) The information about how to reach the recipient on the receipt as required by § 205.31(b)(2)(iii).

d) The specification, as required by the statute, of both the exchange rate, as well as the fees and taxes charged at the front end by the remittance provider, (§ 205.31(b)(iv)).

e) The requirement of a separate disclosure for additional fees and taxes imposed by anyone other than the remittance provider – such as the provider's agent on the recipient's end of the transaction – as required by subsection § 205.31(b)(v).

f) The requirement that the disclosures must be accurate at the time the payment is made in § 205.31(f) is necessary.

g) The foreign language disclosure requirements, which are in compliance with the statute in § 205.31(b)(g). We adopt the comments of Appleseed on this issue.[6]

However, there are a number of serious problems with the proposed disclosure regime as well. These are as follows:

2. Specific wording for disclosures of total cost on the Model Form should be improved.

The premise of the disclosures in the underlying legislation was to simplify – and thus make completely transparent – the true costs of a remittance. It really does not matter to the buyer of goods or services what the components of the total price are; what matters is the total price. So if one remittance transfer provider is able to negotiate a much lower exchange rate for transfers to a particular country, that fact may be independently interesting. It is only really relevant to the sender, however, if, in combination with the fees the provider charges, as well as the taxes the provider and agents are required to collect, the total cost of the remittance transfer is less than others.

The sender most wants to know one fact: the total amount of local currency the recipient will receive if the sender passes over a certain amount of U.S. dollars. That fact is the bottom line, driving comparison for shopping purposes for remittance senders. Once printed on the receipt, that fact becomes the contractual promise that sender is relying on – which indeed is the critical element of the contract between the sender and the remittance provider.

The Model Form disclosures should be amended to clarify these two numbers: the total of funds delivered by the sender to the provider (called "Total" in the current Model Forms), and the amount of foreign currency to be received by the recipient (called "Total to Recipient"). These numbers are the critical pieces of information that senders will want to know, and will want to lock down. It is very important to separate out some of this information and emphasize these two numbers and their relation to each other.

The "total" as described by the Board now, should be in bold, and should be denominated: "**Total Cost to You of this Transfer.**" The "Total to Recipient" should also be in bold and denominated "**Total Amount Recipient will Receive**." Additionally, the words the Board proposes – "Total Amount" – are too generic. These words not really the total cost of the remittance anyway, as other funds are required to be paid to accomplish the transfer. In the first line of each disclosure, we recommend that this amount be called "Amount Transferred." To accomplish these proposed changes, we recommend reworking the disclosure of the numbers on the

[6] *See* Comments filed by Appleseed.

Model Forms, as follows (we have other recommendations for the error resolution information, below):

Receipt	
Sender: Pat Jones 100 Anywhere Street Anytown, State, 222-555-1212	**Recipient:** Carlice Gomez 123 Gallie Mexico City, Mexico xxx-xx-xxxxx
Confirmation Code: ABC 123	
Date Funds Will Be Available to Recipient: 3/4/2011 **Pick Up Location:** ABC Company 65 Avenida YYY Mexico City, Mexico,	
Amount Transferred	$100
Transfer Fees and Taxes:	+ 10
Total Cost to You for this Transfer:	**$110**
Exchange Rate: US $1 = 12.27 MXN	
Amount Transferred	1,2278.00 MXN
Additional Fees and Taxes:	- 40.00 MXN
Total Amount Recipient Will Receive:	1,187.00 MXN

3. Combined disclosures defeat the purposes of the statute's protections and should not be allowed.

The Pre-Payment Disclosures (required by §226.31(b)(1)) provided before the transaction serve the critical and distinct function of informing the sender of the proposed cost and delivery date of the remittance. It is – in effect – an offer. An offer is different from a contract – it does not require the remittance transfer provider to act *unless* the offer is accepted within the allotted time period.

On the other hand, the Receipt (required by § 226.31(b)(2)) is intended to be the written articulation of the contract between the parties. The receipt is far more than a disclosure, it embodies the terms of the written contract.

