

CFPB Shines Spotlight On Consumer Remittance Transfers

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The Consumer Financial Protection Bureau recently closed a 60-day public comment period[1] on a plan to conduct an assessment of the effectiveness of its May 2013, final rule governing consumer remittance transfers under Subpart B of Regulation E (remittance transfer rule).[2] The remittance transfer rule governs the transfer of money by consumers to recipients located overseas and has been routinely blamed by industry participants and trade associations for increased costs, declining market participation and higher prices for consumers. The planned assessment will focus on (1) “whether the market for remittances has evolved ... in ways that promote access, efficiency, and limited market disruption;” and (2) whether the remittance transfer rule (and other CFPB regulatory activity) has “brought more information, transparency, and greater predictability of prices to the market.”[3]

Based on the responses received during the comment period, the answer to both questions may be “no,” and commenters pulled few punches in blaming the core elements of the rule for adverse market impacts.

Multiple commenters requested that the CFPB consider doing away with or substantially revise the core disclosure, cancellation and error resolution provisions that make up the heart of the rule but are now blamed for hurting consumers through higher prices. Others sought an increase to the safe harbor exemption for low-volume remittance providers in order to remove them entirely from the ambit of the rule.

Further aggravating pains in the industry is that the assessment has come alongside a recent uptick in CFPB examination and pre-enforcement activity in this space. No matter the results of the assessment — which is not due until October of 2018 — the increased scrutiny on remittance transfer providers will likely continue without the benefit of any revisions to the rule or the CFPB’s practices. This makes it an opportune time for market participants to evaluate their own practices.

The Remittance Transfer Rule

The remittance transfer rule aims to protect consumers who send money out of the country by placing



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obligations on institutions offering such services. Among other things, the rule requires that providers give customers pre and post-payment disclosures that detail particulars of the transaction. The rule also provides procedures for investigating and responding to claims of error in transactions and generally grants consumers a right to cancel for a full refund within 30 minutes of payment.[4]

The size of the industry impacted by the remittance transfer rule is large in terms of both individual transactions and volume of dollars. According to one estimate, over \$133 billion was sent out of the United States via remittance transfer in 2015.[5] The CFPB similarly estimated in 2014 that Americans sent over 150 million individual transfers that would be covered by the rule.[6] Such transfers include everything from sending money to a family member, to paying a utility bill, and often are small amounts of money. As long as the sender is located in the U.S. and sends more than \$15 to a recipient located overseas, the rule would generally apply.

The Comments

The CFPB received over 35 public comments from a variety of market participants representing a range of interests, from large market participants to local credit unions and associations.[7] Notwithstanding the variety of interests and market positions of the commenters, several common threads (and complaints) emerged.

Almost all of the comments focus broadly on the monetary burden of compliance and the cumbersome nature of modifying operations to conform to the remittance transfer rule. Of particular concern to commentators is the cost, complexity and impact of the (1) disclosure requirements, (2) 30-minute cancellation window, and (3) complaint and error resolution rights of customers.[8]

Citing expense and operational burden, many commentators questioned (if not challenged directly) whether the effect of the remittance transfer rule has been to constrain competition in the market for remittance transfers and to increase the cost and burden to consumers. Of particular note were comments from the Credit Union National Association, which described a recent survey of its membership as revealing that “55 percent of responding credit unions that have offered remittances sometime during the past five years have either cut back (27 percent) or stopped offering them entirely (28 percent).”[9] A prior survey of its membership in 2014 yielded similar results, with the number of credit unions reducing or eliminating remittance services standing slightly lower than in the 2017 survey — showing a downward trend line in market participation by member credit unions.[10]

The American Bankers Association (ABA) submitted a comment letter raising similar concerns.[11] According to a survey of 75 member banks, the rule — intended to “provide additional information to help consumers shop for remittances and establish error resolution procedures and protections” — has “restricted consumers’ access to remittances, increased fees for use of the service, and unnecessarily delayed remittance requests.” The ABA expressed concern about the rule, stating that there is “little evidence that the final rule has improved consumer decision-making or facilitated comparison shopping.” Furthermore, the ABA has asked the CFPB to examine the following issues: (1) whether consumers, including those in rural areas, have access to remittance transfer services; (2) whether consumers are provided information about remittance services that informs rather than confuses; and (3) whether regulation of remittances is unnecessarily burdensome to the financial institutions that provide this service.

Separately, The Clearing House, the Consumer Bankers Association, the Bankers Association for Finance and Trade, and the ABA issued a joint letter outlining recommendations for the CFPB, including: (1)

continuing to permit estimates of third-party fees and exchange rates rather than actual fees and rates in cases where obtaining exact data is not feasible; (2) excluding from the rule high-value transfers in excess of a certain dollar amount as well as excluding from coverage transfers effectuated through reloadable prepaid cards; (3) modifying disclosure requirements and cancellation and resend rights; and (4) making changes to the rule's error resolution provisions to hold the sender responsible for transaction costs resulting from sender error.[12]

Several comments also urged the bureau to make significant changes to the remittance transfer rule, including eliminating the prepayment disclosure requirements, eliminating the 30-minute cancellation window, and increasing the threshold number of remittance transfers a provider can perform before the rule applies to its transactions (the "safe harbor").

