CHAPMAN AND CUTLER LLP

# To the Point!

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## Remittance Transfer Rule

Congressional hearings during the adoption of the Dodd Frank Act acknowledged that a significant number of electronic consumer funds transfers to persons in another country were occurring in the U.S. with no federal consumer protection law directly regulating these transfers. The Dodd-Frank Act responded to these concerns by amending the Electronic Funds Transfer Act (the *"EFTA"*) to include consumer compliance requirements for foreign remittance transfers.

The CFPB published its final remittance transfer rule amending Regulation E to be effective February 7, 2013. The remittance transfer rule generally requires disclosures of the exchange rate, fees and taxes, and the amount of money to be delivered, among other consumer protections. Although the CFPB issued a final rule, the CFPB, FinCEN and the Federal Reserve Board (the *"Board"*) have all recently published various issuances that require a financial institution that acts as a remittance transfer provider to conduct further review of its planned procedures to ensure compliance with the remittance transfer rules and guidance. Notably on December 21, 2012, the CFPB published revisions to the final remittance transfer rule and delayed the effective date of the new rule to be 90 days following publication of the final rule. Following is a brief review of these recent issuances. The CFPB proposed revisions to its remittance transfer rule addressing the following issues: (i) errors resulting from incorrect account numbers provided by senders of remittance transfers; (ii) the disclosure of foreign taxes and third-party fees; and (iii) the disclosure of sub-national foreign taxes.

Under the proposal, the remittance transfer provider is not liable for unrecovered funds if the incorrect account number resulted in the deposit to the wrong account and the remittance transfer provider can establish that the sender (i) gave an incorrect account number; and (ii) received a notice that he/she could lose the transfer amount. The remittance transfer provider must also establish that it used reasonable efforts to recover the transfer amount.

If variables apply to the foreign tax and/or third-party fee, and the actual foreign tax and/or third–party fee is unknown to the remittance transfer provider, the remittance transfer provider can disclose the highest possible tax or fee. The remittance transfer provider is not required to disclose sub-national foreign taxes and must only disclose those foreign taxes imposed by the federal government.

In addition to the proposed revisions, the CFPB published commentary to the new rule, provided safe harbors and issued an unofficial Remittance Transfer Rule and Interpretations to provide guidance on the rule. The safe harbors (i) exempt from coverage certain entities issuing fewer than 100 remittance transfers during a year and (ii) permit remittance transfer providers to use estimates in disclosures of the amount of currency to be received for transfers to specified countries where the laws or transfer methods prevent remittance transfer providers from determining exact amounts. Those countries are Aruba, Brazil, China, Ethiopia and Libya. The CFPB can change the list of exempt countries at any time.

The Bank Secrecy Act (*"BSA"*) regulations currently exclude all EFTA-covered transactions from its recordkeeping and transmittal requirements. FinCEN and the Board published a proposed change to the BSA regulations to ensure that these requirements continue to apply to international funds transfers sent by consumers after the effective date of the remittance transfer rules amending Regulation E.

A financial institution that acts as a remittance transfer provider should closely monitor the CFPB's revisions to the remittance transfer rule and its delayed effective date. At the same time it should review the newly published commentary, the BSA proposal and the CFPB guidance on the remittance transfer rule to determine whether its proposed procedures are consistent with these issuances. A financial institution should also ensure that it has in place agreements with its processors or agents that require compliance with these new rules, require cooperation with dispute resolution requirements and provide adequate indemnification for the financial institution for its processor's or agent's violations of the rule.

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## Request for CARD Act Comments

On December 19, 2012, the Consumer Financial Protection Bureau (the *"CFPB"*) issued a press release seeking public comment on how the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the *"CARD Act"*) has impacted consumers and the credit card market.

The CARD Act was enacted in May of 2009. Before the enactment of the CARD Act, the applicable provisions of the Truth in Lending Act (*"TILA"*) and Regulation Z focused principally on how credit card companies needed to disclose product pricing terms to consumers, and otherwise placed few substantive limits on industry practice. However, after the CARD Act, TILA and Regulation Z imposed limits on various pricing practices that Congress deemed unfair or unclear to consumers.

The CFPB is seeking comment on the following topics:

- The terms of credit card agreements and the practices of credit card issuers.
- The effectiveness of disclosure of terms, fees and other expenses of credit card plans.
- The adequacy of protections against unfair or deceptive acts or practices relating to credit card plans.
- Whether implementation of the CARD Act has affected the cost and availability of credit, particularly with respect to non-prime borrowers.
- Has the CARD Act impacted the safety and soundness of any credit card issuers?
- Has the CARD Act affected the use of risk-based pricing?
- Has implementation of the CARD Act had any effect on credit card product innovation?

The CFPB's request for information is part of a review of the credit card market required by the CARD Act. The CFPB's press release states that the review will be contained in a report to Congress. Comments must be submitted on or before February 19, 2013 in order to be ensured of consideration.

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## Project Catalyst and the Trial Disclosures Program

Less than a month following the announcement of its Project Catalyst initiative intended to encourage consumer-friendly innovation in markets for consumer financial products and services, the CFPB issued a proposed policy that would provide financial services companies with a "safe harbor" to conduct trial consumer disclosure programs exempting the companies from current federal disclosure requirements. In describing possible trial disclosure programs the CFPB noted that trial disclosures programs could include modifications to an existing model form, changed delivery mechanisms, wholesale replacement of a model form or existing disclosure requirements with new disclosure requirements or forms, and/or the elimination of select disclosure requirements.

In announcing the CFPB's request for public comment on the proposed policy, Director Cordray stated: "As part of our efforts to foster innovation in consumer financial markets, the proposed policy will allow companies to conduct real world trials of disclosure alternatives" and such trials "will help the Bureau identify what works and does not work to provide consumers with the clear information they need to make financial decisions in a marketplace of evolving programs and products." The CFPB clarified, however, that the proposed policy will not be a substitute for the normal process of rulemaking, including public comment on a proposed regulation.

The proposed policy has four sections setting forth: (1) requirements for proposed programs to be considered eligible for a temporary waiver from disclosure requirements; (2) the factors the CFPB may consider in deciding which programs to approve for a waiver; (3) the CFPB's procedures for issuing waivers; and (4) the CFPB's disclosure of information about programs.

The CFPB will publish notice of any trial disclosure program approved for waiver on its website. The notice will: (1) identify the company conducting the trial disclosure program; (2) summarize the changed disclosures to be used, their intended purpose and the duration of their intended use; (3) summarize the scope of the waiver and the CFPB's reasons for granting it; and (4) state that the waiver only applies to the testing company in accordance with the approved terms of use.

The proposal requires financial services companies approved for waivers to share the results of their disclosure trials with the CFPB. In addition to the information disclosed on the CFPB website when a program is approved, public disclosure of information regarding trial programs will be addressed in the Trial Disclosure Waiver: Terms and Conditions document signed by the CFPB and the company. Any such public disclosure is governed by the CFPB's Final Rule on Disclosure of Records and Information. Generally, information will be made available when requested by the public unless subject to a FOIA exemption or exclusion. Financial services companies interested in participating in Project Catalyst should fully consider the proposed policy's terms relating to information disclosure and consider the impact of the Trial Disclosures Waiver: Terms and Conditions with the CFPB. The CFPB will accept public comment on the proposal until February 15, 2013.



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