

# **MOBILE REMITTANCES AND DODD-FRANK: REVIEWING THE EFFECTS OF THE CFPB REGULATIONS**

By Colin C. Richard

Volume XII – Spring 2012

## **ABSTRACT**

International remittances provide \$325 billion in capital each year to developing countries and serve as an essential tool for international economic development. The growth of mobile money and mobile banking around the world will significantly increase access to remittance services and reduce costs for senders and recipients, but policy changes could irreparably deter the use of mobile phones for remittances. In July 2010, the Dodd-Frank Act proposed for the first time substantive federal regulation of international remittances and required the Consumer Financial Protection Bureau (CFPB) to develop certain rules for the industry. This article analyzes the CFPB's February 2012 rule in the context of mobile remittances.

# **MOBILE REMITTANCES AND DODD-FRANK: REVIEWING THE EFFECTS OF THE CFPB REGULATIONS**

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International remittances provide \$325 billion in capital per year to developing countries and are an essential tool for international economic development. Remittance transfer services have been expensive – in 2011, they cost an average service fee of 9.3% of the amount sent – because their operations can be expensive. Even with the use of agents, such a service often requires the maintenance of an expansive network of brick-and-mortar access points. Mobile phones now provide a means for eliminating access issues, leading to reduced infrastructure and operating costs for the provider and, ideally, reduced costs for the consumer. As mobile availability continues to expand around the world, the mobile phone will likely serve as the foundation for the next wave of downward price movement in the average cost of remittances. This will result in reduced opportunity costs and actual costs for senders and recipients, and will likely also advance several U.S. foreign policy interests in the process. U.S. regulatory policy changes have the potential to significantly increase flows of this efficient private foreign assistance and reduce the costs to individual senders and recipients.

The U.S. Congress chose to regulate international remittances at the federal level with its decision to include Section 1073 in the July 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>1</sup> The statute required the Board of Governors of the Federal

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Reserve System (“Board”) and the newly-created Consumer Financial Protection Bureau (“Bureau”) to draft regulations to interpret and apply the statutory provisions. The final rule was issued on February 7, 2012 and becomes effective February 7, 2013.

Remittance regulatory efforts should be approached within a framework of reducing barriers to the development and adoption of mobile remittances. Greater volumes transacted via mobile phones will lead to cheaper prices for consumers, greater capital flows to developing countries, and increased support of infrastructure that can help combat corruption and counter the financing of terrorism.

This article analyzes the impact that the Bureau’s final rule will have on the development and implementation of mobile remittances sent from the United States. Part I describes the remittance and mobile banking industries and their importance for international economic development. Part II discusses the Dodd-Frank Act and regulations. Part III analyzes the rule’s effects on mobile remittances and highlights the possibilities that this rule creates for the industry going forward.

## **1. Remittances, Mobiles, and International Economic Development**

### **a. Remittances**

Remittance flows to developing countries provide more than three times as much capital as government official development assistance (ODA), and an amount equal to 57% of the total private foreign direct investment (FDI) in developing countries’ economies each year.<sup>2</sup>

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073 (2010) (an Act signed on July 21, 2010, with the goal of reforming the U.S. financial system’s accountability and transparency, correcting “too big to fail,” and introducing certain new consumer protection measures in the financial services industry).

<sup>2</sup> Compare Sanket Mohapatra, Dilip Ratha & Ani Silwal, *Migration and Development Brief 17*, WORLD BANK, (Dec. 1, 2011), <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationandDevelopmentBrief17.pdf> (“\$325 billion in 2010”), with *Query Wizard for International Development Statistics*, ORG. FOR ECON. COOPERATION & DEV., <http://stats.oecd.org/qwids/#?x=1&y=6&f=4:1,2:1,3:51,5:3,7:1&q=4:1+2:1+3:51+5:3,4+7:1+1:2+6:2010>

Moreover, remittances go directly to their intended recipients without the bureaucratic controls and redirection that can consume large percentages of ODA, or the corresponding capital outflows in the form of dividends and repatriated profits on FDI. While U.S. taxpayers provided the rest of the world with \$36.9 billion in foreign aid in 2010,<sup>3</sup> individuals working in the U.S. – “the largest estimated source of international remittances” in the world<sup>4</sup> – sent \$51.6 billion in remittances to developing countries that year.<sup>5</sup> Remittances provide more than 10% of GDP for one-eighth or more of the world’s countries, and about 25% or more of GDP in Lesotho, Samoa, and Tajikistan.<sup>6</sup>

Reducing the cost of remittances should increase the flow of formal remittances to developing countries,<sup>7</sup> and this will have important consequences. Numerous studies have

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(preliminary data predicts that \$128.7 billion USD in official development assistance was disbursed worldwide in 2010. While complete 2010 data is not yet available for the “all developing countries” subcategory, 79.1% and 80.8% of the worldwide ODA disbursements went to these countries in 2009 and in 2008 respectively. If this pattern continues, then ODA to developing countries in 2010 was roughly \$103 billion USD) and *Inward and Outward Foreign Direct Investment Flows, Annual, 1970–2009*,

UNCTADSTAT, <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=88> (providing that inward foreign direct investment flows to developing economies in 2010 totaled approximately \$ 573.6 billion USD).

<sup>3</sup> *Foreign Assistance Dashboard*, FOREIGNASSISTANCE.GOV,

<http://foreignassistance.gov/DataView.aspx#DataSetAnchor> (select “Foreign Assistance Summarized by Year (All Organizational Units)” under Report Criteria; select year “2010” under Filter Data By Fiscal Year; run query). Foreign assistance summarized by year (All Organizational Units) for Fiscal Year 2010 had base year appropriation of \$32,260,032,000 and supplemental appropriations of \$4,599,560,000).

<sup>4</sup> FED. RESERVE, REPORT TO THE CONGRESS ON THE USE OF THE AUTOMATED CLEARINGHOUSE SYSTEM FOR REMITTANCE TRANSFERS TO FOREIGN COUNTRIES 2 (July 2011), [http://www.federalreserve.gov/boarddocs/rptcongress/ACH\\_report\\_201107.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/ACH_report_201107.pdf) [hereinafter *ACH Remittance Report*].

<sup>5</sup> *Annual Remittances Data Outflows*, WORLD BANK (Dec. 2011), [http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/RemittancesData\\_Outflows\\_Dec11\(Public\).xlsx](http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/RemittancesData_Outflows_Dec11(Public).xlsx).

<sup>6</sup> *Annual Remittance Data Inflows*, WORLD BANK (Dec. 2011), [http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/RemittancesData\\_Inflows\\_Dec11\(Public\).xlsx](http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/RemittancesData_Inflows_Dec11(Public).xlsx) (Remittances as a share of 2010 GDP: Tajikistan (31.0%), Lesotho (28.6%), Samoa (24.8%), Moldova (23.2%), Kyrgyz Republic (20.8%), Nepal (20.0%), Tonga (19.7%), Lebanon (19.6%), Kosovo (17.5%), El Salvador (15.7%), Jamaica (15.2%), Honduras (15.1%), Guyana (13.0%), Bosnia and Herzegovina (12.9%), Jordan (12.8%), Togo (12.2%), Nicaragua (11.7%), Haiti (11.7%), Senegal (11.2%), Albania (10.9%), Philippines (10.7%), Serbia (10.4%), Guatemala (10.2%), and the Gambia (10.0%)).

