

## FINANCIAL SERVICES

### INTERNATIONAL FUNDS TRANSFER RULES ARE COMING SOON

by: John K. Lawrence

Among the consumer law changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") were new protections for consumers who send funds to consumers or businesses located in other countries. They include disclosures (potentially in multiple languages) and error resolution and cancellation rights. These requirements have been implemented by the Bureau of Consumer Financial Protection ("CFPB") in amendments to Regulation E.

The new regulation will take effect in just three months, on February 7, 2013. For those banks and businesses offering such services, it is not too early to plan for compliance with the new rule.

#### Overview of the New Requirements

In general, the new rule applies to transfers of more than \$15 by electronic means made by intermediaries on behalf of consumers to consumer or business recipients in foreign countries. In Regulation E, the consumers who make the transfers are called "senders," the transfers covered by the rule are called "remittance transfers," the recipients of transfers are called "designated recipients," and the intermediaries to which the rule applies are called "remittance transfer providers."

Remittance transfer providers include banks, thrift institutions, credit unions, money transmitters, securities broker-dealers, and other companies that offer remittance transfer services to consumers in the normal course of business. Such entities that consistently send 100 or fewer remittance transfers annually, however, are exempt under the rule.

The rule generally requires a remittance transfer provider to furnish two disclosures to the consumer. These disclosures must be given in writing, in English, and in some cases in another language as well. The first is given before the consumer pays for the remittance transfer. The second, containing additional information and a receipt, is furnished when the consumer makes payment. At the option of the remittance transfer provider, a single, combined disclosure may be given before the consumer makes payment, so long as an additional proof of payment is given when payment is made. Special rules apply to remittance transfers scheduled in advance, including recurring remittance transfers.

The rule gives consumers 30 minutes to cancel a remittance transfer and receive a refund. Special cancellation rights are afforded for remittance transfers scheduled in advance.

Consumers have 180 days to report errors in a remittance transfer. Reported errors generally must be investigated by the remittance transfer provider. For some errors, the consumer may receive a refund or redelivery, without charge, of any amount that did not arrive. Significantly, remittance transfer providers are responsible for mistakes made by their agents.

#### Determining if the New Rule Applies

Generally, consumers in the U.S. who send more than \$15 in funds by electronic means to consumers or businesses in another country are sending remittance transfers covered by the rule. This is true even if a consumer does not have an account with you, or the transfer is of a type not otherwise subject to the Electronic Funds Transfer Act. Examples include electronic transfers of amounts in the same currency, cash to account transfers, international wire transfers, international automated clearinghouse ("ACH") transfers, and some types of prepaid card transactions.

To be covered, a transaction must be primarily for personal, family, or household purposes and sent by an individual consumer. For this reason, transfers by a sole proprietor and other business entities are not remittance transfers.

The consumer sender must be located in the U.S. For consumers having an account, the location of the account is the location of the consumer. For non-account transactions, the consumer's location may be determined from information provided by the consumer or in the records of the remittance transfer provider.

The person or business specified by the consumer sender to receive the transfer is the designated recipient. The designated recipient must receive the transfer outside the U.S. Again, if the transfer is to an account, the location of the account determines if the transfer is received outside the U.S. For example, if the recipient's account is in France, the transfer is covered, even if the recipient happens to be in the U.S. at the time of the transfer.

A depository institution or other business that in the normal course of business engages directly with consumers in making such funds transfers by electronic means to designated recipients outside the U.S. will generally be a remittance transfer provider required to comply with the rule. An exception is recognized for occasional provision of such services. If a depository institution or other business engaged in 100 or fewer such transfers in the preceding calendar year and provides 100 or fewer such transfers in the current calendar year, it is exempt from the rule.

#### Disclosure Requirements

A remittance transfer provider must furnish two disclosures in respect of each remittance transfer; a pre-payment disclosure, and a receipt. Alternatively, a provider may choose to furnish a combined disclosure preceding payment, and a simple proof of payment once payment has been made by the consumer. Model forms of disclosure have been prepared by the CFPB.



The initial, or pre-payment, disclosure must contain the amount of money to be transferred (stated in the sender's currency), the exchange rate, applicable fees of the remittance service provider and taxes imposed in the sender's country, any fees and taxes imposed in the country of the designated recipient, the total amount to be received by the designated recipient (in the relevant currency), and the total amount to be paid by the sender (in the sender's currency). The consumer is not obligated to conduct the transaction by receiving the initial disclosure.

The second disclosure, or receipt, includes all the information contained in the pre-payment disclosure, plus the date of funds availability to the designated recipient, contact information for the sender and the designated recipient, a statement of the sender's cancellation and error resolution rights, and the contact information for the CFPB and for any State authority that licenses or charters the remittance transfer provider with respect to remittance transfers.

All disclosures must be clear and conspicuous, must satisfy specific format requirements, and generally must be made in writing in retainable form. Some disclosures may be made electronically in accordance with the E-SIGN Act, if the sender electronically requests the remittance transfer provider to make the remittance transfer. Special rules apply for oral telephone, mobile application and text message transactions.

