



## CFPB Nonbank Supervision of International Money Transfer Providers – Proposed Rule

### Executive Summary

The Consumer Financial Protection Bureau (CFPB or Bureau) released a proposed rule on January 23, 2014 that would amend its regulations defining larger participants of certain markets for consumer financial products and services to add a new section defining larger participants of the market for international money transfers.

As proposed, any nonbank provider of international money transfers that, together with its affiliated companies, conducts at least one million international money transfers annually would be subject to the CFPB's supervisory authority. The CFPB estimates approximately 25 nonbank international money transfer providers would meet the proposed threshold and cover about 90 percent of nonbank international money transfers.

The CFPB will accept comments on the proposal until April 1, 2014.

### Background

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) amended the *Electronic Funds Transfer Act* (EFTA) to create new consumer protections for consumers in the United States that send "remittance transfers" to individuals and businesses in foreign countries. Broadly, these protections include: i) the provision of disclosures prior to and at the time of payment by the sender for the transfer; ii) cancellation and refund rights; iii) the investigation and remedy of errors by providers; and iv) liability standards for providers for the acts of their agents. The CFPB issued a final rule in April 2013 amending Regulation E, which implements the EFTA, to effect the Dodd-Frank Act changes. The final rule, commonly called the "Remittance Rule," became effective October 28, 2013. It is applicable to transfers in excess of \$15 and to companies that offer money transfers, including banks, thrifts, credit unions, money transmitters, and broker-dealers, except for those that provide 100 or fewer remittance transfers per year.

The CFPB and the prudential regulators have supervisory authority over banks, thrifts and credit unions that provide international remittance transfers and they currently examine those entities for compliance with the Remittance Rule. The proposed rule would permit the CFPB to supervise certain nonbank providers of international remittance transfers. However, as discussed below, for purposes of defining the larger participants in this market, the proposed rule would replace the term "remittance transfer" with "international money transfer" in order to include transfers

of \$15 or less and so better capture the extent of a nonbank international money transfer provider's market participation.

If finalized, the market for nonbank international money transfers would be the fourth market of "larger participants" identified for supervision by the CFPB. The three previously defined markets include the:

- Consumer debt collection market (debt collectors with more than \$10 million in annual receipts from debt collecting activities);
- Consumer reporting market (companies that receive more than \$7 million in annual receipts from consumer reporting activities); and
- Student loan servicing market (nonbank student loan servicers that handle more than 1 million borrower accounts, including both Federal and private student loans).

The CFPB has identified these markets for supervision pursuant to Section 1024 of the Dodd-Frank Act, which grants the CFPB authority to supervise certain nonbank providers of consumer financial products and services regardless of size, including mortgage companies (originators, brokers, and servicers as well as loan modification or foreclosure relief services); payday lenders; and private education lenders. Section 1024 also grants the CFPB authority to supervise "larger participants" of other markets for consumer financial products and services that the CFPB identifies and defines by rule.

The CFPB notes that States have been active in the regulation of money transmission, with forty-seven States and the District of Columbia requiring entities to obtain a license to engage in money transmission, as defined by applicable law. Many States also actively examine money transmitters. If the Proposed Rule is adopted, the Bureau indicates that it would coordinate with appropriate State regulatory authorities in examining larger participants of the international money transfer market.

## Description

The proposed rule would subject nonbank international money transfer providers that, together with their affiliates, provide an aggregate annual number of at least one million international money transfers. For purposes of the rule, the CFPB considers international money transfers to be electronic transfers of funds sent by nonbanks from consumers in the United States to designated persons or entities abroad, regardless of the amount of funds transferred. (The CFPB states this definition "roughly tracks" with the definition of "remittance transfer" under the Remittance Rule except that it includes transfers of \$15 or less.)

The CFPB would apply the following definitions to larger participants of the nonbank international money transfer market:

- "Nonbank covered person" – would mean a nonbank provider of consumer financial products and services, and its affiliates that act as service providers to the nonbank. Nonbank covered persons are generally subject to the Bureau's regulatory and enforcement authority and any applicable federal consumer financial laws, regardless of whether they are subject to the CFPB's supervisory authority. (Note: "person" is defined in the CFPB's regulations at Section 1090.101 as "an individual, partnership, company, corporation, association

(incorporated or unincorporated), trust, estate, cooperative organization, or other entity,")

- "International money transfer" – would mean the electronic transfer of funds requested by a sender that is sent by an international money transfer provider to a designated recipient. The term would apply regardless of whether the sender holds an account with the international money transfer provider and regardless of whether the transaction also is an "electronic fund transfer," as defined in Regulation E. The term would not include certain transfers related to the purchase or sale of a security or commodity that are excluded from the definition of "electronic fund transfer" under Title X of the Dodd-Frank Act.
- "Sender" – would mean a consumer in a State who requests an international money transfer provider to send an international money transfer to a designated recipient primarily for personal, family, or household purposes.
- "Aggregate annual international money transfers" – would mean the "annual international money transfers" of a nonbank covered person, aggregated with the "annual international money transfers" of its affiliated companies.
- "Annual international money transfers" – would be calculated separately for each affiliated company and generally would equal the annual average of total international money transfers completed in the three previous calendar years. (Adjustments would be provided for companies that have not been in business for three full calendar years.)

In addition, international money transfers in which an agent acts on behalf of a nonbank covered person would be included in the nonbank covered person's annual international money transfer total; however, transactions where the nonbank covered person performed activities as an agent would not be included in the total annual transfers.

