



Payment Systems Advisory ■

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CFPB Proposes Revisions to Remittance Transfer Rule

On April 15, 2014, the Consumer Financial Protection Bureau (CFPB) issued a proposal (the “Proposed Rule”)¹ to amend its remittance transfer regulations (“Remittance Transfer Rule” or “Rule”)² implementing Section 1073 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act of 2010 (“Section 1073”), which created new requirements for “remittance transfers.”

Background

The Remittance Transfer Rule, which took effect on October 28, 2013, sets forth a number of consumer protection requirements for consumer-initiated electronic transfers of funds to recipients in foreign countries (“remittance transfers”). Prior to the Dodd-Frank Act, remittance transfer transactions were generally excluded from most federal consumer protection laws. Accordingly, Section 1073 was included in the Dodd-Frank Act to “establish minimum protections for remittances sent by consumers in the United States to other countries” and specifically to protect immigrants who “send substantial portions of their earnings to family members abroad.”³ Although remittance transfer transactions are traditionally thought of as low-value, cross-border payments, the Remittance Transfer Rule defines the term “remittance transfer” broadly to include the vast majority of electronic transfers of funds sent by U.S. consumers to consumers and businesses in foreign countries (including ACH and wire transfer transactions, as well as the addition of funds to a prepaid card that is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country). The Rule requires “remittance transfer providers” to disclose certain information to the sender of a remittance transfer, including the exchange rate that will apply to the transfer and the amount of certain “covered” third-party fees. In addition, the Rule requires remittance transfer providers to investigate and remedy alleged “errors” relating to a transfer and gives senders a right to cancel a transfer within 30 minutes of making payment for the transfer.

Generally, the Rule requires that the transaction disclosures be accurate when a sender makes payment for the transfer. However, Section 1073 includes two statutory exceptions that permit remittance transfer providers to disclose estimates

¹ http://www.consumerfinance.gov/f/201404_cfpb_remittances-proposal.pdf.

² 12 C.F.R. Part 1005 (Regulation E), Subpart B.

³ S. Rep. 111-176, at 179 (2010), available at <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt176/pdf/CRPT-111srpt176.pdf>.

of exchange rates and covered third-party fees rather than exact amounts, including a “temporary exception” that is set to expire on July 21, 2015.⁴ The Proposed Rule would extend the “temporary exception” by five years, from July 21, 2015, through July 21, 2020. In addition, the Proposed Rule would make a number of “clarificatory amendments and technical corrections” to the Rule.

Proposed Extension of the “Temporary Exception”

As noted above, a remittance transfer provider is generally required to provide senders of remittance transfers with disclosures that include accurate information about the exchange rate and covered third-party fees associated with a transfer.⁵ The “temporary exception” allows a remittance transfer provider to disclose reasonably accurate estimates of such figures, rather than exact amounts, if:

- (i) a remittance transfer provider cannot determine the exact amounts “for reasons beyond its control”;
- (ii) a remittance transfer provider is an “insured institution” (i.e., an insured depository institution or credit union);
and
- (iii) the remittance transfer is sent from the sender’s account with the institution.

Commentary to the Rule explains that an insured institution cannot determine exact amounts “for reasons beyond its control” when a person “other than the insured institution, or a person with which the insured institution has no correspondent relationship, sets the exchange rate or imposes a covered third-party fee,” such as when a provider sends a transfer through an “open network” system.⁶ By the terms of the statute, the “temporary exception” is set to expire on July 21, 2015. However, Section 1073 permits the CFPB to extend this exception up to five additional years “if it determines that the termination of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers.”

After interviewing approximately 35 industry and consumer group stakeholders, the CFPB determined that “both small and large insured institutions continue to rely on the temporary exception for transfers from accounts when they believe fee and exchange rate information is not readily available” and that “[t]hese institutions have indicated to the Bureau that they are unlikely to find an alternative to their reliance on the temporary exception by July 21, 2015, for at least some portion of the remittance transfers for which they currently use the temporary exception.” Thus, the CFPB has reached a “preliminary determination” that the expiration of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers and, as permitted by Section 1073, proposes to extend the temporary exception by five years to July 21, 2020.

⁴ Section 1073 also includes a permanent statutory exception that permits a remittance transfer provider to provide estimates when the provider cannot determine the exact amounts at the time the disclosure is required because the laws of the recipient country do not permit such a determination or the method by which transactions are made in the recipient country does not permit such determination. In addition, in implementing the requirements of Section 1073, the CFPB created two additional permanent exceptions: (i) one that permits providers to disclose estimates for transfers scheduled five or more business days before the day of transfer; and (ii) a second that allows providers to estimate (if they choose to) non-covered third-party fees and taxes collected by a person other than the provider.

⁵ 12 C.F.R. § 1005.31(f).

⁶ Comment 32(a)(1)-1. The CFPB notes in the Proposed Rule that “the most common form of open network remittance transfer is a wire transfer, an electronically transmitted order that directs a receiving institution to deposit funds into an identified beneficiary’s account.”

