MoneyGram International

July 22, 2011

Submitted electronically at http://www.regulations.gov/ and http://www.federalreserve.gov.

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Re: Docket No. R–1419 and RIN 7100–AD76

Dear Ms. Johnson:

MoneyGram International, Inc. ("MGI") appreciates the opportunity to comment on the Federal Reserve Board's Proposed Rulemaking under Section 1073 of the Consumer Financial Protection Act of 2010.

The Proposed Rule

Section 1073 of the Consumer Financial Protection Act of 2010, adds a provision to the Electronic Funds Transfer Act ("EFTA") to create new protections for consumers who send remittance transfers to designated recipients located in a foreign country. The Proposed Rule implements Section 1073 by amending Regulation E to require that remittance transfer providers give senders of remittance transfers certain disclosures, including information about fees, the applicable exchange rate, and the amount of currency to be received by the recipient. The Proposed Rule also would provide error resolution rights for senders of remittance transfers, would establish standards for resolving errors as well as procedures for cancelling transactions and refunding fees.

MoneyGram and its Interest in Commenting on the Proposed Rule

MGI conducts its business primarily through its wholly owned subsidiary MoneyGram Payment Systems, Inc. ("MPSI" or "MoneyGram"), which is a leading provider of remittance transfers. We provide remittance transfer services through our worldwide network of agents and through Company-owned retail locations in the United States and Western Europe. We also offer our money transfer services on the Internet via our MoneyGram Online service in the United States and through agent websites in Italy, Saudi Arabia and Japan. In Italy, Abu Dhabi and the Philippines, we also offer our money transfer services via mobile phone. We also offer our services through kiosks, ATM's, receive cards and direct-to-bank account products in various markets around the world.

We operate our remittance transfer business through a global network of approximately 227,000 agent locations, including over 33,500 agent locations in the United States, and provide our remittance transfer products and services utilizing a variety of proprietary point-of-sale platforms. Our platforms include AgentConnect®, which is integrated into an Agent's point-of-sale system, and DeltaWorks® and Delta T3®, which are separate software and standalone device platforms. Through our FormFree® service, customers may contact our call center via a dedicated telephone line in an agent location and our call center representative will collect transaction information over the telephone, entering it directly into our central data processing system.

We operate two customer care centers in the United States, and we contract for additional call center services in various countries. We provide call center services 24 hours per day, 365 days per year and provide customer service in more than 50 languages.

We offer money transfers to consumers in a choice of local currency or U.S. dollars and/or euros in approximately 190 countries. Our multi-currency technology allows us to execute our money transfers directly between and among several different currencies. Multi-currency capabilities have not been implemented at all locations, and not all agents carry dollars, euros and local currency, but, where implemented, multi-currency technology allows consumers to know the amount that will be received in the local currency (or currencies) of the receiving country, in dollars or in euros.

Because of the scope and complexity of MoneyGram's remittance transfer operations and its vast network of agents, as well as the variety of technologies and channels used to provide remittance transfer services to consumers, and the number of languages and currencies in which we do business, the Proposed Rule – especially the provisions requiring detailed consumer disclosures and receipts – will have a critical impact on MoneyGram and its operations. Additionally, the proposed error resolution and refund procedures will have a critical impact on the economics of our business and may require fundamental changes.

Summary of Comments

Throughout this letter, MoneyGram will refer to the consumer sending the remittance transfer as the Sender, the consumer receiving the transfer as the Recipient, the company providing the transfer as the Provider, and the Provider's agent or delegate as the Agent.

As outlined in greater detail below, MoneyGram believes that any Final Rule should:

- Provide 18 to 24 months before compliance is required;
- Modify the proposed definitions of "business day," "designated recipient," and "remittance transfer provider;"
- Not require disclosure of state regulators on receipts;
- Require written disclosures in not more than three foreign languages;

- Permit estimates of fees and taxes and delivery date under certain circumstances where fees, taxes and delivery dates are especially unpredictable, for example, because of numerous intermediaries;
- Require Sender disputes to be submitted to a specified address maintained by Providers for that purpose;
- Limit cancellation rights to 30 minutes, rather than 24 hours, or permit Senders to waive such rights, and permit Providers to keep a certain amount of fees in connection with cancelled transactions to compensate for the cost of processing a cancelled transaction; and
- Incorporate Alternative B with respect to vicarious liability.

We recognize that some of our comments may focus on issues – such as the disclosure of state regulators on receipts – where section 1073 is relatively specific and may appear to leave the rulemaking agency with very little leeway for variance from the statutory terms. Section 904(c) of the EFTA, however, affords the rulemaking agency with substantial authority to include in any Final Rule "such classifications, differentiations, or other provisions, … as in the [agency's judgment] are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." In the interests of facilitating compliance, and allowing Providers to continue to provide the same level of service to Senders, without any unnecessary increase in cost or diminished access to services, we would ask that the rulemaking agency take a broad view of its power to make exceptions to the statutory language, for the benefits of Senders and Providers alike.

Specific Comments on the Proposed Rule

MoneyGram's section-by-section comments on the Proposed Rule are as follows:

1. Proposed Effective Date

The Board specifically requested comment on the length of time remittance transfer providers may need to implement the rule.

Depending on the outcome of several of the issues discussed in this letter, MoneyGram will need **18 to 24** months to comply with any Final Rule regarding remittance transfers.

<u>Foreign Language Requirements will Require New Printers</u>

For example, depending upon the scope of the Final Rule to comply with foreign language disclosure requirements, MoneyGram may need to replace its systems and hardware with systems capable of printing receipts in 15 or more alphabets. The alternative would be to limit the languages with which MoneyGram provides services, error resolution and customer care to our consumers, and to prohibit our Agents from communicating with customers in all but the few languages in which our technology is capable of providing written disclosures.

Many Agents Do Not Have the Ability to Print Disclosures and Receipts

Over ten percent of our individual Agent locations currently do not have any ability to print prepayment disclosures or receipts. These Agents currently rely on the MoneyGram "send" form as the receipt. We would need to determine whether and how these Agents could continue to operate and provide the required disclosures and receipts.

Although we believe that we can build a system to enable these locations and others that we add to our network to continue to use paper "send" forms designed to comply with the rule, this will at a minimum require revision of our current send forms (which also contain terms and conditions governing the use of our services, language mandated by state regulations and other legally required information); translation of the existing form into the languages required by the Final Rule; distribution of the revised forms to all of the applicable locations; training of our customer service personnel; and development and implementation of a training and communication plan for all our Agent locations.

Providers Should be Given Sufficient Lead Time to Deplete Existing Form Stock

Due to varying transaction volumes at Agent locations, forms are depleted at varying rates. By providing a reasonable time frame under which we can roll revised forms out to Agent locations, we would have an opportunity to change to compliant forms as Agent locations deplete obsolete form stock. With less time to implement new requirements, we would have to replace and destroy existing form stock, which could greatly increase the costs associated with development and distribution of forms to thousands of Agent locations. To replace existing forms with ones compliant with the Final Rule without resorting to a costly replace and destroy program would require 12 to 14 months; some low volume Agent locations only order replacement forms once a year. While these locations may only perform a limited number of transactions per year, many are in sparsely populated areas and provide a vital service to consumer in their communities who occasionally need MoneyGram services.

