

**Meeting Between Federal Reserve Staff
and Representatives of Appleseed
October 27, 2010**

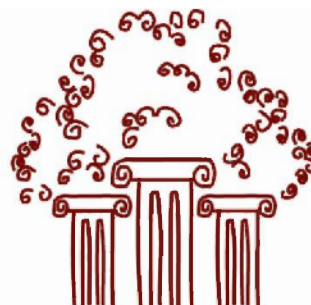
Participants: Annette LoVoi, Betsy Cavendish, and Robert Anderson (Appleseed) and Chris Allen and Kathleen Scott (Arnold & Porter)

Dana Miller, Samantha Pelosi, Mandie Aubrey, David Stein and Ky Tran-Trong (Federal Reserve Board)

Summary: Staff from the Federal Reserve Board met with representatives of Appleseed to discuss the remittance transfer provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As part of this discussion, Appleseed's representatives described the legislative evolution of several sections of the remittance transfer provisions. They also urged the Federal Reserve Board to implement the remittance transfer provisions in a way that discloses the information senders find most important in a format that is workable across various media (such paper, Internet and text message). Specific topics of discussion included the posting of storefront and Internet disclosures containing information about model transfers, written initial disclosure of information regarding the transaction, foreign language disclosures, error resolution, cancellation, and the statutory exceptions for disclosure of the amount of currency received.

Attached below is a copy of the materials that Appleseed prepared to guide discussion during the meeting.

Appleseed



Proposed Rulemaking under the Dodd-Frank Act, Section 1073, Remittance Transfers
To Accompany Meeting Notes October 27, 2010

This background paper serves as the basis for the Appleseed team meeting with the staff of the Board of Governors of the Federal Reserve System (“Board”), at the request of the Board staff, on October 27, 2010, to discuss remittance rulemaking opportunities in Section 1073 (“Remittance Transfers”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”).

The overriding aim of Section 1073’s provisions is the expansion and simultaneous standardization of the information and protections available to customers of remittance transfer providers. This goal will be accomplished primarily through the issuance of regulations applicable to all industry participants — something previously not possible in a state-level regulatory structure.

Appleseed encourages prompt commencement of the rulemaking process to implement Section 1073 of the Dodd-Frank Act and is pleased that the Board is moving expeditiously toward rulemaking. Moreover, because certain of the Board’s powers sunset in 18 months, it is particularly important that the Board make it clear to the industry that while Section 1073 needs regulations to implement most of the provisions, that is no excuse for the industry to ignore existing state consumer-protection provisions, such as disclosure requirements and error-resolution procedures, and that such state laws continue to apply during the rulemaking process.

Appleseed Recommends Expeditious Rulemaking in Accord with Appleseed’s Research

As we believe that Section 1073’s requirements are not self-implementing, with the arguable exception of the error resolution provisions, Appleseed encourages the Board to act promptly in promulgating the regulations required under Section 1073.

Appleseed further seeks to connect our work to the Board's initiatives and to share our research, findings and recommendations. Appleseed's work on disclosures can inform the Bureau's rulemaking. Appleseed's work is available at:

<http://www.appleseednetwork.org/bPublicationsb/FullArchive/FinancialAccess/tabid/525/Default.aspx> We refer the Board staff specifically to these four Appleseed reports as resources in its remittance rulemaking (abstracts provided in Appendix 1):

- **“Remittance Transparency: Strengthening Business, Building Community”** (January 2009)
<http://www.appleseednetwork.org/Portals/0/Documents/Publications/FE%20Final.pdf>
- **“Immigrant Use of Financial Services and Unmet Needs”** (December 2008)
<http://www.appleseednetwork.org/Portals/0/Documents/Publications/Access%20to%20Financial%20Institutions%20and%20Use%20of%20Financial%20Services%20final.pdf>
- **“The Fair Exchange: Improving the Market for International Remittances”** (April 2007)
<http://www.appleseednetwork.org/Portals/0/Documents/Publications/thefairexchangeimprovingmarket.pdf>

Appleseed provides below our commentary on each category of item required under Section 1073:¹

General Disclosures. The remittance transfer disclosure requirements appear to be dependent upon the prior promulgation of regulations by the Board. Specifically, remittance transfer providers must “make disclosures as required under [Section 919 of the EFTA] *and in accordance with rules prescribed by the Board*” (emphasis added).² Under the legislation, the Board must promulgate regulations prescribing the form and content of disclosures regarding the amounts, fees, and exchange rates applicable to funds remittances, as well as the form and content of receipts to be provided to consumers. The Board has limited authority to grant exemptions to these requirements in certain enumerated circumstances.

