

CFPB Announces More Changes to Come for Remittance Rule, Delayed Implementation

BY CHRIS DANIEL, KEVIN L. PETRASIC, HELEN Y. LEE & HEENA A. ALI

On November 27, 2012, the Consumer Financial Protection Bureau (“CFPB”) issued a bulletin (“[Bulletin](#)”)¹ announcing the agency’s intent to propose amendments to its not-yet-effective final rule on foreign remittance transfers that was issued earlier this year and scheduled to become effective on February 7, 2013 (“[Remittance Rule](#)”).² The Remittance Rule implements Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“[Dodd-Frank Act](#)”).³ The forthcoming proposed rulemaking is expected to “refine” three elements of the Remittance Rule in response to feedback received from industry participants regarding implementation challenges.⁴ The proposed revisions specifically address:

- 1) Errors resulting from incorrect account numbers provided by senders of remittance transfers;
- 2) Disclosure of certain foreign taxes and third-party fees; and
- 3) Disclosure of sub-national, foreign taxes.

Importantly, the CFPB will also delay the effective date of the Remittance Rule until 90 days after the agency issues a final rule that includes the announced changes. Thus, the rule is not expected to become effective until “sometime during the spring of 2013.”⁵

Summary of Current Remittance Rule⁶

The Remittance Rule imposes disclosure and error resolution obligations on “remittance transfer providers,”⁷ and gives cancellation rights to senders of “remittance transfers.”⁸ The term “remittance transfer” generally refers to an electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider⁹ and is commonly in the form of consumer-to-consumer transfers of low monetary value made via non-depository companies known as “money transmitters,” as well as through depository institutions like banks and credit unions. Transactions that are covered under the Remittance Rule include consumer-to-consumer transfers abroad (*i.e.*, where the recipient is located in a foreign country), as well as consumer-to-business transfers abroad. The rule does not cover transfers initiated by senders who are not consumers (*e.g.*, businesses).¹⁰ Small value transactions of \$15 or less are also not covered by the rule.¹¹

The Remittance Rule requires remittance transfer providers to give two types of disclosures to a consumer – one before the consumer pays for a remittance transfer (“[pre-payment disclosure](#)”) and one after the payment is made (“[receipt](#)”). The pre-payment disclosure must indicate the amount to

be transferred, front-end fees and taxes, the exchange rate (if applicable), back-end fees and taxes, and the total amount to be received by the designated recipient abroad.¹² The rule requires remittance transfer providers to provide a receipt as proof of payment that repeats the information in the pre-payment disclosure, and among other information required to be included, indicates the date of availability of the funds, and provides contact information for the remittance transfer provider and the CFPB.¹³ Disclosures must generally be provided in English at a minimum, and under certain circumstances, are required to be provided in other languages.¹⁴

The Remittance Rule also imposes obligations and time limits on remittance transfer providers to investigate and remedy remittance transfer errors.¹⁵ The term “error” is defined generally to include situations where an incorrect amount of currency is paid by the sender, an incorrect amount of currency is received by the recipient abroad, and/or late or non-delivery of a remittance transfer.¹⁶ The term generally does not include inquiries about the status of a remittance transfer, recipient-requested changes, or changes in the amount or type of currency if the provider relied on the information provided by the sender.¹⁷ The rule also obligates a remittance transfer provider to honor a sender’s right of cancellation and refund under certain circumstances when either an oral or written request to cancel a remittance transfer from the sender is received within 30 minutes after the sender makes payment (*i.e.*, receives a receipt) in connection with the remittance transfer.¹⁸ In such circumstance, the remittance transfer 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 within three business days of receiving the cancellation request.¹⁹ The likely effect of the sender’s right of cancellation is that providers will want to wait at least 30 minutes *after providing the receipt* to effect a remittance transfer. Providers engaging in this practice should be aware of the need to honor the currency exchange and other rates as disclosed in the receipt, even where the rate may have changed at the time of processing of the remittance transfer.

