

DODD-FRANK, INTERNATIONAL REMITTANCES, AND MOBILE BANKING: THE FEDERAL RESERVE'S ROLE IN ENABLING INTERNATIONAL ECONOMIC DEVELOPMENT

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International remittances—"cross-border person-to-person payments of relatively low value"[1] sent primarily by international migrants to family members in developing countries[2]—alleviate poverty, support entrepreneurship, and foster the development of financial systems.[3] Until recently, aside from prohibitions on financial interactions with countries such as Cuba or Burma,[4] U.S. regulators have only indirectly addressed these monetary transfers. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) changes this, providing direct, substantive regulation of the industry for the first time.[5] Dodd-Frank calls on the Board of Governors of the Federal Reserve System (Board) to craft more than a dozen regulations to enforce Dodd-Frank's remittance provisions within eighteen months.[6] These regulations can either stifle progress in the remittance industry or help it become more efficient.

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[1] COMM. ON PAYMENT & SETTLEMENT SYS., WORLD BANK, GENERAL PRINCIPLES FOR INTERNATIONAL REMITTANCE SERVICES 6 (2007) (emphasis omitted) [hereinafter GENERAL PRINCIPLES], *available at* http://siteresources.worldbank.org/INTPAYMENTREMMITTANCE/Resources/New_Remittance_Report.pdf (link).

[2] *See generally* SANKET MOHAPATRA ET AL., WORLD BANK, MIGRATION AND REMITTANCES UNIT, OUTLOOK FOR REMITTANCE FLOWS 2011–12: RECOVERY AFTER THE CRISIS, BUT RISKS LIE AHEAD (2010), *available at* http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationAndDevelopmentBrief13.pdf (explaining recent trends in remittance flows to developing countries) (link).

[3] *See infra* Part I.B.

[4] *See, e.g.*, Eric Schmitt & Damien Cave, *Obama to Loosen Restrictions on Policy with Cuba*, N.Y. TIMES, Apr. 4, 2009, http://www.nytimes.com/2009/04/05/world/americas/05cuba.html (link).

[5] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073, 124 Stat. 1376, 2060–67 (2010) (link).

[6] *Id.* § 1073(a)(4) (proposed §§ 919(c), 919(d)(2)–(3)), 124 Stat. 2063–64. For convenience, citations to proposed portions of the section 919 language—as provided in Dodd-Frank to amend the Electronic Fund Transfer Act, 15 U.S.C. § 1693 (2006)—are cited to section 1073(a)(4) of Dodd-Frank as "§ 1073(a)(4) (proposed § 919)."

This Article recommends regulations that would enable a thriving business environment for transfer providers and preserve reasonable consumer protections. Part I describes the international remittance industry, including its role in enabling economic development and in alleviating poverty. Part I then predicts the changes that the industry is likely to undergo in the near future. Part II explains Dodd-Frank's remittance provisions. Part III provides recommendations to the Board on how it can design regulations that best enable global economic development.

I. INTERNATIONAL REMITTANCES

A. The Remittance Industry Today

In 2010, an estimated $440 billion in remittances were sent worldwide,[7] primarily by many of the 215.8 million international migrants.[8] The global average fee for sending a remittance has recently dropped to 8.62%,[9] but a specific remittance's actual price varies significantly depending on the country corridor,[10] exchange rates, amount sent, and type of transfer provider used. At the least expensive end of the spectrum, a $200 transfer from the United Arab Emirates to Pakistan costs $3.24 on average, or 1.62% of the transfer;[11] on the upper end, a $200 transfer from Tanzania to Kenya costs $47.27 on average, or 23.64% of the transfer.[12] Reducing the current global average by half would make an additional $14 billion available each year to remittance recipients in developing countries[13]—approximately 41% of the total U.S. foreign aid budget in 2010 and ap-

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7 MOHAPATRA ET AL., *supra* note 2, at 14 tbl.1.

8 INT'L BANK FOR RECONSTRUCTION AND DEV., WORLD BANK, MIGRATION AND REMITTANCES FACTBOOK 2011, at 18 (2d ed. 2011) [hereinafter FACTBOOK 2011], *available at* http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf (link).

9 PAYMENT SYS. DEV. GRP., WORLD BANK, REMITTANCE PRICES WORLDWIDE: AN ANALYSIS OF TRENDS IN THE AVERAGE TOTAL COST OF MIGRANT REMITTANCE SERVICES 1 (2010) [hereinafter REMITTANCE PRICES], *available at* http://remittanceprices.worldbank.org/~/media/FPDKM/Remittances/Documents/RemittancePriceWorldwide-Analysis-Dec2010.pdf (link).

10 International remittance channels are financial pipelines between two distinct markets—the sending and receiving countries. Prices can vary significantly between these different channels for a variety of reasons, including the volume of remittances sent between two countries. Therefore, in an analysis of transfer prices, the focus is often on individual corridors (e.g., United States to El Salvador) rather than on the overall price for all remittances originating in the United States or all remittances arriving in El Salvador. *See Remittance Prices Worldwide*, WORLD BANK, http://remittanceprices.worldbank.org/Country-Corridors (last visited Jan. 13, 2011) (link).

11 *Id.*

12 *Id.*

13 *See* MOHAPATRA ET AL., *supra* note 2, at 1; REMITTANCE PRICES, *supra* note 9 (reducing the global average fee to 4.31% would create savings for remittance senders sending money to developing countries equal to $14,007,500,000).

proximately 556% of the international development assistance portion of this budget.[14]

A "remittance transfer provider" is the "person or financial institution that provides remittance transfers for a consumer in the normal course of its business."[15] Transfers can be of varying speed and complexity, but they all require "access points" where consumers can send and receive funds, and procedures linking those access points.[16] There are four primary models for transfer services: (1) unilateral, (2) franchised, (3) negotiated, and (4) open.[17] For "unilateral services," a lone transfer provider offers "a proprietary product provided 'internally'" without "other entities [acting] as capturing or disbursement agents."[18] With "franchised services," the transfer provider, "without necessarily having any access points of its own, provides a proprietary service" and uses other entities to provide access points.[19] "Negotiated service" transfer providers—often larger commercial banks—"negotiate[] with a limited number of other" entities to form a "network of access points."[20] "Open service" transfer providers offer "proprietary service[s]" to senders, while the transfer is received through "an open network to which any [remittance service provider] can have direct or indirect access."[21]

B. *Remittances as a Tool for International Economic Development*

Remittances encourage and enable efficient international economic development by providing an influx of capital to developing countries in an amount that is second only to foreign direct investment.[22] In 2010, consum-

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[14] *See* U.S. DEP'T. OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION: FOREIGN ASSISTANCE, SUMMARY TABLES, FISCAL YEAR 2011, at 13 tbl.3a (2010), *available at* http://www.state.gov/documents/organization/138174.pdf (listing the total U.S. 2010 foreign aid budget as $34,493,782,000 and the Development Assistance portion as $2,520,000,000) (link).

