



## **Summary of the Consumer Financial Protection Bureau's Final and Proposed Rules and Official Interpretation Regarding International Remittance Transfers June 5, 2012**

On January 20, 2012, the Consumer Financial Protection Bureau ("CFPB") amended Regulation E, which implements the Electronic Fund Transfer Act, and also amended the accompanying official interpretation to Regulation E, to establish new rules governing remittance transfer providers (the "Final Rule") and to implement section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act").<sup>1</sup>

At the same time, the CFPB released several model forms for use in connection with remittance transfers conducted in accordance with the Final Rule and official interpretation. The Final Rule will become effective on February 7, 2013, which is one year after publication in the *Federal Register*.<sup>2</sup>

Section 1073 of the Dodd-Frank Act amended the Electronic Fund Transfer Act to require remittance transfer providers to provide disclosures to senders of remittance transfers pursuant to rules issued by the CFPB. Specifically, remittance transfer providers must give senders a written pre-payment disclosure of specific information applicable to the sender's remittance transfer. A remittance transfer provider must provide a written receipt that includes both the information on the pre-payment disclosure and additional specified information. As amended, the Electronic Fund Transfer Act provides for specific error resolution procedures and requires the CFPB to adopt error resolution standards and cancellation and refund policies as well as standards of liability for remittance transfer providers, including those that act through agents. The Final Rule carries out the CFPB's responsibility for implementing these requirements.

Concurrently with issuance of the Final Rule, the CFPB issued a related proposed rule to further refine application of the Final Rule to certain transactions and remittance transfer providers ("Proposed Rule"). The Proposed Rule was also published in the *Federal Register* on February 7, 2012, with a proposed effective date of February 7, 2013, to coincide with the effective date of the Final Rule.

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<sup>1</sup> Regulation E implements the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.* Rulemaking authority with respect to Regulation E (other than EFTA § 920) was transferred from the Board of Governors of the Federal Reserve System to the CFPB pursuant to the Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). As defined by the Dodd-Frank Act, the term "remittance transfer" covers most electronic transfers of funds sent by consumers in the United States to recipients in other countries.

<sup>2</sup> 77 Fed. Reg. 6194 (February 7, 2012).

This paper provides a summary of the principal provisions of the CFPB Final Rule and the CFPB Proposed Rule regarding international remittance transfers. This paper also provides a summary of issues associated with these Rules.

## **I. The CFPB Final Rule**

The Final Rule applies to “remittance transfers” for personal, family or household purposes that are made by “remittance transfer providers.” A “remittance transfer” is defined broadly to include all electronic transfers of funds to designated recipients located in foreign countries that are initiated by a consumer in the United States utilizing a remittance transfer provider’s services.<sup>3</sup> A “remittance transfer provider” is defined as any entity providing remittance transfers in the “normal course of business,” a determination that is made based upon the specific facts and circumstances and that does not depend upon whether the consumer holds an account with the remittance provider. Types of remittance transfer providers include banks, thrifts, credit unions and money transmitters. Transfers in amounts of \$15 or less are exempt from coverage of the Final Rule.

### **A. Prepayment Disclosures**

Under the Final Rule, before a consumer pays for a remittance transfer, the remittance transfer provider must disclose to the consumer certain key aspects of the proposed transaction in writing, using terms specified in the Final Rule or substantially similar to those specified in the Final Rule, including:

1. the amount that will be transferred to the recipient in the currency in which the remittance transfer is funded (the “Transfer Amount”);
2. any fees and taxes imposed on the transfer by the remittance provider in the currency in which the remittance transfer is funded (the “Transfer Fees” and “Transfer Taxes”);
3. the total amount of the transaction in the currency in which the remittance transfer is funded, which reflects any fees and taxes that may be imposed (the “Total”);
4. the exchange rate, rounded consistently to between two and four decimal places (the “Exchange Rate”);
5. any fees and taxes imposed on the transfer by a third party (such as taxes imposed by the recipient’s foreign government), in the currency in which the funds will be received (the “Transfer Amount”);
6. the amount that will be transferred to the recipient in the currency in which the funds will be received, if the amount will be reduced by fees or taxes as described in paragraph (5) above (the “Other Fees” and “Other Taxes”); and

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<sup>3</sup> The definition of “remittance transfer” expands upon the definition of an “electronic fund transfer” in section 1005.3(b) of the EFTA, which has historically focused on electronic fund transfers involving “accounts” held at financial institutions. Under the new rules, before a consumer pays for a remittance transfer, the remittance transfer provider must disclose to the consumer certain key aspects of the proposed transaction, including financial institutions.

7. the total amount to be received by the recipient in the currency in which the funds will be received (the "Total to Recipient").

The Final Rule specifies that disclosures must be made in the English language and in each foreign language principally used by the remittance transfer provider, or any of its agents, to advertise, solicit or market at that office. For prepayment disclosures made in alternative formats, including mobile applications or text messages, the Final Rule permits such disclosures to be provided orally, by mobile application or return text message, provided that the remittance transfer provider complies with the foreign language requirements.

#### **B. Post-Transaction Receipt Requirements**

Under the Final Rule, the remittance transfer provider is generally required to provide a written receipt when payment is made. The receipt must include the information provided on the prepayment disclosure, as well as additional information, including the date by which the funds will be available to the recipient, the recipient's contact information, and information regarding the sender's error resolution and cancellation rights.

#### **C. Combined Disclosures**

As an alternative to the post-transaction receipt, the Final Rule permits remittance transfer providers to give senders a single written disclosure prior to payment containing all of the information required on the receipt, so long as the provider also provides proof of payment such as a stamp on the earlier document.