Appleseed urges Board staff to immediately begin work to promulgate regulations prescribing the form and content of written disclosures regarding the amounts, fees, and exchange rates applicable to funds remittances, as well as the form and content of receipts to be provided to consumers.

¹ Please note that, for ease of reference, citations are given to Section 919 of the EFTA, which is added by Section 1073 of the Dodd-Frank Act.

² Section 919(a)(1).

In pre-transaction and receipt disclosure rulemaking, Appleseed stresses the importance of the following:

- Availability of disclosures in Spanish and other languages principally used by remittance transfer providers;
- Using plain, simple language;
- Ensuring that disclosures are written, not oral;
- Ensuring that written disclosures across all media, including print, mobile telephony and Internet, provide commensurate information; and
- Considering current consumer behavior research to promote complete disclosures, ease of use, and ability to shop or walk away without engaging employees.

Appleseed suggests that the Board consider promulgating model written disclosure forms, both physical and electronic, similar to those provided for in other federal government consumer financial rulemakings, that could provide safe harbor compliance for providers and ready availability of complete disclosure for consumers. Written disclosures generally are required by Section 1073 and we would urge Board staff not to use any exemptive power to allow oral disclosures in situations where written disclosures can be given because there is no guarantee that on each occasion that oral disclosures are used, they are provided exactly as prescribed.

For a period of up to ten years, the Bureau has the authority to establish special rules for insured depository institutions regarding the disclosure of amounts to be received by remittance recipients in certain circumstances. Appleseed's position is that all institutions should comply with Section 1073's full disclosure requirements in all instances.

Storefront and Internet Notices. The Board is authorized, but not required, to issue rules requiring the posting of storefront and Internet notices. Prior to engaging in such a rulemaking, the Board must first conduct "appropriate studies and analyses" of whether such notices would facilitate consumers' ability to comparison shop and to understand the fees and costs associated with remittances.

Appleseed recommends that the Board test the efficacy of storefront notices and strongly recommends testing and providing model Internet notices. The Board should consider Appleseed's research work and proceed expeditiously with focus group testing of storefront and Internet notices as a prelude to rulemaking. We have provided abstracts of our work in Appendix 1.

Based on Appleseed's research, we stress the importance of testing and addressing the following elements in notice rulemaking:

- Testing in Spanish and other languages principally used by remittance transfer providers;

- Testing plain, simple language;
- Ensuring accurate notice of frequent fluctuations in price and exchange rate;
- Ensuring that disclosures across all media, including print, mobile telephony and Internet, provide commensurate disclosures; and
- Considering current consumer behavior research to promote complete disclosures, ease of use, and ability to shop or walk away without engaging employees.

The Board should explore the adaptability of electronic notices – both mobile telephony and Internet – as inputs to the creation of a public, real-time database of fees and exchange rates.

Appleseed recommends that the Board consider promulgating model notices that could provide safe harbor compliance for providers to speed implementation and uptake, but only if such disclosures meet the highest, most rigorous aspirations of the law.

Error Resolution/Cancellation/Refund Policies. Section 919 requires remittance transfer providers who receive notification from a sender that an error occurred with respect to a funds transfer to research and, if appropriate, correct that error in one of several ways. Although the Board is charged with developing standards for this process (and is given 18 months to do so), the compliance obligation of service providers is not clearly tied to the regulations, as in the case of the general disclosure requirements. It is arguably the case, therefore, that service providers should begin complying with this provision immediately.