[15] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073(a)(4) (proposed § 919(g)(3)), 124 Stat. 1376, 2065 (2010).

[16] GENERAL PRINCIPLES, *supra* note 1, at 2.

[17] *Id.* at 9–10 (explaining how these categories "differ primarily according to how a network of access points is created and linked").

[18] *Id.* at 9.

[19] *Id.* Note that, "[t]he term 'franchised' is used for convenience. In practice, the legal form of the arrangement may not always be a franchise." *Id.* at 9 n.11.

[20] *Id.* at 10.

[21] *Id.*

[22] *Compare* MOHAPATRA ET AL., *supra* note 2, at 1 (explaining that new data reveal that "officially recorded remittance flows to developing countries fell to $307 billion in 2009"), *with Query Wizard for International Development Statistics*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, http://stats.oecd.org/qwids/#?x=1&y=6&f=4:1,2:1,3:51,5:3,7:1&q=4:1+2:1+3:51+5:3+7:1+1:1+6:2009 (providing that official development assistance to all developing countries in 2009 totaled $127.5 billion) (link), *and Inward and Outward Foreign Direct Investment Flows, Annual, 1970–2009*, UNCTADSTAT, http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=88 (providing that foreign direct investment in developing economies in 2009 totaled approximately $478.35 billion) (link).

ers sent an estimated $325 billion of the estimated $440 billion remitted globally to developing countries.[23] For at least twenty-one countries, international remittances represent 10% or more of gross domestic product (GDP).[24] Remittances also have several benefits over other forms of capital flow. Unlike the interest payments on bilateral and multilateral development loans or the dividend payments on foreign direct investments, remittance payments do not require a corresponding outflow of capital.[25] Additionally, remittances are received directly by the intended recipient, providing an efficiency advantage over foreign aid, which often encounters significant overhead before its benefits arrive at the intended constituencies.[26]

The indirect effects of international remittances for developing economies are as important as the direct benefits of international remittances for individual households. Recipients may use remittances for saving and investing,[27] but between 80% and 90% of remittances are used for essentials, including "food, clothing, shelter, health care and education."[28] Regardless of the purpose of the expenditure, the spending itself creates further benefits.[29] Throughout developing countries, remittances also reduce poverty,[30]

But see FACTBOOK 2011, *supra* note 8, at 17 (citing official development assistance to developing countries in 2009 as $120 billion, remittance transfers to developing countries in 2009 as $307 billion, and foreign direct investment in developing countries in 2009 as $359 billion).

[23] MOHAPATRA ET AL., *supra* note 2.

[24] Tajikistan (35.1%), Tonga (27.7%), Lesotho (24.8%), Moldova (23.1%), Nepal (22.9%), Lebanon (22.4%), Samoa (22.3%), Honduras (19.3%), Guyana (17.3%), El Salvador (15.7%), Jordan (15.6%), Haiti (15.4%), Kyrgyz Republic (15.1%), Jamaica (13.8%), Bosnia & Herzegovina (12.7%), Serbia (12.6%), Bangladesh (11.8%), Philippines (11.3%), Albania (10.9%), Nicaragua (10.3%), and Togo (10.3%). *See* FACTBOOK 2011, *supra* note 8 (providing six Country Group summaries that each list the 2009-top remittance recipients by percentage of GDP). This total is potentially larger, as remittance data is currently not available for twenty countries including Afghanistan, American Samoa, Bhutan, Central African Republic, Chad, Cuba, Democratic Republic of Congo, Eritrea, Kosovo, Marshall Islands, Mayotte, Micronesia, Montenegro, North Korea, Palau, Somalia, Timor-Leste, Turkmenistan, Uzbekistan, and Zimbabwe. *Id.*

[25] *See* GIBRIL FAAL, REMITAID, MITIGATING THE STRUCTURAL IMPERFECTIONS AND NEGATIVE IMPACTS OF REMITTANCES 1 (2006), *available at* http://www.remitaid.org/downloads/Mitigating%20the%20Imperfections%20of%20Remittances%20-%20Gibril%20Faal%20-%20GKP.pdf (link).

[26] *See id.*

[27] *Id.* at 2; GENERAL PRINCIPLES, *supra* note 1, at 1.

[28] INT'L FUND FOR AGRIC. DEV., REMITTANCES: SENDING MONEY HOME 1 (2009), *available at* http://www.ifad.org/pub/factsheet/remittances/e.pdf (providing statistics from a 2006 study) (link). In February 2011, United Nations Conference on Trade and Development Deputy Secretary-General Petko Draganov emphasized that "[e]vidence shows that a significant amount of remittance transfers to developing countries is spent on household consumption and human capital." *Attention Needed so that Billions in Migrants' Remittances Do Most to Help Families, Boost Countries' Economic and Social Development, Experts Say*, UNCTAD PRESS (Feb. 17, 2011), http://www.unctad.org/Templates/webflyer.asp?docid=14542&intItemID=1528&lang=1 (link).

[29] *See* FAAL, *supra* note 25, at 3 ("[T]he mere act of expenditure means that people who work in the businesses that provide the wide range of services earn incomes, and in turn spend their earnings by buy-

promote entrepreneurship,[31] and develop financial infrastructure.[32] The exchange of remittances through formal transfer channels promotes the financial sector because the inflow of income creates a gateway to the use of other financial services.[33] Additionally, a 10% increase in remittances reduces poverty in the receiving country by 3.5%.[34] This poverty-reduction benefit is even greater in rural areas.[35] The poverty-reduction and the development benefits of remittances keep global institutions pushing for efficiency-minded remittance reforms.[36]

C. The Remittance Industry Tomorrow

In five to ten years, the remittance industry will change greatly because of increases in the variation of service providers and transfer business models,[37] the expansion of mobile phone ownership,[38] and the extension of mo-

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ing goods and services provided by other workers—thus a virtuous circle of income earning and expenditure is created in the local economy.").

30 *See generally* RICHARD H. ADAMS, JR., UNITED NATIONS, DEP'T ECON. & SOC. AFFAIRS, MIGRATION, REMITTANCES AND DEVELOPMENT: THE CRITICAL NEXUS IN THE MIDDLE EAST AND NORTH AFRICA 5 (2006), *available at* http://www.un.org/esa/population/meetings/EGM_Ittmig_Arab/P01_Adams.pdf ("Using data from nationally-representative household surveys . . . this paper finds that international worker remittances significantly reduce the level, depth and severity of poverty in the developing world.") (link); Richard H. Adams, Jr., *Remittances and Poverty in Guatemala* (World Bank, Working Paper No. 3418, 2004) (link); Ernesto López-Córdova, *Globalization, Migration and Development: The Role of Mexican Migrant Remittances* (INTAL-ITD, Working Paper No. 20, 2006) (link).