<sup>7</sup> *Mobile Money Transfer*, GSM WORLD, <http://216.239.213.7/mmt/intro.asp> (“The World Bank estimates that reducing remittance commission charges by 2-5% could increase the flow of formal remittances by 50-70%, which

shown that international remittances reduce poverty.<sup>8</sup> Remittances also “promote entrepreneurship, and develop financial infrastructure,”<sup>9</sup> “spur spending on health and education, . . . [and] provide insurance against adverse shocks by diversifying the sources of household income.”<sup>10</sup>

The service cost of sending a remittance varies significantly depending on how and where it is sent, and how much is sent. There has been a downward trend in worldwide remittance prices over the last decade. Unfortunately this trend has recently reversed, as “[t]he Global Average Total Cost increased from 8.89 percent in the 3Q 2010 to 9.30 percent in the 3Q 2011.”<sup>11</sup> Mobile remittances though are cheaper for the sender and significantly reduce opportunity costs for both the sender and the recipient. Mobile remittances cost 7.36% on

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would boost local economies. Reducing the cost of sending each individual remittance encourages the delivery of lower value remittances, at values far less than today's average transfer of US\$200”).

<sup>8</sup> See, e.g., Richard H. Adams, Jr., *The Effects of International Remittances on Poverty, Inequality, and Development in Rural Egypt*, 86 INT’L FOOD POL’Y RESEARCH INST. RESEARCH REPORT 73 (1991) (“[T]he study shows that international remittances have a small, but positive, effect on poverty.”); Pablo Acosta, Cesar Calderón, Pablo Fajnzylber & Humberto Lopez, *What is the Impact of International Remittances on Poverty and Inequality in Latin America?* 21 (World Bank Policy Research Working Paper No. 4249 2007) (“[M]igration and remittances have statistically significant poverty reducing effects that appear to operate mainly through increases in per capita income of remittances-receiving countries.”); Richard H. Adams, Jr. & John Page, *The Impact of International Migration and Remittances on Poverty*, in REMITTANCES: DEV. IMPACT AND FUTURE PROSPECTS 277, 291 (2005) (“[I]nternational remittances – defined as the share of official remittances in country GDP – has a negative and statistically significant effect on all three poverty measures used in the analysis. On average, the point estimates for the poverty headcount measure indicate that a 10 percent increase in the share of remittances in country GDP will lead to a 1.6 percent decline in the share of people living on less than US\$1 per day. However, the more sensitive poverty measures – the poverty gap and squared poverty gap – suggest that international remittances will have a slightly larger impact on poverty reduction.”). But see Manuel Orozco, *Migration, Remittances and Assets in Bangladesh: Considerations About Their Intersection and Development Policy Recommendations* 1-2 (2010) [http://www.thedialogue.org/PublicationFiles/Migration%20Remittances%20and%20Assets\\_Bangladesh\\_final%20a ppendix.pdf](http://www.thedialogue.org/PublicationFiles/Migration%20Remittances%20and%20Assets_Bangladesh_final%20a ppendix.pdf) (“In the short term, their condition improves and keeps them out of poverty, . . . in the long term, without appropriate and systematic means to achieve economic independence, [remittance recipients’] ability to get out of poverty does not change.”).

<sup>9</sup> Colin C. Richard, *Dodd-Frank, International Remittances, and Mobile Banking: The Federal Reserve’s Role in Enabling International Economic Development*, 105 NW. U. L. REV. COLLOQUY 248, 251-52 (2011), <http://www.law.northwestern.edu/lawreview/colloquy/2011/7/LRColl2011n7Richard.pdf> (citing studies discussing the effects international remittances have on entrepreneurship and financial infrastructure).

<sup>10</sup> DILIP RATHA, “LEVERAGING MIGRATION FOR AFRICA: REMITTANCES, SKILLS, AND INVESTMENTS 4 (2011), <http://siteresources.worldbank.org/EXTDECPROSPECTS/Resources/476882-1157133580628/AfricaStudyEntireBook.pdf>.

<sup>11</sup> *Remittance Prices Worldwide Issue No.3*, WORLD BANK 1 (Nov. 2011). The average cost of a remittance sent from the US is 6.93%. *Id.* at 2.

average, and while they are not yet as widely available as other options, this average still proves to be cheaper than cash transfers (7.60%), on-line transfers (8.76%), and account-to-account transfers (14.52%, although this drops to 6.47% when only considering transfers within the same institution).<sup>12</sup> As the availability of mobile remittances and the growth in the number of mobile remittance providers increase, the market price of this service is likely to decrease even further relative to other options.<sup>13</sup>

### **b. Mobile Banking**

The traditional function of a bank, as a means for efficiently matching passive assets with individuals and businesses in need of credit,<sup>14</sup> plays a central and necessary role in economies and benefits individuals, businesses, and society as a whole. Banks have “been present even in the earliest instances of pre-modern, pre-capitalist societies, their role so pervasive and ingrained in the basic functioning of markets and economies”<sup>15</sup> in which they serve many essential roles.<sup>16</sup> A significant body of research concludes that banking activity likely adds economic value.<sup>17</sup>

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<sup>12</sup> *Remittance Prices Worldwide Issue No.3*, WORLD BANK 6 (Nov. 2011).

<sup>13</sup> CONSUMER FIN. PROTECTION BUREAU, REPORT ON REMITTANCE TRANSFERS 15 (2011) [hereinafter *Report on Remittance Transfers*] (“The World Bank attributed recent price declines in certain popular remittance markets, in part, to the industry’s growing use of Internet technology to exchange messages and settle funds. In coming years, emerging remittance transfer products could lead to further price declines, by reducing the need for – and costs associated with – retail agents.”).

<sup>14</sup> Franklin Allen & Elena Carletti, *The Roles of Banks in Financial Systems*, THE OXFORD HANDBOOK OF BANKING 37 (Allen N. Berger, Philip Molyneux & John O. S. Wilson eds., 2010) (“The efficiency of the process through which savings are channeled into productive activities is crucial for growth and general welfare. Banks are one part of this process[, financial markets are the other].”).

<sup>15</sup> Nicola Cetorelli, *Banking and Real Economic Activity*, in THE OXFORD HANDBOOK OF BANKING 756, 757 (2010).

<sup>16</sup> Franklin Allen & Elena Carletti, *The Roles of Banks in Financial Systems*, THE OXFORD HANDBOOK OF BANKING 54 (2010) (Banks act “as delegated monitors and ensure that firms use the resources allocated to them effectively. They also play an important role in sharing risk in the economy by diversifying and smoothing fluctuations over time . . . Banks play an important role in providing funds for firms and helping them and the economy to grow. . . . banks can help overcome asymmetric information problems by forming long-lived relationships with firms.”).

