



FEDERAL RESERVE BANK *of* NEW YORK

# Payments System Law – Rationalizing Laws and Regulations

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# Remittance Transfers – A Lesson in Harmonization

- The term “remittance transfer” typically describes a transaction where a consumer sends funds to a relative or other individual located in another country, often the consumer’s country of origin. Traditional remittance transfers often consist of consumer-to-consumer payments of low monetary value.
- The Dodd Frank Wall Street Reform Act looked to harmonize the rules on remittance transfers
  - State of the Law Prior to Harmonization Effort
  - State of the Law After Harmonization Effort



# State of Law Prior to Harmonization Effort

- Law that governs depends on the method used to send the remittance
  - What system is being used
    - ACH network
    - Wire transfer system
    - Credit card network
    - Debit card network
    - Internet
    - Telephone
  - How is payment made
    - Cash tendered (traditional money transmitter)
    - Purchase of prepaid card
  - Type of entity providing service



# State of Law Prior to Harmonization Effort

ACH	Wire
Required Disclosures	Silent
Unauthorized -- an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit.	A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.
No prohibition on use of contract to define what is authorized	Expressly prohibits using contract to define what is authorized (see below)
	<p>Verified Order – (deemed authorized)</p> <p>(1) Customer and bank agreed to use a commercially reasonable security procedure to determine authenticity</p> <p>(2) Bank accepted the payment order in good faith and followed the security procedure and any contractual limitation placed on Bank by customer</p>



# State of Law Prior to Harmonization Effort

ACH	Wire
<p>Consumer Liability for Unauthorized (no access device at issue)</p> <ul style="list-style-type: none"><li>-- zero if consumer reports an unauthorized EFT that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement</li><li>-- Otherwise, the consumer's liability is the amount of unauthorized transfers that occur <i>after the close of the 60-day reporting period</i> and before notice is given to the bank, and that the <u>bank can prove</u> would not have occurred had the consumer notified the institution within the 60-day period.</li></ul>	<p>Consumer's Liability for Unauthorized</p> <ul style="list-style-type: none"><li>-- zero unless verified payment order</li><li>-- If verified payment order, then amount of the wire unless:<ol style="list-style-type: none"><li>(1) Bank agreed by contract with consumer to limit the amount; or</li><li>(2) <u>the consumer proves</u> that the order was not caused, directly or indirectly, by a person entrusted at any time to act for consumer or who obtained access to consumer's transmitting facilities or information facilitating breach of the security procedure, regardless of how the information was obtained or whether the consumer was at fault.</li></ol></li></ul>

# State of Law Prior to Harmonization Effort

ACH	Wire
<p>Errors</p> <ul style="list-style-type: none"><li>-- Reporting timeline (60 days)</li><li>-- Includes unauthorized, wrong amount, missing credit, computational error</li><li>-- Requirement to investigate within stated timeframes</li><li>-- If error, generally required to fix the error and pay interest</li><li>-- treble damages available</li></ul>	<p>Errors</p> <ul style="list-style-type: none"><li>-- One year statute of repose</li><li>-- includes unauthorized, wrong amount, duplicate, delay, wrong recipient</li><li>-- No stated investigation requirement</li><li>-- If error generally required to fix the error and pay interest</li><li>-- consequential damages expressly prohibited</li></ul>



# Remittance Transfers – A Case Study in Harmonization

- Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
  - Establishes minimum protections for consumers in the United States that send remittances to other countries
    - Explicit concern about remittances of earnings to family members abroad
    - Problems seen with remittance transfers included overcharging of senders and funds not reaching intended recipients
  - Electronic Fund Transfer Act (EFTA) governs all “remittance transfers”