For comparison purposes, when we were required to include privacy notices on our consumer forms in conjunction with Public Law 106-102, the Gramm-Leach Bliley Financial Services Modernization Act of 1999 ("GLB"), the process took us almost the entire 13 month period between publication of a final rule and the effective date. Changes to consumer forms and receipts associated with GLB amounted to the insertion of a single paragraph of text in our terms and conditions which had to be translated into a single language other than English, namely Spanish. In this case, the potential changes to disclosures to consumers at Agent locations are much more comprehensive, and may require translation into significantly more languages. At a minimum, 18 months is reasonable given the precedent of GLB, but depending upon the scope of the Final Rule, more time may be more appropriate.

Agents Integrate MoneyGram Software into Point-of-Sale Receipt Systems, and Agents Will Need Time to Implement a Final Rule

MoneyGram and other Providers operate through networks of Agents, such as convenience stores, grocery stores and pharmacies, which provide other products and services to consumers. For almost all Agents, providing remittance transfers is an ancillary activity to their core business. For the convenience of Senders and Agents, as well as the avoidance of error, MoneyGram and other Providers have developed proprietary technologies that integrate directly into the point-of-sale ("POS") cash registers and related systems of many Agents. The integrated services are fast, efficient and error-free, and an improvement over the alternative of separate stand-alone technology, or pencil-and-paper. These integrated systems, however, present unique challenges to Providers who are trying to implement a regulatory overhaul as comprehensive as that contemplated by the Proposed Rule: not only will Providers need to reprogram and test their own systems, but their Agents will also need to reprogram and test systems, and Agent and Provider will need to ensure that the reprogrammed systems will be able to adequately communicate with one another to execute Senders' transactions quickly, accurately, and in compliance with the new requirements.

AgentConnect Platform

For example, some of our largest Agents offer our services via AgentConnect, through which MoneyGram provides the Agent with an application performance interface ("API") document which the Agent uses to communicate to MoneyGram and integrates into its POS technology. Currently, approximately 5,900 Agent locations in the United States use this method to offer MoneyGram services. Implementation of significant changes to AgentConnect at Agent locations will need significant lead time before undertaking the type of information technology overhaul that would be required should the Proposed Rule be made final without modification. MoneyGram needs to design, develop, test and document all of the changes; Agents then need to do their own screen and receipt design and development to integrate into their proprietary systems, followed by testing, implementing a pilot and then finally rolling out throughout their network. Since MoneyGram services constitute a relatively small portion of what is offered at the point of sale by Agents who use AgentConnect, changes related to MoneyGram services are subject to other information technology priorities. Changes to Agent POS technology following this model take months and even years of advance notice, planning and coordination between MoneyGram and its Agents. MoneyGram has little or no control over the information technology budgets and upgrade schedules of its business partners, but it bears all of the risks of its Agents' non-compliance with any Final Rule.

Delta T3 Platform

Delta T3 technology is used at almost 18,000 Agent locations in the U.S. This is proprietary MoneyGram technology. In 8,200 of the locations, it is fully integrated into the Agent's POS technology, so that the transaction information goes from the Delta T3 terminal, through the Agents' POS technology and systems, back through the Delta T3 and then into the global MoneyGram system. As with AgentConnect, prior to implementing changes to Delta T3, MoneyGram must design the changes, then perform development to integrate the changes into the Delta T3 software, and then write Agent documentation. We then engage in rigorous and time-consuming testing, prior to moving to a pilot to ensure the rollout will not impact our current service offerings. Finally, we move to rollout. For Agents who use this technology, there is also development, testing, pilot and rollout. As Delta T3 is integrated into Agent technology, Agents must rigorously test to ensure that any modifications to the MoneyGram services, which may constitute a very small percentage of their total revenue, does not impact their system. One Agent has estimated that it would require 12 weeks simply to roll out an update to the more than 30,000 devices at its locations. This effort would begin after doing their internal design, development and testing. They also have a pilot period and their policy it to roll changes out to registers on a location-by-location basis initially in an effort to ensure that their ability to offer all of the other services to their consumers was not disrupted.

Combined Platforms

Further complicating rollout of new technology is the fact that some of our Agents combine multiple pieces of our technology to offer MoneyGram services to consumers. One network of approximately 3,800 locations combines Delta T3 and AgentConnect to offer MoneyGram services to customers in the most efficient manner possible. Other networks combine DeltaWorks (a PC-based platform dedicated entirely to MoneyGram transactions but which is also integrated with Agents' POS technology) and Delta T3. Challenges of rolling out changes in any of these systems alone is challenging, as described above. When multiple MoneyGram platforms are combined, and then combined with Agent POS technology, they are exacerbated.

If MoneyGram offered its services to consumers using a single technology platform and uniform software and hardware throughout its more than 33,500 Agent locations in the U.S., implementing changes to comply with the Proposed Rules would be challenging in less than 18 months. Since MoneyGram works with Agents to offer services in a manner best suited to each Agent's POS environment, always with the goal of providing the best customer experience possible, we think it is necessary to have at least 24 months to prepare for the requirements of the Final Rule.

MoneyGram Will Need to Renegotiate "Floating Rate" Contracts with Foreign Receive Agents

MoneyGram currently offers Senders "floating" exchange rates with respect to transfers sent to many locations. To accommodate the requirement in the Proposed Rule that Providers quote a fixed exchange rate in prepayment disclosures and indicate a fixed amount received in receipts, MoneyGram would no longer be able to offer a floating rate, and would need to renegotiate its contracts with approximately 100 foreign receive Agents representing just under 10,000 locations that currently offer only floating rates. We believe this would affect approximately a half a million consumers on an annual basis. While MoneyGram would be able to point to its new legal obligations under the Final Rule and provisions in its agreement with its international Agent agreements in an effort to expedite the renegotiation of its contracts, the practical reality is that the renegotiation of this many agreements would be an extremely time-consuming process. Additionally, other terms in our contract agreements with affected receive Agents that will inevitably add to complexity and time to implement will need to be re-negotiated with these receive Agents to account for the incremental costs that the implementation of the prior described system enhancements. These increased costs will likely be passed to consumers in the form of increased fees, or even worse, the complete loss of availability of service.

Other Challenges to Implementing the Proposed Rule

Furthermore, not all Agents in all countries carry all currencies. For example, some Agents may not carry dollars or euros, and some Agents may not carry all local currencies. In addition, supplies of specific currencies at Agent locations can be unpredictable. To implement the new requirements to disclose the amount received in the currency designated by the Sender, MoneyGram will need to modify its systems and Agent relationships to accommodate the proposed sent currency requirements.

2. Definition of Business Day

MoneyGram believes that the general definition of "business day" in Regulation E should also apply with respect to the remittance transfer provisions of Regulation E. Specifically, the term should be defined as "any day on which the offices of the [Provider] are open to the public for carrying on substantially all of its business functions." *See* EFTA § 903(4).

The Proposed Rule would define the term "business day" as "any day on which a [Provider] accepts funds for sending remittance transfers." MoneyGram believes that the definition of "business day" should key on when the Provider is open for business under the general definition in Regulation E, not when any one of the Provider's thousands of Agents is open for business.

This is an especially important definition, because many of the key deadlines in the Proposed Rule depend on "business days." For example, this definition is relevant to mailing of written receipts following a telephone transaction (one business day), communication of investigation results (three business days), resolution of errors (one business day), cancellation of transactions (one business day), refund of cancelled transactions (three business days), and estimates (where exchange rate is set on the next business day).

