

# CFPB Modifies Foreign Remittance Rules and Sets New Effective Date

May 3, 2013

The Consumer Financial Protection Bureau (“CFPB”) has revised its previously issued rules on foreign remittance transfers to ease some of the disclosure concerns raised by financial institutions. The revised rules, which are incorporated into Subpart B of Regulation E, are effective October 28, 2013.

This final rule from the CFPB (the “2013 Final Rule”) modifies rules that were issued by the CFPB in February, July, and August 2012 (collectively, the “2012 Final Rule”), which was originally scheduled to take effect on February 7, 2013. The 2012 Final Rule implemented section 1073 of the Dodd-Frank Act, creating a comprehensive new system of consumer protection for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. When the 2012 Final Rule was issued, it provided the following:

- Consistent and reliable disclosures were required regarding the price of a transfer, the amount of currency to be delivered to the recipient and the date of availability.
- Providers were required to investigate disputes and remedy errors committed by the provider.
- To remedy an error caused by the sending customer providing incorrect or insufficient information, the provider was to either refund the funds or resend the transfer at no cost to the sender, but the provider could collect the third party costs of resending the transfer.

Comments on the 2012 Final Rule raised a few concerns regarding the feasibility of these requirements. Many commenters noted that it is extremely difficult to estimate fees imposed on remittance transfers by recipient institutions, especially those transfers sent through open networks. Commenters also suggested that the large effort to compile this information would be of relatively little value to the senders because it did not increase any benefits to senders in a meaningful way. A second issue that commenters addressed was the burden placed on providers when an error occurred that was actually caused by the sender. It was argued that in many instances providers are unable to verify the accuracy of account numbers, and thus should not be held accountable for the cost of a lost transfer.

In response to the comments to the 2012 Final Rule, the CFPB has modified the foreign remittance rules to address three specific issues:

- The disclosure of taxes collected by a person other than the remittance transfer provider has now been made optional, if a disclaimer that such taxes may apply is disclosed;
- The disclosure of fees imposed by a recipient institution (unless that institution is an agent of the provider), has now been made optional, if a disclaimer that such fees may apply is disclosed; and

- When funds are deposited to the wrong account because of incorrect routing or account number information supplied by the sending customer, the provider will have to attempt to recover the funds but will not be accountable for funds that cannot be recovered.

Please note that a safe harbor provision for institutions that do not provide foreign remittance transfers to consumers in the normal course of business was included in the August 2012 amendment, which was included in the overall 2012 Final Rule. This provision will be effective, along with the 2013 Final rule, on October 28, 2013. It provides that a person is deemed not to be providing foreign remittance transfers for a consumer in the normal course of its business if the person provided 100 or fewer foreign remittance transfers in the previous calendar year and provides 100 or fewer foreign remittance transfers in the current calendar year. A person that qualifies for the safe harbor provision is not a remittance transfer provider, and is thus not subject to the requirements of Subpart B of Regulation E.

As noted above, the 2013 Final Rule is effective on October 28, 2013. If you have any questions regarding the 2013 Final Rule, please feel free to contact Joseph D. Simon at [516-357-3710](tel:516-357-3710) or via email at [jsimon@cullenanddykman.com](mailto:jsimon@cullenanddykman.com), or Elizabeth Murphy at [516-296-9154](tel:516-296-9154) or via email at [emurphy@cullenanddykman.com](mailto:emurphy@cullenanddykman.com).

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- Joseph D. Simon