<sup>17</sup> See e.g., Cetorelli, *supra* note 15, at 759 (analyzing a line of research assessing the casualty of banking and economic growth, and concluding “Their evidence represents, in my opinion, the closest to a nail in the coffin of the causality debate. After this paper, it has become very difficult to counter Schumpeter’s assertion that ‘bank credit does create value’, or at the very least the burden of proof has shifted squarely to the other side of the debate.”).

Yet, there remains widespread lack of access to the formal financial services offered in many countries around the globe – mobile phones can now provide that access.

Four general financial tools are important for the consumer: savings, payment systems, insurance, and credit. Various savings methods – typically, although not always, in the form of a deposit account – offer a means to store assets, ideally with the benefit of compound interest. Payment systems, whether through checks, cards, or the mobile phone, allow a more risk-free payment method than cash, reducing the threat of loss or theft for the consumer. Insurance services provide a means to shift risk burdens, which is especially relevant when medical problems or natural disasters can be catastrophic for a household's finances. Finally, access to credit, providing financial leverage, is often an integral factor for increasing personal opportunities and business growth.

In general, these four services are not available to the world's poor because many business models that could provide these services are often not yet economically viable below certain consumer income levels and, as a result of a variety of factors, companies and entrepreneurs have been slow to enter these markets. This is primarily the consequence of two key issues: a lack of infrastructure resulting in limited access points, and significant operating costs which restrict the profitability in provision of financial services to markets below certain income levels.

In the last few years, mobile technology – specifically the exponential growth of global access to mobile telecommunication networks, the prevalence of cheap handsets and interchangeable SIM cards, and the recent development of dozens of mobile money platforms around the world – has provided a means for eliminating these two obstacles. This suggests that in the near future, the world is likely to witness an explosion in access to financial services and

the resulting benefits for individuals struggling to escape poverty, entrepreneurs and businesses seeking to enable markets and create jobs, and overall economic growth in developing economies. While many current platforms are termed “mobile money,” the end goal is something more-approaching “mobile banking,” with mobile phones being used to deliver the full-spectrum of traditional financial products to poor and rural communities around the world.<sup>18</sup> Mobile money can be a necessary first step for mobile banking, but progress will require businesses to reach scale, regulatory reform that does not restrict the development space unnecessarily, and entrepreneurial initiative to creatively experiment with different business models and partnerships.

This trend toward mobile financial services is being matched within the U.S. market as well. Industry commentators point out that in order “to harness mobile for its full potential, banks must look at mobile banking as a channel in and of itself rather than as a ‘channel extension’ of online banking. . . . The mobile device will be at the center of how customers manage their financial relationships going forward.”<sup>19</sup> Current startups like Simple and MovenBank are leading this effort to encourage consumers to view banking access from the mobile perspective, and not simply as an extension of physical or internet banking.<sup>20</sup> MovenBank’s founder argues that “[t]he conclusions are inevitable. If you think Internet banking take-up was rapid, wait till you get a load of mobile payments. . . . banks are simply no

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<sup>18</sup> See, e.g., Safaricom – Safaricom M-KESHO, SAFARICOM, <http://www.safaricom.co.ke/index.php?id=263> (last visited April 1, 2012) (M-Kesho in Kenya which now offers interest-bearing deposit accounts, and facilitates insurance products and loans.).

<sup>19</sup> Kiran Kalmadi & Raghavendra Shenoy, *Seizing the Mobile Banking Opportunity*, BANKTECH, Nov. 29, 2011, <http://www.banktech.com/channels/232200338>; see also Will Hernandez, *Banks Should Embrace Open Mobile-Wallet Systems, Citi Exec Says*, AMERICAN BANKER, Oct. 14, 2011, [http://www.americanbanker.com/issues/176\\_200/isis-google-wallet-dickson-chu-citigroup-1043161-1.html](http://www.americanbanker.com/issues/176_200/isis-google-wallet-dickson-chu-citigroup-1043161-1.html).

<sup>20</sup> See, e.g., SIMPLE, <https://www.simple.com/> (last visited April 1, 2012); see also, MOVENBANK, <http://movenbank.com/> (last visited April 1, 2012).



longer going to be necessary when it comes to point-of-sale, neither are credit card companies.”<sup>21</sup> And there is reason to believe that this may be realized quite soon – for example, “Just as people adapted to purchasing online, now they are becoming more accustomed to buying through their smartphones. PayPal is seeing a six-fold increase in mobile payments as smartphones move toward owning half of 2011’s mobile marketshare.”<sup>22</sup> Even Visa, one of the most influential firms in card-based payments, has acknowledged that the economy is moving toward a mobile future.<sup>23</sup> As a result, Visa has unveiled its own mobile wallet, V.me – evidencing, perhaps more than any other development, the impending paradigm shift.<sup>24</sup>

### **c. Benefits of Mobile Banking and Mobile Remittances**

Access to financial services is the area of economic development in which there is the greatest disparity globally between the rich and the poor.<sup>25</sup> For the first time, the tools now exist to connect the global poor with an efficient method for receiving remittances, leveraging credit, utilizing savings accounts, and becoming insured. The mobile phone, as the delivery vehicle for mobile financial services, is revolutionizing the way international development is approached and has the potential to open the door for billions of individuals to a wide-array of financial products that can help to protect their families from the daily risks and uncertainties of poverty. But, in addition to the financial benefits for households and economies generally, mobile

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<sup>21</sup> Brett King, *Bank 2.0: How Customer Behaviour and Technology Will Change the Future of Financial Services*, 343 (2010).

<sup>22</sup> Meghan Kelly, *PayPal Sees 514 Percent Increase of Mobile Payments on Cyber Monday*, VENTUREBEAT, Nov. 28, 2011, <http://venturebeat.com/2011/11/28/paypal-sees-514-percent-mobile-payments-increase-on-cyber-monday/> (“PayPal had a 514 percent increase in mobile payments this Cyber Monday from last year . . . The payments company saw an even bigger mobile increase, 516 percent, this past Black Friday.”).

<sup>23</sup> Elinor Mills, *Mobile Phone E-Wallets Get Closer to Reality*, CNET, Feb. 18, 2011, [http://reviews.cnet.com/8301-13970\\_7-20032840-78.html](http://reviews.cnet.com/8301-13970_7-20032840-78.html) (quoting the global head of Visa Mobile, who predicted that “The move from leather wallets to mobile wallets will come this year.”).

<sup>24</sup> See, e.g., *V.me* by Visa, VISA VIEWPOINTS, Nov. 15, 2011, <http://blog.visa.com/2011/11/15/v-me-by-visa/>.

<sup>25</sup> Elisa Sitbon, *How Does Finance’s Outreach Compare to Other Utilities*, CGAP MICROFINANCE BLOG, February 4, 2010, <http://microfinance.cgap.org/2010/02/04/how-finance%E2%80%99s-outreach-compares-to-other-utilities%E2%80%99/> (Only 40% of the world has access to financial services; compare with access to basic sanitation (60%), mobile phones (68%), electricity (78%), safe water (83%), or basic medical care (84%).).

banking and mobile remittances provide several systemic improvements from a security policy perspective: they can help to reduce physical insecurities, eliminate opportunities for global corruption, and support the battle against the financing of terrorism and other illicit activities.