Proposed Clarificatory Amendments and Technical Corrections

In addition to extending the “temporary exception,” the Proposed Rule would make the following amendments to the Rule:

- **Application of the Rule to U.S. military installations abroad.** The Remittance Transfer Rule applies when a sender located “in a State” sends funds to a designated recipient at a location in a “foreign country.”⁷ The CFPB has requested comment on whether and how it should clarify the application of the Rule to transfers to and from individuals and/or accounts located on U.S. military installations abroad (e.g., by clarifying whether or not, for purposes of the Rule, such locations should be treated as being in a state).
- **Treatment of transfers from non-consumer accounts.** The Rule applies when a transfer is requested by a consumer primarily for personal, family or household purposes.⁸ The Proposed Rule would add a new comment to clarify that the Rule does not apply to transfers from non-consumer accounts because “[f]or remittance transfers from an account, the primary purpose for which the account was established determines whether a transfer from that account is requested for personal, family, or household purposes.”
- **Clarification regarding faxes.** The Remittance Transfer Rule generally requires that disclosures be provided in writing, but does not specify what qualifies as a “writing.”⁹ The Proposed Rule would clarify that disclosures made by fax are considered to be provided in writing for purposes of the Rule.
- **Oral disclosures in response to a written remittance transfer “inquiry.”** The Rule permits remittance transfer providers to make prepayment disclosures orally if the “transaction is conducted orally and entirely by telephone” and if certain other language and disclosure requirements are satisfied.¹⁰ The CFPB notes that in some instances a transaction conducted over the telephone may initially have been requested by the consumer by mail, email or fax (e.g., where the remittance transfer provider telephones the consumer in response to the mail, email or fax request). The Proposed Rule would revise the commentary to explain that “a provider may conduct the transaction orally and entirely by telephone pursuant to [the Rule] when the provider treats that initial communication as an inquiry and subsequently responds to the consumer’s inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.”
- **Bureau website on receipts.** Under the Rule, remittance transfer providers are required to disclose contact information for the CFPB, including the CFPB’s website address, on receipts provided to senders.¹¹ The Proposed Rule would clarify that a provider may satisfy this requirement by disclosing the general website address for the CFPB (www.consumerfinance.gov), or an address of a page on the CFPB’s website that provides information for consumers about remittance transfers (such as the site that will be available at www.consumerfinance.gov/sending-money, which is currently under development). In addition, a provider making disclosures in a language other than English would be permitted, but not required, to disclose a CFPB website address that

⁷ See 12 C.F.R. § 1005.30(c) and 12 C.F.R. § 1005.30 (g).

⁸ See 12 C.F.R. § 1005.30(e) and 12 C.F.R. § 1005.30 (g).

⁹ 12 C.F.R. § 1005.31(a)(2).

¹⁰ 12 C.F.R. § 1005.31(a)(3).

¹¹ 12 C.F.R. § 1005.31(b)(2)(vi).

provides information for consumers about remittance transfers that is in the relevant language, if such website exists (such as the Spanish language site that will be available at www.consumerfinance.gov/enviar-dinero, which is currently under development).¹²

- **The definition of “error” and delays related to fraud and related screening.** The Rule defines “error” to include, among other things, the failure to make funds available to a designated recipient by the date of availability stated in the receipt (or combined disclosure) provided to the sender (a “delay error”), unless the failure occurs due to certain specified reasons, including for delays related to the remittance transfer provider’s fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311, et seq. (BSA), Office of Foreign Assets Control (OFAC) requirements, or similar laws or requirements.¹³ The Proposed Rule would add commentary to specify that this exception to the definition of error applies only to “delays related to individualized investigation or other special action by the remittance transfer provider or a third-party as required” by the BSA, OFAC requirements or similar laws or requirements (e.g., for delays related to investigations or special actions necessary to address potentially suspicious, blocked or prohibited activity in accordance with these requirements). However, “if a delay is caused by ordinary fraud screening or other screening procedures, where no potentially fraudulent, suspicious, blocked or prohibited activity is identified and no further investigation or action is required,” the exception would not apply.
- **Error resolution procedures and remedies.** The Proposed Rule would also clarify what should happen when a “delay error” occurs “but the funds are ultimately delivered to the designated recipient before the remedy is determined.”¹⁴ The Proposed Rule would clarify that under such circumstances, the provider must refund its own fees and any taxes collected on the transfer, but would have no further obligations to the sender in connection with the error.

Comments on the Proposed Rule must be received 30 days from the date the Proposed Rule is published in the *Federal Register*.

¹² The CFPB states in the Proposed Rule that although these websites are under development, it “expects these pages to contain information regarding consumers’ rights under the Remittance Rule, how consumers can use the receipts that they receive from providers, and how and when to lodge a complaint with the [CFPB]. The [CFPB] expects that the English and Spanish versions of this Web Site will be available by the time that the Bureau finalizes this proposal.”

¹³ 12 C.F.R. § 1005.33(a)(1)(iv).

¹⁴ With respect to “delay errors,” the Remittance Transfer Rule “generally permits a sender to choose either: (1) to obtain a refund of the amount tendered in connection with the remittance transfer that was not properly transmitted, or an amount appropriate to resolve the error, or (2) to have the remittance transfer provider resend to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or designated recipient. However, if the error resulted from the sender providing incorrect or insufficient information, [the Rule] requires a provider to refund or, at the consumer’s request, reapply to a new transfer, the total amount that the sender paid to the provider and it permits the provider to deduct from this amount fees actually imposed and, where not otherwise prohibited by law, taxes actually collected as part of the first unsuccessful remittance transfer attempt.”

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