



**Bryan Cave Alert:
With Recent Changes Issued by the CFPB,
Final Remittance Transfer Regulations
To Become Effective February 7, 2013**

One provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) that generated comparatively little concern when it was passed was section 1073 entitled “Remittance Transfers.” Closer examination and subsequent issuance of regulations has now drawn scrutiny to this provision, which was already so detailed and lengthy when it was inserted into the Dodd-Frank Act that there was little room for modification by the CFPB when the bureau issued its implementing regulations.

The CFPB’s new regulations are clearly “comprehensive.” Among other things, they:

- (i) mandate certain disclosures, including the amount of the exchange rate and the amount to be received, prior to and at the time of payment by the consumer for the transfer;
- (ii) provide for Federal rights regarding consumer cancellation and refund policies;
- (iii) require remittance transfer providers to investigate disputes and remedy errors regarding remittance transfers; and
- (iv) establish standards for the liability of remittance transfer providers for the acts of their agents and authorized delegates.

With the recent issuance by the CFPB of some modifications intended to soften the impact of the Remittance Transfers law and implementing regulations (the “Remittance Rules” or “Rules”), we now have the complete and final picture of how these new Remittance Rules will work. Unfortunately, they will still be exceedingly (and many argue unnecessarily) burdensome to implement as Section 1073 of the Dodd-Frank Act requires specific disclosures and error resolution rights for consumers who send remittance transfers to foreign countries. The Rules’ scope includes certain prepaid card-based international transfers and, to the concern of many banking and depository institutions, also includes international wire transfers, ACH transfers, and even bill pay transactions within its scope.

The purpose of this Client Alert is to assist Bryan Cave’s clients and friends in their efforts to comply with the new law and regulations in time for its February 7, 2013 effective date. Any underlining or bolding of terms in this Alert has been added by us, to assist you in interpreting and applying these complex Rules.

1. What are “remittance transfer providers” and which remittance transactions are covered?

The Remittance Rules apply to the “electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider” to be received by a designated recipient in a foreign country.

The term “remittance transfer provider” includes any person that provides remittance transfers (i) for a consumer (ii) in the normal course of its business, whether or not the consumer holds an account with such person. The transfer must be sent to a foreign location. Remittance transfer providers can include both banks and non-financial institutions, such as money transmitters. Small value transactions of \$15 or less are excluded and persons who provided 100 or fewer remittance transfers in both the current and the previous calendar year are also excluded.

To constitute a remittance transfer covered by the Rules, the transfer must be specifically requested by a consumer in the U.S., who is requesting the transfer primarily for personal, family or household purposes, and must be sent to a specifically identified recipient. The recipient may be either a consumer or a business. The Official Interpretations accompanying the Rules clarify that a transfer is still “sent by a remittance transfer provider” even when there is an intermediary directly engaged with the sender to send the transfer of funds. Examples of remittance transfers include:

- (1) consumer wire transfers to an international recipient,
- (2) international ACH transactions,
- (3) online bill payments to an international recipient, and
- (4) an addition of funds to certain prepaid cards used by a person in a foreign country.

The Rules apply to electronic transfers of funds, regardless of whether those transfers are considered electronic fund transfers under other parts of Regulation E, but do not apply to non-electronic remittance methods such as the mailing of checks or cash directly to a recipient.

2. What prepaid card programs are covered by the Rules?

The prepaid card provisions have been drafted relatively narrowly. Only loads/reloads to prepaid cards in which the issuer (or program manager or other prepaid program participant) sends the card directly to the foreign person at a foreign address are subject to these Remittance Rules. If the foreign person receives his or her card from a friend or family member, and not the card issuer, the Rules would not apply. For those prepaid card programs that involve cards sent by the issuer or program manager to a foreign person, any addition of funds by the card issuer or its agent (or another prepaid program participant) is covered by the Remittance Rules, *even if a person in the US also retains the ability to withdraw funds.* However, a payment card network or other similar third-party payment service that provides two cards to an individual cardholder and allows the cardholder to mail the card to a foreign recipient does not constitute a remittance transfer under the Rules.