**i. Increase physical security**

Cash is convenient in some situations, but it also creates real insecurities for both the consumer and the consumer's asset accumulation efforts. The carrying of and transacting in cash presents opportunities for wealth loss, theft, or destruction (e.g., from a flood or fire in the individual's home where the cash savings are stored). The use of mobile phones for both savings and transactions allows the consumer to store assets in a secure form, which is separated from any immediate physical threats of loss, theft, or destruction. If the mobile phone is lost or stolen, the consumer contacts the mobile money or mobile banking provider to secure the account, and the assets are preserved. Additionally, the consumer presents a lower risk profile in the course of normal business in that there is reduced need to carry large sums of cash to execute transactions.

In war zones, mobile money transfers allow governments to decentralize salary distributions for their security forces. This has become an important issue in Afghanistan where cash salary distributions for Afghan soldiers and police officers have required a coordinated event at a fixed time and location, resulting in large lines for payments. In February 2011, "[a]s Afghan soldiers and police officers lined up . . . to get their monthly salaries at a bank in downtown Jalalabad, they became targets for seven heavily armed attackers."<sup>26</sup> A solution exists in mobile banking, which offers a means to decentralize this distribution, allowing soldiers and police officers the ability to receive their salaries directly to their mobile phone and then convert

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<sup>26</sup> Alissa J. Rubin, *Attackers Wearing Army Uniforms Make Deadly Assault on Bank in Afghanistan*, N.Y. TIMES, Feb. 19, 2011, <http://www.nytimes.com/2011/02/20/world/asia/20afghanistan.html>.

it to cash at their convenience at a grocery store or other mobile agent. Additionally, mobile salary distributions can reduce absenteeism in military units and keep individual government employees safer in war zones.<sup>27</sup>

On the other hand, a potential argument against reliance on mobile banking appears in the context of countries in transition. A real concern is that when access to financial services relies primarily on the telecommunications networks, and an authoritarian power essentially controls the switch to turn off these networks,<sup>28</sup> the citizens could be left without access to their savings, payment systems for daily purchases, or even immediate access to money for necessities such as food and water. In Spring 2011, dictators shut down mobile access when faced with protestors using text messages and social media to organize and demand democracy.<sup>29</sup> Means exist to work around this control over infrastructure – independent mobile networks have been developed to counter dictators<sup>30</sup> or the outages resulting from natural disasters<sup>31</sup> – but it is unclear to what

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<sup>27</sup> Peter E. Kunkel, *How Jesse James, the Telegraph, and the Federal Reserve Act of 1913 Can Help the Army Win the War on Terrorism: The Unrealized Strategic Effects of a Cashless Battlefield*, MIL. REV., 88, 95 (2008) (“The Army can learn from accounts of Iraqi units suffering high rates of absenteeism while indigenous soldiers and police travel great distances to deliver cash to their families and, while in transit, suffer attacks by insurgents seeking to weaken the nascent force and discourage potential recruits. A practical solution to this problem could be to conduct salary payments of indigenous soldiers and police by money transfer enabled by expeditionary banking. This would keep government employees off the road and within the relatively safer confines of their units.”).

<sup>28</sup> See, e.g., Ray Rivera & Sangar Rahimi, *Taliban Cut Cellphone Service in Helmand*, N.Y. TIMES, Mar. 24, 2011, <http://atwar.blogs.nytimes.com/2011/03/24/taliban-cuts-cellphone-service-in-helmand/> (“[M]obile phone networks throughout [Helmand province] have been silenced for nearly a week now under orders of the Taliban”); Seth Mydans, *Monks Are Silenced, and for Now, Internet Is, Too*, N.Y. TIMES, Oct. 4, 2007, <http://www.nytimes.com/2007/10/04/world/asia/04info.html> (“[T]he junta cut off most telephone access to the outside world. Soldiers on the streets confiscated . . . cellphones.”).

<sup>29</sup> See, e.g., Christopher Rhoads & Geoffrey A. Fowler, *Egypt Shuts Down Internet, Cellphone Services*, WALL ST. J., Jan. 29, 2011, <http://online.wsj.com/article/SB10001424052748703956604576110453371369740.html> (“Egypt took the unprecedented step of . . . shutting down its cellphone services—with the cooperation of international firms.”); Jennifer Preston, *Seeking to Disrupt Protesters, Syria Cracks Down on Social Media*, N.Y. TIMES, May 22, 2011, <http://www.nytimes.com/2011/05/23/world/middleeast/23facebook.html> (“Security officials are moving on multiple fronts . . . switching off the 3G mobile network at times . . . , turning off . . . telephone service in neighborhoods with the most unrest.”).

<sup>30</sup> Margaret Coker & Charles Levinson, *Rebels Hijack Gadhafi's Phone Network*, WALL ST. J., April 13, 2011, <http://online.wsj.com/article/SB10001424052748703841904576256512991215284.html> (“A team led by a Libyan-American telecom executive has helped rebels hijack Col. Moammar Gadhafi's cellphone network and re-establish their own communications,” by creating “an independent data and routing system free from Tripoli's command.”).

extent tools such as these can be relied on from the perspective of mobile banking providers, and these tools may raise other issues in such a context.

## ii. Fight Global Corruption

The advent of mobile money transfer has created an amazing tool for helping to eliminate the opportunity for corruption – “[c]ash is the greatest driver of corruption. But when you make a mobile payment the transaction is electronic – this means there is an audit trail.”<sup>32</sup> This audit trail, combined with the direct disbursement of the sum from payer to payee, reduces the opportunity for corrupt officials to extract tolls on a citizen’s daily activities. This policy change has been advocated for and is taking effect in markets such as Afghanistan<sup>33</sup> where the elimination of corruption is helping to ensure that government security force salaries achieve their strategic purpose.<sup>34</sup> This approach is now U.S. policy, and USAID is working

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<sup>31</sup> Rebecca Boyle, *With Australian Mesh-Network System, Cellphones Work in Remote or Disaster-Struck Areas, No Need for Towers*, POPSCI, July 14, 2010, <http://www.popsoci.com/gadgets/article/2010-07/australian-teams-tower-less-cellphone-network-enables-communication-remote-areas> (“The goal is to provide fast, cheap, robust and effective telecommunications systems where conventional phone infrastructure has been destroyed or is not cost-effective . . .”).

<sup>32</sup> Barry Coetzee, *How Mobile Money is Changing Africa: Interview with Barry Coetzee of iVeri*, MOBITHINKING, <http://mobithinking.com/mobile-money-interview-barry-coetzee-iveri>.