31 WORLD BANK, INCREASING THE MACRO-IMPACT OF REMITTANCES ON DEVELOPMENT 4 (2007), *available at* http://gfmd.org/en/gfmd-documents-library/brussels-gfmd-2007/doc_download/423-rt-23-increasing-the-macro-impact-of-remittances-on-development-english.html ("Several studies also show that remittances provide capital to small entrepreneurs, reduce credit constraints and increase entrepreneurship.") (link); Reena Aggarwal et al., *Do Workers' Remittances Promote Financial Development?* 7 (World Bank, Working Paper No. 3957, 2006) ("Remittances have also been shown to promote entrepreneurship.") (link); Dean Yang, *International Migration, Human Capital, and Entrepreneurship: Evidence from Phillipine Migrants' Exchange Rate Shocks* 22–25 (World Bank, Working Paper No. 3578, 2005) (explaining that while "there is little evidence of a clear, strong relationship between the exchange rate shock and entrepreneurial activity overall . . . [,] it does appear that the exchange rate shocks are significantly associated [with] entry into *new* entrepreneurial activities.") (link).

32 *See* Aggarwal et al., *supra* note 31, at 4 (explaining that the authors' "empirical analysis provides support for a robust positive impact of remittances on financial sector development").

33 *See id.* at 2–3.

34 *See* Richard H. Adams, Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 WORLD DEV. 1645, 1660 (2005) (link).

35 *See* Aggarwal et al., *supra* note 31, at 6.

36 *See, e.g.*, GENERAL PRINCIPLES, *supra* note 1, at 4–5 (highlighting the "links between remittances . . . and poverty alleviation" as a key reason for the World Bank's ongoing involvement in reducing barriers to international remittances); G8 MINISTERS, RESPONSIBLE LEADERSHIP FOR A SUSTAINABLE FUTURE 49 (2009), *available at* http://www.g8italia2009.it/static/G8_Allegato/G8_Declaration_08_07_09_final,0.pdf (G8 Summit 2009 in L'Aquila) (noting the "development impact" of international remittances in a call for nations to facilitate a "more efficient transfer and improved use of remittances") (link).

37 As mobile banking continues to grow, the role these platforms hold in increasing distribution access points for remittance transfer providers is likely to increase. *See generally GSMA Mobile Money*

bile signal availability.[39] These changes will further fuel the beneficial role that remittances play in international economic development. The mobile phone may provide the critical determinant for the direction in which the industry evolves. The increasing ability to execute transfers through cyber communications and through mobile phones will reduce reliance on fixed-location access points, a change that benefits both senders and recipients.[40] Mobile remittances can help reduce the transfer costs for senders and the opportunity costs for recipients. For example, major technology companies are developing proprietary mobile payment platforms that operate across a multitude of banking and telecommunications networks, a "development that could shake up markets"[41] by creating a cheaper, more efficient means for connecting access points.

On the sending side, growth in mobile phone availability hints at changes on the horizon. Major U.S. technology firms are taking steps in the direction of a "mobile wallet." Google's newest version of its Android mobile operating system enables near-field communication, a development that could allow mobile phones to replace the dominance of card-based payment

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Deployment Tracking, MOBILE MONEY EXCHANGE, http://www.wirelessintelligence.com/mobile-money (last visited Feb. 13, 2010) [hereinafter *GSMA Mobile Money Deployment Tracking*] (documenting the current size of the mobile banking industry, which has grown from several platforms to several hundred platforms in the last few years) (link).

[38] Global mobile phone subscriptions have increased 13.5% in the last year to an estimated 5.28 billion. In developing countries, mobile phone subscriptions have increased 18.6% in the last year and now account for 72.8% of the world's total subscriptions. Just five years ago, the number of mobile phone subscriptions in developing countries represented 54.4% of the world's total subscriptions. *See Key Global Telecom Indicators for the World Telecommunication Service Sector*, INT'L TELECOMM. UNION, http://www.itu.int/ITU-D/ict/statistics/at_glance/KeyTelecom.html (last modified Oct. 21, 2010) (link).

[39] In July 2010, the number of worldwide mobile connections exceeded five billion. Only eighteen months earlier, the number of worldwide mobile connections had reached the four billion mark. Press Release, The GMSA, GSMA Announces that Global Mobile Connections Surpass 5 Billion (July 9, 2010), http://www.gsmworld.com/newsroom/press-releases/2010/5265.htm ("[T]he mobile penetration rate on a global basis at the 5 billion connection mark was 74 percent, compared to 60 percent at 4 billion connections. The highest penetrated region is Western Europe at 130 percent, while the lowest is Africa at 52 percent. Eastern Europe (123 percent) is the only other global region to have exceeded 100 percent mobile penetration.") (link); *see also* Ignacio Mas & Kabir Kumar, *Banking on Mobiles: Why, How, for Whom?*, CGAP FOCUS NOTE, June 2008, at 1, 3, *available at* http://www.cgap.org/gm/document-1.9.4400/FN48.pdf (link). In the first quarter of 2008, the wireless penetration rates in Africa, Latin America/Caribbean, and the Middle East were 30.60%, 70.40%, and 61.91% respectively. Availability is predicted to grow in those regions to 50.13%, 90.84%, and 98.26% respectively by the first quarter of 2012. *Id.*

[40] *See* MANUEL OROZCO ET AL., INTER-AMERICAN DIALOGUE, IS THERE A MATCH BETWEEN MIGRANTS, REMITTANCES AND TECHNOLOGY? 10–11 (2010), *available at* http://www.thedialogue.org/PublicationFiles/a%20match%20in%20migrants%20remittances%20and%20technology%20MO_FINAL_11.4.101.pdf (link).

[41] *See* Claudia McKay & Mark Pickens, *Branchless Banking 2010: Who's Served? At What Price? What's Next?*, CGAP FOCUS NOTE, Sept. 2010, at 1, 1, *available at* http://www.cgap.org/gm/document-1.9.47614/FN66_Rev1.pdf (link).

systems.[42] AT&T Mobility, T-Mobile USA, and Verizon Wireless have recently announced a new joint venture, Isis, to "build[] a mobile payment network that utilizes mobile phones to make point-of-sale purchases."[43] These three mobile carriers represent almost two-thirds of the U.S. market.[44] Google's and Isis's actions may signal the beginning of the transition from a card-based payment economy to a mobile-based payment economy.[45] As this progression continues, it is more likely that mobile-based systems will become the primary technology choice for sending remittances. Smaller operations are also emerging to facilitate mobile transfer and payment options,[46] while MoneyGram and Western Union both continue to expand their own mobile-based platforms.[47] These developments offer conveniences and, in the long run, the possibility of cheaper services for international remittance customers.[48]

On the receiving side, the development of increased distribution points provides the most important component for reducing opportunity costs for the recipient.[49] For decades, the dominant business model has relied on the

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[42] *See* Ryan Singel, *Next Android Version Includes E-Wallet for Real World Purchases*, WIRED EPICENTER (Nov. 15, 2010, 8:56 PM), http://www.wired.com/epicenter/2010/11/android-wallet (link).