In the *Federal Register* preamble to the Rules, the CFPB noted that any or all of the parties involved in a prepaid card program (which may include a program sponsor, program manager, and issuing bank, among others) may be a “remittance transfer provider” involved in providing a remittance transfer. In such a situation, however, only one set of disclosures must be given, and the providers must agree among themselves which party will take the actions necessary to comply with the requirements imposed by the Rules.

3. When persons use payment cards, such as credit, debit or prepaid cards in a foreign location or at a foreign merchant, would that be a covered remittance?

No. A payment network or other payment card program participant does not send a remittance transfer when a consumer provides a credit, debit or prepaid card directly to a foreign merchant as payment for goods or services, because the network is providing payment processing and settlement services on behalf of the foreign merchant or the card issuer, rather than the sender.

4. For covered remittance transfers what disclosure requirements apply?

The Rules contain detailed requirements for (1) pre-payment disclosures, (2) written receipts, (3) error resolution rights, (4) cancellation and refund rights, and (5) liability for the actions of agents.

Disclosures must be clear and conspicuous and must generally be in writing. Disclosures can be given electronically, if the sender so requests, but must be provided in a form that can be retained. For remittance transfers that are done entirely by telephone, specific instructions are included for oral disclosures. For remittance transfers that are done entirely by mobile phone, mobile application or text message, specific instructions are included for those disclosures as well. As noted below, the disclosure requirements generally set forth specific terms that are to be used in the disclosures, but please note that “substantially similar” terms may also be used.

The Rules require the following disclosures:

- *Prepayment disclosures:* The remittance transfer provider must provide the following disclosures to the sender when the transfer is requested by a consumer sender, but prior to payment:
 - The “transfer amount” (that is, the amount that will be transferred to the designated recipient), stated in the sender’s currency.
 - The amount of any “transfer fees” and “transfer taxes” imposed by the remittance transfer provider, each stated separately.
 - The total amount of the transaction (the sum of the above two amounts) in the sender’s currency, stated as the “total.”
 - The “exchange rate” used by the provider for the transfer (which must be “consistently” rounded to 2, 3 or 4 decimal places).
 - The “transfer amount” restated in the recipient’s currency, but only if there are other fees or taxes imposed by anyone other than the provider, calculated in accordance with the exchange rate shown.
 - If any fees or taxes are imposed by any persons other than the provider, the amount of such other fees and taxes, each stated separately as “other fees” and “other taxes.”
 - The total amount to be received by the designated recipient in the currency that the funds are to be received, using the term “total to recipient.”
- *Receipt disclosures:* The following disclosures must be made to the sender, as part of the receipt when the sender pays for the transaction:

- All of the prepayment disclosures described above.
- The date on which the funds will be available to the recipient stated as the “date available.”¹
- The name of the recipient, using the term “recipient.”
- The telephone number and/or address of the recipient, if provided by the sender.
- A statement about the sender’s error resolution and cancellation rights which must comport with the following terms (from the Model Disclosures):

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert Web site]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:²

- The name, telephone number(s) and website of the remittance transfer provider.
 - A statement that the sender can contact the state agency that licenses or charters the provider with respect to the remittance transfer and the CFPB for questions or complaints about the provider.
 - The name, telephone number(s) and website for both the state agency that licenses/charters the provider and the CFPB.
 - For any transfer scheduled by the sender at least three business days before the date of transfer, or the first in a series of preauthorized remittance transfers, the date that the provider will make the remittance transfer, using the term “transfer date.”
- *Combined disclosure:* In lieu of providing separate prepayment and receipt disclosures, a remittance transfer provider may provide all the receipt disclosures at the time the sender requests the transfers, but prior to payment for the transaction. The provider must also provide proof of payment to the sender when payment is made.³

The Rules include specific requirements for presentation of disclosures, including formatting, font size (minimum eight-point font – except for mobile and text disclosures) location, grouping and timing of disclosures. If the remittance transfer is advertised in any foreign languages, then the disclosures must also be in such foreign languages.