# Remittance Transfers – A Case Study in Harmonization

- **“Remittance transfer”** means
  - The electronic transfer of funds
    - “Electronic” refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities
  - Requested by a consumer (*i.e.*, a natural person) in the United States (including Puerto Rico and the Virgin Islands)
  - Made by a remittance transfer provider
    - Any person or financial institution that provides remittance transfers for consumers in the normal course of business
  - To someone (not necessarily a natural person) in a foreign country
  
- Small-value transactions are excluded -- \$15 or less





# Remittance Transfers – A Case Study in Harmonization

- Remittance transfer providers must provide disclosures to senders of remittances
  - At the time the consumer requests the transfer AND before payment
  - At the time the consumer pays for the transfer
  - Special rules for disclosure of amount of currency to be received
- Cancellation right
- Rules on error resolution



## State of Law After Harmonization Effort (a series of unfortunate events)

- EFTA applies to remittance transfers even if the transfer is made by wire – old exclusion does not apply
- Because EFTA applies, Article 4A does not apply

Section 4A–108.

This Article [4A] does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 as amended from time to time.

- As a result, none of the provisions of Article 4A—the majority of which set forth rules governing the relationship between the banks in a wire transfer—apply to wire remittance transfers.



## State of Law After Harmonization Effort (a series of unfortunate events)

- Proposed Regulation E acknowledges Article 4A will no longer apply to wire remittance transfers and resulting uncertainty
  - No authority to resolve
  - State law problem to be fixed by state law or system rules
- Proposed amendment to Regulation J
  - Preempts 4A-108 to the extent that it would prevent a Fedwire remittance transfer from being treated as a funds transfer under UCC Article 4A
  - Disclosure rules, cancellation rule, error resolution rule would govern remittance transfers as between a consumer and his or her bank
- CHIPS transfers not governed by Regulation J; CHIPS Rules no longer Article 4A “funds transfer system rules”



## State of Law After Harmonization Effort (a series of unfortunate events)

- EFTA error resolution rules differ for non-remittance EFTs, remittance EFTs, and non-EFT remittance
  - Timing of consumer notice of error – 60 days (measured from time statement is sent) for EFT errors and 180 days (measured from the promised date of delivery of the remittance) for remittance errors
  - Types of errors – remittances that are also EFTs are subject to both 60-day and 180-day rules; otherwise only 180-day rule applies
    - Significantly, remittance rules do not define “error” to include unauthorized transactions
  - Time to investigate – traditional EFT error-resolution regime provides 45 days to investigate (with recredit right after 10 days); remittance transfer error-resolution regime provides 90 days to investigate (no recredit right during investigation)

## State of Law After Harmonization Effort (a series of unfortunate events)

- Liability for unauthorized transfers
  - EFT remittance transfer subject to EFTA/Regulation E rules
  - Remittance wire transfers
    - Regulation J for Fedwire remittance transfers (Article 4A scheme)
    - Contract for CHIPS wires
      - System rule may not work
      - Article 4A does not permit a bank to use its contracts to limit the bank's liability (other than by defining security procedures)
  - Remittance that are neither EFTs nor wire transfers

## State of Law After Harmonization Effort (a series of unfortunate events)

- Wire remittances after Dodd Frank are no longer captured by regulations designed to disrupt money laundering and terrorist financing activities and to aid law enforcement in identifying those activities.
- Bank Secrecy Act (as amended by, among other things, the USA PATRIOT Act) excludes funds transfers governed by EFTA from the key definitions of “funds transfer” and “transmittal of funds” under those regulations

## State of Law After Harmonization Effort (a series of unfortunate events)

- Payment systems not designed to support the new law
  - Current providers may exit the business
  - Cost of service may increase
  - Transfers may be delayed (to accommodate cancellation right)

# Remittance Transfers – A Case Study in Harmonization Lessons Learned

- Narrow changes to harmonize aspects of payments law can have significant unintended consequences
- Attempts at harmonization can lead to greater disharmonization if it is too narrowly focused
- Efforts must focus on all laws and regulations that might be affected – even if rule-writing authority is spread across different entities