MoneyGram, through its vast network of Agents "accepts funds for sending remittance transfers" 24 hours per day, 365 days per year. Defining "business day" as any day that funds are accepted would be akin to defining "business day" in Regulation E generally as any day that an automated teller machine transaction can be conducted.

3. Definition of Designated Recipient

The term "Designated Recipient" would be defined to mean "any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country." MoneyGram proposes that the definition of Designated Recipient be amended to strike the phrase "at a location" to reflect that Providers usually permit Designated Recipients to pick up transfers at any location in a given country, and do not know which location the Designated Recipient will choose.

The Proposed Commentary would state that a Provider "will generally know the location where funds can be picked up or will be deposited as part of its normal operating procedures." This is not an accurate interpretation of how MoneyGram and other Providers offer remittance transfers. Providers and Senders will not generally know the location at which funds can be picked up.

Although we will know the country to which the transfer is being sent, "will call" systems commonly used by many Providers do not specify at which Agent location in foreign country a transaction will be picked up. Transactions can be picked up at any location in the foreign country, which makes it convenient for Recipients to pick up remittance transfers at the location most convenient to them. For example, in Mexico, MoneyGram has over 13,000 Agent locations. If a Recipient wishes to pick up a remittance transfer at the location closest to their home, or nearest their place of work, he or she has that option.

The Board has requested comment on "whether there are instances where a remittance provider may only receive a recipient's email address and therefore be unable to determine the location where funds are to be received." Although there are no instances where MoneyGram only knows the email address of the Recipient, in all instances we are unable to determine, at the time of the initiation of a remittance transfer, to determine the location where funds are to be received.

One of the many advantages of nonbank money transmission is that it allows the Recipient to pick up at a location convenient for the Recipient. The Final Rule should be careful not to limit the consumer benefit and convenience of current industry practice.

4. Definition of Remittance Transfer Provider

The Board solicits comment on whether it should adopt guidance on "normal course of business" as sending a minimum number of transfers in a given year, and if so, how many. MoneyGram believes that a more appropriate definition of Provider would include any person that "regularly engages" in providing remittance transfers. This is the approach taken in other consumer financial protection laws, such as the definition of "consumer reporting agency" in the Fair Credit Reporting Act ("FCRA"). It is appropriately broad and would exclude only those persons who provide isolated or "one-off" remittance transfers.

5. Disclosures and Receipts

The Proposed Rule would require Providers to provide consumers with an initial disclosure, prior to conducting a transaction, and a receipt following a transaction. These two disclosures must be in writing and must be capable of being retained by the Sender. The Proposed Rule would also permit a combined disclosure containing both the required information from the initial disclosure and the receipt.

Safe Harbor Forms Should Not Require 8-Point Type

The Proposed Rule would include forms that Providers can use as a safe harbor from liability under EFTA. These safe harbor forms would require all disclosures to be in at least 8-point type.

While MoneyGram strongly supports the inclusion of model forms that offer Providers a safe harbor from liability, these forms should not impose an 8-point minimum. It should be enough that the disclosures be clear and conspicuous, which in most formats is generally understood to 8-point type. *See Cole v. U.S. Capital*, 389 F.3d 719, 730 (7^{th} Cir. 2004) (stating that 6-point type in a written mailer is not clear and conspicuous). MoneyGram believes that new products and services, particularly those serving mobile phone users may not accommodate 8-point type. For example, SMS messages have a limited text field of 160 characters, and senders of SMS messages have no control over the size of the font in which the message is displayed. Moreover, where a message continues onto multiple screens of text, it may result in additional data charges being imposed on a Sender by his or her telecommunications provider. Providers should have the flexibility to adapt the model forms to new services, delivery channels and technology, and should not be limited by rigid requirements such as an 8-point font size requirement. While Providers are not required to use the model forms, given the threat of class action litigation under EFTA if they do not, we believe that there are strong disincentives to vary from the model form requirements. Under these circumstances, we believe that "clear and conspicuous" sets forth a workable performance standard that is understood by industry, regulators and courts alike.

Safe Harbor Forms Should Accommodate State Law Disclosures

MoneyGram also believes that the model forms must be able to accommodate existing and future state disclosure requirements, such as those in California, New York and Texas. Section 1842 (c) of the California Money Transmission Act provides, for example, that Receipts must include or have attached a conspicuous statement in English and in the language principally used by the licensee or that agent to advertise, solicit, or negotiate, either orally or in writing at that branch office if other than English in a size equal to at least 10 point bold type, as follows:

> RIGHT TO REFUND "You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you. If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, you have a right to a refund of your money. If you want a refund, you must mail or deliver your written request to _____ (name of licensee) at _____ (mailing address of licensee). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to $1,000 and attorney's fees pursuant to Section 1842 of the California Financial Code."

Grouping, proximity, segregation and prominence and size requirements, including font size, in the Proposed Rule may make it difficult to comply with current and future state law disclosure requirements.

Prepayment Disclosures Should Not Be Required to Be in Writing

The prepayment disclosure must describe the fees that will be charged by the Provider, the exchange rate, and the amount of currency that will be received by the Recipient, expressed in the currency into which the funds will be exchanged. The prepayment disclosure must be in writing and must be capable of being retained by the Sender.

MoneyGram does not believe that prepayment disclosures should be required to be in writing, nor should these disclosures be required to be capable of retention.

The prepayment disclosures required to be provided under proposed section 205.31(b)(1) should be able to be given on a screen or verbally. As a practical matter, Senders do not typically "request a remittance transfer" as contemplated by proposed section 205.31(e). Senders, particularly those who have sent remittance transfers, typically visit a MoneyGram Agent location, complete a To Send Money form which includes information required to process the transaction (sender name and address, amount to be sent, receiver name, telephone number and destination state or country). They then present the completed form to the associate at the Agent location, who tells them the fee associated with the service and information on the applicable exchange rate.

In addition, new technologies enable Agents to display transaction details on touch screens – enabling Senders to review details before authorizing the transaction, similar to the touch screens used at the POS to authorize payment card transactions. Any final Rule should similarly enable prepayment disclosures to be displayed on a touch screen or similar terminal screen, rather than requiring Providers and Agents to print out a prepayment disclosure which will be superseded 30 seconds later by a formal receipt. Requiring the prepayment disclosure to be in writing in this instance is akin to requiring a credit card authorization (e.g., "Is this amount OK?") to be written. Such a written disclosure creates needless costs for Providers, which will be passed onto Senders.

<u>Post-Transaction Receipts Should Not Require Disclosure of State Regulators</u>

The Provider also must provide the Sender with a receipt showing all of the information above, as well as the promised date of delivery, the name and telephone number or address of the Recipient, a statement about the Sender's error resolution rights, contact information for the Provider, and contact information for the Provider's primary state regulator and the Consumer Financial Protection Bureau, as well as a toll-free number established by the Consumer Financial Protection Bureau.

MoneyGram believes that Providers should not be required to disclose state regulator information, or in the alternative that disclosure of state regulators should be optional. As one of the few providers operating nationally, MoneyGram has more than 50 licenses, and it would be very difficult for MoneyGram to tailor its state regulator disclosures to each of its more than 33,500 U.S. Agent locations.

