

CFPB Remittance Rule Fine Spotlights Cash-Transfer Conduct

By **Kara Kuchar and Donald Mosher**, Schulte Roth & Zabel LLP (September 13, 2019, 6:00 PM EDT)

Consumers in the United States send billions of dollars abroad each year. The remittance transfer rule is a federal consumer financial protection law that generally applies to money-services businesses and banking institutions that provide international money-transfer services to consumers.[1] Broadly, the rule requires covered persons to provide senders with certain disclosures, grant consumers a right of cancellation, and establish error-resolution procedures.

On Aug. 27, the U.S. Consumer Financial Protection Bureau announced it issued its first enforcement action based on violations of the rule.[2] The bureau issued the consent order against Maxitransfers Corp. for various violations, including:

- Disclosing in its terms and conditions with consumers that Maxi would not be responsible for errors made by payment agents;
- Failing to develop and maintain written policies and procedures designed to ensure compliance with error-resolution requirements;
- Failing to comply with the customer notification disclosures of the error-resolution requirements;
- Failing to use the rule’s specified terms or substantially similar terms in receipts and prepayment disclosures; and
- Failing to treat certain international bill-payment services as covered remittance transfers. The consent order does not include restitution, but the bureau imposed a civil monetary fine of \$500,000.

In the bureau’s October 2018 remittance rule assessment report, the bureau warned that through its examinations, it has discovered “mixed levels of compliance across the industry,” and while consumers are generally receiving the required disclosures, they are receiving them “in many instances with inaccuracies and errors.”[3]

So, this action should serve as another reminder to all remittance transfer providers of their obligations under the rule, as well as several other considerations.

For example, providers are responsible for violations of the rule and remedying errors, as defined by the

rule, in accordance with the rule's error-resolution procedures, even if acts of third-party payout agents in foreign countries caused the violation or error. Since providers typically rely on third-party payout agents to facilitate payment to recipients, risks of noncompliance outside of the control of providers exist. To mitigate such risks, we recommend that providers implement and maintain an agent oversight program with this in mind, including reviewing agent contracts and disclosures, learning from consumer complaints, and conducting test transactions and audits.

Based on the reported number of remittance transfers sent, it appears that Maxi is considered a larger participant in the international money-transfer market.[4] Larger participants are subject to CFPB supervision, but all providers subject to the rule should revisit their compliance programs and conduct a compliance review. We encourage all providers to maintain an appropriate compliance management system and to maintain written policies and procedures showing an awareness of the compliance obligations under the rule.

In particular, we recommend a review of all product offerings in case there may have been an oversight relating to some product development since the rule first became effective in 2013.

Providers that depart from using the disclosure language in the rule's model forms should understand that there are compliance risks if the prepayment disclosures and receipts or combined disclosure do not use the rule's specified terms or substantially similar terms.

The civil monetary penalty was imposed pursuant to Section 5565 of U.S. Code Title 12. This section provides the bureau with great latitude to assess penalties. The current action provides one data point.

Based on the consent order, it is not clear exactly how many remittance transfers are subject to the action and what statute of limitations, if any, applies. Based on the most recent court developments, we currently believe a three-year statute of limitations — that starts running from the date of discovery of the violation by the bureau[5] — applies to administrative actions by the bureau. However, we note that the bureau has previously argued in court that no statute of limitations should apply to its administrative actions enforcing consumer protection laws, and that even if the limitations period does apply, the clock does not begin to run until the bureau actually discovers the violation.

In order to mitigate such risks, and in addition to our general compliance reminders above, we remind providers that they have the option to follow the CFPB's guidance on responsible business conduct, which includes self-policing, self-reporting, remediation and cooperation.[6] Mistakes happen, but it is better to find them and fix them than have the bureau force you to fix them.

The CFPB currently has supervisory authority over banking institutions with assets over \$10 billion and larger nonbank participants in the international money-transfer market, as defined by regulation.[7] The bureau also has the authority to examine smaller institutions if the bureau has reasonable cause to determine that the person's conduct poses risks to consumers.[8]

Given that many bank and nonbank providers are chartered or licensed under state or federal banking laws — including, in the case of nonbank providers, state money-transmitter laws — those providers not paying sufficient attention to their obligations under the rule run the risk of being cited for violations by their state and federal regulators, and run the risk of a supervisory or enforcement action from the CFPB.

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[1] See 12 C.F.R. Part 1005, Subpart B.

[2] The CFPB's press release and consent order are available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-maxitransfers-corporation/>. The remittance transfer rule (Subpart B of 12 C.F.R. Part 1005) implements certain provisions of the Electronic Fund Transfer Act (15 U.S.C. § 1693o-1).

[3] Remittance Rule Assessment Report at 117, available at https://files.consumerfinance.gov/f/documents/bcftp_remittance-rule-assessment_report_corrected_2019-03.pdf.

[4] See 12 C.F.R. § 1090.107.

[5] "The "date of discovery" is the date when the plaintiff obtains actual knowledge of the facts giving rise to the action, or notice of the facts, which in the exercise of reasonable diligence, would have led to actual knowledge." CFPB v. NDG Fin. Corp., No. 15-CV-5211 (CM), 2016 WL 7188792, at *19 (S.D.N.Y. Dec. 2, 2016) (not reported) (internal quotations and citations omitted).

[6] CFPB Bulletin 2013-06, dated June 25, 2013, available at https://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

[7] See 12 C.F.R. § 1090.107 (defining larger nonbank participants in the international money-transfer market).

[8] 12 U.S.C. § 5514.