[43] *AT&T, T-Mobile, and Verizon Wireless Announce Joint Venture to Build National Mobile Commerce Network*, ISIS, http://www.paywithisis.com/#/news/ (last visited Mar. 8. 2011).

[44] *See* Devindra Hardawar, *Pay With Your Phone: AT&T, Verizon, T-Mobile Announce Isis Mobile Commerce Network*, MOBILEBEAT (Nov. 16, 2010), http://venturebeat.com/2010/11/16/pay-with-your-phone-att-verizon-t-mobile-announce-isis-mobile-commerce-network/ (link).

[45] One of the largest card-based providers is changing course toward mobile-payments as well. *See* Elinor Mills, *Mobile Phone E-Wallets Get Closer to Reality*, CNET REVS. (Feb. 18, 2011, 4:00 AM), http://reviews.cnet.com/8301-13970_7-20032840-78.html (quoting the global head of Visa Mobile, who predicted that "The move from leather wallets to mobile wallets will come this year.") (link). The combined effect of these mobile developments suggests mobile-based systems are likely to rival or to replace card-based systems in the near future. *See id.*

[46] *See, e.g.*, *About Obopay*, OBOPAY, https://www.obopay.com/corporate/en_US/aboutUs.shtml (last visited Mar. 1, 2011) (link); *About Us*, PAYNEARME, http://www.paynearme.com/about (last visited Mar. 1, 2011) (link); *Mobile Money*, SHAKA PAY, http://shakapay.com/index.php/services/mobile (last visited Mar. 1, 2011) (link).

[47] Dan Butcher, *Western Union Reveals International Mobile Strategy*, MOBILE COMMERCE DAILY, (June 3, 2010), http://www.mobilecommercedaily.com/2010/06/03/western-union-reveals-international-mobile-strategy (link); Jordan Crook, *MoneyGram Launches Global Mobile Money Transfer Service*, MOBILE MARKETER (Aug. 4, 2009), http://www.mobilemarketer.com/cms/news/banking-payments/3830.html (link); Heather McLean, *Western Union and Etisalat Introduce M-Money Transfer to 18 Countries*, Posting to *Mobile Money Exchange*, GMSA (Feb. 17, 2011, 9:05 AM), http://www.mobilemoneyexchange.org/News/western-union-and-etisalat-introduce-m-money-transfer-to-18-countries (link); *Mobile Money Transfer Fact Sheet*, WESTERN UNION, http://corporate.westernunion.com/news_media_MobileMoney.html (last visited Mar. 1, 2011) (link); Courtney Muir, *MoneyGram Rolls Out Mobile Money Transfers Throughout US*, MOBILE COM. DAILY (Apr. 22, 2010), http://www.mobilecommercedaily.com/2010/04/22/moneygram-international-supports-mobile-money-transfers-throughout-us (link).

[48] Mobile banking is 19% cheaper on average than traditional banking and 50% cheaper than informal money transfer options. McKay & Pickens, *supra* note 41, at 2, 5 (asserting findings based on a 2009 "analysis of the prices of 16 branchless banking services and 10 traditional banks").

[49] An increased number of access points could also reduce transfer costs for the sender.

transfer provider securing fixed-location sending agents and distributing agents, thus forfeiting a significant percentage from the revenue stream to each.[50] The introduction of access points that deliver the transfer directly to the recipient can decrease transfer costs by reducing overall operating costs, expanding available markets, and enabling the development of new pricing structures.

Replacing fixed-location agents with an individual's mobile phone as the primary distribution point resolves remittance transfer problems of both access and cost. Businesses continue to capitalize on the fact that over "[eighty] percent of the world's population is now within mobile coverage."[51] For example, Paypal allows users to send money from their mobile phones and has recently teamed up with Globe GCASH to allow GCASH users in the Philippines to receive international remittances directly on their mobile phones.[52] Worldwide, 101 mobile banking platforms have already been deployed with another ninety-four planned deployments.[53] These companies have tended to build customer bases around a domestic transfer product and have subsequently offered an international remittance product.[54]

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50 *See* George R. Kalan & Dilek Aykut, Reps., Orien Ventures & World Bank, Assessment of Remittance Fee Pricing (July 2005), http://siteresources.worldbank.org/INTPROSPECTS/Resources/AssessmentofRemittanceFeePricing.pdf (Background paper for World Bank Global Economic Prospects 2006) (link).

51 *See* Mark Pickens et al., *Scenarios for Branchless Banking in 2020*, CGAP FOCUS NOTE, Oct. 2009, at 1, 2, *available at* http://www.cgap.org/gm/document-1.9.40599/FN57.pdf (link).

52 Farhard Irani, *Globe GCASH Uses PayPal to Transform Mobile Phones into Virtual Wallets*, PAYPAL BLOG (May 28, 2010), https://www.thepaypalblog.com/2010/05/globe-gcash-uses-paypal-to-transform-mobile-phones-into-virtual-wallets/ (link). Globe GCASH is a mobile banking platform that enables "GCASH subscribers to conveniently send and check GCASH balance" through the Internet and through mobile phones. GLOBE GCASH, https://www.gcashonline.net/g2mpgam78/ (last visited Feb. 20, 2011).

53 *GSMA Mobile Money Deployment Tracking*, *supra* note 37 (link). The GSM Association is "the global trade association for the mobile communications industry" and it tracks the mobile banking platforms that have already been deployed. McKay & Pickens, *supra* note 41, at 1 & n.1.

54 *See, e.g.*, Olusegun Abolaji Ogundeji, *Mobile Money Services Stay Hot in Sierra Leone*, COMPUTERWORLD ZAM. (Apr. 27, 2010), http://www.computerworldzambia.com/articles/2010/04/27/mobile-money-services-stay-hot-sierra-leone (exemplifying how one network-neutral platform, Sierra Leone's SplashMoney, first expanded its customer base and subsequently planned to introduce an international remittance product) (link); Michael Ouma, *M-Pesa Now Ventures Abroad to Tap into Diaspora Cash*, E. AFRICAN (Oct. 19, 2009, 12:00 AM), http://www.theeastafrican.co.ke/business/-/2560/673512/-/5gaimnz/-/index.html (exemplifying how one telecom-based platform, Kenya's M-Pesa, first expanded its customer base and subsequently introduced an international remittance product in 2009) (link).

D. Remittance Regulatory Structure

Policymakers should aim to create a "sound, predictable, non-discriminatory and proportionate" remittance regulatory system.[55] Before Dodd-Frank, remittances were regulated by individual states' financial institution regulations,[56] measures to combat money laundering and terrorism financing,[57] compliance with economic and trade sanctions,[58] and foreign governments' regulations and restrictions.[59]

Dodd-Frank's remittance provisions will have a significant effect on the development of the remittance industry. The ideal system would be a more competitive remittance market with common-sense consumer protection, such that the sender is protected but business is not stifled. The World Bank suggests that lower barriers to entry, transparent pricing, easy access to transfer services, and "reasonable" consumer protection would "reduce the price of remittance services" by creating a more competitive remittance market.[60] The Board has the opportunity to advance the international remittance industry toward these ideals.

