

Client Alert.

February 10, 2012

Consumer Financial Protection Bureau Finalizes Regulatory Scheme for Remittance Transfers

By Ezra C. Levine, Andrew M. Smith, and M. Sean Ruff

Earlier this week, the Consumer Financial Protection Bureau (“Bureau”) published, in the Federal Register, a final rule setting forth an entirely new regulatory scheme for companies that provide remittance transfers, including banks.¹ Remittance transfers are electronic transfers of money from U.S. consumers to recipients in foreign countries. Among other things, the Bureau’s final rule: (1) requires that specific disclosures be given to each “sender” of a remittance transfer showing how much money will be received by the recipient of the transfer in local currency; (2) enables senders to dispute errors for up to 180 days following a remittance transfer; and (3) allows senders to cancel remittance transfer transactions within 30 minutes.

BACKGROUND

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added a new section 919 to the Electronic Fund Transfer Act (“EFTA”) to require certain disclosures and error resolution procedures with respect to remittance transfers.² The new rule implements these EFTA provisions.

REQUIRED DISCLOSURES

The final rule requires a remittance transfer provider to provide to each “sender” of a remittance transfer a prepayment disclosure describing: (i) the amount that will be transferred to the designated recipient, in the currency in which the remittance transfer is funded, using the term “Transfer Amount” or a substantially similar term; (ii) any fees and taxes imposed on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms “Transfer Fees” for fees and “Transfer Taxes” for taxes, or substantially similar terms; (iii) the total amount of the transaction in the currency in which the remittance transfer is funded, using the term “Total” or a substantially similar term; (iv) the exchange rate used by the provider for the remittance transfer using the term “Exchange Rate” or a substantially similar term; (v) the amount that will be received by the designated recipient in the currency in which the funds will be received, but only if, fees and taxes are imposed by a person other than the remittance transfer provider; (vi) any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient, using the terms “Other Fees” for fees and “Other Taxes” for taxes, or substantially similar terms; and (vii) the amount that will be received by the designated recipient, in the currency in which the funds will be received, using the terms “Total to Recipient” or a substantially similar term.

The remittance transfer provider must also provide the sender with a receipt showing all of the information above required for the prepayment disclosure, as well as: (i) the date in the foreign country on which funds will be available, using the term “Date Available” or a substantially similar term; (ii) the name and, if provided by the sender, the telephone number

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2012-02-07/pdf/2012-1728.pdf>.

² Remittance transfers of less than \$15 are not subject to the final rule. 12 C.F.R §1005.30(e)(2)(i).

Client Alert.

and/or address of the designated recipient, using the term “Recipient” or a substantially similar term; (iii) a statement about the rights of the sender regarding the resolution of errors and cancellation, using language set forth in the final rule or substantially similar language (for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a statement about the rights of the sender regarding cancellation as set forth in the final rule); (iv) the name, telephone number(s), and Web site of the remittance transfer provider; (v) a statement that the sender can contact the state agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the Bureau for questions or complaints using language set forth in the final rule or substantially similar language; and (vi) the name, telephone number(s) and Web site of the state agency that licenses or charters the remittance transfer provider and the name, toll-free telephone number(s) and Web site of the Bureau.

Under the final rule, banks and credit unions are only required to provide a “reasonably accurate estimate of the foreign currency to be received” if the transfer is conducted through an account that the sender holds with the bank or credit union and the bank or credit union is unable to know the exact amount of foreign currency that will be received. This safe harbor would sunset on July 21, 2015. In addition, all remittance transfer providers, bank and non-bank, may provide estimates for those countries where local law or other circumstances do not permit the provider to determine a precise exchange rate.

The Bureau provides model forms for the required disclosures, and also has indicated that remittance transfer providers may provide the initial “pre-payment” disclosure and the receipt at the same time, prior to payment, as a combined disclosure. See Figure A (initial disclosure), Figure B (receipt), and Figure C (combined disclosure) below.