Subject to certain exceptions, all disclosures must be exact and accurate when the sender makes payment for the remittance transfer. Limited exceptions permit the use of estimates, based on specified methodologies, for certain items in some circumstances. Remittance transfers to certain countries, identified by the CFPB from time to time, will also be eligible for use of estimates.

Disclosures generally must be made in the English language. They must also be made either (i) in each foreign language principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, whether orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, or (ii) in the specific foreign language primarily used by the sender in conducting a transaction or asserting an error (if that language is one used by the remittance transfer provider at that office as described above). The CFPB has prepared model disclosures in English and Spanish.

## Cancellation and Error Resolution Rights

Except for remittance transfers scheduled before the transfer date, the consumer has 30 minutes after making payment to cancel a transaction, orally or in writing, as long as he/she provides sufficient information to allow the remittance transfer provider or its agent to identify the transaction, and the funds have not been picked up by, or deposited to the account of, the designated recipient. The remittance transfer provider must refund the total amount paid by the consumer sender within three business days of receiving the cancellation. The refund must include all fees and, unless prohibited by law, all taxes imposed.

The rule provides consumer senders with error resolution rights against the remittance transfer provider. Among the errors covered by the rule are an incorrect amount paid by the sender, a computational or bookkeeping error by the provider relating to the remittance transfer (such as miscalculating the amount to be received by the designated recipient), or, subject to stated exceptions, failure to make available to the designated recipient the disclosed amount, or failure to make funds available by the disclosed date of availability.

The consumer sender has 180 days from the disclosed date of funds availability to report an error, orally or in writing, to either the remittance transfer provider or its agent. The report of error must identify the remittance transfer involved, contain the names of the sender and the designated recipient, and indicate why the sender believes an error exists, or request additional information or clarification as permitted by the rule.

Receipt of the error notice, by either the remittance transfer provider or its agent, imposes a duty of prompt investigation on the provider, unless the provider chooses to correct the error, in the amount or manner alleged by the sender, without conducting an investigation. Within three business days of completing the investigation (and in any event not more than 90 days after receipt of the error notice), the provider must report the results of the investigation to the sender, including a notice of any available remedies. A report must also be made if the provider chooses to correct the error without investigation.

If an error occurred as described by the sender, the investigation report by the remittance transfer provider may be given orally or in writing. If the investigation determines that no error occurred, or that an error not described by the sender occurred, the sender must be given a written explanation of the results of the investigation, together with a notice of the sender's right to request copies of any documentation relied upon in making the determination.

In general, if an error has occurred, the sender may select one of two options; either a refund or a redelivery. The precise amounts to be refunded or redelivered are determined based upon the type of error involved and, in certain instances, whether the sender furnished inaccurate or incomplete information to the remittance transfer provider at the time of the transaction.

The remittance transfer provider must correct the error as directed by the sender within one business day of, or as soon as reasonably practicable after, receiving the sender's direction regarding the preferred remedy. The provider may specify a default remedy that it will implement if the sender fails to designate his/her desired remedy within a reasonable time (at least 10 days) after the provider has given the error report.

The rule requires remittance transfer providers to maintain documentary evidence of compliance with its provisions for not less than two years after disclosures are required to be made or action required to be taken. This includes records of error investigations.

## Planning Issues

Getting ready for compliance with the new rule may involve multiple issues. Among other things, you will want to identify the products, departments and staff that are affected by the rule, as well as the business processes and operational or systems technology used to enter, implement, and record remittance transfers.

This may be a broader task than would initially be apparent. For example, advertising and marketing functions may need to be considered, because solicitations conducted in foreign languages may trigger foreign language disclosure aspects of the new rule.

The new rule requires accurate disclosure of certain information, such as currency exchange rates, tax rates in foreign countries, and fees imposed by third parties participating in international funds transfers, that may not be within your control. This may suggest the need for a review of the means by which you communicate with your business partners, and for greater coordination of real-time information exchange.

If you have third party agents that participate in your international transfers business, the responsibility for their actions imposed on you by the new rule may suggest the wisdom of reviewing the terms of your contractual relationship. You may also want to consider the frequency and method of communication with agents, and the adequacy of their recordkeeping and staff practices.

The new rule will also require training your relevant staff in its requirements. Such training will be essential to minimize errors and thereby to manage the risk of expenses arising from error resolution and refunds to consumers.

With the compliance deadline approaching in three months, it is not too early to act on your response.

FOR MORE INFORMATION CONTACT:



**John K. Lawrence**, is a member in Dickinson Wright's Detroit office. He can be reached at 313.223.33616 or [jlawrence@dickinsonwright.com](mailto:jlawrence@dickinsonwright.com).

*Disclaimer: This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of financial services law. The content is informational only and does not constitute legal or professional advice. We encourage you to contact a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in this Client Alert.*