II. REMITTANCES UNDER DODD-FRANK

Dodd-Frank was created "[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', [sic] to protect the American taxpayer by ending bailouts, [and] to protect consumers from abusive financial services practices . . . ."[61] With these aspirations, Dodd-Frank takes four actions in the remittance context. First, it adds a "Remittance Transfers" section[62] to the Electronic Funds Transfer Act (EFTA).[63] This section requires remittance transfer providers to make certain disclosures to consumers and to

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55 GENERAL PRINCIPLES, *supra* note 1, at 16.

56 *See, e.g.*, Money Transmission Act, CAL. FIN. CODE §§ 1800–03, 1805–06, 1810–22, 1825–28 (2011) (link).

57 The Financial Action Task Force (FATF) is an inter-governmental "policy-making body" established by the G-7 Summit in 1989. The FATF's *40+9 Recommendations* provide international standards to advise national legislative bodies on how to combat "money laundering and terrorist financing." *About the FATF*, THE FINANCIAL ACTION TASK FORCE, http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236836_1_1_1_1_1,00.html (last visited Jan. 19, 2011) (link); *see also* Timothy R. Lyman et al., *Regulating Transformational Branchless Banking: Mobile Phones and Other Technology to Increase Access to Finance*, CGAP FOCUS NOTE, Jan. 2008, at 9–10, *available at* http://ww.cgap.org/gm/document-1.9.2583/FN43.pdf (link).

58 *See, e.g.*, Schmitt & Cave, *supra* note 4.

59 *See, e.g.*, Lyman et al., *supra* note 57, at 1, 7–9 (explaining foreign governmental control of which entities can serve as financial distribution agents).

60 GENERAL PRINCIPLES, *supra* note 1, at 19–20.

61 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 1376 pmbl. (2010).

62 *Id.* § 1073(a)(4) 124 Stat. 1376, 2060–65 (proposed § 919).

63 15 U.S.C. § 1693 et seq. (2006).

post certain notices.[64] The section also establishes a transfer error procedure for the industry.[65] Second, Dodd-Frank instructs the Board "to work with the Federal Reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms" for international remittances.[66] Third, Dodd-Frank requires relevant federal agencies to "provide guidelines to financial institutions . . . regarding the offering of low-cost remittance transfers . . . ."[67] Fourth, Dodd-Frank requires that the Director of the Bureau of Consumer Financial Protection report to the President and relevant committees of the Senate and House of Representatives on the feasibility of using remittance transfer histories in developing credit scores.[68]

Dodd-Frank's real effects on the international remittance industry going forward remain unclear. There are nine areas where Dodd-Frank requires the Board to create a rule or standard or to comply with a reporting responsibility.[69] Additionally, there are five areas in the legislation that permit the Board to act if it sees fit.[70] The regulations must be introduced within eighteen months of the effective date of the legislation, by January 21, 2012[71]—although the remittance-transfer portion of the regulations are expected to be "among the first changes in consumer finance to emerge from" Dodd-Frank,[72] possibly arriving as early as mid-spring 2011.[73]

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64 *See infra* Part II.A.

65 Dodd-Frank Wall Street Reform and Consumer Protection Act § 1073(a)(4) (proposed § 919(d)(1)), 124 Stat. 1376, 2060–67.

66 *Id.* § 1073(b)(1).

67 *Id.* § 1073(c)(1).

68 *Id.* § 1073(e).

69 *See id.* §§ 1073(a)(4) (proposed §§ 919(a)(6)(A)(iii) (requiring prescription of Internet notice rules), 919(a)(6)(B) (requiring studies and analyses to determine the effectiveness of notice requirements), 919(d)(1)(B)(iii) (requiring determination of other appropriate remedies for remittance transfer errors), 919(d)(2) (requiring development of error resolution standards), 919(d)(3) (requiring creation of cancellation and refund rules), 919(f)(2) (requiring prescription of standards for agent liability)), 1073(b)(1) (requiring expansion of the use of the automated clearing house for remittance transfers), 1073(b)(2) (requiring reports on the status of the automated clearing house), 1073(e) (requiring reports on the use of remittance transfers for credit scores).

70 *Id.* § 1073(a)(4) (proposed §§ 919(a)(4)(B) (permitting extension of disclosure exceptions for banks and credit unions), 919(a)(5) (permitting any of four exemptions to the disclosure requirements), 919(a)(6)(A)(i)–(ii) (permitting creation of model transfer notice requirements), 919(a)(6)(A)(iv) (permitting creation of standards or requirements regarding notice requirements), 919(c) (permitting prescription of rules regarding transfers to nations where the amount of currency to be received may be unknown)).

71 *Id.* § 1073(a)(4) (proposed §§ 919(c), 919(d)(2)–(3)).

72 Carter Dougherty, *Western Union, MoneyGram May Lose as Fed Sets Remittance Rules*, BLOOMBERG (Nov. 10, 2010, 11:00 PM), http://www.bloomberg.com/news/2010-11-11/western-union-moneygram-may-lose-as-fed-warren-target-remittance-fees.html (link).

73 *CUNA, WOCCU Meet with Fed on Dodd-Frank Burdens*, CREDIT UNION NAT'L ASS'N (Oct. 20, 2010), http://www.cuna.org/newsnow/10/wash101910-2.html (link).

Within the EFTA section 919 amendment, there are two key mechanisms governing remittance provider operations: required disclosures and posted notices. Additionally, Congress has provided several more regulatory methods.

A. Required Disclosures

Dodd-Frank requires remittance transfer providers to make three written disclosures "in a form that the sender may keep."[74] First, upon requesting a transfer but before any payment for services is made, the sender must be given a statement that describes the amount to be distributed to the recipient, the associated fees, and the exchange rate "to the nearest 1/100th of a point."[75] Then, upon payment, the sender must be given two additional disclosures. First, the provider must produce a receipt detailing the information disclosed in the prior statement, the promised date of delivery, and the name and contact information (if provided) for the recipient.[76] Second, the provider must produce a statement that includes the sender's rights and the required contact information for the remittance transfer provider, for the relevant state regulator, and for the Board.[77]

If the remittance transfer is conducted through an asset account held in an insured bank or credit union and the transfer provider is unable to know the amount of currency to be received by the recipient, then the disclosure will be considered accurate under Dodd-Frank if it "provide[s] a reasonably accurate estimate."[78] This safe harbor provision is set to expire on July 22, 2015. However, Congress has permitted the Board to extend the exception up to an additional five years if the Board finds that not extending the provision would "negatively affect the ability" of banks or credit unions to send international remittances.[79] For all other transfer providers, the Board is permitted to create a similar "reasonably accurate estimate" exception in cases where the laws or transfer methods of the recipient country make it difficult for the transfer provider to know the amount of currency to be received.[80] Overly precise exchange rates and delivery dates can restrict the transfer provider's ability to transact through agents and would be a significant obstacle for some models of mobile remittances.