In any event, disclosure of contact information for the Consumer Financial Protection Bureau should be sufficient. Not only is the Consumer Financial Protection Bureau the primary agency with responsibility for enforcing the new Regulation E remittance transfer requirements against MoneyGram, but the Consumer Financial Protection Bureau has announced that it plans to cooperate closely with state regulators with respect to enforcement and examinations and plans to maintain a complaint intake and referral system to ensure that consumer complaints are routed to the appropriate state or federal regulator. The Bureau, which is tasked with ensuring that consumers get the information they need to make the financial decisions they believe are best for themselves and their families, is best suited to direct consumers to both appropriate state and Federal regulators that can assist the Sender with any inquiries governing which regulatory body is best suited to assist.

MoneyGram provides uniform forms and receipts to its customers nationally. Managing state-specific receipts and forms would require a considerable amount of resources. In addition, Agents which provide services in multiple states often distribute forms to their locations as part of their chain of distribution. Requiring these Agents to manage state-specific forms will require a significant change in distribution processes, and regardless of how good these processes are, may result in forms being shipped to the wrong state. Given the potential liability of MoneyGram under EFTA for failure to provide these disclosures, the risks associated with providing forms that do not technically comply with the requirements of the Rule are significant. Requiring a provider such as MoneyGram to include each of the more than 50 state and territorial agencies that regulate it on each receipt would provide Senders with a significant amount of superfluous information.

Hybrid Transactions

Proposed section 205.31(a)(3) would provide that prepayment disclosures under section 205.31(b)(1) may be provided verbally if a transaction is conducted entirely by telephone. The Proposed Commentary would specifically provide that, for transactions conducted partially by telephone, prepayment disclosures may not be provided orally. MoneyGram engages in certain "hybrid" transactions – conducted partially by telephone and partially in-person. The restrictions of the Proposed Rule might stifle these innovations by making it difficult or impossible to conduct hybrid and consumer preferred methods for transactions in the future.

One type of hybrid transaction begins with a telephone call in an Agent location, and is completed at a point-of-sale, by the Sender. In these transactions, the Senders picks up the MoneyGram "red phone" in the retail location and it automatically connects to a MoneyGram voice response unit, which prompts the Sender for the type of transaction (such as, bill payment or money transfer); the Sender is asked to enter his or her telephone or rewards number; is connected to a live MoneyGram customer service representative who will ask the Sender to confirm his or her telephone number, name and address, and will provide a confirmation number to the Sender; the Sender will then take this confirmation number to the cashier at the retail location who will collect the Sender's payment and provide a receipt. Under these circumstances, it would be more convenient and consumer-friendly for the live MoneyGram customer service representative to be able to provide the Sender with the prepayment disclosure verbally at the time they are discussing the transaction, which will enable the Sender to, for example, discuss fees or currency delivery options. Providing a printed prepayment disclosure at the point-of-sale, seconds before the Sender tenders his or her payment for the transfer makes little sense from the Sender's point of view.

Disclosures of Fees and Taxes

Comment was solicited on whether the Providers should disclose "Fees and Taxes" in the prepayment disclosures that would be required in proposed sections 205.31(b)(1)(ii) or (b)(1)(vi), or should provide a more granular disclosure of "Fees" or "Taxes" if only fees or only taxes are being charged. MoneyGram believes that using the combined term "Fees and Taxes" provides a Sender with adequate information as to the total cost of a transaction for the Sender to make an informed decision to continue. With respect to disclosures required by section 205.31(b)(1)(vi) MoneyGram believes that the term "Other" as a qualifier for fees imposed on the receive side of a transaction may provide less clarity than a term such as "Receive" or "Payout."

6. Foreign Language Disclosures

The Proposed Rule would require Providers to provide disclosures and receipts in English and in "***each*** of the foreign languages principally used by the Provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office," or "in the foreign language primarily used by the [Sender] with the [Provider] to conduct the transaction (or for written or electronic disclosures made pursuant to [the error resolution procedures], in the foreign language primarily used by the sender with the Provider to assert the error)." (emphasis added)

The Proposed Rule would require that post-transaction receipts required to be provided to the Sender for transactions conducted entirely by telephone "shall be made in English ***and***, if applicable, in the foreign language primarily used by the sender with the [Provider] to conduct the transaction." (emphasis added)

The Proposed Commentary accompanying these provisions indicates that a posting or sign in an Agent location that contains a foreign language reading "Ask us about our foreign remittance services" may "create an expectation that a consumer could receive information on remittance transfer services in the foreign language used in the advertisement," and that "[t]he foreign language used in such an advertisement would be considered to be principally used at that office," meaning that disclosures and receipts would need to be provided in that language. The Proposed Commentary also provides that "[a]ny [advertisement] is considered to be made at that office if such [advertisement] is posted, provided, or made: at a physical office of a Provider; on a Web site of a Provider; or during a telephone call with the Provider."

The Proposed Commentary notes, however, that disclosures need not be made in more than three languages.

The combination of the Proposed Rule and the Proposed Commentary could require MoneyGram to provide written disclosure or receipts in more than 50 languages and at least 15 unique alphabets, depending on

- the language used by a Sender in a telephone transaction;
- the language used by a Sender to dispute a transaction;
- a statement posted on a MoneyGram Website anywhere in the world; or
- signage (*e.g.*, "¡Se Habla Espanol!") posted in one of our more than 33,500 Agents in one of their locations.

MoneyGram conducts business in more than 50 unique languages:

- Our Lakewood, Colorado call center handles 18 languages, plus English – Spanish, Arabic, Cambodian, Cantonese, French, German, Hindi, Italian, Japanese, Mandarin, Mongolian, Polish, Portuguese, Punjabi, Russian, Tagalog, Ukrainian, Urdu and Vietnamese.

- We operate a call center in Bulgaria which handles the following languages – German, Italian, French, Romanian, Bulgarian, Dutch, Danish, Swedish, Polish, Turkish and Spanish.

- We also maintain a translation service, which can interpret many additional languages. In the last month we have handled the following: French, Mandarin, Portuguese, Hindi, Arabic, Russian, Polish, Italian, Vietnamese, Korean, German, Urdu, Spanish, Romanian, Albanian, Turkish, Burmese, Thai, Cambodian, Hmong, Czech, Bengali, Tagalog, Dutch, Haitian Creole, Greek, Armenian, Laotian, Japanese, Tamil, Punjabi, Bulgarian, Mongolian, Pashto, Ukrainian, Danish, Malay, Tigrinya, Serbian, Amharic, Cantonese, Swahili, Bosnian, Farsi, Hebrew, Somali, Swedish, Indonesian and Georgian.

These languages use at least 15 different alphabets, and we have more than 33,500 send Agent locations in the U.S., 10,000 of which maintain their own receipt printing equipment.

<u>The Proposed Rule Discourages Foreign-Language Assistance</u>

The extraordinary breadth of the Proposed Rule's foreign language disclosure requirements presents Providers with significant disincentives to offer foreign language assistance to Senders. If a Provider offers Senders the ability to conduct transactions or dispute transactions over the telephone in Cambodian, it must now be able to print receipts and disclosures in the Khmer alphabet. Rather than assume that responsibility, the Provider may instead choose to forego offering Cambodian language assistance.

In addition, for a significant number of Agents, remittance services are an incidental part of their business. Excessive investments in equipment will cause them to cease offering services. That is, some Agents may choose not to offer remittance services for Providers that offer services to numerous countries, or offer services in languages using alphabets which require different printers. The result of this will be a decline in the number of locations offering services to consumers, which limits consumer access to vital financial services.