#### **D. Exceptions - Estimated Disclosures**

Although the prepayment disclosures and the receipt disclosures must be accurate when the sender pays for a remittance transfer, the Final Rule allows for two exceptions that would allow a remittance transfer provider to disclose an estimate of the amount of currency to be received, rather than the actual amount. The first exception is a temporary exception that expires on July 21, 2015. The first exception applies to insured depository institutions and insured credit unions that cannot determine certain disclosed amounts for reasons beyond their control. The second exception applies when the remittance transfer provider cannot determine the precise amounts to be disclosed due to the laws of a recipient country or the method by which transactions are made in the recipient country. The CFPB plans to issue a safe harbor list of countries to which the second exception applies prior to the effective date of the Final Rule and plans to update the safe harbor list periodically.

#### **E. Error Resolution Procedures**

The Final Rule sets forth error resolution procedures for remittance transfers that are similar to those that apply to financial institutions under Regulation E with respect to errors involving electronic fund transfers and defines additional circumstances that would not be considered errors. For example, under the final rule, an "error" does not include a change in the amount or type of the currency received by the recipient from the original type or amount

disclosed to the sender if the remittance transfer provider relied on the information provided by the sender in making the disclosure.

Under the Final Rule, an “error” has occurred if funds are correctly delivered by the remittance transfer provider to an unintended recipient account because the sender provided the incorrect account number. In such a case, the sender may resend the transfer or request a refund of the entire amount of the transfer and fees, even if the remittance transfer provider cannot recoup the improperly transferred funds.

#### **F. Cancellation and Refund Procedures**

In response to concerns that commenters raised, the Final Rule adopts a cancellation period that is reduced from one day to just 30 minutes. The Final Rule also implements a different cancellation and refund procedure for any remittance transfer scheduled by the sender at least three business days before the date of the transfer. For transfers scheduled at least three business days in advance, senders may generally cancel the transfer as long as the request to cancel is received by the remittance transfer provider at least three business days before the scheduled date of the remittance transfer.

#### **G. Provider Liability**

The Final Rule adopts a standard of liability under which a remittance transfer provider will be held liable for violations by an agent, when such agent acts for the provider.

#### **H. UCC 4A Preemption**

Under the Final Rule, wire transfers that are also “remittance transfers” will be governed by the EFTA and Article 4A of the Uniform Commercial Code (UCC) will no longer apply to those wire transfers. Thus, financial institutions that provide remittance transfer services by wire will lose the well-established legal framework that sets the rights, responsibilities and liabilities of financial institutions that participate in a wire transfer. In the preamble to the Final Rule, the CFPB indicates its view that,

...the best mechanisms for resolving this uncertainty rests with the states, which can amend their respective versions of UCC Article 4A, with the purveyors of rules applicable to specific wire transfer systems, which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts.<sup>4</sup>

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<sup>4</sup> 77 Fed. Reg. 6194, 6212.

## **II. The CFPB Proposed Rule**

### **A. Safe Harbor - Definition of “Remittance Transfer Provider”**

The Proposed Rule published by the CFPB concurrently with the Final Rule has two parts. First, the Proposed Rule seeks comment on a safe harbor under the definition of the term “remittance transfer provider” to aid in determining when a company is excluded from coverage of the Final Rule because it does not provide remittance transfers in the “normal course of business.” Under the proposed safe harbor, a company that does not exceed 25 remittance transfers in the previous calendar year would not be deemed to be providing remittance transfers in the normal course of business for the current calendar year if it provides no more than 25 remittance transfers in the current calendar year. The CFPB is requesting comment on whether the threshold number for the safe harbor should be higher or lower, such as 10 or 50 transfers.

### **B. Preauthorized Transfers**

The second part of the Proposed Rule on which the CFPB seeks comment relates to the safe harbor and other amendments to disclosure and cancellation rights for certain preauthorized remittance transfers, including those that are scheduled in advance to recur at substantially regular intervals. The Proposed Rule solicits comment on whether use of estimates should be permitted in the prepayment disclosure, alternative approaches to disclosures for recurring transactions, and whether the deadline of three business days within which to cancel a remittance transfer in the Final Rule should be changed to be earlier or later than three business days.

## **III. Issues Associated with the CFPB’s Final and Proposed Rules**

The CFPB’s Final and Proposed Rules raise several compliance issues for community banks that offer international funds transfers to consumers. First, the Final Rule provides only a temporary exception to certain disclosure requirements, until July 31, 2015, generally for institutions that are users of open network systems which involve the transfer of funds from the sending institution through one or more unaffiliated intermediary institutions. Second, the Final Rule covers a wide scope by defining “remittance transfer” to include virtually all electronic transfers of funds by a consumer to a recipient outside the US. Third, the Final Rule requires remittance transfer providers to disclose the amount of taxes and fees, which would require obtaining and monitoring information on foreign tax laws and fees charged by intermediary institutions and could violate certain privacy laws and laws designed to promote competition. Further, the Final Rule requires remittance transfer providers to disclose estimates of exchange rates, which in turn requires conducting research on exchange rates and willingness to manage the associated foreign exchange risk.

In addition to the issues raised by the Final Rule, the Proposed Rule would provide a safe harbor of 25 consumer-initiated international remittance transfers in the prior calendar year. Institutions that conduct fewer than 25 international remittance transfers in the prior calendar

year would not be subject to the disclosure and other requirements of the CFPB rule. In a public comment letter filed in April 2012, the ICBA recommended a safe harbor of 50 remittance transfers each month or 600 such transfers each year in order to provide a meaningful safe harbor that could be relied upon by smaller institutions.