



## **Summary of the CFPB Final Rules Regarding Remittance Transfers**

*Revised May 30, 2013*

The Consumer Financial Protection Bureau (“CFPB”) has amended Regulation E, which implements the Electronic Fund Transfer Act, and the accompanying official interpretation to Regulation E, to establish new rules governing remittance transfer providers as required by section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”).<sup>1</sup>

Section 1073 of the Dodd-Frank Act amended the Electronic Fund Transfer Act to require remittance transfer providers to provide disclosures to consumers that plan to initiate international funds transfers (“senders”) pursuant to rules issued by the CFPB. Specifically, remittance transfer providers must give senders a written, pre-payment disclosure pertaining to the sender’s remittance transfer as well as a written receipt that includes both the information on the pre-payment disclosure and additional specified information. As amended, the Electronic Fund Transfer Act also provides for specific error resolution procedures and standards as well as cancellation and refund policies and liability standards for remittance transfer providers, including those that act through agents. The “Final Rules” (summarized below) outline the CFPB’s actions associated with this rulemaking:

- **February 2012 Final Rule** - Established definitions, disclosures and error resolution procedures for consumer-initiated international funds transfers.
- **August 2012 Final Rule** - Revised rule to establish a “normal course of business” safe harbor of 100 transactions per calendar year and to establish procedures for preauthorized and recurring remittance transfers.
- **April 2013 Final Rule** - Revised rule to: (1) make the disclosure of foreign fees and fees imposed by a recipient institution optional for some remittance transfers; (2) change definitions and error resolution procedures for instances when funds are deposited into the wrong account because the sender provided an incorrect account number or routing

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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.

number; and, (3) extend the compliance effective date from Feb. 7, 2013 to Oct. 28, 2013.

Additionally, the CFPB released several model forms for use in connection with remittance transfers in accordance with the Regulation E Final Rules and official interpretation. The Final Rules become effective October 28, 2013.

This summary covers the principal provisions of the CFPB Final Rules regarding international remittance transfers.

## **I. Scope**

The Final Rules apply 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>2</sup> A “remittance transfer provider” is defined as any entity providing remittance transfers in the “normal course of business,” and does not depend upon whether the consumer holds an account with the remittance transfer provider. Remittance transfer providers include banks, thrifts, credit unions and money transmitters. Transfers in amounts of \$15 or less are exempt from the Final Rules.

## **II. Safe Harbor - Definition of “Normal Course of Business”**

The Final Rules provide a new 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 Rules because it does not provide remittance transfers in the “normal course of business.” Under the Final Rules, a company that does not exceed 100 remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, is not considered a remittance transfer provider and is exempt from compliance. For a company that exceeds the 100-transfer threshold, the Final Rules permits a reasonable time period, not to exceed six months, to begin compliance.

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<sup>2</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, including financial institutions and money transmitters, the remittance transfer provider must disclose to the consumer certain key aspects of the proposed transaction.

### **III. Prepayment Disclosures**

Under the Final 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 in writing, using terms specified in the Final Rules or substantially similar to those specified in the Final Rules, 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 above (the “Other Fees” and “Other Taxes”); and
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 Rules specify that disclosures must be made in English 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 Rules permit such disclosures to be provided orally, by mobile application or return text message, assuming that the remittance transfer provider complies with the foreign language requirements.

The 2013 April Final Rule modified the Final Rules to make optional the requirements to disclose fees imposed by a designated recipient’s institution and disclose foreign taxes. The Final Rules now require disclaimers indicating that the recipient may receive less than the disclosed total due to the fees and taxes charged by the recipient bank and/or taxing authority. While these two disclosures are optional, those remittance transfer providers that choose to provide these disclosures need to ensure that they are made in a clear and conspicuous manner.

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

Under the Final Rules, the remittance transfer provider is generally required to supply a written receipt when payment is made. The receipt must include the information provided on the prepayment disclosure, as well as 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.