While the bureau was very clear that the current assessment and invitation to public comment is not part of a formal rulemaking proceeding, it did advise that it expects the results of the assessment will inform its thinking in future rulemaking proceedings. Whether the bureau will eventually consider these, or any, changes is unclear.

Recent CFPB Activity

Clouding the outlook for any changes to the remittance transfer rule is recent CFPB activity in the money transmitter space. The assessment is occurring alongside a noticeable uptick in bureau examinations of remittance providers that began last year and continues in 2017. During this period, there has been an increase in remittance transfer-related CFPB examinations and pre-enforcement activity. Many of the repeat issues the bureau has focused on include the very same general issues highlighted in the comments:

- Providing incomplete, and in some instances, inaccurate disclosures;
- Failing to adhere to the regulatory time frames (typically three business days) for refunding canceled transactions;
- Failing to communicate the results of error investigations at all or within the required time frames, or communicating the results to an unauthorized party instead of the sender;
- Failing to promptly credit consumers' accounts (for amounts transferred and fees) when errors occurred; and
- Other issues concerning marketing materials and unfair, deceptive, or abusive acts or practices (UDAAP) concerns.[13]

Historically, the remittance transfer providers that are now subject to these intense compliance exams have dealt primarily with state exams concerned with the various requirements imposed by the Bank Secrecy Act and various anti-money laundering laws (BSA/AML). This has left remittance providers vulnerable to criticism levied by the CFPB in recent supervisory highlights.[14] These include concerns that such providers lack processes and controls to deal with the consumer issues the rule addresses, and generally weak compliance management systems.

Because the bureau has seized on so many of the same issues in the examination and pre-enforcement

context, it may be less likely that current leadership would entertain the kinds of broad changes proposed in many of the comments. It is likely instead that the CFPB will continue to devote substantial attention to money transmitters and other remittance providers through the close of the assessment in October of next year, and that the examination and pre-enforcement focus will remain the same.

Best Practices

The ongoing assessment and increase in examination activity is a good reminder to institutions to review their remittance transfer rule policies, procedures and practices for compliance with their obligations. Indeed, given the CFPB's continuing interest in this space, it is also appropriate to assess whether providers' overall consumer compliance systems meet regulatory expectations. While a comprehensive approach should include all aspects of the rule, remittance providers should devote significant focus to three issues.

First, remittance providers should carefully evaluate disclosure documentation and related practices to ensure technical compliance with the plain text of the rule, as well as ensuring that the disclosures are presented clearly, timely and accurately to consumers. Second, remittance providers should ensure that error resolution, cancelation and complaint practices are appropriately tailored to ensure compliance with the rule. Complaint policies and practices are particularly important as they relate to the proper routing of consumer complaints, disputes and requests to cancel into the appropriate channels for resolution. For example, what looks like a mere complaint may be an "error" within the meaning of the rule, triggering consumer protections and provider obligations.

Finally, providers should ensure that all policies and procedures related to remittance transfer rule obligations are recorded in formal written instruments. It is often the case for CFPB examiners that if it is not in writing, it is not real.

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[1] CFPB Request for Information Regarding Remittance Rule Assessment, available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-24/pdf/2017-05681.pdf>.

[2] 12 C.F.R. §§ 1005.30-36.

[3] The assessment is mandated under Section 1022(d) of the Dodd-Frank Act for each "significant" rule or order adopted by the bureau under federal consumer financial law. The bureau was required to solicit public comment on recommendations for modifying, expanding, or eliminating the rule or order and publish a report of the assessment not later than five years after the effective date of each rule or order. It expects to issue a report on its assessment in October 2018.

[4] 12 C.F.R. §§ 1005.31-34.

[5] PEW Research Center, Remittance Flows Worldwide in 2015, available at

<http://www.pewglobal.org/interactives/remittance-map/>.

[6] CFPB Final Rule, available at http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf.

[7] All comments can be found at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=CFPB-2017-0004>.

[8] 12 C.F.R. §§ 1005.31-34.

[9] CUNA Comment, available at <https://www.regulations.gov/document?D=CFPB-2017-0004-0020>.

[10] CUNA 2014 International Remittances Survey, available at https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Track_Regulatory_Issues/Pending_Regulatory_Changes/2014/Remittance%20Study%20Summary.pdf.

[11] ABA Comment, available at <https://www.regulations.gov/document?D=CFPB-2017-0004-0026>.

[12] Associations Comment, available at <https://www.regulations.gov/document?D=CFPB-2017-0004-0024>.

[13] See generally CFPB Supervisory Highlights, March 2016 at 11-14, available at http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.

[14] Id.