Importantly, as mandated by the Dodd-Frank Act, the Remittance Rule imposes a strict liability standard on remittance transfer providers with respect to the actions of their agents.²⁰

Summary of CFPB’s Announced Changes to Remittance Rule

In the Bulletin, the CFPB announced that it expects the upcoming proposal to address the following three topics:

A. Situations in which a sender provides an incorrect account number to a remittance transfer provider.

The CFPB plans to propose revisions to the Remittance Rule’s error resolution provisions by addressing the way the rule applies where a sender provides an incorrect account number to a remittance transfer provider resulting in a remittance transfer being deposited into the wrong account. To ease the burden on – and to clarify the responsibilities of – remittance transfer providers, the CFPB will propose that where the provider can demonstrate that the consumer provided the incorrect information, the provider would be required to attempt to recover the funds but would not be liable for the funds if those efforts are unsuccessful. Thus, the proposal would limit the liability of the provider in circumstances where the sender’s incorrect information caused an error in the remittance transfer.

B. Disclosure of third party fees and foreign taxes.

The CFPB plans to provide additional flexibility to the Remittance Rule’s disclosure provisions concerning foreign taxes and fees assessed by the financial institution receiving the transfer by allowing providers to base fee disclosures on published bank fee schedules. Recognizing that certain

foreign taxes may depend on variables outside the control of the remittance provider, such as characteristics of the designated recipient and where the funds will be received, the CFPB indicated it will revise the Final Rule to provide further guidance on foreign tax disclosures where certain variables may affect tax rates.

C. Disclosure of regional and local taxes assessed in foreign countries.

The CFPB also plans to limit the obligation imposed on providers to disclose foreign taxes imposed on remittance transfers to taxes imposed at the national level. Taxes imposed by foreign, sub-national jurisdictions would not be subject to disclosure.

Action Plan

The CFPB indicated in the Bulletin that it expects to issue the proposed rulemaking in December 2012 and will “proceed on a fast track” to issue a final rule after considering the public comments. We anticipate that the public comment period will be short; thus, remittance transfer providers and other affected parties should be prepared to:

- Continue to implement systems changes in preparation for compliance with the Remittance Rule requirements;
- Understand and be aware of the potential implications of the anticipated changes to the Remittance Rule that the CFPB outlined in the Bulletin;
- Monitor for rulemaking developments regarding the Remittance Rule; and
- Be prepared to submit any comments during the public comment process to voice any concerns about how a proposed change would negatively and/or unfairly impact your business or create an unworkable challenge for your operations with respect to implementation.

Paul Hastings attorneys are actively assisting clients with a variety of matters involving CFPB regulatory and supervisory matters.

◇ ◇ ◇

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Atlanta

Chris Daniel
1.404.815.2217
chrisdaniel@paulhastings.com

Heena A. Ali
1.404.815.2393
heenaali@paulhastings.com

Todd W. Beauchamp
1.404.815.2154
toddbeauchamp@paulhastings.com

Kevin Erwin
1.404.815.2312
kevinerwin@paulhastings.com

Diane Pettit
1.404.815.2326
dianepettit@paulhastings.com

Palo Alto

Cathy S. Beyda
1.650.320.1824
cathybeyda@paulhastings.com

San Francisco

Thomas Brown
1.415.856.7248
tombrown@paulhastings.com

Stanton R. Koppel
1.415.856.7284
stankoppel@paulhastings.com

Kristin M. Hall
1.415.856.7071
kristinhall@paulhastings.com

Samuel Zun
1.415.856.7206
samuelzun@paulhastings.com

Washington, D.C.