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[74] § 1073(a)(4) (proposed § 919(a)(1)–(2)), 124 Stat. 1376, 2060–65. These disclosures must "be made in English and in each of the foreign languages principally used" by the provider or agent with regard to that transfer product. *Id.* § 1073(a)(4) (proposed § 919(b)).

[75] *Id.* § 1073(a)(4) (proposed § 919(a)(2)(A)).

[76] *Id.* § 1073(a)(4) (proposed § 919(a)(2)(B)(i)).

[77] *Id.* § 1073(a)(4) (proposed § 919(a)(2)(B)(ii)).

[78] *Id.* § 1073(a)(4) (proposed § 919(a)(4)(A)). An "insured depository institution" is defined by Federal Deposit Insurance Act, 12 U.S.C. § 1813 (2006). *Id.* An "insured credit union" is defined by Federal Credit Union Act, 12 U.S.C. § 1752 (2006). *Id.*

[79] *Id.* § 1073(a)(4) (proposed § 919(a)(4)(B)).

[80] *Id.* § 1073(a)(4) (proposed § 919(c)).

Notably, Congress has provided the Board significant room for interpreting the strength and applicability of these disclosure requirements. In addition to the "reasonably accurate estimate" exception, Congress has allowed for the Board to create three exemptions to the disclosure requirements.[81] The Board can choose to enact any or all of the following: if the transaction is conducted by telephone, then the transfer provider can satisfy the initial disclosure over the telephone and the receipt and error resolution statement by mail;[82] all required disclosures can be executed in one document;[83] and, if conducted electronically, the transfer provider can satisfy the initial disclosure by displaying the required information "electronically in a manner that the sender can keep."[84] Enabling disclosure in various forms of media can encourage the application of technology to transfer operations, a step likely to support the growth of mobile remittances. Moreover, allowing for the consolidation of disclosure information can help increase the usefulness of these disclosures for the sender. These steps increase the likelihood that the legislation's intent will be realized in the regulations' effects.

B. Posted Notices

The legislation requires the Board to develop website notice requirements for transfer providers that offer Internet-initiated remittance transfers.[85] Additionally, Congress has given the Board the option to create storefront notice requirements for transfer providers.[86] These potential rules can include requiring transfer providers to "prominently post, and timely update, a notice describing a model remittance transfer"[87] and to display such notice in "every physical storefront location owned or controlled" by the provider.[88] The Board also has the authority to create additional storefront or Internet notice "standards or requirements."[89] Prior to creating either storefront or Internet notice requirements, the Board must "undertake appropriate studies and analyses" to determine whether these requirements will assist the consumer in price-shopping remittance services or in "understand[ing]" the fee structure of the services.[90]

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81 *Id.* § 1073(a)(4) (proposed § 919(a)(5)).
82 *Id.* § 1073(a)(4) (proposed § 919(a)(5)(A)–(B)).
83 *Id.* § 1073(a)(4) (proposed § 919(a)(5)(C)).
84 *Id.* § 1073(a)(4) (proposed § 919(a)(5)(D)).
85 *Id.* § 1073(a)(4) (proposed § 919(a)(6)(A)(iii)).
86 *Id.* § 1073(a)(4) (proposed §§ 919(a)(6)(A)(i)–(ii), 919(a)(6)(A)(iv)).
87 *Id.* § 1073(a)(4) (proposed § 919(a)(6)(A)(i)).
88 *Id.* § 1073(a)(4) (proposed § 919(a)(6)(A)(ii)).
89 *Id.* § 1073(a)(4) (proposed § 919(a)(6)(A)(iv)).
90 *Id.* § 1073(a)(4) (proposed § 919(a)(6)(B)).

C. Additional Responsibilities

Congress also established industry-wide procedures for transfer errors.[91] Furthermore, Congress instructed the Board to create "appropriate standards or conditions" for agent liability,[92] to "expand the use of the automated clearinghouse system" for international remittances,[93] and to report to both the President and Congress regarding the feasibility of using remittance histories in calculating credit scores.[94]

III. FEDERAL RESERVE'S REGULATIONS

In preparing to draft the regulations, the Board has held public meetings with various remittance industry lobbying constituencies,[95] many of whom are uncertain about the ramifications of Dodd-Frank's remittance provisions. The largest transfer providers believe the goals of Congress may be "well-intentioned," but that regulators have been afforded "a lot of latitude" and may end up creating "unintended consequences," such as reduced competition and increased costs for the consumer.[96] The regulations "may require technological upgrades"[97] and, some believe, the regulations "are likely to drive up the cost of most" U.S.-originated remittance transfers.[98] The smaller firms view the new rules as "an unnecessary burden" on the industry.[99]

To the contrary, this legislation fulfills an unmet need and has the potential to balance the interests of the consumer with the ability of the transfer providers to operate in a free manner. But, in electing to directly regulate the industry, Congress and the Board should follow a course that is most likely to ensure long-term industry growth, continued or greater market competition, and reduced prices for remittance senders.

The Board's regulations should strive to lower consumer costs by increasing competition and access to accurate real-time information, enabling the growth and use of emerging technology, and promoting the common-

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91 *Id.* § 1073(a)(4) (proposed § 919(d)(1)–(3)).

92 *Id.* § 1073(a)(4) (proposed § 919(f)(2)).

93 *Id.* § 1073(b)(1), 124 Stat. 1376, 2065.

94 *Id.* § 1073(e), 124 Stat. 1376, 2066–67.

95 *See Communications with the Public: Consumer Financial Protection,* BD. GOVERNORS FED. RESERVE SYS., *available at* http://www.federalreserve.gov/newsevents/reform_consumer.htm (last visited Feb. 13, 2011) (link).

96 Dougherty, *supra* note 72 (quoting representatives from both MoneyGram and Western Union).

97 *Id.*

98 *E.g.*, *Global Regulatory Update – September 2010*, WORLD COUNCIL OF CREDIT UNIONS, http://www.woccu.org/bestpractices/legreg/regupdate9 (last visited Feb. 13, 2011) (citing the Credit Union National Association) (link).

99 Dougherty, *supra* note 72 (citing the executive director of the National Money Transmitters Associations).

sense notion that the "benefits of regulation . . . outweigh the costs."[100] In this way, the U.S. regulatory system can help meet the international goal of reducing the global average service fee for remittance transfers, "generating a significant net increase in income for migrants and their families in the developing world."[101] To advance these goals and to enable the development of mobile banking, the remainder of Part III provides five recommendations that the Board should consider.

A. Section 919(a)(4)(B) & 919(c)—Disclosure Exceptions

The Board is permitted to extend the disclosure exceptions for certain institutions for an additional five years and to create a disclosure exception for transfers to some countries.[102] Absent an exception, the legislation requires the transfer provider to disclose the exchange rate "to the nearest 1/100th of a point"[103] and the promised date of delivery.[104] Because these precisions could constrain some transfer models and could limit the development of remittance transfers supported by mobile banking,[105] the issue focuses on whether the Board will allow for the continued use of floating rates and estimated dates. The Board should allow for estimated exchange rates and delivery dates in the instances where exceptions are permitted.

