



CFPB Nonbank Supervision of International Money Transfer Providers – Final Rule

Executive Summary

The Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule on September 12, 2014 that amends its regulations defining “larger participants” of certain markets for consumer financial products and services to add a new section defining the larger participants of the market for international money transfers.

The final rule is substantially similar to the previously proposed rule (please refer to Regulatory Practice Letter 14-05) and defines any nonbank provider of international money transfers that, together with its affiliated companies, conducts at least one million international money transfers annually as a “larger participant” of the market for international money transfers. The nonbank’s number of international money transfers are calculated for the previous calendar year and aggregated with the international money transfers for each of its affiliates, also calculated for the previous calendar year even if the affiliate relationship did not exist for the entire period. Nonbanks meeting the threshold of one million transfers will be subject to the CFPB’s supervisory authority.

The final rule becomes effective December 1, 2014. The CFPB estimates 25 nonbank international money transfer providers, accounting for more than 90 percent of nonbank international money transfers, will meet the transfer threshold.

Background

Supervision

Section 1024 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act) (codified at 12 U.S.C. 5514) 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 nonbank international money transfers market is the fourth market of “larger participants” to be identified for supervision by the CFPB, following final rules covering the:

- Consumer debt collection market (nonbank debt collectors with more than \$10 million in annual receipts from debt collecting activities);
- Consumer reporting market (nonbank 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 one million borrower accounts, including Federal and private student loans).

On September 17, the CFPB released a proposed rule that would add yet another new section to its regulations defining larger participants, this one to include a definition for the larger participants of a market for automobile financing. The new section would define a market that includes grants of credit for the purchase of an automobile, refinancings of such credit obligations, and purchases or acquisitions of such credit obligations (including refinancings). It would also include automobile leases and purchases or acquisitions of such automobile lease agreements. As proposed, a nonbank covered person would become a larger participant of the automobile financing market if, together with its affiliates, it engages in at least 10,000 annual originations (including the credit and lease transactions described) on a calendar basis. Comments will be due on this proposed rule 60 days after publication in the *Federal Register*.

The Bureau's supervisory authority for these nonbanks includes: (1) assessing compliance with Federal consumer financial laws; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets. The Bureau conducts examinations, of various scopes, of supervised entities and it may also, as appropriate, request information without conducting examinations.

The Bureau prioritizes its supervisory activities for nonbanks subject to its authority on the basis of risk, taking into account, among other factors, the size of each entity, the volume of the entity's transactions involving consumer financial products or services, the size and risk presented by the market in which the entity is a participant, the extent of relevant State oversight, and any field and market information that the Bureau has available for the entity.

Regulation E – *Electronic Funds Transfer Act*

The *Electronic Funds Transfer Act* (EFTA) was amended by the Dodd-Frank Act 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's final rule implementing these changes, commonly referred to as the "Remittance Rule," became effective October 28, 2013. It applies 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 definition of "international money transfer" employed in the final rule for larger participants of the international money transfers market "roughly tracks" with the definition of "remittance transfer" under the Remittance Rule, however, the CFPB states it has replaced "remittance transfer" with "international money transfer" in order to include transfers of \$15 or less, which permits them to better capture the extent of a nonbank international money transfer provider's market participation.

Money transfers may 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.

Other Information

Enforcement Actions

International money transfers have garnered the attentions of multiple regulatory agencies, including the Department of the Treasury, the federal prudential regulators (the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation), and individual state regulators. Their focus has primarily been directed toward compliance with the *Bank Secrecy Act* and anti-money laundering (BSA/AML) practices. Many banks have reportedly exited or greatly diminished their participation in the international money transfers market based in large part on heightened BSA/AML risks and the potential for significant fines and penalties. Recently enacted legislation, the *Money Remittances Improvement Act*, which was signed by President Obama in August 2014, permits the Secretary of the Treasury to rely on state supervisory agency examinations covering compliance with federal AML requirements for certain financial institutions, including nonbank money services businesses.

The CFPB's Remittance Rule is separate from the BSA/AML requirements and is specifically consumer-protection focused. It applies to all providers of international money transfers, including banks, savings associations, credit unions (collectively, banks), and nonbanks. The final rule for larger participants of the international money transfers market gives the CFPB direct supervisory authority over the 25 largest of the nonbank providers, though the CFPB may examine, for "reasonable cause," any nonbank that it finds poses a threat to consumers.

Consumer Complaints

A report released by the Bureau in July 2014, entitled *Consumer Response: A Snapshot of Complaints Received*, states that, as of June 30, 2014, the CFPB has received approximately 2,100 consumer complaints related to money transfers (international money transfers are not distinguished in this report) since it began to accept this type of complaint in April 2013. Approximately 41 percent of money transfer complaints were related to frauds and scams, another 15 percent claimed the money was not available when promised, 6 percent claimed the wrong amount was charged or received, and 4 percent were related to incorrect or missing disclosures or information. More than half of the remaining 34 percent of the complaints addressed "other transaction issues" (such as unauthorized transactions, cancellations, or refunds). The CFPB highlighted the complaints related to frauds and scams, stating "In response to such complaints, companies engaged in money transfers define it as a person-to-person service and not a commercial service. Thus, they claim no liability when someone other than the intended recipient receives the funds, as long as the company complied with its policies and procedures and the minimum identification requirements were satisfied by the recipient."