<sup>33</sup> Kunkel, *supra* note 27, at 94 (“[I]f a mobile banking network has been established, financial flows across the network would be transparent, limiting opportunities for corruption.”); Dan Rice & Guy Filippelli, *One Cell Phone at a Time: Countering Corruption in Afghanistan*, SMALL WARS J., Sept. 2, 2010, at 1, available at <http://smallwarsjournal.com/blog/journal/docs-temp/527-rice.pdf> (“Money appropriated to secure and stabilize the country is too easily siphoned and redirected as it changes hands, inevitably making its way to local powerbrokers, insurgent networks, and offshore bank accounts, rather than the individuals who need it most. One solution to this problem lies in the palm of our hands: the mighty cell phone.”); Colin C. Richard, *How the U.S. Government’s Market Activities Can Bolster Mobile Banking Abroad*, 88 WASH. U. L. REV. 765 (2011), available at <http://lawreview.wustl.edu/commentaries/how-the-us-governments-market-activities-can-bolster-mobile-banking-abroad> (“To combat corruption and increase the effectiveness of foreign aid, the United States should require that all of its foreign aid distributions, reconstruction projects, and payments for services abroad go through banking channels—that is, the U.S. government should strive to eliminate cash transactions whenever possible. In U.S. operations in many parts of the developing world, this will mean utilizing nascent mobile banking industries . . .”).

<sup>34</sup> See Rice & Filippelli, *supra* note 33, at 1 (“In 2009, the Afghan National Police began a test to pay salaries through mobile telephones, rather than in cash. It immediately found that at least 10% of its payments had been going to ghost policemen who didn’t exist; middlemen in the police hierarchy were pocketing the difference. Salaries for Afghan police and soldiers are calculated to be competitive with Taliban salaries, but beat cops and deployed soldiers had been receiving only a fraction of the amount paid by US taxpayers because of corruption in the payment system. Most Afghan cops assumed that they had been given a significant raise, when, in fact, they simply received their full pay for the first time--over the phone.”).

collaboratively with foreign governments so that mobile money can “serve as the lynchpin in government efforts to improve transparency, mitigate corruption, reduce leakages in the disbursement of funds, and undercut serious threats to our security.”<sup>35</sup>

### **iii. Counter the financing of terrorism**

The transparency benefits that mobile money platforms provide for eliminating opportunities for corruption have also been helpful in countering the financing of terrorism. The formal financial sector is effectively governed in part by a series of international recommendations, implemented by nationalizing legislation, which have helped to ensure that institutions know their customers and that governments are able to counter the financing of terrorism.<sup>36</sup> In 2008, the then- U.S. Acting Assistant Secretary of the Army stated that the reduced opportunities for corruption arising from an established mobile banking network will also “increas[e] law enforcement tools to battle more serious threats such as terrorism financing.”<sup>37</sup>

This strategy is beginning to succeed in disrupting financial pipelines that fund violence and instability, and is illustrated by the pushback from these illegal organizations. In 2010, the terrorist group al-Shabab issued a proclamation threatening Somalia for its adoption and

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<sup>35</sup> USAID Office of Innovation and Development Alliances, *Mobile Money*, Oct. 9, 2011, <http://idea.usaid.gov/newsroom/articles/ms/11-10-09-99>.

<sup>36</sup> See Financial Action Task Force, *FATF IX Special Recommendations*, (Oct. 22, 2004); Financial Action Task Force, *FATF 40 Recommendations*, (June 20, 2003). *But see*, 77 Fed. Reg. 6194, 6213 (Feb. 7, 2012) (“[w]hen EFTA section 919, as implemented by this rule, becomes effective, certain transactions that have traditionally been outside the scope of the EFTA will be governed by the EFTA, such as consumer-initiated wire transfers. The Bureau has had discussions with FinCEN about the importance of FinCEN amending its rules so that they continue to apply to remittance transfers after the effective date of this rule. The OCC also stated that it will be imperative that FinCEN act quickly to amend their rules. The Bureau does not believe, however, that it can fill the gap by incorporating FinCEN’s regulations into Regulation E. The Bureau believes consolidating the requirements of the Bank Secrecy Act and the EFTA in Regulation E would be impracticable under the respective authorities of two agencies.”).

<sup>37</sup> Kunkel, *supra* note 27, at 94.

sustained use of mobile remittances provided by three Somali telecom companies.<sup>38</sup> The Somali government stated that al-Shabab issued the threat after the companies refused to let their services be used for terrorist fundraising.<sup>39</sup> This statement is supported by reporting elsewhere that the threats came in response to the tactical reality that traditional money transfer channels are easier for al-Shabab to influence, tax, and use for their own ends than are the use of mobile phones for remittances.<sup>40</sup>

These economic and non-economic benefits arising from the use of mobile banking and mobile remittances, and the resulting increases in access to financial services, illustrate a different world that may be possible in just a few years. The U.S. is the largest origination market for international remittances, and the advent of new federal regulation of this industry has the potential to enable greater volumes of this private economic assistance at cheaper costs to the consumer.

## **2. The Dodd-Frank Act, the Board's Proposed Rule, and the Bureau's Final Rule**

The U.S. Congress, in the course of its effort to overhaul how the U.S. financial system is regulated, implemented several provisions in the Dodd-Frank Act related to international remittances. The most significant of these is the addition to the Electronic Funds Transfer Act (EFTA) of a new section on remittance transfers,<sup>41</sup> though Congress also used this opportunity to evaluate potential policy options for the future. As a result, Congress has required that (i) the Federal Reserve and the Department of the Treasury work “to expand the use of the automated

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<sup>38</sup> Ibrahim Mohamed, *Somali Militants Ban Mobile Money Transfers*, REUTERS AFRICA, Oct. 18, 2010, <http://af.reuters.com/article/somaliaNews/idAFLDE69H22R20101018>.

<sup>39</sup> *Id.* (“Ban comes after firms closed doors on al Shabaab - govt”).

<sup>40</sup> *Al-Shabab Bans Mobile Phone Money Transfers in Somalia*, BBC NEWS, Oct. 18, 2010, <http://www.bbc.co.uk/news/world-africa-11566247> (Al-Shabab “may also fear that its members and backers can be traced more easily when mobiles are used for money transfers. . . . [the ban] “may be intended to block a rival to the traditional money transfer systems . . . which al-Shabab can influence, or tax, more easily.”).

<sup>41</sup> Dodd-Frank Act, 12 U.S.C. § 5601(a) (2012).

clearinghouse system and other payment mechanisms for remittance transfers to foreign countries”<sup>42</sup>; (ii) the Federal banking agencies and the National Credit Union Administration (NCUA) “provide guidelines to financial institutions . . . regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts”<sup>43</sup>; and (iii) the Director of the Bureau issue a report on the feasibility of using remittance histories in the calculation of credit scores.<sup>44</sup>

#### **a. The Board’s Proposed Rule**

The amendment to the EFTA regulates the remittance industry through required disclosures, as well as error resolution, cancellation, and refund procedures. The Board, in its discussion of methods for sending remittance transfers, acknowledged that “[r]emittance transfer providers are also exploring the use of mobile applications to send remittances.”<sup>45</sup> As a result, in issuing the proposed rule, the Board specifically sought public comment on three issues related to mobile remittances.<sup>46</sup> While some commenters have noted that it may be too difficult to offer retainable disclosures for mobile remittances,<sup>47</sup> others have requested flexibility in the Bureau’s

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<sup>42</sup> 12 U.S.C. § 5601(b). The Board is required to draft biennial reports “on the status of the automated clearinghouse system and [the Board’s] progress in complying with the requirements of this subsection . . . [including] an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.” The first of these reports was issued in July 2011, and is available at [http://www.federalreserve.gov/boarddocs/rptcongress/ACH\\_report\\_201107.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/ACH_report_201107.pdf) (Concluding that “neither the supply nor the demand side has extensive experience with international ACH transfers”).