¹ The “date available” should be the latest date that the funds may be available. Remittance transfer providers are invited to disclose that the funds “may be available sooner.”

² Note: For remittance transfers scheduled at least 3 business days in advance, different rights of cancellation apply and different disclosure language is required. In addition, remittance transfer providers must provide “long form” notices of error resolution and cancellation rights upon request.

³ For transfers scheduled in advance where payment is not processed at the time the transfer is scheduled, the provider may provide confirmation that the transfer has been scheduled in lieu of proof of payment.

5. How do the Remittance Rules impact disclosures for prepaid card programs?

With respect to the exchange rate requirements for remittance transfers involving prepaid cards, the CFPB explained in the preamble to the Rule that the funds to be received by the designated recipient are those that are loaded onto the prepaid card by the sender at the time of the transaction. The CFPB noted that a prepaid card is often both funded and loaded in U.S. dollars, and the funds remain in U.S. dollars until a cardholder withdraws funds in a foreign currency. In such instances, the provider need not provide an exchange rate disclosure, because the transfer is sent and received in the same currency.

6. How do the Rules deal with remittance transfer providers who do not have the disclosure data required under the Rules?

Certain remittance transfer providers, including many licensed money transmitters, operate a “closed network,” meaning that they have direct contracts with the entities that pay out the transfer amounts to recipients. Parties to these closed network transactions are connected by contractual agreements. The preamble to the Rules acknowledges that this makes it “easier to predict fees and taxes deducted over the course of a transaction, to obtain information about exchange rates and other matters, and to ensure compliance with procedures designed to reduce and resolve errors.”

Compliance, however, is much more difficult with “open network” remittances when there is no pre-existing contractual relationship with potential intermediaries involved in the transfer. This is common with respect to bank wire transfers and ACH transfers.

Temporary Exception: To deal with these issues, the CFPB has added to the Rules certain temporary measures that allow for estimated disclosures. These temporary measures, which expire on July 21, 2015, are intended to benefit depository institutions by permitting them to use “estimates” instead of defined amounts and rates in their disclosures. The temporary measures only apply under the following circumstances:

- (i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;
- (ii) A remittance transfer provider is an insured institution;⁴ and
- (iii) The remittance transfer is sent from the sender’s account with the institution.

Permanent Exception for Transfers to Certain Countries: In addition, estimates may be provided for remittance transfers to certain countries, when the remittance transfer provider cannot determine the exact amounts at the time that the disclosure is required because:

- (A) The laws of the recipient country do not permit such a determination, or

⁴ The term “insured institution” means FDIC insured depository institutions (which includes uninsured U.S. branches and agencies of foreign depository institutions) and insured credit unions.

(B) The method by which transactions are made in the recipient country does not permit such determination.

The CFPB will publish a list of countries for which estimates can be provided, due to those countries' laws or methods of providing transfers. Such list will provide a "safe harbor" for the remittance transfer provider's use of estimates, unless the provider has information that a country's laws or the method of transfer permits a determination of the exact disclosure amount.

Permanent Exception for Transfers Scheduled in Advance: The CFPB's recent revisions to the Rules also created a permanent exception allowing estimates to be used for certain disclosures when a transfer is scheduled five or more business days before the date of transfer.

The Rules go into detail setting forth when estimates can be used and how such estimates must be determined.

7. What procedures are required for resolving errors?

The Rules prescribe the procedures for dealing with five types of errors:

(i) An incorrect amount paid by a sender in connection with a remittance transfer (unless the discrepancy relates to an estimate used for the amount to be paid by the sender).

(ii) A computational or bookkeeping error made by the remittance transfer provider relating to a remittance transfer.

(iii) The failure to make available to the recipient the amount of currency stated in the disclosure provided to the sender unless the disclosure was an "estimate" permitted by the Rules or unless the failure was caused by extraordinary circumstances outside the remittance transfer provider's control.

(iv) The failure to make funds available to a designated recipient by the date of availability stated in the disclosure unless the failure was caused by extraordinary circumstances outside the remittance transfer provider's control, or the delay was caused by anti-money laundering compliance screenings, anti-fraud screenings, Office of Foreign Assets Control (OFAC) requirements, or if there is evidence of fraudulent intent.