V. Gerard Comizio
1.202.551.1272
vgerardcomizio@paulhastings.com

Behn Dayanim
1.202.551.1737
bdayanim@paulhastings.com

Kevin L. Petrasic
1.202.551.1896
kevinpetrasic@paulhastings.com

Erica Berg-Brennan
1.404.815.2294
ericaberg@paulhastings.com

Lawrence D. Kaplan
1.202.551.1829
lawrencekaplan@paulhastings.com

Michael A. Hertzberg
1.202.551.1797
michaelhertzberg@paulhastings.com

Carla Laroche
1.202.551.1768
carlalaroche@paulhastings.com

Helen Y. Lee
1.202.551.1817
helenlee@paulhastings.com

Amanda M. Jabour
1.202.551.0376
amandajabour@paulhastings.com

Lily Woodland
1.202.551.1977
lilywoodland@paulhastings.com

- ¹ CFPB Bulletin 2012-08 (Nov. 27, 2012), Re: Remittance Rule Implementation (Subpart B of Regulation E), *available at* http://files.consumerfinance.gov/f/201211_cfpb_remittance-rule-bulletin.pdf.
- ² See 77 Fed. Reg. 6194 (Feb. 7, 2102) (general rule); 77 Fed. Reg. 40459 (Jul. 10, 2012) (technical correction); and 77 Fed. Reg. 50243 (Aug. 20, 2012) (amendments addressing normal course of business safe harbor and transfers scheduled in advance).
- ³ Section 1073 of the Dodd-Frank Act, *codified at* 15 U.S.C. § 1693o-1.
- ⁴ See CFPB Blog, "Proposed changes to the remittance rule and an extension of rule's effective date" (Nov. 27, 2012), *available at* <http://www.consumerfinance.gov/blog/proposed-changes-to-the-remittance-rule-and-an-extension-of-rules-effective-date/>.
- ⁵ Bulletin, p. 1.
- ⁶ For additional Paul Hastings publications about the Remittance Rule, see Kevin L. Petrasic, "CFPB's First Final Rule Addresses International Remittance Transfers" (Jan. 2012), *available at* <http://www.paulhastings.com/assets/publications/2099.pdf>; Stanton R. Koppel, "FRB Proposes Rules for Remittance Transfers" (May 2011), *available at* <http://www.paulhastings.com/assets/publications/1919.pdf>; and Stanton R. Koppel, "The Dodd-Frank Act: Remittance Transfers" (rev. Oct. 2010), *available at* http://www.paulhastings.com/assets/publications/1671.pdf?wt.mc_ID=1671.pdf.
- ⁷ A "remittance transfer provider" or "provider" is defined in the Remittance Rule 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 "normal course of business" safe harbor is generally available where a person: (A) provided 100 or fewer remittance transfers in the previous calendar year; and (B) provides 100 or fewer remittance transfers in the current calendar year. For any amounts over the 100 remittance transfer limit in the current calendar year, a transition period of up to six months is available to achieve compliance or if the person provides evidence that it is not a remittance transfer provider. See 1005.30(f) of the Remittance Rule.
- ⁸ See *generally* 15 U.S.C. § 1693o-1 and the Remittance Rule.
- ⁹ See Section 1005.31(b) of the Remittance Rule.
- ¹⁰ For purposes of the Remittance Rule, a "sender" means "a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient." Section 1005.30(g) of the Remittance Rule.
- ¹¹ Section 1005.30(e)(2)(i) of the Remittance Rule.
- ¹² Section 1005.31(b)(1) of the Remittance Rule.
- ¹³ Section 1005.31(b)(2) of the Remittance Rule.
- ¹⁴ Section 1005.31(g) of the Remittance Rule.
- ¹⁵ Section 1005.33 of the Remittance Rule.
- ¹⁶ Section 1005.33(a)(1) of the Remittance Rule.
- ¹⁷ Section 1005.33(a)(2) of the Remittance Rule.
- ¹⁸ Section 1005.34(a) of the Remittance Rule.
- ¹⁹ Section 1005.34(b) of the Remittance Rule.
- ²⁰ Section 1005.35 of the Remittance Rule.