<sup>43</sup> 12 U.S.C. § 5601(c).

<sup>44</sup> 12 U.S.C. § 5601(e). *See also* Report on Remittance Transfers, *supra* note 13, at 32 (Concluding that “Given the differences between many remittance transfers and recurring payments for debts or other contractual obligations, it is difficult to know, without empirical analysis, what patterns or attributes of remittance history might be predictive of a sender’s credit risk.”).

<sup>45</sup> 76 Fed. Reg. 29903, 29904 (May 23, 2011).

<sup>46</sup> *Id.* at 29916 (describing (i) “how the requirement to provide electronic disclosures in a retainable form in proposed §205.31(a)(2) could be applied to transactions conducted via text messaging or mobile phone application”; (ii) “how the grouping and proximity requirements in proposed §§205.31(c)(1) and (2) could be applied to transactions conducted via text messaging or mobile phone application”; and (iii) “how the prominence and size requirements in proposed §205.31(c)(3) could be applied to transactions performed via text messaging or mobile phone application.”).

<sup>47</sup> Michael J. DeFors, *Michigan Credit Union League*, cmt., FEDERAL RESERVE 1, 2-3, (July 20, 2011), [http://federalreserve.gov/SECRS/2011/July/20110728/R-1419/R-1419\\_072011\\_82956\\_33459222190\\_1.pdf](http://federalreserve.gov/SECRS/2011/July/20110728/R-1419/R-1419_072011_82956_33459222190_1.pdf); The



approach to this rule.<sup>48</sup> Specifically, commentators have suggested that disclosures could be made simultaneously through the phone and email, mail, or Internet link; or alternatively through delivery of a PDF or HTML file; or by saving a screen shot.<sup>49</sup> While the Board was initially charged with drafting these remittance regulations, that authority transferred to the Bureau on July 21, 2011.<sup>50</sup>

## **b. The Bureau's Final Rule**

As with the Board, the Bureau acknowledges the expected growth of mobile remittances and has stated that the rule must be written such that they “adapt disclosures to the growing variety of channels that consumers use to initiate remittance transfers,”<sup>51</sup> including mobile remittances.<sup>52</sup> Consequently, the Bureau “used its authority . . . to tailor the disclosure

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Clearing House Association LLC et al., *Joint Association Comment Letter*, cmt., FEDERAL RESERVE 1, 18 - 19 (July 22, 2011), [http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419\\_072211\\_84135\\_470496936468\\_1.pdf](http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419_072211_84135_470496936468_1.pdf); Jeff Asher, *1<sup>st</sup> Bank Holding Company*, cmt., FEDERAL RESERVE 1, 3, (July 22, 2011) [http://federalreserve.gov/SECRS/2011/August/20110810/R-1419/R-1419\\_072211\\_83820\\_470497561472\\_1.pdf](http://federalreserve.gov/SECRS/2011/August/20110810/R-1419/R-1419_072211_83820_470497561472_1.pdf).

<sup>48</sup> Joseph Cachey III, *Western Union Comments on the Notice of Proposed Rulemaking Regarding Remittance Transfers*, cmt., FEDERAL RESERVE 1, 23-24, (July 22, 2011), [http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419\\_072211\\_83480\\_331083972500\\_1.pdf](http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419_072211_83480_331083972500_1.pdf); Asher, *supra* note 47, at 2; John Muller, *PayPal Comment on Proposed Rules Regarding Global Remittance Service*, cmt., FEDERAL RESERVE 1, 5 (July 22, 2011), [http://federalreserve.gov/SECRS/2011/July/20110729/R-1419/R-1419\\_072211\\_83811\\_470495842711\\_1.pdf](http://federalreserve.gov/SECRS/2011/July/20110729/R-1419/R-1419_072211_83811_470495842711_1.pdf); Randi D. Adelstein, *MasterCard Comment on Electronic Fund Transfers*, cmt., FEDERAL RESERVE 1, 6 (July 22, 2011) [http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419\\_072211\\_84026\\_470495998962\\_1.pdf](http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419_072211_84026_470495998962_1.pdf); Robert G. Rowe, *American Bankers Association Comment*, cmt., FEDERAL RESERVE 1, 5, (July 22, 2011), [http://federalreserve.gov/SECRS/2011/August/20110801/R-1419/R-1419\\_072211\\_83992\\_470495530209\\_1.pdf](http://federalreserve.gov/SECRS/2011/August/20110801/R-1419/R-1419_072211_83992_470495530209_1.pdf).

<sup>49</sup> Muller, *supra* note 48, at 5; Asher, *supra* note 47, at 2; Cachey, *supra* note 48, at 24; The Clearing House Association et. al., *supra* note 47, at 21; Betsy Cavendish, *Appleseed Comments to the Federal Reserve Board*, cmt., FEDERAL RESERVE 1, 12, (July 22, 2011), [http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419\\_072211\\_83996\\_470495686460\\_1.pdf](http://federalreserve.gov/SECRS/2011/August/20110811/R-1419/R-1419_072211_83996_470495686460_1.pdf).

<sup>50</sup> Report on Remittance Transfers, *supra* note 13, at 17 (stating that “On July 21, 2011, the date of this report, the rule-writing authority of the Federal Reserve Board for these provisions transferred to the CFPB, which is now responsible for issuance of the final EFTA remittance transfer rules.”).

<sup>51</sup> *Id.* at 1.

<sup>52</sup> See *id.* at 7-8 (stating that “several money transmitters have begun to permit customers to transfer or receive money through accounts tied to . . . mobile phone numbers.”); *id.* at 9 (stating that “as RTPs expand beyond cash and account-based transfer products, some are also allowing consumers to initiate transactions by phone . . . [and] with mobile phone text messages.”).



requirements to reduce potential burdens” for mobile remittances,<sup>53</sup> and, as a result, the final rule “generally tracks the language and structure of the Dodd-Frank Act and the May 2011 Proposed Rule, with some additional tailoring to provide guidance on complying with the requirements in particular circumstances such as transactions conducted by mobile applications or text message.”<sup>54</sup>

### **i. Disclosures**

The final rule requires that remittance transfer providers issue a pre-payment disclosure and a post-payment receipt. All disclosures “must be clear and conspicuous,”<sup>55</sup> “provided to the sender in writing,”<sup>56</sup> and “made in a retainable form.”<sup>57</sup> In certain circumstances, pre-payment disclosures may be provided electronically<sup>58</sup> or orally,<sup>59</sup> and post-payment receipts may be provided electronically.<sup>60</sup>

The pre-payment disclosure must state the transfer amount (in the currency transferred), all transfer fees and taxes (imposed by the transfer provider), the total amount of the transfer, the exchange rate, the transfer amount (in the currency received), any other transfer fees and taxes (imposed by any non-provider entities), and the actual amount that will be received by the recipient.<sup>61</sup> The first three items must be grouped together, and the last three items must be grouped together on the disclosure.<sup>62</sup>

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<sup>53</sup> 77 Fed. Reg. 6194, 6282 (Feb. 7, 2012).

