



A Summary of the Final Remittance Transfer Rule (Section 1073)

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I. Background

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Section 1073 of the Dodd-Frank Act creates new protections for U.S. consumers sending money abroad. Such transfers—or remittances, as the Act identifies them—are now the subject of rulemaking by the Consumer Financial Protection Bureau (CFPB), the agency charged with implementing Section 1073. The CFPB issued a final rule (hereafter referred to as “Final Rule”) regulating remittance transfers by amending Regulation E (Reg E) that governs electronic transfer of funds. The Final Rule has been amended twice, with the last version issued August 20, 2012. There is a proposal currently pending that further revises the Final Rule; the newly revised rule is scheduled to be issued later this year along with a new effective date. As it currently stands, the Final Rule creates a number of new obligations for entities providing remittance transfer services. These obligations focus primarily on consumer rights with respect to disclosures, error resolution, cancellations, and refunds.

II. Coverage

To identify the transactions within the scope of the Final Rule, it’s important to understand the definitions of two key terms: *remittance transfers* and *remittance transfer providers*. According to the Final Rule, a remittance transfer is:

- An electronic transfer of funds¹ (checks, drafts, or other paper instruments are not covered);
- In an amount greater than \$15;
- Originated by a consumer in the United States for personal, family, or household purposes;

¹ An “electronic funds transfer” is defined as any transfer of funds 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. The term includes but is not limited to (1) point-of-sale transfers, (2) automated teller machine transfers, (3) direct deposits or withdrawals of funds, (4) transfers initiated by telephone, and (5) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

- Sent to recipient (consumer or business) located in a foreign country;
- Sent by a remittance transfer provider; and
- Not used for the primary purpose of purchasing or selling securities and commodities.

A remittance transfer provider (RTP) is any person or business that provides remittance transfers for a consumer in the normal course of business, regardless of whether the consumer holds an account with such person or business. Thus, a bank or nonbank financial institution that provides remittance transfers to consumers in the normal course of its business, absent an account-holding relationship with such consumers, would still be considered an RTP under the Final Rule. The Final Rule contains a safe harbor for any person or business that provides 100 or fewer remittance transfers in the previous calendar year and 100 or fewer remittance transfers in the current calendar year. The logic behind these numbers is that if an entity stays under the thresholds, it does not provide remittance transfers in the normal course of its business and, as such, is not an RTP and therefore not subject to the obligations created for RTPs under the Final Rule.

In addition to providing remittances in the normal course of business, an RTP must act as the intermediary engaged with the sender to send a remittance transfer *on behalf of the sender* to the recipient. Thus, when a consumer provides payment directly to a foreign merchant for goods or services, the payment card network or similar third party facilitating the transaction would not be an RTP since such intermediary would merely be providing payment processing and settlement services *on behalf of the merchant or card issuer*, rather than on behalf of the sender.

III. Disclosures

The Final Rule creates both form and substance disclosure requirements for RTPs. With respect to form, disclosures must be made in English and, if applicable, in either (i) the foreign language *principally used* by the RTP for advertising, soliciting, and marketing remittance transfer services at the office at which the sender conducts a transaction, or (ii) the foreign language primarily used by the sender with the RTP to conduct the transaction (provided it is one of the principal languages used by the RTP). The “principally used” requirement is applied on an office-by-office basis and could impose substantial compliance costs on those providers that have many offices or branches and that target a variety of non-English-speaking customers. For example, the principal language of one branch location may not be the principal language of another branch location, which would result in different language disclosures at the different branches and would thereby complicate the ability to standardize disclosures across all branches. Oral disclosures for transactions conducted entirely by telephone must be made in the language primarily used by the sender with the RTP to conduct the transaction.

Substantive requirements apply to three types of disclosures: prepayment, receipt, and combined disclosures. A pre-payment disclosure must be provided by an RTP at the time

the sender requests a transfer but prior to payment. A receipt disclosure must be provided by an RTP at the time a sender pays for a transfer. Alternatively, a combined disclosure can be provided in lieu of the prepayment and receipt disclosures so long as it's provided when the sender requests the transfer but prior to payment and so long as it contains all the information required in the prepayment and receipt disclosures. Prepayment and receipt disclosures must contain the following information:

Prepayment Disclosure	Receipt Disclosure
Transfer Amount Sent. The amount, in the funding currency, transferred to a recipient. ²	Date Available. The date in the foreign country on which the funds will be available to the recipient. A provider may provide a statement that funds may be available to the recipient earlier than the date disclosed.
Transfer Fees. Any fees imposed by the RTP, in the funding currency.	Recipient Contact. The name and, if provided by the sender, the telephone number and/or address of the recipient.
Transfer Taxes. Any taxes imposed by the RTP, in the funding currency.	Error Resolution and Cancellation Rights. A statement about the rights of the sender regarding the resolution of errors and cancellation.
Total Sent. The total amount of the transaction in the funding currency. The Total Sent is the sum of the Transfer Amount Sent, Transfer Fees and Transfer Taxes.	Provider Contact. The name, telephone number, and website of the RTP.
Exchange Rate. The exchange rate used by the provider for the remittance transfer, rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places.	Regulatory Agency Contact. A statement that the sender can contact the <i>state</i> agency that licenses or charters the RTP and the CFPB for questions or complaints about the RTP. The statement includes the name, telephone number (including the toll-free number), and website of both the CFPB and the state agency that licenses or charters the RTP.
Transfer Amount Received. The Transfer Amount Sent in the currency in which the funds will be received by the recipient using the Exchange Rate. Transfer Amount Received is disclosed only if Other Transfer Fees and Other Transfer Taxes (as defined below) are imposed.	

² For instance, if the funds will be transferred from U.S. dollars to Mexican pesos, the transfer amount required by the Final Rule must be disclosed in U.S. dollars.

<p>Other Transfer Fees. Any fees imposed on the remittance transfer by a person other than the provider, in the currency in which the funds are received by the recipient using the Exchange Rate.</p>	
<p>Other Transfer Taxes. Any taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds are received by the recipient using the Exchange Rate.</p>	
<p>Total to Recipient. The amount that will be received by the recipient, in the currency in which the funds will be received using the Exchange Rate.</p>	

A combined disclosure should contain all the information required in the prepayment and receipt disclosure, and the information must be accurate at the time when payment is made in connection with the remittance transfer. Additionally, where an RTP provides a combined disclosure and the sender subsequently completes the transfer, the RTP must provide the sender with proof of payment after payment is made for the remittance transfer. The proof of payment must be clear and conspicuous and appear in writing or in an electronically retainable format. The proof of payment can be on the same piece of paper as the combined disclosure or on a separate piece of paper. For example, the provider could feed the combined disclosure through a computer printer when the sender makes the payment to add the date and time of the transaction, the confirmation code, and an indication that the transfer was paid in full.

Information on the prepayment disclosure, written receipt, and combined disclosure is required only to the extent applicable to the transaction. For instance, if the provider does not impose fees or taxes in connection with a particular transaction or does not have a website, the provider does not have to disclose information about fees or taxes or website URL. Furthermore, in dollar-to-dollar transactions in which a sender sends funds to a recipient to be picked up in U.S. dollars or deposited into dollar-denominated accounts, no exchange rate disclosure is necessary. There are separate disclosures required for “preauthorized transfers,” which are remittance transfers authorized in advance to recur at regular intervals. Disclosures related to preauthorized transfers differ from standard disclosures with respect to timing, accuracy, and cancellation rights.

The Final Rule also includes a number of formatting requirements for the disclosures depending on whether they are written or oral, or through a mobile app or text messages. Lastly, the Final Rule provides model disclosure forms in both English (see forms A-30 through A-37) and Spanish (forms A-38 through A-40).

IV. Estimates

Generally, disclosures provided under the Final Rule must be exact, unless an exception applies. The Final Rule provides three exceptions, in which cases the RTP can provide estimated disclosures: (1) Temporary Exception for Insured Institutions, (2) Permanent Exception for Transfer to Certain Countries and (3) Permanent Exception for Transfers Scheduled Five or More Days in Advance. The Final Rule also provides permissible approaches for making such estimates. Under the Temporary Exception, an RTP can estimate the exchange rate and receipt-side disclosures if it is an insured institution, it cannot determine the exact amounts for reasons beyond its control, **and** it sends the remittance transfer from the sender's account. According to the Final Rule, an insured institution is deemed not to be able to determine exact amounts for reasons outside of its control when the exchange rate is set after the institution has sent the remittance transfer by a party with which the insured institution has no correspondent relationship, and the transfer fees or taxes are imposed by intermediary institutions with which the insured institution also has no correspondent relationship. The temporary exception expires July 21, 2015.

Under the permanent exception for transfers to certain countries, an RTP may provide estimates if it cannot determine exact amounts because the *laws* of the recipient country or the *method* by which transactions are made in the recipient country do not permit such a determination. An example of the laws exception would be when a country's law or regulation requires the entity distributing the funds on the receiving side to apply an exchange rate that the recipient country's government has set after the sender initiated the transaction or at the time the recipient claimed the funds. In addition, the CFPB has provided a list of safe harbor countries for which RTPs can provide estimates—namely, Aruba, Brazil, China, Ethiopia, and Libya.

An example of the method exception would be when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the recipient country's central bank sets the exchange rate after the provider has sent the remittance transfer.

Under the permanent exception for transfers scheduled in advance, if a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers five or more business days before the date of transfer, the Final Rule permits RTPs to estimate the exchange rate and the receipt-side disclosures.

V. Error Resolution

To trigger the Final Rule's error resolution rights, there must first be an error as defined by the Rule.