Some consumer advocates contend that "all institutions should comply with [the] full disclosure requirements in all instances" and should only be allowed to deviate "in the clearest instances of exchange-rate uncertainty."[106] Yet, cheaper transfers and greater choice between transfer providers and transfer models create a more impactful benefit for consumers

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[100] Rosemary Gallagher et al., Reps., Western Union, Remittance Disclosure Requirements Under the Dodd-Frank Wall Street Reform and Consumer Protection Act 19 (Nov. 3, 2010), http://www.federalreserve.gov/newsevents/files/western_union_meeting_20101103.pdf (Presentation at meeting between Federal Reserve Staff and representatives of Western Union) (link).

[101] G8 MINISTERS, *supra* note 36, ¶ 134.

[102] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073(a)(4) (proposed §§ 919(a)(4)(B), 919(c)), 124 Stat. 1376, 2060–65 (2010). Note that the Board may not extend the disclosure exceptions for more than ten years. *Id.*

[103] *Id.* § 1073(a)(4) (proposed § 919(a)(2)(A)(iii)).

[104] *Id.* § 1073(a)(4) (proposed § 919(a)(2)(B)(i)(II)).

[105] *See* Dan O'Malley et al., Reps., MoneyGram, Dodd-Frank Remittance Transfer Provisions Discussion 16 (Oct. 13, 2010), http://www.federalreserve.gov/newsevents/files/MoneyGram_meeting20101013.pdf [hereinafter MoneyGram mtg.] (Materials from the meeting between Federal Reserve Staff and representatives of MoneyGram) ("Innovations such as mobile transfers . . . will be stifled due to the challenges with fixing rates in a multi-network transfer[.]") (link); *id.* at 18 ("Innovation may be stifled as new transfer methods and the integration of networks can not easily comply with fixed rates (e.g. [sic] international [automated clearing house] networks) . . . . ").

[106] Annette LoVoi et al., Reps., Appleseed, Proposed Rulemaking under the Dodd-Frank Act, Section 1073, Remittance Transfers (Oct. 27, 2010), http://www.federalreserve.gov/newsevents/files/appleseed_meeting_20101027.pdf [hereinafter Appleseed mtg.] (Paper and materials from the meeting between Federal Reserve Staff and representatives of Appleseed) (link).

than the slight protections offered by over-precise rates and dates. Allowing transfer providers to use floating rates alleviates some costs because, in certain channels, "currency risk does not get priced into the transaction" and consumers can "time their receive in an attempt to get a better rate."[107] Moreover, non-closed loop transfer providers will be disadvantaged if the Board requires a precise delivery date because these providers "must rely on third-parties [sic] that control the ultimate distribution of the funds."[108] Any steps to limit the ability of transfer providers to rely on third-party distribution agents would be critically detrimental to the development of mobile remittance transfers at this stage.[109]

B. Section 919(a)(5)—Disclosure Exemptions

Congress has permitted the Board to adopt four exemptions that ease the ability of transfer providers to comply with the disclosure requirements.[110] The Board should allow for phone disclosure of the initial price quote[111] and for the transfer provider to issue a text-message or email disclosure immediately upon conclusion of the transaction. This, as opposed to the suggestion of mailing a receipt within one business day, is more likely to match the transaction with the disclosed information, and thus more effectively achieves the purpose of the proposed section 919 disclosure requirements.[112]

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[107] MoneyGram mtg., *supra* note 105, at 16.

[108] Danny Alaya & Daniel Lainsbury, Reps., Wells Fargo, Dodd-Frank Act Section 1073 Remittances 14 (Oct. 14, 2010), http://www.federalreserve.gov/newsevents/files/wells_fargo_meeting_20101014.pdf [hereinafter Wells Fargo mtg.] (Materials from the meeting between Federal Reserve Staff and representatives of Wells Fargo) (link).

[109] Mobile remittances will, at least initially, predominantly involve transfer providers joining with mobile banking platforms in markets around the world. These mobile companies team with a vast array of retail enterprises throughout their countries to enable customers to "cash out" the transfers. *See* DALBERG GLOBAL DEV. ADVISERS, CGAP TECH. PROGRAM, IMPROVING ACCESS AND REDUCING COSTS OF INTERNATIONAL REMITTANCES THROUGH BRANCHLESS BANKING SOLUTIONS 11–12, 17 (2010), http://www.cgap.org/gm/document-1.9.49049/Dalberg-CGAP_Intl_Remit_Branchless_Banking_Findings.pdf (providing examples of known deployments that involve partnerships between transfer providers and global banking platforms) (link). By restricting the ability of transfer providers to viably rely on agents at either of these stages, the range of possible business models will be severely constrained and variables for reducing the current average service fees will be removed. *See id.* at 14 (identifying common challenges in market entry).

[110] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073(a)(4) (proposed § 919(a)(5)), 124 Stat. 1376, 2061–63 (2010).

[111] Appleseed raises the concern that allowing oral disclosures for phone orders may corrupt the effectiveness of the requirement because "there is no guarantee that on each occasion that oral disclosures are used, they are provided exactly as prescribed." Appleseed mtg., *supra* note 106. This problem is negated if the Board allows for consolidated disclosures via text or email, simultaneously or immediately following the phone transaction.

[112] Dodd-Frank Wall Street Reform and Consumer Protection Act §1073(a)(4) (proposed §§ 919(a)(2)(A)–(B)), 124 Stat. 1376, 2060–65.

Additionally, the Board should allow the transfer provider to consolidate the three disclosures into one electronic or print receipt that clearly identifies the enumerated pieces of information. This consolidation is cheaper to comply with for the business and is more likely to be effective at conveying the intended information to the consumer. Multiple print or electronic disclosures increase the opportunity for confusion, as well as the odds that the consumer will disregard one or all of the statements, thus negating the purpose of the requirement in the first place.

These suggested regulations will effectively streamline the disclosure requirements for businesses and consumers, and will thus preserve the effects intended by Dodd-Frank. Further, by allowing for disclosure in various forms of media, the Board can enable transfer providers to diversify and to expand their operations through the use of technology. This possibility will, in turn, increase the likelihood of success for mobile-initiated transfer services and decrease costs for consumers.

C. Section 919(a)(6)(B)—Study the Effectiveness of Notice Requirements

Dodd-Frank requires the Board to prescribe rules regarding Internet notices and permits it to prescribe rules regarding storefront notices.[113] The Board is required to conduct "appropriate studies and analyses," prior to implementing rules regarding Internet or storefront notices, to determine whether such rules would actually improve the customer's ability to compare prices and to understand the associated costs.[114] The results of four inquiries will allow the Board to determine if notice requirements actually benefit the consumer, or if they simply impose unnecessary costs on businesses.