The differences between the offer and the accepted contract are significant: while the terms are expected to be the same (otherwise there would be some problematic slippage between the offer and the acceptance), the receipt must indicate on its face that it is in fact an agreed-to contract. The receipt must evidence the unequivocal promise by the remittance transfer provider to deliver the transfer a) in the amount agreed-to, b) to the person whose name and identifying information is on the receipt, c) by the date promised on the receipt.

It would be far too confusing for the Pre-Payment Disclosure and the Receipt to be delivered together. If these two critically different documents are both provided before the transaction, how is the sender to prove that the offer was actually accepted? How does an offer transmute into a contract without any new evidence of that process?

Congress did authorize the Board to allow combined disclosures (in § 919(a)(5)(C)) but only to the extent that "the information provided [on the Pre-Payment Disclosure] is accurate at the time at which payment is made . . . ." The Board's proposed regulations on this point do not address how the combined disclosure will ensure the information is still accurate. The regulations also fail to address how there will be a clear distinction that the Pre-Payment Disclosure has actually become a firm contract between the parties.

The Board has discretion on whether to allow combined disclosures: "The Board *may*, by rule, ..."[7] As the Board has this discretion to not permit the combined disclosures, it should exercise this discretion to disallow them.

The Board – and the Consumer Financial Protection Bureau – have the authority to disallow this combined disclosure under their discretionary authority in 15 U.S.C. § 1693b(c)[8] when the adjustments are necessary to effectuate the purposes of the title. The purposes of the Electronic Fund Transfer Act are –

> … to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights."[9]

The combined disclosure threatens both the shopping value of the Pre-Payment Disclosure and the integrity of the contract evidenced in the receipt. We strongly urge the Bureau to use its adjustment authority to prohibit combined disclosures. Providing both the early disclosure and the receipt are not unduly burdensome tasks to industry. The statute and the proposed regulations appropriately allow exceptions to the requirement for the Pre-Payment Disclosure for transactions which occur over the telephone. As a result there is unlikely to be any significant burden on remittance providers in providing two separate disclosures. To the extent there is any burden on the providers, it is far outweighed by the benefit to consumers provided by the clear distinction between the two documents.

Moreover, as the Board points out in the Background comments to the proposed regulations, the testing revealed that –

> Some participants who stated they would prefer to receive a pre-payment disclosure and a receipt expressed concern about receiving the combined disclosure without also receiving proof of payment for the remittance transfer. Particularly if an issue arose with the transaction, these participants felt that they would not have sufficient official documentation to assert an error with the provider. Some participants also expressed concerns about different methods for providing proof of payment with the combined disclosure. For

[7] § 919 (a)(5).

[8] "Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, …." 15 U.S.C. § 1693b(c).

[9] 15 U.S.C. § 1693, § 902 of the Electronic Fund Transfer Act.

example, some participants believed that stamping the combined disclosure as "paid" constituted sufficient proof of payment, while others believed that it was insufficient because a disclosure could easily be fraudulently stamped "paid."[10]

We do not believe there is any way these issues can be adequately addressed to ensure that senders are protected against errors or worse by remittance transfer providers. We urge the Bureau to use its discretionary authority to prohibit combined disclosures.

4. Congress required the Error Resolution rights to be specifically disclosed on the receipt.

Congress very specifically required that the receipt include –

(ii) a statement containing --

(I) information about the rights of the sender under this section regarding the resolution of errors; . . . [11]

Yet, (in § 226.30(b)(2)(iv)) the Board proposes to allow the following completely non-descriptive language to satisfy this clear statutory requirement:

Problems or Questions? Contact us within 180 days at 800-123-4567 or www.abccompany.com
You can contact us for a written explanation of your rights.[12]

This language does not satisfy the statutory requirement for "information about the rights of the sender under this section regarding the resolution of errors." Consumers who send remittances are often among the least educated, the least able to pick up the telephone to determine what unknown rights might be, and certainly the least likely to have easy access to the Internet.