The Board is also ordered to implement regulations regarding cancellation and refund policies for the industry. While refunds are referenced as a possible error-resolution mechanism, cancellations are not otherwise mentioned. In developing cancellation rules, the Board should consider policies included in the House of Representatives-passed remittance legislation presented in Appendix 2, Section 4309(c) of H.R. 4173.

The initial place to look for comparable error resolution language would be to Regulation E (12 CFR Part 205), which contains the EFTA regulations and which is where the remittance transfer regulations should be placed.

The current EFTA error resolution process is set out in 12 CFR §205.11, a copy of which is attached to this memorandum as Appendix 3, along with a copy of the model disclosure and a copy of the FRB staff commentary on that regulation. This regulation could be used as the basis for the Section 1073 remittance transfer error resolution process, with changes made to reflect the differences in statutory language (for example, the time periods for resolution of errors is different in Section 1073). This process also will be familiar to financial institutions that offer electronic funds transfers to consumers and to regulators and will facilitate uniformity and take advantage of adapting what already is in place. Under 12 CFR §205.7, as part of the initial disclosures when establishing an account subject to the EFTA, the error resolution process must be explained. Otherwise, applicable consumer remedies must be preserved. Any safe harbor

model disclosures must be reviewed, annually, to recognize the dynamism of the marketplace and new methods for transmitting money.

Establishing standards for error resolution/cancellation/refunds are key provisions at the core of Appleseed's work and should be a priority in order to ensure the protections for consumers contained throughout Section 1073.

Appleseed urges the Board to consider the positive marketplace effects of complaint-handling systems:

- Make complaints public, with sensitive personal data of consumers removed, so that remittance providers face public scrutiny and consumers and their advocates can detect patterns.
- The new Consumer Financial Protection Bureau (CFPB) should have an office charged with complaint receipt and complaint resolution.
- The CFPB should aggregate and analyze complaints for frequency and longitudinal repetition.
- The Board should constitute acceptable error rates and penalties for companies that experience systematic errors that unduly burden consumers and recipients.

Liability for Agents. Section 919(f) makes remittance transfer providers liable for violations of Section 919 by agents working on their behalf. It also instructs the Board to issue rules regarding the scope of such liability.

With respect to the question of liability generally, state money transmitter law typically holds licensees responsible for the acts of their "agents" (or whatever term the state assigns to persons performing as agents for the remittance transfer provider). This liability, along with the general tenets of principal-agent liability, will continue to apply regardless of the effective date of the specific liability provisions of Section 919.

This is an important provision – worthy of emphasis – because much of the work done in the remittance industry is performed through agents and delegates. It is important to note that the statute declares liability outright while delegating to the Board the duty to prescribe rules on scope (appropriate standards and conditions) of liability. Appleseed promotes rulemaking that broadly defines agent liability.

Transfers to Certain Nations. The Board is authorized to modify the general disclosure requirements applicable to remittance transfer providers in the case of recipient nations for which it is not possible to ascertain, in advance, the amount of currency that will be provided to

the recipient. The Board has 18 months to implement such regulations but is not required to do so.

Rulemaking regarding transfers to certain nations is not necessary; all remittances should fall under Section 1073's general disclosure requirements. Appleseed hopes the Board, in its role as gatekeeper for waivers under this provision, only narrowly permits nation-specific deviations from otherwise applicable disclosure requirements in the clearest instances of exchange-rate uncertainty. Such restraint is particularly important regarding countries to which a high volume of remittances are sent. Appleseed believes that liberal granting of waivers would undercut the very purpose of Section 1073.

Studies, Reports, and Guidance. Section 1073 requires a variety of studies, reports, and guidance related to funds remittances. Each of these items (with the apparent exception of storefront/Internet notices) is mandatory.

Expand the use of automated clearing houses for foreign remittance transfers and report regularly, over a ten-year period, on the results. Appleseed believes that expansion of cross-border ACH capabilities will greatly facilitate efforts to encourage mainstream financial institutions to offer money remittance services, which, may, in turn, serve to increase the availability of other basic banking services to traditionally unbanked communities and lower remittance prices. Appleseed recommends public benchmark comparisons of commercial rates and ACH rates.

