

CFPB Issues Final Remittance Transfer Regulations Under Dodd-Frank Act

By [Brian J. Hurh](#) and [Andrew Owens](#) on February 1st, 2012

On Jan. 20, 2011, the Consumer Financial Protection Bureau (CFPB or Bureau) released its long-anticipated rules governing certain electronic money transfers or “remittance transfers.”¹ The new “remittance transfer” rules implement provisions of Dodd-Frank² by imposing—for the first time—federally mandated disclosure, error resolution and cancellation rights on remittance transfer providers, which can include both financial and non-financial institutions. Non-depository financial institutions such as money transmitters, which have been traditionally governed principally by state law (except for federal Bank Secrecy Act requirements), will now be subject to these new federal rules.

The final rules will be codified as new “subpart B” to Regulation E³ under the Electronic Fund Transfer Act (EFTA). The new remittance rules are effective one year from publication in the Federal Register. Concurrently with the final rules, the Bureau is also seeking comment on proposed standards for (i) determining whether a person provides remittance transfers “in the normal course of business,” and (ii) applying disclosure and cancellation requirements to scheduled transfers, including recurring transfers.

Required Elements of a “Remittance Transfer”

A remittance transfer involves (i) an “electronic” transfer of funds (ii) delivered by a “remittance transfer provider” (iii) upon request of a “sender” located in the United States (iv) to a “designated recipient” (consumer or business) located in a foreign country. Checks, drafts and other paper (i.e., non-electronic) instruments are not covered; however, open network transactions (e.g., wire transfers, ACH transactions) are covered. A remittance transfer can, but need not, be an “electronic fund transfer” (EFT)⁴, which are covered by the legacy Regulation E rules (now codified as new “subpart A”). The elements of a remittance transfer are further explained as follows:

- A “sender” must be located in the United States and request a remittance transfer “primarily for personal, family or household purposes.” Business-to-business or business-to-consumer transactions are not covered, but consumer-to-business transactions (for personal, family or household purposes) are covered, including bill payment services.
- The “designated recipient” must be located in a foreign country. The rules cover transfers to a foreign account (e.g., savings or checking account), even if the sender retains the ability to draw funds from the account. This departs from the Bureau’s proposed rule, which would have excluded such a transaction under the reasoning that it would not be clear who the “designated recipient” is if both the sender and receiver can access the funds. Thus, under the final rules, the “location of the account” will determine whether a transaction is covered.
- The “remittance transfer provider” (RTP) is any person (including a financial or a non-financial institution) that provides remittance transfers for a consumer “in the normal course of its business.” The term does not include foreign merchants that receive card or bank information



directly from the consumer. Similarly, payment card networks that provide payment processing and settlement services, and financial institutions that merely deliver payment to a merchant, are not RTPs unless directly involved with the transfer of funds (e.g., a bank's online bill payment service). Defining "normal course of business" is one of the subjects at issue in the concurrent proposal.

Two Exceptions

The rules do not apply to "small value transactions," which are transfer amounts of \$15 or less, as measured by the currency in which the remittance transfer is initially funded.

The rules also exempt remittance transfers whose primary purpose is the purchase or sale of securities or commodities. This exclusion, which was not in the proposed rule, mirrors the exclusion for EFTs under Regulation E.

Disclosures

The principal RTP requirement under the new remittance rules is for providers to give written or oral disclosures about the transaction, including over-the-telephone disclosures and electronic disclosures, with specific carve-outs for transactions performed entirely via text message or mobile application.

In general, disclosures must be "clear and conspicuous," "in writing" and in "a retainable form." Electronic disclosures are permitted if the remittance is requested electronically, without regard to compliance with the E-Sign Act⁵, and the disclosure is "retainable." Disclosures made through mobile application or by text message need not be "retainable." Moreover, the rules' formatting guidelines for disclosures do not apply to mobile applications and text message disclosures.