Moreover, if an Agent has posted a sign indicating foreign language capability, the Provider must be prepared to deliver disclosures and receipts in that language. In this context, we note that many of our Agents are located in grocery stores, convenience stores, and other retail establishments that may cater to a wide variety of foreign language customers and may have sales personnel with foreign language capability, even if the staff responsible for sending remittance transfers speaks only English.

The Proposed Rule Encourages Use of "Underground" Providers

Requiring foreign language disclosures and receipts also may have the effect of pushing transactions to the "informal," undocumented remittance providers who do not comply with the safety and soundness requirements imposed by state regulations governing remitters or the laws designed to prevent money laundering and combat terrorist financing. It is safe to assume that these remitters also would not follow the disclosure and error resolution provisions that would be required by the Proposed Rule. Although it is difficult to calculate, combining the estimates between recent World Bank reports and the United Nations Department of Economic and Social Affairs (DESA) studies it is believed that anywhere from $100-$300 billion of remittances globally are performed through these informal channels. If Providers like MoneyGram are required to limit the number of languages with which they communicate to senders, leaving only the informal channels which communicate with Senders in their native language, the percentage of undocumented remittance transfers is bound to increase, thereby reducing the transparency of transactions flowing through formal, legal and regulated payment providers such as MoneyGram.

The Proposed Rule Discourages Expansion of Internet Services

Moreover, the provision that any language used on a Website may be deemed to be used in all locations will discourage Providers that operate through the storefront channel from expanding their internet offerings. *See* Proposed Comment § 31(g)(1)-4. At the very least, the Final Rule needs to make clear that, if a Website is targeted to a particular non-U.S. community, that the Provider's U.S. Agents are not required to provide disclosures and receipts in the language used in the special purpose Website. For example, if a multinational Provider maintains a Website intended for use by Senders in Kenya, it should not be required to make Swahili-language disclosures available in all of its U.S. locations.

The Proposed Rule Could be Read to Require the Translation of All Terms and Conditions of the Remittance Transfer

In addition to disclosures required under the Proposed Rule, Providers are obligated under state law to make certain disclosures to Senders. These are incorporated into terms and conditions that provide Senders with information and establish the contractual relationship between the Sender and the Provider governing the transaction. These terms and conditions are quite detailed, and in a transaction based relationship provide the only reasonable opportunity for Providers to communicate with Senders. If disclosures required under the Proposed Rules were required to be translated into 50 different languages, terms and conditions may also have to be translated in order to be considered enforceable. This would prove completely unworkable; in addition to the technological limitations related to printing in certain alphabets, the work required to continually translate changes in terms and conditions dictated by changing state and Federal law requirements as well as changes in terms of service into 50 languages and related technological and operational costs would have the impact of limiting the languages in which Providers would offer customer service and advertise their services.

Providers Should Be Required to Disclose Only Three Languages

Section 1073 of the Consumer Financial Protection Act requires only that disclosures must be provided "in each of the foreign languages ***principally used*** by the [Provider]." (emphasis added.) MoneyGram recommends that the Final Rule afford Providers the ability to provide disclosures in the languages "principally used" by a Provider throughout its U.S. network, rather than at each location or with each Sender. In addition, MoneyGram agrees that, as recognized in the Proposed Commentary, "a single written document containing more than three languages is not likely to be helpful to a consumer." *See* Proposed Comment 205.31(g)(1)-1.

In MoneyGram's case, a rule requiring that disclosures be provided to Senders in the three most common languages in its U.S. network, would result in English, Spanish and French disclosures to Senders. This would account for the primary language used by the Sender in approximately 95% of all of MoneyGram's remittance transfers sent from the United States.

Policymakers have considered the issue of foreign language disclosures for the financial services market repeatedly, and have generally decided to limit such disclosures to English-only or English and Spanish. *See, e.g.*, 69 Fed. Reg. 35,468, 35,476 (June 24, 2004) (Final FTC credit report disclosure rule, declining to require consumer reporting agencies to make foreign language file disclosures, but noting that it would provide outreach in Spanish). Even where policymakers have required a broader array of foreign language disclosures, MoneyGram is unaware of any foreign language disclosure requirement that is as entirely open-ended as that in the Proposed Rule. *Compare* Cal. Civ. Code § 1632 (b) (California law requiring disclosures of loan documents in Spanish, Chinese, Tagalog, Vietnamese, or Korean, if the loan transaction is negotiated "primarily" in that language).

Furthermore, MoneyGram believes that the Safe Harbor disclosures and receipts provided in the Proposed Rule are quite straightforward, and the most important information included in the notices, such as the exchange rate and the currency amounts to be provided by the Sender and received by the Recipient, need not be translated. The remaining language is largely "boilerplate," with which experienced Senders will already be familiar. We believe that inexperienced Senders will be able to find a friend or neighbor, or someone in the Agent location that can assist them in understanding the disclosure or receipt, to the extent that they are unable to do so without assistance. In any event, one of the key functions to be fulfilled by the Bureau is financial education, and the Bureau can perform outreach to foreign language communities to explain to Senders their rights and remedies. MoneyGram notes that it would be happy to assist with such an educational effort. We believe that educated Senders will be our best customers.

*7. **Disclosure of Exchange Rates and Amounts Received***

The prepayment disclosures and the post-transaction receipts provided to the Sender must describe the fees that will be charged by the Provider, the exchange rate, and the amount of currency that will be received by the Recipient, expressed in the currency into which the funds will be exchanged.

Under the Proposed Rule, Providers would be able to provide an estimated exchange rate for those countries where local law or other circumstances do not permit the Provider to determine a precise exchange rate. The Proposed Rule also would include a special exception for banks and credit unions whereby the bank or credit union would be able to provide a "reasonably accurate estimate of the foreign currency to be received" by the Recipient if the transfer is conducted through a deposit account that the Sender holds with the bank or credit union and the bank or credit union is unable to know the exact amount of foreign currency that will be received. This safe harbor would sunset on July 20, 2015.

Ability to Provide Estimates Should be Broader

MoneyGram believes that it is critically important that Providers be given the ability to provided estimates for fees, taxes, exchange rates, and amounts received. This is especially so because of the error resolution procedures which require, in the event there is any error in the disclosure of these amounts, that the Provider will be liable for the payment of any unforeseen taxes, fees or other expenses.

MoneyGram believes, however, that the exception allowing Providers to provide exchange rate estimates for situations in which the "laws of the recipient country" do not permit a Provider to determine exact amounts required to be disclosed is too narrow. This exception would apply only where (1) the government of the recipient country sets the exchange rate after the transfer is sent or when transfer is received, or (2) the exchange rate is set after transaction by recipient country central bank pursuant to a treaty with Federal Reserve Board of Governors. This does not address situations where exchange rates are set by an individual receive Agent or by an intermediary financial institution with which the receive Agent does business.

In addition, the provision allowing for estimated exchange rate does not address unforeseen fees and taxes that might reduce an amount received. The temporary exception for banks and credit unions, however, addresses this issue. This exception should be available to all Providers, including non-banks, and should be made permanent.

