

Comments

to the

Bureau of Consumer Financial Protection

Docket No. CFPB-2014-0003¹

RIN 3170-AA25

Defining “Larger Participants” of the International Money Transfer Market

April 1, 2014

Submitted by the

National Consumer Law Center

on behalf of its low-income clients and by the

National Association of Consumer Advocates

I.A. Introduction

We applaud the Consumer Financial Protection Bureau (“CFPB”) for initiating this proposed regulation defining larger participants in the international money transfers market. The Dodd-Frank Act permits but does not require the CFPB to supervise nonbank covered persons who are “larger participant[s]” in markets for consumer financial products other than residential mortgage, private education lending, and payday lending. This effort by the CFPB is an admirable exercise in this authority.

These comments are filed by the **National Consumer Law Center**,² on behalf of its low-income clients, and by the **National Association of Consumer Advocates**.³

The proposed rule would identify a nonbank market for international money transfers and define “larger participants” of this market that would be subject to the Bureau’s supervisory authority. We support this proposal. However, we strongly encourage the CFPB not to limit this supervisory

¹ http://files.consumerfinance.gov/f/201401_cfpb_proposed-regulations_defining-larger-participants-intl-money-transfer-market.pdf, published at 79 Fed. Reg. 5302 (Jan. 31, 2014).

² The **National Consumer Law Center** (www.nclc.org) is a nonprofit organization specializing in consumer issues affecting low-income and elderly people. NCLC publishes twenty practice treatises, most of which are updated annually and which describe the law currently applicable to all types of consumer transactions. These comments are filed on behalf of our low-income clients and written by NCLC attorney Margot Saunders.

³ The **National Association of Consumer Advocates** (NACA) is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA’s members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

application to providers of *international* money transfers, but to include providers of all money transfers – including domestic transfers.

In the Proposed Rule,⁴ only international money transfers would be covered, and “larger participants” in the international money transfer market are defined as nonbank covered persons that have at least one million in aggregate annual international money transfers. “Aggregate annual international money transfers” would be calculated by adding the annual international money transfers of the nonbank covered person and each of the nonbank covered person’s affiliated companies. “Annual” would be an annual average over the most recent three years of business and if the covered nonbank person has been in business less than three years, then “annual” would be defined as the average weekly number of transfers while the person has been in business, multiplied by 52. The proposed rule also sets out a formula for calculating the business volume of affiliates of the covered person. Once covered, an entity would continue to be subject to the rule until two years from the first day of the tax year in which the entity last met the million aggregate transfer threshold.⁵ A proposed covered person would be given the opportunity to submit information to the Bureau demonstrating that it does not fall within the definition of a “larger participant.”⁶ According to its research, the Bureau estimates that 25 money transfer companies would be covered.

While we generally support the proposed rule, we have two concerns about the criterion for defining “larger participants” to be supervised under this authority:

1. First, including only the number of international transfers as a criteria for supervision, rather than domestic and international transfers.
2. Second, dominance in a local market – regardless of the exact number of transfers actually made by the provider – should also trigger coverage.

I. All money transfers should be included, not just international money transfers.

While the 2010 amendments to the Electronic Funds Transfer Act created new consumer protections only for remittances made from the United States to recipients in other nations, there is no reason that providers of domestic transfers should not be supervised as well. The transactions are similar, if only more complicated when the money is to be sent internationally.

Counting both domestic and international transfers toward the aggregate number that would trigger supervision would encourage remittance providers to treat both types of transfers the same. It would encourage them to provide the same type of disclosures for both types of transfers. It might even encourage them to give domestic transfer the substantive protections that the Electronic Funds Transfer Act requires for to international transfers.

Advocates and the CFPB agree that greater transparency in all consumer financial transactions is a primary goal of the CFPB’s work. The Bureau has been given the important task of seeking to further consumer financial protection for all U.S. consumers. As is articulated in the CFPB’s Vision Statement on its website:

⁴ Proposed 12 C.F.R. § 1090.107

⁵ 12 C.F.R. § 1090.102.

⁶ 12 C.F.R. § 1090.103.

OUR VISION

If we achieve our mission, then we will have encouraged the development of a consumer finance marketplace:

- Where customers can see prices and risks up front and where they can easily make product comparisons;
- In which no one can build a business model around unfair, deceptive, or abusive practices;
- That works for American consumers, responsible providers, and the economy as a whole.

We acknowledge that international money transfers present unique challenges not faced by those persons sending domestic transfers, such as exchange rate calculation. However, we suggest that it is just as important to protect persons in the United States sending solely domestic transfers. Those persons deserve no less of the benefit of the CFPB's federal oversight and including all U.S. consumers would be in keeping with the CFPB's Vision Statement. We therefore urge the CFPB to expand the final rule cover all domestic funds transfers.

II. Firms that are dominant in regional or local markets should be defined as “larger participants” even if they do not meet the million annual transfer threshold.

The CFPB noted in the commentary accompanying the proposed rule that it was difficult to obtain “precise data” to determine the threshold for “larger participant.”⁷ The commentary accompanying the proposed rule sets out in great detail how the CFPB arrived at the million annual transaction threshold. But, as is pointed out in the commentary, market estimates were derived primarily from confidential supervisory information provided by California, New York and Ohio.

We agree that the top 25 firms that the CFPB has identified as having annual volume of a million or more transfers should be subject to supervision. However, we respectfully submit that another categories of companies should be added. We suggest that firms which are dominant in local markets, regardless of their actual size, be supervised as well.

While we understand the reasoning for the annual million-transaction threshold, dominance in regional and local markets should also be a consideration. While the Bureau should supervise large, nationwide money transmitters, it also should supervise major regional/local money transmitters that dominate certain markets even if they do not have a nationwide presence.

In the past, it has been recommended that the CFPB consider using criteria that represents a company's market share (e.g. revenues or volume of transactions) relative to the population density of the area in which it operates. For example, a money transfer company located in a highly urbanized area doing 300,000 transactions annually would not be considered a major participant in that market. But a money transfer company in a more rural area doing the same volume of transactions could be the predominant transmitter in the community; and the closer to a monopoly a company comes, the better the chance it has to control the market and charge high prices. Thus, the Bureau should account for relative market share when determining whether a money transmitter

⁷ 79 Fed. Reg. 5302, 5306 (Jan. 31, 2014).

is a “larger participant,” subject to the Bureau’s supervision. Providing for supervision of providers that dominate local markets would also prevent companies from evading supervision by staying just below the million-transaction threshold while still dominating a market.

Please let us know if you have any questions.