Disclosures must be made in English and, if applicable, in either (i) the foreign languages "principally" used by the RTP for advertising, soliciting and advertising remittance services at a particular office, or (ii) the foreign language "primarily" used by the sender (if it is one of the principal languages used by the RTP as described above). Because the "principally used" requirement is applied on an office-by-office basis, it could impose substantial compliance costs on those providers that have many offices or branches and target a variety of non-English speaking customers. Oral, mobile application and text message disclosures must be made in the language primarily used by the sender, if also used or spoken by the RTP (even if not "principally used" by the RTP as described above).

RTPs have the option of providing senders with either (i) a pre-payment disclosure and a post-payment receipt; or (ii) a combination of the two as a single pre-payment disclosure (with proof of payment).

1. *Pre-payment disclosures* must be provided to the sender prior to payment for the transfer and generally include the amount to be transferred, including taxes and fees; the applicable exchange rate; and the amount to be received in the foreign currency, less fees and taxes. Insured depository institutions and credit unions acting as RTPs may rely on estimates of the exchange rate, certain taxes and fees, and the transferred amount in the foreign currency until



July 2015 (subject to a 5-year extension). Additionally, any RTP may rely on such estimates if the RTP cannot determine certain amounts to be disclosed because of (i) the laws of a recipient country; or (ii) the method by which transactions are made in the recipient country. The Bureau expects to publish a safe harbor list of countries that qualify for the exception. For oral, mobile application and text message transfers, the RTP must also disclose (orally or via mobile application or text message) the sender's cancellation rights prior to payment for the transfer.

2. *Post-transaction receipts* must be provided to the sender after payment is made and must include all of the pre-payment disclosures as well as the date the funds will be available, the recipient's contact information, the sender's error resolution and cancellation rights, the RTP's contact information and website, and information on contacting the relevant State licensing agency and the CFPB.
3. *Combined disclosure alternative.* An RTP may instead provide the pre-payment and post-transaction receipt information as a single disclosure prior to payment for the transfer, so long as "clear and conspicuous" proof of payment is also provided (either on the disclosure itself or in a separate document).

Error Resolution Procedures

An RTP must follow error resolution procedures that are similar in important respects to those applied to EFTs. Actions that trigger the resolution procedures generally include an incorrect payment by the sender; RTP-related failures (e.g., computational errors, failed delivery), and a sender's request for the required disclosures or additional information or clarification; but they do not include differences between the actual and estimated amounts, fraud, and "extraordinary circumstances" outside the RTP's control not reasonably anticipated. Status inquiries, change requests, and requests for information for tax and recordkeeping purposes also do not constitute "errors."

In most cases, a sender must give oral or written notice of an "error" within 180 days of the promised delivery date, which in turn triggers the RTP's duty to investigate within 90 days. The RTP must report its results, including remedies, if any, to the sender within three business days of completing the investigation. The RTP must correct an error within one business day or "as soon as reasonably practicable after" receiving the sender's preferred choice of remedy. In contrast to EFT error resolution, there is no ability to "provisionally recredit" the sender and extend the time period for investigation. Documentation related to an investigation must be retained for at least two years from the error notice. The rules clarify the applicability of the interplay between the error resolution procedures for EFTs, remittance transfers and credit transactions under Regulation Z.

Cancellations and Refunds

Senders have a right to cancel a remittance transfer orally or in writing if made within 30 minutes after the sender makes payment, if the transferred funds have not yet been picked up by the recipient or deposited in the recipient's account. The RTP must issue a refund of the total amount, including fees and taxes, within three business days of receiving the cancellation notice, at no additional cost to the sender. For transfers scheduled at least three days prior to the transfer date, including recurring transfers, an RTP must cancel and refund the transfer if notice is received at least three business days before the scheduled transfer.



Advance Transfers

Though absent in the proposed rules, the Bureau adopted final rules for advance (including recurring) transfers that are generally similar to the remittance rules, with some variation. These requirements are, however, subject to further revision pending the outcome of the Bureau's concurrent proposal.