Transfers to Accounts Can Incur Unforeseeable Taxes and "Lifting Fees"

Account-to-account transfers or cash-to-account transfers involve multiple financial intermediaries, many of which are unknown to the Provider at the time that the receipt is provided and each of which may impose any amount of fees on the transaction. Even where the intermediary is known to the Provider it might change its fee from day-to-day, or even intra-day. As an example, if a Sender requests a transfer to a specific account at a specific bank in Tokyo, Japan, the transaction might travel a tortuous route through numerous intermediaries. While it is possible that the Provider will have a relationship with that specific Tokyo bank, it is not likely. The Provider must contact its own bank to determine if its bank, through its correspondent relationships with other financial institutions, can string together a connection to the bank in Tokyo to which the transfer must be made. Transfers like this might include any number of unknown intermediaries, each of which assesses its own "lifting fee" for handling the transaction, before the transfer reaches its final resting place.

Presumably, the unpredictability of correspondent relationships and lifting fees was the reason for the bank and credit union exception in the statute as well as the Proposed Rule. This issue is not limited, however, to banks and credit unions, nor is it limited to institutions that maintain deposit accounts with Senders. MoneyGram transfers money from account to account, and routinely transfers cash received from a Sender to an account held by a Recipient. These transfers to accounts are convenient, safe and private for Senders and Recipients, and many of MoneyGram's most innovative new products and applications, including those linked with mobile phones, allow for transfers to accounts. This is especially the case with the increased use of prepaid and stored value cards by MoneyGram's customers, who frequently are unbanked or underbanked. A direct transfer to or from a stored value card provides underbanked Senders and Recipients with unparalleled convenience and safety, but it also may require complex transactions with multiple intermediaries and correspondents and complicated cross-border currency flows through jurisdictions that may impose their own taxes on the transaction.

If Providers are required to be entirely responsible for unforeseen fees and taxes, it may discourage innovation, particularly with respect to the more cutting-edge non-cash and transfer-to-account products. MoneyGram believes that if Providers are unable to provide estimates in connection with these new products, they will be encouraged to underestimate amounts received on receipts, to spread the risk of unforeseen fees or taxes among their Senders, as an increased cost of doing business. This would be an unfortunate result for Senders – financially responsible Providers that are in the remittance transfer business for the long term would provide conservative disclosures of amounts to be received, while fly-by-night Providers may provide disclosures showing larger amounts received, without regard to whether they will actually be able to fulfill that amount.

Rule Should Allow for "Good Faith Estimates"

MoneyGram suggests that the Final Rule include an opportunity for a Provider to make a "Good Faith Estimate" of the amount to be received in a specific instance, such as, where the amount to be received is especially uncertain because of unpredictable taxes, exchange rates or lifting fees. This estimate should be able to be substantiated by the Provider and a permitted tolerance – perhaps 10 percent above or below the estimate – might be allowed as a safe harbor, after which point the Provider would be responsible for undisclosed fees and taxes. The approach of a substantiated and good faith estimate of taxes, fees or ultimate costs, with or without a tolerance for error, has been tried in other financial services markets, such as mortgages and debt settlement, with success.

8. Date of Availability

The Proposed Rule would require that receipts provided to Senders include a date that funds will be available to the Recipient. Where a Provider underestimates the date of availability, the Provider would be required to refund all fees paid by the Sender, including fees paid to intermediaries other than the Provider.

The Proposed Rule and Commentary allow Providers to overestimate the availability date where the Provider does not know the exact date on which funds will be available. According to the Proposed Commentary: "if funds may be available on January 3, but are not certain to be available until January 10, then January 10 should be disclosed as the date of availability." The Proposed Rule, however, would permit a Provider to "provide a statement [on the receipt] that funds may be available to the designated recipient earlier than the date disclosed, using the term 'may be available sooner' or a substantially similar term" to inform Senders that funds may be available to the Recipient on a date earlier than the date disclosed.

While MoneyGram supports the flexibility provided by the Proposed Rule with respect to availability dates, particularly the ability to indicate that "funds may be available sooner," in our experience, the date that funds may be available can be unpredictable for many legitimate reasons beyond a Provider's control. In addition, Providers may sometimes need to delay transactions to investigate for fraud. Under these circumstances, MoneyGram believes that Providers should have the flexibility to provide a "good faith estimate" of the availability date to Senders – for the convenience and protection of Senders and Recipients alike.

Availability Dates Can Be Unpredictable

MoneyGram agrees that the availability date is important information for both Senders and Recipients and should be disclosed, but notes that availability dates can be unpredictable, especially where transfers are being made to an account. For example, where transfers are sent via SWIFT (Society for Worldwide Interbank Financial Telecommunication), through intermediary banks, or into payment networks like MasterCard or Visa, we frequently do not know how long it will take for the payment to arrive. Transfers to accounts can frequently get delayed at intermediary financial institutions.

Providers Must Be Able to Investigate Possible Fraud

Additionally, MoneyGram submits that the availability date rules should allow for Providers to investigate suspicious transactions before they result in consumer injury. For example, there may be instances where a Provider may see what may be suspicious activity such as indicia of fraud. In such cases, the Provider may delay payout to communicate with Sender or otherwise investigate to make sure the Sender is not a victim of fraud. For instance, lottery, prize and sweepstake scammers routinely contact consumers to notify them that they have "won" a prize in a foreign lottery, and ask that they wire money to a foreign country – for example, to pay for processing or local taxes. Once the consumer wires the money, they receive nothing in return. In May of this year, the FTC held a Workshop on scams such as these that use money transfer services to obtain payment. See http://www.ftc.gov/opa/2011/03/lottery.shtm. The FTC has made clear that it expects providers of money transfer services to be on the lookout for fraudsters and to monitor transactions and Agents for indicators of fraud. Where MoneyGram sees a transaction that it believes may be fraudulent, such as based on suspicious behavior of the Sender, the Recipient or an Agent, it will delay and investigate the transaction. MoneyGram sees thousands of such transactions each month, and while more than 90% of such investigations are completed within 24 hours, there are a significant number which take longer to resolve, for a variety of reasons. All responsible Providers should do the same, and any Final Rule should encourage, not penalize, fraud investigations for the protection of Senders.

Rule Should Allow for "Good Faith Estimates"

Currently MoneyGram and other Providers disclose to Senders an "estimated date" of availability which would not permitted under the Proposed Rule. MoneyGram believes that Providers should be able to provide estimated arrival dates where the route that a transaction may take is uncertain. These estimates should be substantiated by the Provider's own experience with similar transactions and should be made in good faith.

In addition, Providers need to have the flexibility to delay transactions to investigate potential fraud, without risk of incurring liability under the proposed error resolution provisions.

As noted, the proposed error resolution procedures require *all* fees to be refunded, including fees paid by the Provider to the others, when an availability date is delayed, even where the amount received is paid in full. As a result, we believe that Providers will be encouraged to overestimate availability dates to avoid the strict liability provisions of the Proposed Rule. Routine overestimates of availability dates by Providers will inconvenience and confuse both Senders and Recipients. We believe that Providers should be encouraged to provide accurate estimates of availability dates without being exposed to the strict liability of the error resolution provisions.

9. Error Resolution

Section 205.33 of the Proposed Rule would set forth error resolution procedures that would take the place of the EFTA's existing error resolution procedures for electronic funds transfers. *See* EFTA §§ 908 and 909 (EFTA error resolution and unauthorized transaction provisions).

