

ALERTS

CFPB Issues First Enforcement Action Based on Violations of the Remittance Transfer Rule

September 6, 2019

On Aug. 27, 2019, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) announced that it issued its first enforcement action based on violations of the Remittance Transfer Rule (“Rule”).^[1] The Bureau issued the consent order against Maxitransfers Corporation (“Maxi”) for various violations, including (1) disclosing in its terms and conditions with consumers that Maxi would not be responsible for errors made by payment agents, (2) failing to develop and maintain written policies and procedures designed to ensure compliance with error resolution requirements, (3) failing to comply with the customer notification disclosures of the error resolution requirements, (4) failing to use the Rule’s specified terms or substantially similar terms in receipts and prepayment disclosures and (5) 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.

This action should serve as a reminder to all remittance transfer providers (“Providers”) of their obligations under the Rule. Providers should also take note of the following considerations:

- 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.[2] 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 12 U.S.C. § 5565. 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 [3]) 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, that 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.[4]

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] The CFPB's press release and consent order are available here. 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).

[2] See 12 C.F.R. § 1090.107.

[3] "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).

[4] CFPB Bulletin 2013-06, dated June 25, 2013, available here.

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