The federal banking agencies are to provide guidance to the depository institutions they supervise on offering low-cost remittance transfer services to industry providers, as well as low- or no-cost basic consumer accounts to customers. Appleseed encourages the Board to work together with the other federal bank regulatory agencies to find solutions to these important issues so as to expand the availability of low-cost transfer services and consumer accounts to customers.

The Director of the Bureau is instructed, within one year of passage of the Dodd-Frank Act, to report to Congress on the feasibility of and impediments to using remittance histories in credit-score calculation. Appleseed urges the Board to proceed immediately with a study and recommendations addressing:

- (1) The manner in which the remittance history of a consumer could be used to enhance the credit score of the consumer; and
- (2) The current legal and business model barriers and impediments that impede the use of the remittance history of the consumer to enhance the credit score of the consumer.

Conclusion

Appleseed thanks the Board's for its interest in promoting transparency and remedies in remittances and its prompt, thoughtful and complete efforts to implement these provisions of Dodd-Frank. We stand ready to support this effort.

If you have any questions or would like to discuss these issues further, please contact either Annette LoVoi (alovoi@appleseednetwork.org) or Betsy Cavendish (bcavendish@appleseednetwork.org). We acknowledge the research and analytical support of Robert Anderson, Long Fellow from the University of Texas Law School.

Appendix 1

Appleseed Remittance Research and Reports

Remittance Transparency: Strengthening Business, Building Community

January 2009

In an effort to help immigrant workers more effectively build financial assets – both for themselves here and for their families abroad – Appleseed’s Fair Exchange initiative has generated this important report underscoring the value of pre-transaction price disclosures for international remittances. The study reveals substantial consumer demand for such transparency, suggesting that participating businesses are likely to capture a greater share of the country’s enormous remittance market.

Immigrant Use of Financial Services and Unmet Needs

December 2008

A survey of Mexican immigrants in Chicago identified strong demand for important financial offerings related to personal credit, insurance, and remittance services. Such offerings allow immigrant families to build financial assets and enter the economic mainstream. However, despite strong demand, Appleseed identified several structural obstacles which impede financial access within the immigrant community. This report offers several market- and outreach-based policies to address these shortfalls.

The Fair Exchange: Improving the Market for International Remittances

April 2007

In April 2006, Appleseed convened a group of industry, regulatory, and consumer representatives, the Fair Exchange Committee, to explore options for a voluntary market-based approach to improve pre-transaction disclosures for international remittance transactions. This report includes three main sections describing the results of the work of the committee and presenting options for creating a branding program similar to the Fair Trade concept.

Creating a Fair Playing Field for Consumers: The Need for Transparency in the U.S.-Mexico Remittance Market

December 2005

The money flowing from the United States to Mexico currently represents the largest remittance market in the world. To provide a more complete picture of the impact of the exchange rate spread on pricing, Applesseed Centers collected and analyzed exchange rate data for wiring money from the United States to Mexico. Our study revealed that unpredictable and undisclosed rates make it extremely difficult for consumers to make informed decisions about remitting money to Mexico, and keep the market from operating efficiently for three primary reasons: lack of marketplace transparency, lack of consistent access to correct pricing information, and lack of standardized pricing disclosure practices. Our report offers three recommendations on how to best handle the problem, any one of which would build greater transparency and consumer protection into the remittance market.

Appendix 2

Remittance Transfer Cancellations, Refunds, and Errors Section 4309(c) of H.R. 4173, as passed by the U.S. House of Representatives

REMITTANCE TRANSFER CANCELLATIONS, REFUNDS, AND ERRORS.—

(1) CANCELLATIONS.—

(A) After receiving the receipt required under subsection (a)(2)(B), a consumer may cancel the currency transaction—

- (i) before leaving the premises of the remittance transfer provider where the consumer received the receipt; and
- (ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

(B) If a consumer cancels the transaction, the remittance transfer provider shall immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction has been cancelled.

(C) A consumer may not cancel a remittance transfer after the remittance transfer provider has sent the funds to the recipient.