<sup>54</sup> *Id.* at 6202.

<sup>55</sup> 12 C.F.R. § 1005.31(a)(1); *see* cmt. 31 (a)(1)-1.

<sup>56</sup> 12 C.F.R. § 1005.31(a)(2).

<sup>57</sup> *Id.* at § 1005.31(a)(2); *see* cmt. 31(a)(2)-3.

<sup>58</sup> 12 C.F.R. § 1005.31(a)(2).

<sup>59</sup> *Id.* at § 1005.31(a)(3).

<sup>60</sup> *Id.* at § 1005.31(a)(2); cmt. 31(a)(2)-1.

<sup>61</sup> 12 C.F.R. § 1005.31(b)(1)(i)-(vii).

<sup>62</sup> *Id.* at § 1005.31(c)(1).

The post-payment receipt must restate all the information included in the pre-payment disclosure,<sup>63</sup> as well as the date that the funds will be available to the recipient, the recipient's information, a cancellation and error resolution statement, the transfer provider's information, and information regarding both the transfer provider's state regulator and the Bureau.<sup>64</sup> The transfer provider may choose to instead, prior to payment, issue a single, combined disclosure containing the information required under Section 1005.31(b)(2), and then "provide the sender with proof of payment when payment is made."<sup>65</sup>

Notably, the Bureau included several exceptions to these general disclosure requirements as they pertain to mobile remittances. First, while written or electronic disclosures generally must be retainable, "[d]isclosures provided via mobile application or text message . . . need not be retainable."<sup>66</sup> Second, remittance transfer providers may choose to provide pre-payment disclosures "orally or via mobile application or text message" for mobile remittances if certain criteria are met.<sup>67</sup> The Bureau believes that this pre-payment disclosure exception "benefits consumers and facilitates the development of additional modes of remittance transfer."<sup>68</sup> When transfer providers use this provision, it "likely benefits" mobile remittance senders because "it allows the transaction to proceed more quickly using the tools that the consumer used to initiate the transaction" and because, "while the disclosures may not be permanently retainable in this format as compared to an email or paper disclosure, [the disclosures] may be able to be retained

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<sup>63</sup> *Id.* at § 1005.31(b)(2)(i).

<sup>64</sup> *Id.* at § 1005.31(b)(2)(ii)-(vi).

<sup>65</sup> *Id.* at § 1005.31(b)(3).

<sup>66</sup> *Id.* at § 1005.31(a)(2). *But see* cmt. 31(a)(2)-4 ("disclosures provided electronically to a mobile telephone that are not provided via mobile application or text message must be retainable. For example, disclosures provided via email must be retainable, even if a sender accesses them by mobile telephone.").

<sup>67</sup> 12 C.F.R. § 1005.31(a)(5) ("(i) The transaction is conducted entirely by telephone via mobile application or text message; (ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section; and (iii) The provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section.").

<sup>68</sup> 76 Fed. Reg. 6194, 6275 (Feb. 7, 2012).

temporarily without further action by the consumer and thus may be more useful and convenient to consumers than oral disclosures.”<sup>69</sup> Third, the Bureau confirmed that, for mobile remittances, the receipt “may be mailed or delivered to the sender.”<sup>70</sup> The final rule also exempted mobile remittances from the grouping, proximity, prominence and size, and segregation requirements in §1005.31(c).<sup>71</sup>

## **ii. Estimates**

For remittances sent from an account at an insured institution, if the “transfer provider cannot determine the exact amounts [of certain disclosures] for reasons beyond its control,” then those disclosures may be estimated even though they are otherwise required to be disclosed as accurate.<sup>72</sup> This is a temporary exception to the disclosure requirements, and it will expire on July 21, 2015.<sup>73</sup>

For remittances sent to certain countries, if the “transfer provider cannot determine the exact amounts [of certain disclosures] at the time the disclosure is required,” then those disclosures may instead be disclosed as estimates to the sender.<sup>74</sup> This exception only applies if the transfer provider cannot determine the exact amount because either the laws of the recipient country or the methods by which the transactions are made in the recipient country “do not permit” an accurate determination of the information at the time of disclosure.<sup>75</sup> This is a permanent exception to the disclosure requirements.

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<sup>69</sup> *Id.*

<sup>70</sup> 12 C.F.R. § 1005; cmt. 31(e)-4.

<sup>71</sup> 12 C.F.R. § 1005.31(c)(1)-(4).

<sup>72</sup> *Id.* at § 1005.32(a); *see* cmt.32(a)(1)-1 - 3.

<sup>73</sup> 12 C.F.R. § 1005.32(a)(2).

<sup>74</sup> *Id.* at § 1005.32(b)(1); *see* cmt.32(b)-1 -7.

<sup>75</sup> 12 C.F.R. § 1005.32(b)(1)(i)-(ii).

### **iii. Error Resolution**

If a sender notifies the transfer provider of an error<sup>76</sup> within 180 days of when the remittance was supposed to be available for pickup, the transfer provider is required to promptly investigate the claim.<sup>77</sup> If an error is found to have occurred, the transfer provider must remedy the error within one business day.<sup>78</sup> If the transfer provider determines that no error or a different error has occurred, the provider shall report the results of the investigation and inform the sender of the sender's right to receive copies of the documents relied upon in the investigation.<sup>79</sup>

### **iv. Cancellation and Refunds**

If a sender requests to cancel a paid transfer, the transfer provider must cancel and refund the transfer within three days, as long as the sender provided sufficient information to identify the transfer, the transfer had not yet been picked up by the recipient, and the transfer provider received the request no later than thirty minutes after payment was made.<sup>80</sup>

### **v. Liability for Acts of Agents**

The Bureau chose to apply strict liability to transfer providers if their agents violate any provision in subpart B.<sup>81</sup> The Bureau chose this option – over a proposed alternative in which transfer providers could avoid liability by maintaining compliance policies and procedures and correcting violations<sup>82</sup> – because it believes that this approach “is more consistent with the

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<sup>76</sup> “Error,” for the purposes of this provision, includes five scenarios and excludes four scenarios. *Id.* at § 1005.31(a)(1) and § 1005.31(a)(2); *see also* cmt. 33(a)-1 - 8.

<sup>77</sup> 12 C.F.R. § 1005.33(b) and §1005.33(c)(1).

<sup>78</sup> *Id.* at § 1005.33(c)(2).

<sup>79</sup> *Id.* at § 1005.33(d).

<sup>80</sup> *Id.* at § 1005.34(a); cmt. 34(a)-3 (“The provider may, at its option, provide a longer time period for cancellation. A provider must provide the 30-minute cancellation right regardless of the provider’s normal business hours.”). *But see* 12 C.F.R. § 1005.36(c) (for cancelling transfers scheduled at least three days before the date of the transfer).

<sup>81</sup> 12 C.F.R. § 1005.35; cmt. 35-1.