Description

Definitions

The CFPB's final rule to define the larger participants of the market for international money transfers is substantially similar to the proposed rule released in January 2014.

The CFPB has retained its definition of international money transfers to include 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.

Except for the definition and calculation of “annual international money transfers”, the final rule also retains the following definitions:

- “Nonbank covered person” – 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. A “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” – the electronic transfer of funds requested by a sender that is sent by an international money transfer provider to a designated recipient. The term applies 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” – a consumer in a State (including “a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico; or any political subdivision thereof”) who requests an international money transfer provider to send an international money transfer to a designated recipient (as specified by the sender) primarily for personal, family, or household purposes.
- “Aggregate annual international money transfers” – the “annual international money transfers” of a nonbank covered person, aggregated with the “annual international money transfers” of its affiliated companies.

Under the final rule, “annual international money transfers” must be calculated separately for the nonbank and each of its affiliated companies, such that affiliates are treated as independent nonbank covered persons for purposes of this calculation. Each nonbank and each affiliate company must calculate the number of international money transfers they have provided during the previous calendar year. This amount includes international money transfers in which another person acts as an agent on behalf of the nonbank covered person. It does not include international money transfers in which the nonbank covered person acts as an agent.

The “annual international money transfers” of a nonbank covered person must be aggregated with the “annual international money transfers” of any person with which it was affiliated during the calendar year, even if the affiliate relationship was not in effect for the entire calendar year. In contrast, the proposed rule would have required nonbanks to calculate the average of the total international money transfers completed in the three previous calendar years with adjustments for companies that have not been in business for three full calendar years.

Test to Define

Any nonbank covered person that, together with its affiliates, has at least one million international money transfers in the preceding year qualifies as a larger participant. The Bureau will notify an entity when the Bureau intends to undertake supervisory activity; if an entity disputes that it qualifies as a larger participant, the entity will have opportunity to submit documentary evidence and written arguments in support of its claim.

The designation as a larger participant will remain in effect until two years after the first day of the tax year in which the person last met the applicable test. The Bureau states this provision will ensure that it has sufficient time to undertake and complete supervisory activities relating to a larger participant, even if the participant's market activity declines unexpectedly.

Examinations

International money transfer providers that meet the definition of a "larger participant" will be subject to the CFPB's examination procedures for international money transfers, which include instructions for examining compliance with the CFPB's Remittance Rule (subpart B of Regulation E). Consumer protections under this rule include requirements for disclosures, options to cancel, and error corrections. The Bureau will also conduct exams for compliance with other federal consumer financial laws including whether larger participants of the international money transfer market engage in unfair, deceptive, or abusive acts or practices (UDAAPs), as well as to evaluate the entity's compliance management system.

The Bureau indicates that it will exercise its supervisory authority with respect to affiliated companies using a risk-based approach and may supervise smaller affiliated companies as part of an examination of the larger affiliated company or independently. The Bureau reiterates that it will coordinate with appropriate State regulatory authorities and will consider the extent of State supervisory activity when prioritizing individual examinations.

Commentary

The final rule goes into effect on December 1, 2014 giving nonbank international money transfer providers and their affiliates, slightly more than 60 days to prepare for CFPB supervision. Large entities that expect to meet the qualifying criteria for a larger participant (based on their 2013 international money transfer activity and the activity of their affiliates during 2013) should immediately begin to 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 BSA/AML provisions;

- Developing, or enhancing an existing, compliance management system, that addresses at a minimum:
 - Governance and Culture – including board and management oversight;
 - 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; Monitoring and Testing – both periodic and ongoing processes;
 - Policies and procedures; and
 - People and Skills – including staffing adequacy and skills requirements;
- Conducting a compliance audit to analyze gaps between current practices and compliance requirements and to evaluate skill sets and staffing needs;
- 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; and
- Evaluating each of these points for their primary service providers.

Since the advent of its nonbank supervision program, the CFPB has gained understanding and access to nonbank entities through UDAAP considerations and particular attention should be given to the treatment of U.S. consumers of international money transfer services, including the clarity of disclosures provided, correction of errors, imposition of fees, and consumer complaints intake and resolution. The CFPB expects providers of consumer financial products and services to comply with the spirit of the law as well as the specific requirements.

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For additional information, please contact:

Amy Matsuo, Principal: amatsuo@kppmg.com
 Stacey Guardino, Partner: sguardino@kpmg.com
 Kari Greathouse, Principal: cgreathouse@kpmg.com

Author: Karen Staines, Assoc. Director, Americas' Financial Services Regulatory Center of Excellence

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