(D) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(2) REFUNDS.—

(A) If a remittance transfer provider receives written notice from the consumer within 10 days of the promised date of delivery of a remittance transfer that no amount of the funds to be remitted was made available to the designated recipient in the foreign country, the remittance transfer provider shall—

- (i) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with such remittance transfer;
- (ii) promptly transmit the remittance transfer in accordance with the terms in the written receipt provided to the consumer pursuant to subsection (a)(2)(B);
- (iii) provide such other remedy, as determined appropriate by rule of the Director for the protection of consumers; or
- (iv) demonstrate to the consumer that the proceeds of the remittance transfer were made available to the recipient of the remittance provider.

(B) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

Appendix 3

Error Resolution and Cancellation Provisions in Section 1073, Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act")

Law

Section 1073 of the Dodd-Frank Act adds a new section 918 to the Electronic Funds Transfer Act ("EFTA") regarding the sending of remittances by consumers to locations outside the United States. Among the provisions in new section 918 is the following:

(d) REMITTANCE TRANSFER ERRORS.—

(1) ERROR RESOLUTION.—

(A) IN GENERAL.— If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

(B) REMEDIES.— Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

- (i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;
- (ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;
- (iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or
- (iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

(2) RULES.— The Board shall establish, by rule issued not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding recordkeeping, as required, including documentation—
A) of the complaint of the sender;

(B) that the sender provides the remittance transfer provider with respect to the alleged error; and
(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

(3) CANCELLATION AND REFUND POLICY RULES.—Not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

Thus, regulations are required not later than January 21 of 2012 (i) regarding standards for remittance providers with respect to error resolution to protect senders from errors in remittance transfers and (ii) regarding appropriate remittance transfer cancellation and refund policies for consumers.

Error Resolution

The initial place to look for comparable language would be to Regulation E (12 CFR Part 205), which contains the EFTA regulations and where the remittance transfer regulations should be placed. Under 12 CFR 205.7, as part of the initial disclosures when establishing an account subject to the EFTA, the error resolution process must be explained. There is a model consumer disclosure regarding the error resolution process that can be used by the financial institution and so long as the model disclosure is used, the financial institution will be considered to be in compliance with the law. The current EFTA error resolution process is set out in 12 CFR §205.11, a copy of which is attached to this memorandum, along with a copy of the model disclosure and a copy of the FRB staff commentary on that regulation. This regulation could be used as the basis for the Section 1073 remittance transfer error resolution process, with changes made to reflect the differences in statutory language (for example, the time periods for resolution of errors is different in section 1073). This process also will be familiar to financial institutions that offer electronic funds transfers to consumers, and the regulators, in an attempt at uniformity, also could see the advantages to adapting what already is in place.

Another possibility among other federal consumer statutes is Regulation Z (12 CFR Part 226), which implements sections of the Truth in Lending Act and covers both open-end and closed-end credit arrangements and the error resolution provision is attached in the Appendix as well. However, Regulation Z does not appear to be the best place to look for sample error resolution regulatory language because Regulation Z deals with paying back a loan, an entirely different type of arrangement from sending money outside of a credit relationship and so the errors that might arise, and the remedies available, for the most part would not be applicable to remittances.

Cancellation and Refund Policies

In the House of Representatives version of remittance disclosure requirements, the issue of cancellation and refund was included in the House bill. This provision in the House Bill was adapted from the Texas Financial Code. There appear to be no cancellation and refund provisions in federal consumer statutes dealing with financial matters aside from cancellation of certain contracts (such as second mortgage contracts and health club memberships) but the provisions in the relevant statutes covering those areas are so dependent upon other aspects of the transaction and other requirements that they do not appear to be good candidates for cancellation. We thus would recommend utilizing the House Bill provisions as a basis for promulgating cancellation and refund regulations.

Section 4309(c) of the House Bill permitted the consumer, once he or she received the receipt for the transaction, to cancel the transaction (i) before leaving the premises of the remittance transfer provider where the consumer received the receipt and (ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

If the consumer cancelled the transaction, the remittance transfer provider would be required to immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction had been cancelled. However, a consumer would not be able to cancel a remittance transfer after the remittance transfer provider sent the funds to the recipient, and the remittance transfer provider would not provide a refund if providing a refund would violate State or Federal law.