As currently adopted, the first scheduled transfer must include the pre-payment and receipt disclosures—there is no combined disclosure option. Estimates may be used in the pre-payment disclosure. For subsequent transfers, the RTP must mail or deliver pre-payment disclosures within a “reasonable time” prior to the scheduled transfer date. RTPs must provide a receipt no later than one business day after the transfer date. For transfers made from an account held by the RTP, the RTP may provide the receipt with the next regularly scheduled periodic statement or within 30 days after payment is made if no statement is provided.

Liability for Agents

A RTP is liable for any violation of the final rules by an agent when such agent acts for the provider. Agency is determined under state law.

Relationship to Other Laws

Although the remittance rules apply to RTPs only, the rules clarify that certain of the legacy Regulation E provisions may still apply to RTPs where a remittance transfer is also an EFT.

The Bureau also acknowledged the potential legal uncertainty due to the rules' overlap with Article 4A of the Uniform Commercial Code, which does not apply to transfers under EFTA. Thus, because consumer-initiated international wire transfers will now be covered by Regulation E through the remittance rules, they will no longer be subject to Article 4A. Commercial wire transfers remain unaffected.

The Bureau also recognized that the Financial Crimes Enforcement Network's (FinCEN) rules under the Bank Secrecy Act exclude transfers subject to EFTA. Because consumer-initiated wire transfers will be governed by Regulation E through the remittance rules, they will be excluded from coverage under the Bank Secrecy Act. The Bureau has urged FinCEN to amend its rules so that they continue to apply to remittance transfers after the effective date of the remittance rules.

Concurrent Proposal

In its concurrent proposal, the Bureau has solicited comment on a possible safe harbor to define when a person does not provide transfers in the “normal course of business” for purposes of defining “remittance transfer provider.” Under the proposed safe harbor, as of any date, if a person has made no more than 25 remittance transfers in the *previous* calendar year, that person does not provide transfers in the “normal course of business” for the *current* year if it provides no more than 25 remittance transfers in such year. However, if that person makes a 26th remittance transfer in the *current* calendar year, the person could be considered an RTP, depending on the facts and



circumstances of the transfers. The Bureau has also requested comment on whether these transfer thresholds should be higher or lower.

The Bureau has also solicited comment on several aspects of the rules for advanced transfers. For example, the Bureau seeks input on how frequently consumers request advanced transfers and whether certain scheduled transfers should be deemed standalone transactions or part of a series of recurring transactions. It also questions whether estimates should be permitted for certain advanced transfers and, if so, whether an RTP should be required to provide a second receipt with accurate information closer to the time the transfer is scheduled to occur. The Bureau has also inquired whether an RTP may disclose a formula that will be used to calculate the applicable exchange rate based on publicly available information, in lieu of an estimated rate.

With respect to subsequent transfers, the Bureau has proposed adopting a 10-day “safe harbor” to the requirement that pre-payment disclosures be provided “within a reasonable time” before a scheduled transfer. Alternatively, the Board has proposed eliminating the pre-payment disclosure requirement for scheduled transfers based on the potentially limited benefit to senders versus the cost to RTPs of providing disclosures before each subsequent transfer.

Finally, the Bureau has solicited comment on the cancellation deadlines as applied to advanced transfers, including whether the deadline to cancel an advanced transfer should be more or less than the three business days currently set forth in the final rules; whether the deadline to cancel should be disclosed in a different manner; and whether the cancellation deadline should be disclosed in the pre-payment disclosure for each subsequent transfer, rather than in the receipt.

Comments will be due sixty days after publication of the concurrent proposal in the Federal Register.

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¹ The proposed rules were originally released by the Board of Governors of the Federal Reserve in May 2011, see 76 Fed. Reg. 29902 (May 23, 2011).

² Pub. L. 111-203, 124 Stat. 1376, § 1073 (2010)

³ 12 C.F.R. §§ 1005.30 – .36.

⁴ An EFT is defined as: “any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account.” 12 C.F.R. § 1005.3(b).

⁵ *Electronic Signatures in Global and National Commerce*, 15 U.S.C. § 7001 et. seq.

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