It is essential that the Board change § 226.30(b)(2)(iv) to specifically require the disclosure of the sender's error resolution rights. This obligation should be articulated specifically in the regulation. It is not adequate for the regulation to refer to a model form. That reference is unclear. The statute mandates that the information regarding the error resolution rights be specifically articulated in the receipt given to the sender. The Board's current proposal does not comply with the law.

5. The language in the long-form Model Form on the provider's Error Resolution rights is misleading.

Congress established error resolution obligations for remittance transfer providers.[13] It deliberately inserted the new protections for remittance transfers into the Electronic Fund Transfer

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[10] 76 Fed. Reg 29902 at 29915 (May 23, 2011).

[11] § 919 (a)(2)(B).

[12] A-37 Model Form for error resolution and cancellation disclosures (short).

Act which provides a private right of action for consumers against providers who fail to comply with their obligations under the Act.[14] The remittance transfer provider is *required* to resolve the error. If the remittance transfer provider fails to resolve the error properly, the provider will be liable for a statutory penalty of $1,000, plus attorneys' fees.

Yet the language proposed by the Board – even in the long form Model Form (A-36) – is misleading, haughty and very likely to mislead consumers about the scope of the requirements on providers.

> <u>We will determine</u> whether an error occurred within 90 days …. <u>We will tell</u> you the results within three business days after completing our investigation. <u>If we decide that there was no error, we will send you a written explanation.</u> [15]

In contrast, the obligations on the sender are imperious:

> When you contact us, <u>you must provide us with information</u> . . .

The statutory mandates do not give the providers discretion on how and whether to address the complaints brought to them by consumers. The language in the model form is misleading – if only in tone. Something along the following would be more consumer-friendly, and would more accurately reflect the breadth of the obligation to resolve errors imposed on remittance transfer providers in the statute. (The changes are in *italics.)*

> <u>What To Do If You Think There Has Been An Error or Problem</u>
>
> . . . (as is proposed)
>
> . . .
>
> *We are required to determine* whether an error occurred within 90 days after you contact us and we will correct any error promptly. *We are required to investigate the errors you tell us about and correct the errors promptly.* We will tell you the results within three business days after completing our investigation. . . . .
>
> *If an error occurred, we will fix it.*
>
> *If you do not agree with the results of our investigation, you may complain to ..., or contact a private attorney.*

An even better approach would be for the Bureau to engage in consumer-testing of the proposed language to ensure that remittance senders 1) are appropriately informed about their rights to error resolution procedures, and 2) understand that they have the right and the ability to enforce these rights with both governmental agencies as well as through private actions.

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13 § 919(d).

14 § 9____ (statutory penalty section).

15 A-36-Model form for error resolution and cancellation disclosures (long).

E. The use of estimates

Congress established two exceptions to the express mandates for remittance transfer providers to explicitly disclose the costs of the transfer and the exact amount the recipient would receive from the remittance. One exception – in § 919(b)(4) – is for depository institutions who are unable to know the exact costs involved in wire transfers to certain countries. This exception is supposed to expire after five years. The other exception is a permanent exception, but only applies to remittance transfers made to certain countries which the Board has determined have a structure which makes it impossible for the costs of transfers to recipients to be precisely known before the funds reach the country.

In both instances, the Board has proposed rules outlining how estimates for the disclosures should be determined in § 205.32. We have no objection to the proposed rules about how to make the estimates. However, we do not agree that it is appropriate for the sender not to be told that the disclosures are an estimate. This is a critical oversight. How are senders to know that the disclosures may not be reliable if they are not told that they are based only on estimates? The Board must require that when an estimate is used that it be labeled an estimate.

1. Depository Institution Exception.

Section 205.32(a) of the proposed regulations correctly articulates the limited circumstances under with estimates by depository institutions may be used. The statute[16] authorizes estimates to be used for a limited time period (five years, with the possibility of an extension to ten years) for insured depository institutions. The proposed restrictions and rules applicable to depository institutions using estimates in their remittance disclosures appear to be appropriate.