#### **V. Combined Disclosures**

As an alternative to the post-transaction receipt, the Final Rules permit 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 furnishes proof of payment such as a stamp on the earlier document.

#### **VI. Exceptions - Estimated Disclosures**

Although the prepayment disclosures and the receipt disclosures must be accurate when the sender pays for a remittance transfer, the Final Rules grant 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 temporary and expires on July 21, 2015. This exception applies to insured depository institutions and 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 has issued a safe harbor list of countries<sup>3</sup> to which the second exception applies and plans to update the list periodically.

#### **VII. Error Resolution Procedures**

The Final Rules set forth similar error resolution procedures for remittance transfers under Regulation E with respect to errors involving electronic fund transfers. The Final Rules also define 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.

The April 2013 Final Rule revised the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because of incorrect or

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<sup>3</sup> This list was issued on Sept. 12, 2012 and consists of only five countries: Aruba, Brazil, China, Ethiopia and Libya.

insufficient information provided by the consumer that sent the funds. However, the remittance transfer must still use reasonably available means<sup>4</sup> to verify the recipient's account number and recipient institution identifier.<sup>5</sup>

If the transfer is sent to the incorrect account due to erroneous information provided by the sender, the remittance transfer provider must make reasonable efforts to recover the amount that was to be received, including: calling or contacting the institution that received the transfer, either directly or indirectly through any correspondent(s) or other service provider; using a messaging service through a funds transfer system; and acting promptly after being notified that funds were not received. If the funds cannot be recovered, the remittance transfer provider does not have to refund the transfer amount.

## **VIII. Cancellation and Refund Procedures**

Under the Final Rules a remittance transfer provider must comply with any oral or written request from the sender to cancel a remittance transfer that has been funded. The cancellation must occur within 30 minutes after the sender makes payment to fund the transaction if:

- the cancellation request enables the provider to identify the sender's name, his or her address or telephone number and the particular transfer to be cancelled; and
- the transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

After cancellation, the provider must refund, at no additional cost to the sender, the total amount of funds provided by the sender in connection with the remittance transfer. These refunds must include any fees and, to the extent not prohibited by law, taxes imposed in connection with the remittance transfers. Additionally, these refunds must be provided within three business days of receiving a sender's request to cancel the remittance transfer.

## **IX. Provider Liability**

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

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<sup>4</sup> This may include accessing a directory of Business Identifier Codes and verifying that the code furnished by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. Providers may also rely on other commercially-available databases or directories to check this information.

<sup>5</sup> This term refers to alphanumeric account or institution identifiers other than names or addresses, such as routing numbers, Canadian transit numbers, International Bank Account Numbers (IBANs), Business Identifier Codes (BICs) and other similar account or institution identifiers used to route a transaction.

## **X. UCC 4A Preemption**

Under the Final Rules, wire transfers initiated by consumer senders are defined as “remittance transfers” and are governed by the EFTA and UCC Article 4A 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. The CFPB stated in the Final Rules that the states should “amend their respective versions of UCC Article 4A...which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts.”<sup>6</sup>

## **XI. Preauthorized Transfers**

The Final Rules also provide separate disclosure requirements for remittance transfers before the transfer date, including preauthorized remittance transfers.

1. When a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers five or more business days before the transfer date, the Final Rules permit remittance transfer providers to estimate certain information in the prepayment disclosure and the receipt provided when payment is made. The Final Rules also require providers that estimate disclosure information to give the sender an additional receipt with accurate figures no later than one business day after the date of the transfer.
2. The Final Rules eliminate the requirement that a remittance transfer provider mail or deliver a prepayment disclosure for each subsequent transfer. A receipt must be sent, however, in a reasonable time prior to the transfer if certain disclosed information changes regarding the first preauthorized remittance transfer. This receipt may also contain estimates.

The Final Rules also include specific disclosure requirements regarding the prepayment disclosure and transfer receipts for preauthorized transfers, particularly for disclosing the dates of subsequent payments and the cancellation periods.

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<sup>6</sup> 77 Fed. Reg. 6194, 6212.