Money transfers might include transfers by cash, credit cards, debit cards, or bank account debits and might be sent through Web sites, agent locations, stand-alone kiosks, or telephone lines. Abroad, money transmitters may allow funds to be deposited into recipients' bank accounts, distributed directly onto prepaid cards, or credited to mobile phone accounts.

## Examinations

On October 22, 2013, the Bureau released examination procedures specific to remittance transfers for use in the Bureau's examinations of entities within its supervisory authority. If the proposed rule is adopted, the Bureau states that it will use those examination procedures in supervising international money transfers. Examinations will cover compliance with the EFTA, the Remittance Rule and Regulation E, and other federal consumer financial laws in addition to the unfair, deceptive, or abusive acts or practices (UDAAP) provisions. The scope of examinations will be based in part on a review of the supervised entity's compliance management system.

## Other Considerations

The Bureau is seeking comment on alternate criteria for defining larger participants in the nonbank international money transfers market. In particular, the CFPB is considering additional levels to the transfers threshold (note: the CFPB estimates the one million transfers threshold would subject approximately 25 nonbank providers, representing 90 percent of the nonbank market, to supervision), such as:

- A higher threshold of three million annual international money transfers, which would allow the Bureau to supervise approximately 10 nonbank international money transfer providers representing approximately 75 percent of the transfers in this market.
- A lower threshold of 500,000 annual international money transfers, which would subject an additional 3 providers to CFPB supervision (up from 25) representing an additional 1.5 percent of transfers in the nonbank market.
- Setting different thresholds for different destination regions.

In addition, the CFPB is considering alternative measurement criteria to determine which nonbanks would be covered by the rule, including annual receipts or annual dollar volume.

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## Commentary

Although the CFPB's proposal is focused on defining the "larger participants" market for its nonbank supervision program, the Bureau's focus on international money transfers is expected to also extend to those banks, thrifts, and credit unions under its supervisory authority. The CFPB's Remittance Rule and related examination procedures are relatively new (effective October 2013) and it has dedicated resources to assist supervised entities with compliance. In addition, the CFPB began accepting consumer complaints related to domestic and international money transfers in April 2013 and these will likely help to inform its bank and nonbank examination priorities. (A July 2013 CFPB report indicated the Bureau had received approximately 300 money transfer complaints in the first three months of accepting such complaints, and that the majority of the complaints (40 percent) were about frauds or scams.)

The Bureau estimates that nonbank providers transfer approximately \$50 billion annually through about 150 million individual international money transfers. Setting the transfers threshold at one million annual transfers is expected to bring new oversight to about 25 of the largest providers in the market and cover 90 percent of the international money transfers completed by nonbanks. Such expansive coverage should permit the CFPB to hold nonbank providers, which generally have not been subject to federal supervision, to the same standards as supervised banks.

Large entities that expect to meet the qualifying criteria for a larger participant should consider, among other things:

- Gaining an understanding of the requirements of the EFTA, Regulation E, other applicable federal consumer financial laws (e.g., billing practices), and the UDAAP provisions;
- Reviewing and enhancing Know Your Customer (KYC) programs, including identifying risks associated with the customer base and the internal controls in

place to mitigate those risks, as well as the *Bank Secrecy Act* and anti-money laundering provisions;

- Developing, or enhancing an existing, compliance management system, that addresses at a minimum:
  - Governance and Culture – including board and management oversight (consideration should be given to guidance proposed by the Office of the Comptroller of the Currency and the Federal Reserve Board on heightened standards for risk management and reporting);
  - Information Reporting and Technology – including management information systems needed to conduct surveillance, monitoring, and testing, and to facilitate risk assessments and reporting;
  - Compliance Management Processes – including establishing an enterprise-wide risk appetite and performing risk assessments over the life cycle of each product to measure and monitor risk exposures consistent with that appetite; and
  - Monitoring and Testing – both periodic and ongoing processes;
  - Policies and procedures; and
  - People and Skills – including staffing adequacy and requirements for staff and management to have appropriate skills and training to comply with regulatory requirements;
- Conducting a compliance audit to analyze gaps between current practices and compliance requirements and to evaluate skill sets and staffing needs; and
- Evaluating the intake and resolution of consumer complaints or disputes, including complaints or disputes against third-party agents, along with processes for identifying risks associated with individual products or populations.

Finally, the CFPB notes that “although entities that act solely as agents would not normally be larger participants of the market under the Proposed Rule, the Bureau would have the authority to supervise service providers to larger participants of the market. Accordingly, where an agent acts as a service provider to a larger participant, the Bureau would have the authority to supervise the agent’s performance of services for the larger participant.” It is the Bureau’s position that legal responsibilities for failure to comply with federal consumer financial laws or to protect consumers, in some cases, may lie with the supervised nonbank in addition to its service provider. As such, larger participants must have processes in place to oversee relationships with their service providers and to ensure the service providers comply with federal consumer financial laws and operate in a manner that protects consumers and avoids consumer harm.

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**Contact us:**

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**Contributing authors:**

Amy Matsuo, Principal: [amatsuo@kpmg.com](mailto:amatsuo@kpmg.com)  
Stacey Guardino, Partner: [sguardino@kpmg.com](mailto:sguardino@kpmg.com)  
Kari Greathouse, Managing Director:  
[cgreathouse@kpmg.com](mailto:cgreathouse@kpmg.com)

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