<sup>82</sup> *See* 76 Fed. Reg. 29902, 29942 (May 23, 2011).

approach generally taken in other Bureau regulations” and that it “provides a greater incentive for providers to monitor their agents’ activities and to exercise appropriate supervision and oversight.”<sup>83</sup>

### **3. The Final Rule’s Effects on Mobile Remittances**

The final rule will likely enable more widespread use of mobile remittances, and as a result, may lead to greater volumes of remittances to developing countries at reduced real and opportunity costs for the sender and recipient. While explicit references to mobile transactions in the final rule are limited to a relaxation of some of the disclosure requirements, several of the decisions made by the Bureau in the creation of the final rule advance mobile remittances more generally.

First, the Bureau’s decision to include fraudulent pick-ups as a reportable “error” provides an incentive that should encourage transfer providers to partner with mobile money and mobile banking platforms on the receiving side. Over some industry objections,<sup>84</sup> the Bureau confirmed that “[t]he fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient” is an example of an error for failure to make funds available by the disclosed date of availability.<sup>85</sup> The Bureau stated that it made this decision “because the remittance transfer provider, rather than the sender, is in the best position to ensure that a remittance transfer is picked up only by the person designated by the sender.”<sup>86</sup> To the extent that an individual is able to fraudulently receive the funds from the transfer provider or its agent,

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<sup>83</sup> 77 Fed. Reg. 6194, 6265-6266 (Feb. 7, 2012).

<sup>84</sup> 77 Fed. Reg. 6194, 6250 (Feb. 7, 2012) (“Several industry commenters objected to the inclusion of fraudulent pick-up as an error. These commenters suggested that the remittance transfer provider should not be responsible for fraud that results in the pick-up of a remittance transfer by a person other than the designated recipient where the provider is unlikely to know or have control over all the intermediary institutions involved in the transfer or the final institution that will make the funds available to the designated recipient.”).

<sup>85</sup> Cmt. 33(a)-5. This excludes instances of “friendly fraud.” 12 C.F.R. § 1005.33(a)(1)(iv)(C).

<sup>86</sup> 77 Fed. Reg. 6194, 6250 (Feb. 7, 2012).

the transfer provider will be responsible for remedying the error for the sender under the final rule.

The distribution of funds through a mobile money or mobile banking account significantly reduces the opportunity for fraudulent receipt because the remittance is directly distributed to a secure account. Receipt of a remittance at a physical location generally requires only the confirmation code and identification, and the distribution is received in cash. As a result, one-time, in-person transactions are generally more susceptible to fraud relative to remittances distributed to the recipient's account. An account holder has an ongoing relationship with the financial institution or mobile money provider, and an individual attempting to fraudulently receive the remittance would need to know when the remittance was arriving, gain access to the secured account, and withdraw the funds from the account. Once the remittance is received in the account though, the transfer is complete and the transfer provider's responsibility to make the funds available by the disclosed date has been fulfilled. In markets where access to financial institutions is limited,<sup>87</sup> mobile money and mobile banking platforms increase the ability to receive remittances via a secure account.

Second, one of the indirect benefits of the Bureau's rule for remittances generally is that, in requiring a standardized receipt for remittance transfers, Congress and the Bureau have created a simple, practical tool for the implementation of additional remittance policy options in the future. For example, the volume of remittances to certain foreign aid-receiving markets can be strategically increased and the effective cost of the transfer can be reduced by the offering of tax exemptions for remittances sent to recipients living in countries that receive U.S. foreign assistance from specific foreign aid accounts. The now nationally-standardized receipt can

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<sup>87</sup> ACH Remittance Report, *supra* note 4, at 12 ("many consumers who . . . receive remittance transfers do not have access to deposit accounts at depository institutions.").

easily be updated to inform the sender when a remittance is eligible for such an exemption, and the receipts are already required to include the transfer amount and recipient location, simplifying an audit problem that would have made such a tax program more difficult to implement in the past. This policy change can lead to larger remittances volumes to U.S.-aid receiving markets, and as a result, advance U.S. national security interests, expand available markets for U.S. exports, and enable greater humanitarian assistance. Moreover, because printing is available from many smartphones,<sup>88</sup> and printing companies are developing mobile-focused printers that could be used with mobile phones generally,<sup>89</sup> there should be reduced concern from the Bureau about allowing receipts or combined disclosures to be delivered directly to the consumer's phone for mobile remittances.

On the other hand, several provisions in the final rule may stem the development of mobile remittances. The Bureau's decision to apply strict liability for the actions of agents appears limiting and may raise concerns from transfer providers that would have otherwise been willing to partner with mobile money and mobile banking platforms as agents on the sending and receiving side. Additionally, as the Bureau pointed out in the proposed rule, a significant ongoing practical problem is crafting regulations that can facilitate real-time comparison shopping. It is often difficult for consumers to get comparative prices in real time,<sup>90</sup> which is necessary for consumers' accurate economic decisions in a constantly fluctuating market. A

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<sup>88</sup> *Google Cloud Print*, GOOGLE.COM, <http://www.google.com/cloudprint/learn/> ("Google Cloud Print works on your phone."); *Apple iPhone AirPrint*, APPLE.COM, <http://www.apple.com/iphone/features/airprint.html> ("Wireless printing, right from your iPhone.").

<sup>89</sup> Ashlee Vance, *Printing in a Smartphone Age*, N.Y. TIMES, June 6, 2010, <http://www.nytimes.com/2010/06/07/technology/07printer.html> ("This week, he will see his ideas put into action as H.P. introduces a fleet of printers . . . [that] should open up new ways for people to print from . . . smartphones and devices like the iPad.").

<sup>90</sup> Report on Remittance Transfers, *supra* note 13, at 20 ("Consider a consumer seeking price quotations for two RTPs on different days. By the time the consumer reaches the second RTP to collect a price quote, the first RTP's prices may have changed, due to fluctuations in the exchange rate. The consumer may have difficulty determining which RTP provides the best deal at either time.").

solution that is likely to develop, as mobile phones become the primary means for sending remittances in the next few years, is the use of a mobile application gateway that will assess many available remittance transfer services, in real-time, based on the consumer's personalized needs (recipient country, size of transfer, time constraints, etc.). This tool will offer significant advancement toward resolving the consumer information gap, and is likely to prompt a downward movement in overall remittance prices as consumers are better able to identify and take advantage of the remittance services that are best suited to their needs. Looking forward to such a solution, an issue emerges from how disclosure, error resolution, and agency concerns will be handled when the transfer interaction is enabled by a non-RTP intermediary providing information from potentially dozens or hundreds of transfer providers. The Bureau should address the implications of this likely development, especially in a context where such an entity would not be categorized as an "agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law."<sup>91</sup>

#### **4. Conclusion**

Mobile remittances are cheaper than other available remittance transfer options, and the mobile phone will likely play a major role in the next phase of reduction in the average price of international remittances. The increase in the use of mobile phones for sending and receiving international remittances will lead to reduced opportunity cost and actual cost for senders and recipients, increased capital flows to developing countries, and will support poverty reduction and international economic development. But, mobile remittances will also likely advance important U.S. foreign policy interests – reducing opportunities for global corruption and supporting the battle against the financing of terrorism. The CFPB's final rule, which applies the

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<sup>91</sup> 12 C.F.R. § 1005.30(a).



Dodd-Frank Act provisions to U.S. originated international remittances, will likely enable, and at least will not hinder, the development of mobile remittances.