Depository institutions requested this exception because they apparently have reasons "beyond their control"[17] that cause them to be unable to determine the amount to be delivered to recipients in some wire transfers. This exception only applies to depository institutions because it is only depository institutions which do not have the capacity to determine the exchange rate and/or the fees for delivery to the recipient for wire transfers to some nations. Remittance transfer providers who are not depository institutions apparently do not have these difficulties.

In passing the new protections for remittance transfers, Congress was well aware of these concerns articulated by depository institutions. The five year time period was Congress' deliberate attempt to permit depository institutions to develop these arrangements. Depository institutions originally wanted a blanket exemption from this requirement for all remittances processed through these institutions. This request was specifically and unquestionably rejected, with the five year limit provided as a means to encourage gradual compliance with the full requirements of the new law.

The Bureau should signal clearly to depository institutions that they will indeed only have five years to establish the necessary relationships to be able to state with accuracy all of costs for remittances processed through financial institutions. Once faced with this certainty, depository

[16] §919(a)(4).

[17] 76 Fed. Reg 29902 at 29905 (May 23, 2011).

institutions will develop the necessary relationships, or make the other necessary arrangements to be able to ascertain the exact exchange rate or other fees assessed on the delivery end of the transfer. Depository institutions should be encouraged to ensure that remittances provided through them are competitively priced and appropriately disclosed – without the use of estimates – as soon as possible.

2. Estimates for remittances to certain countries.

The Federal Reserve Board – and the CFPB – are explicitly instructed in § 919(c) of the statute to permit the use of estimates for remittances to certain countries only after making explicit findings:

> *If the Board determines* that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Board may prescribe rules . . . addressing the issues, . . . (Emphasis added.)[18]

Congress specifically permitted the use of estimates by remittance providers sending transfers to certain countries *only after the Board made the finding that the recipient country does not allow the provider to know the amount of currency to be received.* Instead of making this finding for specific countries, however, the Board has issued a blanket regulation in § 205.32(b) that permits remittance transfer providers to make this determination. This is entirely inappropriate – and likely illegal – as it is in direct derogation of the express instructions in the statute for the Board to make these determinations before these exceptions are permitted.

Instead, the Bureau should engage in the necessary analysis to determine which countries have rules or laws which make it overly difficult for providers to make these determinations. The current language of the regulations is far too open-ended. Allowing remittance transfer providers to make these determinations by themselves – potentially even on an ad-hoc basis – is an absurd interpretation of the statutory mandate from Congress. It is especially important for the Bureau to make these determinations before providers are permitted to use this exception as a basis for providing estimates because violations of this provision will be virtually impossible for senders and recipients to determine – especially if the Bureau fails to require that estimates must be labeled as such.

F. Procedures for resolving errors

Our serious concerns regarding the necessity that the full disclosure of the sender's rights to error resolution be explicitly stated on the receipt are described above, in section __. The procedure outlined in the regulations (§ 205.33) for resolving disputes is basically sound. We do, however, have a few suggestions for improvement:

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[18] § 919(c).

- The remittance transfer provider is released from the obligation to resolve errors for certain, defined "circumstances outside the remittance transfer provider's control (§ 205.33(a)(iv). These limited circumstances should be defined as a) acts of war or terrorism, and b) natural disaster. The current language is far too open-ended.

- The burden of proof should be clearly articulated to be on the remittance transfer provider. If the sender presents evidence that there has been an error, the burden should unequivocally shift to the remittance transfer provider to show that there was no error, and that the remittance was transferred properly. For example, if the sender says the funds were delivered to the wrong person, it should be up to the provider to prove the proper party received it – or at least that it was reasonable to believe the recipient was the proper party. The current language leaves the question of burden of proof unanswered.