The disclosures must be provided to the sender clearly and conspicuously, in writing and in a form that the sender can keep, with some exceptions for transactions conducted through mobile applications or text message. Disclosures must be provided in English and in each of the foreign languages principally used by the remittance transfer provider at the office from which the transfer is being initiated or, if applicable, in the foreign language used by the sender to conduct business with the remittance transfer provider.

The final rule allows electronic disclosures, as long as they are in a form that may be retained by the sender, where the sender requests the transfer electronically. In addition, the final rule would allow verbal disclosures for telephone transactions.

ERROR RESOLUTION PROCEDURES

The Bureau’s final rule sets forth error resolution procedures that take the place of the EFTA’s existing error resolution procedures for electronic fund transfers. See EFTA §§ 908 and 909 (EFTA error resolution and unauthorized transaction provisions). Under the final rule, if a remittance transfer provider receives notice that an error occurred from a sender within 180 days of the promised delivery of the remittance transfer, the provider must, within 90 days, conduct an investigation and report the results of the investigation to the sender within three days of completion. Where the provider determines that an error has occurred, the provider is required to offer the sender the option of obtaining a refund or making available to the designated recipient the funds necessary to resolve the error. The provider is only required to refund fees where the provider failed to make funds available to the designated recipient by the date of availability specified in the receipt or combined disclosure, unless the sender provided incorrect or insufficient information to the remittance transfer provider. See Figures B and C.

Client Alert.

Providers are required to provide senders with a notice of their dispute rights. The Bureau has provided a model form for this purpose. See Figure D.

SENDER RIGHT OF CANCELLATION AND REFUND

The final rule requires that remittance transfer providers afford senders a 30-minute cancellation period for all remittance transfers, except those that are scheduled at least three business days prior to the date of transfer. In electing a 30-minute window, instead of the 24-hour period originally proposed, the Bureau indicated its belief that 30 minutes strikes the appropriate balance between providing the sender an opportunity to ensure that the transfer is sent as he or she intended and the expeditious processing of remittance transfers.

Client Alert.

Figure A:

A-30 – Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

NOT A RECEIPT

Transfer Amount:	\$100.00
Transfer Fees:	+\$7.00
Transfer Taxes:	+\$3.00
Total:	\$110.00

Exchange Rate: US\$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

Client Alert.

FIGURE B:

A-31 – Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2013

Transfer Amount:	\$100.00
Transfer Fees:	+\$7.00
Transfer Taxes:	+\$3.00
Total:	\$110.00

Exchange Rate: US\$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

Client Alert.

State Regulatory Agency
800-111-2222
www.stateregulatorvagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

Client Alert.

FIGURE C:

A-32 – Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

SENDER:

Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:

Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:

ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2013

Transfer Amount:	\$100.00
Transfer Fees:	+\$7.00
<u>Transfer Taxes:</u>	<u>+\$3.00</u>
Total:	\$110.00

Exchange Rate: US\$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Client Alert.

FIGURE D:

A-36 – Model Form for Error Resolution and Cancellation Disclosures (Long) (§ 1005.31(b)(4))

What to do if you think there has been an error or problem:

If you think there has been an error or problem with your remittance transfer:

- Call us at [insert telephone number][; or]
- Write us at [insert address][; or]
- [E-mail us at [insert electronic mail address]].

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

- (1) Your name and address [or telephone number];
- (2) The error or problem with the transfer, and why you believe it is an error or problem;
- (3) The name of the person receiving the funds, and if you know it, his or her telephone number or address; [and]
- (4) The dollar amount of the transfer; [and]
- (5) The confirmation code or number of the transaction.]

We will determine whether an error occurred within 90 days after you contact us and we will correct any error promptly. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

What to do if you want to cancel a remittance transfer:

You have the right to cancel a remittance transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or e-mail address] above within 30 minutes of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three business days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient's account.

Client Alert.

Contact:

Ezra C. Levine

(202) 887-1597

elevine@mofo.com

Andrew M. Smith

(202) 887-1558

andrewsmith@mofo.com

M. Sean Ruff

(202) 778-1665

sruff@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for eight straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.