INSIDE THIS ISSUE

Bureau Releases Assessment of Remittance Rule

Overview: Several weeks ago, the Consumer Financial Protection Bureau (the “Bureau”) published its formal assessment (the “Assessment”) of the Remittance Rule—i.e., the series of rules and amendments issued between 2012 and 2014 that were designed to enhance protections for consumers sending remittance transfers out of the United States. While the Assessment is intended to evaluate how effective the Rule has been so far, the Bureau’s key findings show how difficult a task this is due to certain external factors or incomplete records. Still, the final analysis provides substantial insight into the remittance transfer market, both before and after issuance of the Rule.

Remittance Rule Background

A remittance transfer is described under the Remittance Rule as an electronic funds transfer sent from a consumer in the U.S., through an intermediary, to a person or business located in a foreign country. Before the Dodd-Frank Act (“Dodd-Frank”) was passed, remittance transfers were largely regulated under state licensing and regulatory regimes, since the federal Electronic Funds Transfer Act specifically excluded wire transfers and most transfers by MSBs. However, following significant growth in the remittance transfer market and the Great Recession, Congress incorporated a provision into Dodd-Frank regulating fees, disclosures, and other aspects of remittance transfers at the federal level.

The Remittance Rule’s three main requirements are intended to protect consumers transmitting money abroad by obligating remittance transfer providers to: (1) disclose certain information to consumers, including the price, delivery amount, and availability date of a remittance transfer; (2) provide cancellation and refund rights; and (3) investigate disputes and remedy certain errors. The Remittance Rule generally applies to entities that conduct at least 100 remittance transfers per year. It became effective in October of 2013.

Section 1022(d) of Dodd-Frank requires the Bureau to conduct formal assessments of each new “significant” rule or order within five years of its effective date. The Remittance Rule falls under this category.

Key Findings from the Assessment

The Assessment included the following key findings related to remittance transfers:

- Impact of technology. Rapid technological changes continue to significantly affect the remittance transfer market. Most notably, the extensive use of mobile devices and the Internet have led to major changes in the way consumers send remittances. According to the Bureau, these and other technological changes have made it difficult to accurately determine the effect of the Remittance Rule.
• **Increases in MSB transfers.** Both the number and dollar volume of remittance transfers were increasing before the Remittance Rule and continued this upward trend afterwards at the same or a higher rate. However, the Bureau noted that the uptick in transfers is not necessarily due to the Remittance Rule. Indeed, many factors may affect demand, and the Bureau posits that it is possible the increase would have been even stronger without federal regulation.

• **Small increases in bank and credit union transfers.** The percentage of banks (and credit unions, to a lesser degree) that are transferring more than 100 remittances has increased since the Remittance Rule took effect. While around 80% of banks and 75% of credit unions remain below the 100-transfer threshold, the Bureau’s evidence suggests that these institutions rarely constrain transfers to stay under this threshold.

• **Declines in price of remittances.** Again, the trend towards declining remittance transfer prices was occurring before and after the Remittance Rule’s effective date. However, the Bureau cautioned that it is possible prices would have fallen faster without federal regulation, and the evidence does not seem to show that the Rule caused a substantial change in price, whether up or down.

• **Mixed levels of industry compliance.** The Bureau’s research showed a mixed bag in terms of industry compliance.
  
  o **Disclosures.** Although consumers generally seem to be receiving the required disclosures, there were many instances where disclosures had inaccuracies and errors. Still, the Bureau notes that “in at least some cases consumers are now receiving more information than they did before the Rule took effect.”
  
  o **Cancellations.** Evidence shows that some providers delay transfers so that they can more easily provide refunds to consumers requesting cancellation within the Remittance Rule’s 30-minute cancellation window requirement. However, it is unclear how many providers use this practice.
  
  o **Error Resolution.** Whether providers are complying with the error resolution and investigation requirements, however, was ultimately unclear due to inadequate tracking systems by some entities. Available evidence suggests most errors asserted by consumers are due to consumer mistakes or other issues as opposed to provider errors.

• **Cost of compliance.** The Bureau was generally successful in accurately estimating the initial cost for providers to come into compliance with the Remittance Rule, with spending between $86 and $92 million to do so, while ongoing compliance costs came to between $19 and $102 million per year.

**Outlook:** Many of the Bureau’s key findings related to the difficulty in attributing increases in remittance transfers to the Rule’s effects. Interestingly, the Bureau noted that neither this Assessment nor any of the agency’s other pending assessments provide a cost-benefit analysis of the underlying rules—a policy the Bureau is reconsidering going forward. The Assessment hints that there could be future rulemaking to improve how effective the Remittance Rule is in protecting consumers and/or reducing the burden on industry, though the highly prescriptive nature of the statute governing remittance transfers may restrict the Bureau from overhauling the Remittance Rule to the extent it would like to do so.

Craig Saperstein, a member of NACHA’s Government Relations Advisory Group, is an attorney in the Public Policy practice of Pillsbury Winthrop Shaw Pittman LLP in Washington, D.C. In this capacity, he provides legal analysis for clients on legislative and regulatory developments and lobbies congressional and Executive Branch officials on behalf of companies in the payments industry. Deborah Thoren-Peden is a partner and member of the Financial Institutions Team at Pillsbury Winthrop Shaw Pittman LLP. She provides advice to financial institutions, bank and non-bank, and financial services companies. Andrew Caplan is an associate and member of the Financial Institutions Group and the Privacy, Data Security, and Information Use Focus Team at Pillsbury Winthrop Shaw Pittman LLP. He counsels and defends financial institutions, technology companies, and other clients that offer consumer products or services on a range of issues related to credit, payments, data privacy, cybersecurity, and e-commerce. The information contained in this update does not constitute legal advice and no attorney-client relationship is formed based upon the provision thereof.