



Payment Systems Advisory ■

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CFPB Proposes Rule to Supervise Nonbank International Money Transfer Providers

On January 23, 2014, the Consumer Financial Protection Bureau (CFPB, or "Bureau") proposed a rule to expand the scope of its non-depository supervisory coverage to include larger participants in the market for "international money transfers" ("Proposed Rule").¹ The Proposed Rule would apply to non-depository financial service companies ("nonbanks") that provide at least one million international money transfers annually, and would permit the Bureau to supervise such entities regarding compliance with the Bureau's "remittance transfer rule" and other applicable federal consumer financial laws, such as the prohibition on unfair, deceptive or abusive acts or practices (UDAAP).

Background

Since the CFPB began its operations in July of 2011, it has moved aggressively to implement the provisions of the Dodd-Frank Act. One of the first rules the Bureau issued was the "remittance transfer rule," which took effect on October 28, 2013 ("Remittance Transfer Rule").² The Remittance Transfer Rule requires banks and nonbanks that meet the definition of a "remittance transfer provider" to provide the senders of remittance transfers with detailed disclosures about their transfers, investigate and remedy alleged errors in connection with remittance transfers and meet other requirements. "Remittance transfer" is defined broadly to include the vast majority of international electronic transfers of funds that U.S. consumers send to consumers and businesses in foreign countries.³ According to the Bureau, nonbanks are a significant source of remittance transfer services, accounting for approximately 150 million individual transfers, and \$150 billion in total value transferred, during 2012.

¹ CFPB Proposes Rule to Oversee Larger Nonbank International Money Transfer Providers (January 23, 2014), <http://www.consumerfinance.gov/newsroom/cfpb-proposes-rule-to-oversee-larger-nonbank-international-money-transfer-providers/>.

² 12 C.F.R. 1005, Subpart B ("Requirements for Remittance Transfers"). The Remittance Transfer Rule was first issued in February 2012 and revised in series of subsequent rulemakings. See Remittance Transfer Rule, <http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>.

³ The term, which applies regardless of whether the sender has an "account" with the remittance transfer provider, includes wire transfers, ACH transfers and the addition of funds to a prepaid card where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country.

One of the statutory objectives underlying the Bureau's creation was to "level the playing field" between banks and nonbank providers of consumer financial products and services.⁴ To this end, the Dodd-Frank Act provided the Bureau with the authority to supervise certain nonbanks, including "larger participant[s] of a market for other consumer financial products or services," as the Bureau defines by regulation.⁵ Given this backdrop, it is not surprising that the Bureau has proposed to use its "larger participant" authority to permit it to supervise nonbanks that offer remittance transfer services regarding compliance with the Remittance Transfer Rule.

Scope of Proposed Rule

Under the Proposed Rule, nonbanks that provide at least one million aggregate annual "international money transfers," including transfers made by agents or affiliates, would be "larger participants" in the market for "international money transfers" and subject to the Bureau's supervisory authority. The Bureau estimates that this threshold would bring approximately 25 nonbank providers under its supervisory authority and that these companies provide approximately 90 percent of the transfers in the "nonbank market" for international money transfers.

While the terms and definitions used in the Proposed Rule generally track those set forth in the Remittance Transfer Rule, the Bureau explains there are slight differences that are intended to account for the different regulatory purposes of each rule (i.e., to establish a nonbank supervisory program rather than to establish substantive consumer protection requirements). Thus, for example, the Proposed Rule uses the term "international money transfer" rather than "remittance transfer." While the term "international money transfer" generally has the same meaning given to "remittance transfer" under the Remittance Transfer Rule, "remittance transfer" is defined to exclude transfers of \$15 or less, while "international money transfer" applies without regard to the amount of the transfer. The Bureau indicates that it believes it is appropriate to count all transactions for various reasons, including that small transactions "comprise part of the same market as larger transactions" and reflect the extent of a provider's market participation. Similarly, the term "international money transfer provider" would generally have the same meaning as "remittance transfer provider," although it would not include the requirement that transfers be provided "in the normal course of business." The Bureau states that "such a limitation is unnecessary" in the definition of "international money transfer provider," given that the Proposed Rule would require that an international money transfer provider have at least one million aggregate annual international money transfers to be a "larger participant."

⁴ Dodd-Frank Act § 1021(b)(4); see also A Level Playing Field for Consumer Financial Products and Services (Mar. 8, 2011), <http://www.consumerfinance.gov/blog/a-level-playing-field-for-consumer-financial-products-and-services/>.

⁵ The Dodd-Frank Act also provided the Bureau with supervisory authority over (i) mortgage originators, brokers and servicers, as well as persons who offer loan modification or foreclosure relief services for mortgage loans; (ii) persons the Bureau determines to be engaging in conduct that poses risks to consumers; (iii) private education loan providers; and (iv) payday lenders. Dodd-Frank Act § 1024.

Examination Process

Section 1024 of the Dodd-Frank Act authorizes the Bureau to require reports and conduct examinations of nonbanks that are subject to its supervisory authority for purposes of (i) assessing compliance with federal consumer financial protection laws, (ii) obtaining information about the activities and compliance systems or procedures of such entities, and (iii) detecting and assessing risks to consumers and markets for consumer financial products and services.⁶

The Bureau states in the Proposed Rule that it will use the Remittance Transfer Examination Procedures that it released on October 22, 2013, in connection with examinations of “larger participants” in the market for “international money transfers.”⁷ Examiners will review such entities for compliance with the Remittance Transfer Rule and other applicable federal consumer financial laws, such as the prohibition on UDAAP and the privacy requirements of the Gramm-Leach-Bliley Act. Further, the Bureau plans to coordinate examinations with appropriate state regulatory authorities, which have the authority to license and examine many participants in the “international money transfer” market.

Comments on the Proposed Rule must be received on or before April 1, 2014.

⁶ Dodd-Frank Act § 1024(b)(1).

⁷ CFPB Examination Procedures: Remittance Transfers, http://www.consumerfinance.gov/f/201310_cfpb_remittance-transfer-examination-procedures.pdf.

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