REGULATION E RE ERROR RESOLUTION

12 CFR §205.11 **Procedures for resolving errors.** (Electronic Funds Transfer Act)

(a) *Definition of error* —(1) *Types of transfers or inquiries covered.* The term *error* means:

- (i) An unauthorized electronic fund transfer;
- (ii) An incorrect electronic fund transfer to or from the consumer's account;
- (iii) The omission of an electronic fund transfer from a periodic statement;
- (iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
- (v) The consumer's receipt of an incorrect amount of money from an electronic terminal;
- (vi) An electronic fund transfer not identified in accordance with §§205.9 or 205.10(a); or
- (vii) The consumer's request for documentation required by §§205.9 or 205.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1) (i) through (vi) of this section.

(2) *Types of inquiries not covered.* The term *error* does not include:

- (i) A routine inquiry about the consumer's account balance;
- (ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) *Notice of error from consumer* —(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by §205.9, on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) *Time limits and extent of investigation* —(1) *Ten-day period.* A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of §205.6(a), the institution may withhold a maximum of \$50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T (Securities Credit by Brokers and Dealers, 12 CFR part 220);

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (c)(2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;

(B) Resulted from a point-of-sale debit card transaction; or

(C) Occurred within 30 days after the first deposit to the account was made.

(4) *Investigation.* With the exception of transfers covered by §205.14, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall:

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notification.

The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

FRB Staff Commentary:

11(b) Notice of Error From Consumer

Paragraph 11(b)(1)—Timing; Contents

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a Social Security number or other unique means of identification.
2. *Investigation pending receipt of information.* While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.
3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.
4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.
5. *Discovery of error by institution.* The error resolution procedures of this section apply when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.
6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.
7. *Effect of late notice.* An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with §205.6 before it may impose any liability on the consumer.

Paragraph 11(b)(2)—Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

11(c) *Time Limits and Extent of Investigation*

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.
2. *Written confirmation of oral notice.* A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.
3. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of §205.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it must correct the error (subject to the liability provisions of §§205.6 (a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/EFT transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in §205.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in §205.11(c). If the institution has provisionally credited the consumer's account in accordance with §205.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph 11(c)(2)(i)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under §205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of §205.11.

Paragraph 11(c)(3)—Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions apply to all debit card transactions, including those for cash only, at merchants' POS terminals, and also including mail and telephone orders. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location.

Paragraph 11(c)(4)—Investigation

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of §205.11(c)(4)(ii) solely because it participates in transactions that occur under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement.

5. *No EFT agreement.* When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution's own records for the particular account to resolve the consumer's claim. The extent of the investigation required may vary depending on the facts and circumstances. However, a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer's claim.

Information that may be reviewed as part of an investigation might include:

- i. The ACH transaction records for the transfer;
- ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;
- iii. Whether the check number of the transaction in question is notably out-of-sequence;
- iv. The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;
- v. Information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or
- vi. Any other information appropriate to resolve the claim.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both §205.11 (c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

Paragraph 11(d)(1)—Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

Paragraph 11(d)(2)—Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under §205.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five

business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

11(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

A-3—Model Forms For Error Resolution Notice (§§205.7(b)(10) and 205.8(b))

(a) Initial and annual error resolution notice (§§205.7(b)(10) and 205.8(b)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or E-mail us at [insert electronic mail address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

(b) Error resolution notice on periodic statements (§205.8(b)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

* * * * *

12 CFR §226.13 Billing error resolution [Truth in Lending Act]

(a) *Definition of billing error.* For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§226.7(a)(2) or (b)(2), as applicable, and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.* A billing error notice is a written notice from a consumer that:

(1) Is received by a creditor at the address disclosed under §226.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges). If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.

(4) *Permitted creditor actions.* A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

- (1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;
- (2) Shall allow any time period disclosed under §226.6(a)(1) or (b)(2)(v), as applicable, and §226.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;
- (3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §226.6(a)(1) or (b)(2)(v), as applicable, and §226.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but
- (4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:
 - (i) Promptly reports that the amount or account is in dispute;
 - (ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and
 - (iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.
- (h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.
- (i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.