Error	Not an Error
An incorrect amount paid by the sender (that is, amount paid is different from amount on receipt).	An inquiry involving a transfer of \$15 or less.
A computational or bookkeeping error on the part of the RTP.	An inquiry about the status of a remittance transfer except where funds are not made available by the disclosed date of availability.
Failure to make available to the recipient the amount of currency stated on the disclosure, unless the amount was an estimate and the difference is due to the estimate or unless the failure resulted from extraordinary circumstances outside the control of the RTP (for example, war, civil unrest, natural disaster, imposition of foreign currency controls, or garnishment of funds).	A request for information for tax or other recordkeeping purposes.
Failure to make funds available by the disclosed date of availability (with some exceptions).	A change requested by the recipient.
Sender's request for additional documentation or information concerning the remittance transfer.	A change in the amount or type of currency received by the recipient from the amount or type of currency stated in the disclosure if the provider relied on information provided by the sender in making such disclosure.

A sender has one-hundred and eighty (180) days from the disclosed date of availability to provide an oral or written notice of error to the RTP. In cases when an error is based on additional documentation, information, or clarification that the sender had requested after the transfer was sent, the sender's notice of error is deemed timely if the provider receives it the later of either 180 days after the disclosed date of availability or 60 days after the provider sent the documentation, information, or requested clarification.

If the notice comports with the specific content requirements of the Final Rule, an RTP has ninety (90) days from the receipt of the notice to investigate and determine whether an error occurred. Within three (3) business days after completing its investigation, the RTP must report the results to the sender and, if it has found that an error has occurred, it must also provide the sender with notice of remedies available for correcting the error. In addition, if the provider concludes that an error has occurred, it can notify the sender of its findings either orally or in writing. Furthermore, the provider should correct the error as instructed by the sender within one (1) business day of or as soon as reasonably practicable

after receiving the sender's instructions regarding the appropriate remedy. The remedies available to the sender differ depending on the types of error.

VI. Cancellation

A sender may cancel a remittance transfer within 30 minutes after he or she makes payment if (1) the sender's request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled, and (2) the transferred funds have not been picked up by the recipient or deposited into the recipient's account. In such instance, the provider must refund, at no additional cost to the sender, the total amount of funds that the sender tendered—including any fees and, to the extent not prohibited by law, taxes imposed (by RTP and/or third party) in connection with the transfer—within three (3) business days of receiving the sender's request to cancel. The 30-minute cancellation right must be available to the sender regardless of the RTP's normal business hours. Thus, if a provider's agent location closes at 5:00 p.m. and the sender makes a payment at 4:45 p.m., the sender should have until 5:15 p.m. to cancel. The provider can offer this option in person, over the phone, or on the Internet. Alternatively, the provider could choose to set a cutoff time, after which the provider will not accept requests to send a remittance transfer. The provider can issue a refund either in cash or using the same form of payment that the sender initially used, with the exception that if the sender provided cash, a provider may issue a refund by check. Lastly, the Final Rule requires the RTP to make available to the sender, upon request, a notice providing a *full* description of the right to cancel a remittance transfer. The Final Rule provides a model form for this cancellation notice (see form A-36).

VII. Acts of Agents

An RTP is liable for any violation of the Final Rule by an agent when such agent acts for the RTP. Consequently, agent training will have to be a part of any compliance efforts related to the Final Rule.

VIII. Current Status of the Final Rule

On December 21, 2012, the CFPB proposed a number of revisions to the Final Rule. First, the proposal allows an RTP to rely on sender representations regarding the foreign fees and foreign taxes that will be imposed on a remittance, if the RTP does not have specific information regarding variables affecting such fees and taxes. If the sender does not know this information, the RTP can disclose an estimate of the highest possible foreign fees and foreign taxes with respect to any unknown variable. In regard to fees, the estimate must be based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. If the provider cannot obtain such fee schedules or information from prior transfers, the proposal allows a provider to rely on other reasonable sources of information including (1) schedules

published by competitor institutions, (2) surveys of financial institution fees, or (3) information provided by the recipient institution's regulator or central bank.

Second, the proposal limits the RTP's obligation to disclose foreign taxes to only taxes imposed by a country's central government, although the provider can still choose to disclose subnational taxes if it wishes. Third, the proposal relaxes the error resolution requirements that apply when the sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. To avail itself of the relaxed error resolution requirements, the RTP must demonstrate that (1) the sender provided an incorrect account number, (2) the sender had notice that an incorrect account number could result in the sender losing the transfer amount, (3) the incorrect account number resulted in the funds being deposited to a different account, and (4) the provider promptly used "reasonable efforts" to recover the amount. If an RTP is able to demonstrate these conditions, and it ultimately cannot recover the funds, then the RTP is not required to bear the cost of refunding or resending transfers.

Lastly, on January 22, 2013, the CFPB delayed the effective date of the Final Rule and will announce a new effective date when the December 31, 2012 proposal is finalized. The industry currently awaits a revised version of the Final Rule.

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