Under the Proposed Rule, if a Provider receives notice that one of five specific errors occurred from a Sender within 180 days of the promised delivery of the remittance transfer, the provider must, within 90 days, conduct an investigation and report the results of the investigation to the Sender within three business days of completion. The five types of errors covered by the proposed error resolution provisions are:

- an incorrect amount paid by a Sender;
- a bookkeeping error made by a Provider;
- the failure to make available to a Recipient the amount of currency stated in a receipt;
- the failure to make funds available to a Recipient by the date of availability stated in a receipt; and
- a Sender's request for documentation under section 205.31 (regarding prepayment disclosures and receipts) or for additional information or clarification concerning a remittance transfer.

Where the Provider determines that an error has occurred, the Provider would be required to offer the Sender the option of obtaining a refund or making available to the Recipient the funds necessary to resolve the error.

The Provider would only be required to refund fees, including fees paid by the Provider to other intermediary institutions, where the Provider fails to make funds available to the Recipient by the date of availability specified in the receipt or combined disclosure. In other words, a refund of fees would not be required for errors where the Recipient still receives the transferred money on or before the availability date.

Under the proposed error resolution procedures, a Provider would be required to refund to the Sender, or make available to the Recipient, any amounts that are not sent or received, regardless of reason. For example, if a rogue Agent or an intermediary financial institution declines to send the transfer, seizes the sent amount, imposes fees unbeknownst to the Provider or fails to disburse the sent amount to the Recipient, the Provider must make the Sender whole. That is, the Proposed Rule would impose 100 percent liability on the Provider for any fraud or misconduct of any other party to the transaction, even a party, like a correspondent bank, with whom the Provider has no privity of contract.

<u>Sender Disputes Should be in Writing and Submitted to a Designated Address</u>

MoneyGram believes that notices of error from Senders should be required to be in writing, and should be required to be sent to an address designated by the Provider – for example, an address specified on the receipt. Moreover, Providers should not be required to investigate disputes that are not submitted to the designated address, and should not be required to investigate where notice is provided to an Agent.

Under state laws, Agents are never the contact for disputes, because the Agent is not liable for the funds transmission. Many states require Providers to designate a phone number or address for consumers to contact directly, and no state requires that disputes be presented to Agents.

For most or all of MoneyGram's Agents, providing remittance transfers is not their primary business. Relying on an Agent to properly forward disputes and the relevant supporting documents to the Provider imposes unnecessary costs on Agents, who will have to scan, fax or mail the documents to the Provider; Providers, who will be required to train Agents with respect to dispute handling; and Senders, who will undoubtedly have the increased costs passed along to them in the form of higher fees.

In addition, requiring Agents to handle disputes would require Providers to modify all of their Agent agreements, which in the case of MGI means amending contracts or service requirements for over 13,000 U.S. send Agents. And, Agents have no access to the information needed to resolve disputes, so including them in the dispute resolution process adds no value for Senders or Providers.

Perhaps most importantly, introducing the Agent as middle-man into the equation increases the likelihood that disputes will not be properly handled and resolved in a timely way, exposing Senders to risk of loss and exposing Providers to liability. As stated, Agents are frequently located in grocery stores, convenience stores and other retail locations, and many Agents hire younger and less experienced individuals and frequently experience a high level of employee turnover. Disputes should be handled by well-trained professionals whose primary focus is error investigation, not store clerks with competing priorities.

The Rule Should Clarify that Section 205.33 is an Exclusive Remedy

MoneyGram believes that the Rule should clarify that the error resolution procedures of proposed section 205.33 are the exclusive remedy for one of the enumerated errors, just as the error resolution procedures of existing section 205.11 are the exclusive remedy under EFTA for unauthorized or incorrect electronic funds transfers. That is, the Rule should make clear that Senders may obtain relief for the five enumerated errors only under proposed section 205.33, and may not obtain relief under the civil liability provisions of EFTA section 916.

Fraudulent Pick-Up Should Not Always be Considered an Error

The Proposed Commentary also states that an error under proposed section 205.33(a)(1)(iv) includes a circumstance under which a person other than a person identified by the Sender as the Recipient fraudulently picks up a transfer in the foreign country. In the case where a Provider pays out to someone whose name does not match that of the name of the Recipient provided by the Sender, this may be appropriately categorized as an error.

There are other circumstances where it should not be considered to be an error. MoneyGram establishes policies and procedures for its Agents to verify the identity of the Recipient of a transfer. In spite of that, there are occasions when an individual presents a fake identification document in the name of the Recipient and the Agent, following our policies and procedures, pays out the transfer. MoneyGram would consider these to be circumstances outside of its control – procurement of false identification documents is relatively easy, as any college student can attest. Additionally, technology to verify the authenticity of identification documents does not exist in most parts of the world. Provided that policies and procedures are followed and a Provider can show evidence that it paid out to an individual who presented identification matching the name of the Receiver identified by the Sender, this should not be considered an error.

Providers Should be Able to Specify Default Remedies

The Proposed Rule requested comment "on whether the [final rule] should alternatively permit remittance transfer providers to select a default method of correcting errors, provided that the sender retains the option of selecting a different remedy if appropriate. For example, a [provider] could choose to automatically refund to senders any amounts necessary to correct the error, but each sender could decide in an individual case to decline the refund and instead request that the provider deliver the appropriate amount to the designated recipient."

MoneyGram believes that Providers should be able to specify a default method of error resolution, for the convenience of Senders, Providers and Agents. A default method would speed up error resolution by obviating the need for protracted communication between Provider and Sender, and can be specific and explained directly in the terms and conditions. Senders will always have the option to choose an alternative remedy.

Failure to Maintain Compliance Procedures Should Not be an Independent Cause of Action

The Proposed Rules also would require that Providers maintain a written compliance program "designed to ensure compliance" with the error resolution provisions. Any Final Rule should specify that if Providers fail to maintain such policies and procedures that "are it is not an independent violation of EFTA and Regulation E, or that a private action cannot be maintained for such failure to maintain procedures.

Because of the potential remedies available to private plaintiffs and the ability to maintain a class action under EFTA, MoneyGram does not believe that it is appropriate for private plaintiffs to be able to bring an action for a failure to maintain adequate error resolution procedures and to require a Provider to defend such an action. The proper remedy for a Sender injured by a Provider's failure to investigate a dispute is to bring an action against a Provider for failing to investigate the dispute, rather than an action for failing to maintain policies and procedures to investigate disputes.

10. Time Limits and Extent of Investigation

The Proposed Rule would require investigations to be completed within 90 days. Although 90 days seems to be a generous amount of time in comparison to other U.S. consumer financial protections laws, compare 12 CFR § 205.11(c)(2) (allowing up to 45 days to investigate an error under Regulation E), MoneyGram submits that, because of the exigencies of international money transfer, 90 days may not be sufficient. In almost every error investigation, a Provider will be investigating whether a Recipient in a foreign country received the promised amount by the promised date. As stated above, MGI operates an international network of 227,000 Agent locations, many of which are located in remote locations with inscrutable customs and legal systems. It may be difficult to locate or communicate with the Recipient or the receiving Agent, and far-off Agents may not resolve issues or answer questions in a timely way, regardless of what the contract with the Provider requires. MoneyGram understands and appreciates its duties to resolve disputes, and does not offer this discussion as an excuse, just as an explanation of the vagaries of doing business in foreign, and often isolated, jurisdictions. Because of the potential remedies available under EFTA for failing to resolve disputes in a timely way, MoneyGram submits that at least 180 days is an appropriate period of time to allow Providers to resolve disputes.