(v) A request from the sender for further documentation or clarification, including seeking information about a possible error.

For these kinds of errors, detailed procedures must be followed, including requiring the sender to provide oral or written notice to the provider within 180 days, and requiring the remittance transfer provider to investigate and respond within 90 days. The Rules also set forth specific remedies as well as procedures to be followed if the provider determines that no error has occurred.

8. How do the Rules address preauthorized transfers?

Specific provisions are included in the Rules for "preauthorized" remittance transfers, which occur when a sender preauthorizes future transfers to recur at substantially regular intervals. The

Rules include some modifications to the disclosure and cancellation requirements, based on the fact that the sender's instructions may be received weeks, months and even years before the actual transfer occurs.

9. What is the impact of the new supplementary final rule?

In August 2012, the CFPB issued an additional final rule on remittance transfers containing revisions to the original Remittance Rules. The revisions create a safe harbor for transfers that are not made in the normal course of business, and modify requirements for preauthorized transfers scheduled in advance as well as cancellation and disclosure requirements. Some of the more significant changes include the following:

- **Safe harbor for transfers not made in the normal course of business.** As discussed above, the Rules define a “remittance transfer provider” as “any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.” The CFPB has added a safe harbor to that definition for any person who provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer transfers in the current calendar year.
 - If a person provided 100 or fewer remittance transfers in the previous calendar year but in the current year provides more than 100 transfers, and is providing those transfers for consumers in the normal course of its business, that person is granted a reasonable period of time, not to exceed six months, to begin complying with the Rule. Compliance with the rule is not required for any transfers where payment is made during that six month period. Whether a person provides remittance transfers in the normal course of its business, however, remains a matter of facts and circumstances.
 - In the revised Official Interpretations accompanying the Rules, the CFPB notes that the number of remittance transfers used for the above calculations does not include any transfers that are generally excluded from the definition of “remittance transfer,” such as small value transfers of \$15 or less or securities and commodities transfers.
- **Revised disclosure rules for preauthorized transfers and transfers scheduled in advance.** For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized transfers, the remittance transfer provider may estimate certain information in the prepayment disclosure and the receipt that is provided when payment is made.
 - The requirement that prepayment disclosures be mailed or delivered for each subsequent preauthorized remittance transfer has been eliminated.
 - If a remittance transfer provider gives disclosures that include such estimates, the provider must mail or deliver to the sender an additional receipt with accurate

figures no later than one business day after the date of the transfer. However, if the transfer of funds is made from the sender's account held by the provider, this receipt may be provided on or with the next periodic statement for that account, or, if a periodic statement is not provided, within 30 days after the date of the transfer.

- If any information on the most recent receipt is no longer accurate for a subsequent transfer, the remittance transfer must mail or deliver an updated receipt to the sender within a reasonable period of time prior to the scheduled date of the next preauthorized transfer. The new receipt, which may contain estimates, must clearly and conspicuously indicate that it contains updated disclosures.
- **Date disclosures for transfers scheduled in advance.** For transfers scheduled at least three business days in advance and for the first in a series of preauthorized transfers, the remittance transfer provider must disclose the date of the transfer in the receipt that is provided when payment is made. The transfer date for a specific transfer also must be disclosed on any subsequent receipts provided for that transfer.
 - For subsequent preauthorized transfers, the remittance transfer provider must disclose the date(s) on which it will make subsequent transfers as well as a statement about the sender's cancellation rights. This disclosure must be received by the sender no more than twelve months and no less than five business days prior to the date of any subsequent transfer to which it relates.

The Rules, including the recent revisions, are currently slated to become effective on February 7, 2013.

The original Rules are available at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-07/pdf/2012-1728.pdf>. The recent revisions to the Rules are available at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-20/pdf/2012-19702.pdf>.

If you have any questions or would like more information about the Remittance Rules, please contact Judie Rinearson or Kris Andreassen.

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