- The regulations should clearly state that if the funds are never delivered to the recipient and the sender cannot be found for a refund, the provider must send the funds to the applicable state escheat division.[19]

G. Acts of agents.

Congress was unquestionably clear in its directive regarding the liability of remittance transfer providers for their agents:

> (1) IN GENERAL. – A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.[20]

This language is the mandate for providers to have full liability for acts of their agents. In the next subsection, the Board is required to prescribe rules for standards or conditions of liability. Subsection (2) does allow the Board or other agency to "consider, *in any action or proceeding against a remittance transfer provider,* the extent to which the provider had established and maintained policies or procedures for compliance . . . ."[21]

[19] *See, e.g.*, Cal. Civ. Pro. Code § 1520.5 (West). *See* Anita Ramasastry, *State Escheat Statutes and Possible Treatment of Stored Value, Electronic Currency, and Other Payment Mechanisms*, 57 Bus. Law. 475 (2001). The following states have adopted the Uniform Unclaimed Property Act as their escheat statute: Alabama, Arizona, Arkansas, Indiana, Kansas, Louisiana, Maine, Montana, New Mexico, North Carolina, and West Virginia. The Act specifically includes "money or credits owed to a customer as a result of a retail business transaction" and gift certificates. Uniform Unclaimed Property Act §§ 2(a)(6) & (7) (1995). Under the Act, the state official who administers the statute must advertise lists of "abandoned" property. *Id.* § 9.

[20] § 919(f)(1).

[21] § 919(f)(2).

The Board has misunderstood the language in subsection (2) to permit a standard by which providers could avoid responsibilities for its agents so long as they have these procedures in § 205.35. The statute does not permit this.

The Board has proposed two alternatives for this liability, only one of which would be in compliance with this clear direction from Congress: Alternative A. Alternative B would permit avoidance of liability so long as the provider has policies and procedures in place designed to ensure compliance. This is not adequate.

Given the breadth of different types and sizes of transactions in which remittance transfer providers are often involved both in the United States and in the many, diverse destinations to which the remittances are sent, most, if not all, remittance transfers occur through agents. As the Board notes "Some providers have a network of thousands, or in some cases, hundreds of thousands of agent locations worldwide to oversee, making frequent on-site inspections of each location impracticable."[22]

The reliability and honesty of the actors on both ends of the transactions are absolutely critical to the successful completion of these transactions. If remittance transfer providers are permitted to avoid liability for the acts of their agents simply by having policies and procedures in place, they will have no incentive to ensure that those policies are actually followed. Alternative A is the only legal alternative.

H. Storefront disclosures

During the legislative process there was considerable debate about the utility and transparency of store-front model disclosures. The industry was concerned that they would not be able to provide timely updates to these disclosures and that it would be overly burdensome. As a result, Congress required in section 919 (a)(6) that the Board "*may* prescribe rules to require a remittance transfer provider to prominently post, and timely update" notices describing sample amounts for remittances.[23]

Storefront disclosures of sample amounts of remittances are quite valuable to remittance senders. These advertisements provide the first line of information luring customers into the providers' place of business. It is obviously critically important for these disclosures to be reliable, and there is no reason for them to be overly burdensome.

We propose that the Board establish strict, but easy to comply with, rules for storefront disclosures. These rules would require the following:

1. All postings regarding prices for remittance transfers would have to be framed in the format of total cost to send compared to total amount received. The advertisements would have to use the required terms and only include the two critical numbers: the amount the sender

[22] 76 Fed. Reg 29902 at 29934 (May 23, 2011).

[23] § 919 (a)(6)(i).

pays over to the remittance transfer provider, and the amount of foreign currency the recipient would receive.

2. The storefront disclosures would *always* be based on the cost for the advertised remittance as of a time certain – say 5 pm – on the previous business day. This way the disclosures would not need to be updated throughout the day, and would always be based on the same measured cost as of the previous day. The comparison between providers would be easier to do and more reliable, because all providers would be using the same exchange rates as of the same time on a previous date.

3. If any storefront disclosures were provided, then they would have to be provided in the required format; no other format would be permissible.

4. Storefront disclosures would be required for at least two sample remittance amounts – say $100 and $500 – and permitted, at the discretion of the remittance transfer provider, in additional sample amounts.

III. Conclusion

We commend the Board for its comprehensive and thoughtful proposed regulations on remittance transfers. We hope that our suggestions will be adopted as well.