11. Cancellation Right

The Proposed Rule would provide consumers with the right to cancel their transaction within 24 hours. In several instances, however, MoneyGram is unable to cancel a transaction once it has been initiated. For example, once a "directed send" – i.e., a send transaction to specific account, which, as explained, may require transmittal through several intermediary financial institutions – has been initiated, we may be unable to cancel the transaction, even where it takes several days to get from the Sender to the Receiver's account.

Our experience in Texas, which offers a 30-minute cancellation right, indicates that very few Senders cancel transactions, which might be expected, particularly among experienced Senders. *See* Texas Fin. Code § 278.052. This is consistent with our understanding that consumers do shop around, but also use our services not just due to our competitive prices, but also based upon convenience – location, opening hours, location of payout Agents, choice of delivery options, etc.

Moreover, the Proposed Rule would require a Provider to refund any fees and taxes incurred in connection with the cancelled transaction, even fees and taxes that were not imposed by the Provider. As a result, we believe that Providers may choose to delay the initiation of a transaction, particularly in instances where non-refundable fees or taxes may be incurred, until the Sender's cancellation right has expired. Recipients would therefore receive funds 24 hours later than they otherwise would. To avoid liability in such a situation, a Provider might provide a very late date of delivery as part of the disclosure process with the proviso that the funds "may be available sooner." As noted elsewhere in this comment, such lack of clarity would disadvantage Senders and Recipients by making it more difficult to gauge the actual likely date of delivery.

<u>24-Hour Cancellation Right is Not Necessary</u>

The statute does not require the Final Rule to include a cancellation right. It requires only that the rulemaking agency "shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers."

We believe that a 24 hour cancellation right is inappropriate and is not consistent with the interests of Senders in executing timely transactions. If any period for a right to cancel is permitted, it should be closer to that offered under state laws – for example, in Texas Senders have 30 minutes, not 24 hours, to cancel. This allows Senders a "cooling off" period to review their transaction, without unnecessarily delaying the transmittal of the funds.

<u>24-Hour Cancellation Right Should be Waivable</u>

Should the 24-hour cancellation right be maintained in the Final Rule, however, we believe that the right should be able to be waived by the Sender. Those Senders who routinely send remittance transfers, who understand the transaction and fees, and for whom time is of the essence should be able to indicate that they will not exercise their cancellation rights in return for obtaining faster execution. Permitting the cancellation right to be waived by Senders will continue to protect inexperienced Senders who may want additional time to review transaction details, without delaying the transactions of experienced Senders.

<u>Providers Should be Able to Recoup Fees Paid in Connection with Cancellations</u>

Even if the Final Rule allows Senders to waive the cancellation right, Providers should be permitted to keep a certain amount of fees in connection with cancelled transactions to compensate for the cost of processing the transaction. Our Agents need to do work to provide services, and they should be compensated for performing these services even where there is a refund, especially when the error is caused by the consumer. If the Final Rule requires Providers to refund the fee for their services in connection with a cancelled transaction, Providers may pass these additional costs on to consumers or may renegotiate Agent agreements to exclude commissions on transactions which are refunded within the 24-hour cooling-off period.

12. Acts of Agents

The Proposed Rule included two alternative formulations for Provider liability for the misconduct of Agents:

- The first – Alternative A – would provide strict liability for any violation of the Proposed Rule by an Agent when such Agent acts for the Provider.

- The second – Alternative B – would limit the Provider's vicarious liability for Agent misconduct to any remedies to which the Sender is entitled through the error resolution procedures of the Proposed Rule, where the Provider "establishes and maintains written policies and procedures designed to assure compliance with [the Proposed Rule] by its agents, including appropriate oversight practices." In other words, if the Provider maintains compliance procedures, supervises its Agents, and makes the Sender whole for any Agent misconduct under the proposed error resolution procedures, the Provider will not be liable for the acts of Agents.

Of the two alternatives in the Proposed Rule, MoneyGram believes that Alternative B recognizes the unique position of Agents in the remittance transfer model, while still protecting Senders, in particular by ensuring that they are made whole for any pecuniary loss experienced in connection with a remittance transfer. The purpose of imposing liability on

Providers for the acts of Agents is not to create a "gotcha" moment for the Provider when an Agent fails to comply with the Rule, but, rather, the purpose is to encourage Providers to develop, establish and maintain policies, procedures, practices and systems to minimize errors and violations. Alternative B will provide the proper measure of encouragement.

MoneyGram and other Providers operate through vast networks of tens of thousands of individual Agents – perfect compliance in all locations and in all instances, particularly with requirements as exacting and technical as those that would be imposed by the Proposed Rule, is an impossibility.

Threat of Class Action for Agent Misconduct

In addition, a Provider should not be threatened with a private class action for the misconduct of one of its thousands of Agents. All large Providers are acutely aware that a private class action, even one which has no merit, can be very expensive and time-consuming to defend, and the pressure to settle even a frivolous lawsuit can be intense. To illustrate, in a recent decision regarding a class settlement involving Providers worth more than $40 million, the U.S. Court of Appeals for the Seventh Circuit stated it did not consider the class's claims to be worth $40 million, but, rather, "the claims had only nuisance value," and the defendants settled simply to obtain "freedom from a drumbeat of litigation, ... [rather] than an exchange of money (or coupons) for the release of valuable legal rights." *In re Mexico Money Transfer Litigation*, 267 F.3d. 743, 748-49 (7th Cir. 2001).

Rule Should Not Discourage Use of Agents

To impose EFTA liability on a Provider under EFTA's enforcement scheme, if, for example, an Agent fails to provide a prepayment disclosure in the proper format, would severely discourage the use of Agents, to the disadvantage of Senders. Networks of Agents can frequently reach communities of Senders more effectively and fulfill services more efficiently than centralized Providers of remittance transfer services. In addition, many Senders are unbanked, underbanked or otherwise are not willing or able to use the banking system for their remittance needs because of the costs associated with international remittances from banks, minimum balance requirements, inconvenient locations, or hours of operation. To them, the financial services provided by MoneyGram and other Providers are a critical aspect of their financial survival.

Senders will be Made Whole

Alternative A practically would impose strict liability on Providers for any violation of the Proposed Rule caused by its Agents. Under the proposed error resolution procedures, however, Providers already would be liable for the misconduct of Agents up to the full send amount. For example, if a rogue send Agent were to fail to send a transfer, or a rogue receive Agent were to fail to disburse a transfer, the Provider would be liable to the Sender for the full amount of the transfer. For the remaining requirements of the Proposed Rule, which focus on the format, timing and content of disclosures and the conduct of dispute investigations, Providers potentially would be liable to private plaintiffs under the existing civil liability provisions of the EFTA for statutory damages of $100 to $1000, for even isolated violations.

Alternative B strikes an appropriate balance. It would provide only a qualified defense for Providers to vicarious liability under the statutory damages provisions of the EFTA. That is, the Provider would continue to be vicariously liable where it fails to establish compliance procedures and supervision mechanisms for Agents. Thus it allows fact-finders and regulators to recognize the impossibility of perfect compliance in a network of hundreds of thousands of Agents, while still providing the ability to redress wide-spread or systemic compliance failures.

* * * *

We thank you again for the opportunity to comment on this important rulemaking.

Very Truly Yours,

Francis Aaron Henry
Senior Vice President, Associate General Counsel
Global Regulatory and Chief Privacy Officer

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