To adequately address many of the concerns raised by the businesses that have met with the Board and to comply with the legislation's directives, the Board should determine the comparative benefits for the consumer and the costs for the business for each of the following: (1) posting model transactions versus posting real-time price and foreign exchange rates;[115] (2) posting information for all transfer corridors offered at that location versus posting the most-used corridors for that location;[116] (3) requiring

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[113] *Id.* §1073(a)(4) (proposed §§ 919(a)(6)(i)–(iv)).

[114] *Id.* §1073(a)(4) (proposed § 919(a)(6)(B)).

[115] *See* Appleseed mtg., *supra* note 106; Wells Fargo mtg., *supra* note 108, at 9; Letter from Manuel Orozco, Dir., Remittances and Dev. Program of Inter-American Dialogue, to Daniel Akaka, U.S. Senator (Apr. 21, 2010), http://www.federalreserve.gov/newsevents/files/Inter-American_meeting20101013.pdf [hereinafter Orozco Letter] (link).

[116] For global transfer providers, any given location can potentially transfer money to 190 countries, but the vast majority of the customers at a given location will not be concerned with data for most of the options. To require each location to post information for all country corridors offered imposes significant costs, including development of new technology, without providing equal benefit for that specific location's customers. *See* MoneyGram mtg., *supra* note 105, at 12 (commenting that current technology is unavailable "to effectively dynamically post rates for 190 countries").

storefront notices versus making the information available through either an interactive terminal, a toll-free phone number, a website,[117] or a mobile application; and (iv) whether notice requirements would likely "inhibit" the offering of certain products or services.[118]

D. *Section 919(a)(6)(A)—Internet and Storefront Notice Requirements*

Requiring providers to physically post model transfers and fluctuating exchange rates throughout the day would institutionalize an inefficiency that achieves less protection for consumers than cheaper alternative options. As the director of Inter-American Dialogue points out, the effectiveness of posting model transfers raises "accuracy and disclosure problems," and the "physical posting" of prices and exchange rates is "most likely not" the solution to the consumer information gap.[119] Moreover, Wells Fargo believes storefront notice requirements may keep providers from offering beneficial products such as pricing based on account relationships or amount transferred.[120] MoneyGram contends that requiring a storefront notice would create a "significant competitive disadvantage" for MoneyGram and Western Union, "the only two global companies," because it would require real-time postings for up to 190 countries, while "single corridor providers" would only be responsible for one country.[121]

These criticisms support the conclusion that the most effective solution to enable efficient comparison shopping is to offer personalized, real-time price quotes. This solution would eliminate the need for pre-transaction dialogue with a transfer provider employee. Wells Fargo has suggested that the Board allow businesses to comply with notice requirements by providing computer terminals, toll-free phone numbers, or Internet websites to check real-time price and foreign exchange rate information for a given transaction.[122] What these solutions are getting at is the consumer's need for a twenty-first century solution, not an antiquated rule requiring the physical posting and updating of constantly fluctuating rates. To choose the latter would lock the industry into an inefficient and costly system, instead of looking forward to cheaper and more manageable solutions that simultaneously benefit both the business and the consumer.

The legislation divides remittance services between Internet-initiated and store-initiated transfers. Instead, the division should be between transfers requiring employee interaction, like store-based transfers, and those that do not. This distinction plays a bigger role in the consumer's ability to comparison shop transfer services. Where the pricing information is ob-

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117 *See* Wells Fargo mtg., *supra* note 108, at 10.
118 *Id.* at 8 (emphasis omitted).
119 Orozco Letter, *supra* note 115, at 1, 7.
120 Wells Fargo mtg., *supra* note 108, at 8.
121 MoneyGram mtg., *supra* note 105, at 12.
122 Wells Fargo mtg., *supra* note 108, at 10.

tained (storefront, in-store kiosk, mobile phone, or Internet) is irrelevant, so long as the same accurate information can be easily gathered from any of the sources without requiring the consumer to engage an employee of that provider.

Thus, the Board should not require transfer providers to post model transfer data. Instead, the Board should impose the storefront notice that has been called too costly and irrelevant, and make it applicable to all remittance transfers—both store-based and remote. But, it should allow transfer providers to comply by offering at least three of the following means for the consumer to gain personalized real-time pricing information: a store-based terminal, a toll-free phone number, a text-message system, a mobile application, or a Website. If the development and offering of these pro-consumer products is actually cheaper than the storefront notice as the companies suggest,[123] then the companies will pursue these options. This will result in the companies spending less than they would have under the storefront notice approach, and the consumer will have gained a wide spectrum of options for seeking real-time, personalized pricing information.

E. Section 919(f)(2)—Agent Liability Standards

Finally, the Board must develop "appropriate standards or conditions" for holding remittance transfer providers liable if their agents do not comply with Dodd-Frank's remittance provisions.[124] Yet, relevant state law and the "general tenets of principal-agent liability . . . apply regardless of . . . the specific liability provisions of Section 919."[125] Remittance transfer providers could be unfairly burdened without any commensurate increase in consumer protection if agent liability is defined too broadly. More importantly, setting too harsh of an agent liability standard will serve as a deterrent for transfer providers that would have otherwise experimented with different means for increasing sending and receiving access points to their networks, such as through mobile banking platforms. The Board should adopt a willful negligence standard for holding transfer providers liable for their agents' compliance failures.[126] The potential for reduced service fees arising from transfer providers exploring creative approaches to increase access points outweighs any additional protections offered by stricter agency liability policies.

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[123] *See, e.g.*, *id.* at 9 ("Storefront disclosures . . . effectively mandate electronic boards that can be automatically updated throughout the day.").

[124] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073(a)(4) (proposed § 919(f)(2)), 124 Stat. 1376, 2064 (2010).

[125] Appleseed mtg., *supra* note 106.

[126] MoneyGram mtg., *supra* note 105, at 17.

CONCLUSION

International remittances are essential to economic development around the world. A reduction in the global average remittance transfer fee can have a beneficial effect multiple times that of foreign development aid, and the growth of mobile banking is and will be an important key for reducing the cost. Remittances spur poverty reduction, entrepreneurship, and financial sector advancement in developing countries. In crafting the new Dodd-Frank regulations, the Board should take steps to enable mobile remittance transfers.

First, the Board should permit estimated exchange rates and dates of delivery in its disclosure exceptions. Second, the Board should permit phone and electronic disclosures, and allow for consolidation of the required disclosures. Third, the Board should thoroughly study the effectiveness of offering interactive price checks in meeting the goals of a storefront notice requirement. Fourth, the Board should pursue a notice requirement that facilitates consumer access to accurate personalized pricing data without the need to interact with an employee. Finally, the Board should adopt a willful negligence standard of agent liability.

Together, these five actions will encourage the development of mobile remittance transfers and are the most likely regulatory means for continuing the downward trend in remittance prices—an event that will help to alleviate global poverty.