

Comments
to the
Bureau of Consumer Financial Protection
12 CFR Part 1005
Docket No. CFPB-2017-004

Request for Information Regarding Remittance Rule Assessment¹

by the
National Consumer Law Center
on behalf of its low-income clients and
Americans for Financial Reform
Consumer Action
Consumer Federation of America
NAACP
National Association of Consumer Advocates
U.S. PIRG
Woodstock Institute

May 23, 2017

Introduction.

The **National Consumer Law Center** ("NCLC") submits the following comments on behalf of its low-income clients and **Americans for Financial Reform, Consumer Action, Consumer Federation of America, NAACP, National Association of Consumer Advocates, U.S. PIRG** and **Woodstock Institute**. We appreciate the comprehensive nature of the CFPB's proposed assessment plan of the Remittance Rules.² However, we would like to encourage the CFPB to focus its evaluation on the many exceptions to the rules and the effect on consumers of these exceptions.

As a general rule, it is likely that immigrants are more likely to be taken advantage of and less likely to feel empowered to assert their legal rights than other members of our society.³ Therefore, they are more vulnerable to both the mistakes and the deliberate malfeasance of those with whom they do business. Congress passed the statute requiring consumer protections for remittances in a deliberate attempt to provide more protections to all remittance senders, specifically including immigrants. Yet, over the objections of advocates representing these immigrants and other remittance senders, the CFPB allowed a number of significant exceptions to the mandates in the statute. This assessment is the perfect time to revisit those exceptions and determine if they have been beneficial to remittance senders, rather than only to the remittance industry.

¹ 82 Fed. Register 15009, March 24, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-03-24/pdf/2017-05681.pdf>.

² 12 C.F.R. § 1005.30 –36.

³ See generally, Ruben J. Garcia, *Marginal Workers: How Legal Fault Lines Divide Workers and Leave The Without Protection*, NYU Press, Sept. 13, 2013; 7 *Ways immigrants enrich our economy and society*, <http://www.nclr.org/issues/immigration/resources/facts?gclid=CO3l4OHyg9QCFV6Bswod3KQOoQ>.

There is a lot at stake in these regulations. As the CFPB knows, the number of individuals who regularly send money to relatives living in another country is rising steadily.⁴ Tens of billions of U.S. dollars are sent every year by American residents to their relatives overseas.⁵

Given the importance of getting these regulations right for the many people who need the protections provided, we recommend that the CFPB add to its list of issues to be evaluated the following questions:

- I. The extent to which prices for remittances have been changed as the result of the new remittance rules; whether prices for remittances are uniform across different geographies; and whether the price variations (if any) particularly in poor neighborhoods, are the result of the lack of competition
- II. Whether the exceptions allowed by the CFPB for the disclosure of the amounts to be received by the designated recipient (the “Total to Recipient”) a) continue to be necessary, b) have caused problems for remittance senders, and c) should be changed.
- III. Whether it is still appropriate and necessary to provide that the remittance provider has no duty to correct errors that are related to the deposit of funds in the wrong account because of the sender’s mistake.
- IV. Whether the required disclosures should be provided in more foreign languages and in more circumstances.

These issues are described in more detail below.

I. Evaluating Prices for Remittances

The proposed assessment tool already articulates that the Bureau will evaluate prices.⁶ This is good, but we want to emphasize that the two most critical components of any protections related to remittances are the prices charged and whether the promises made regarding those prices and the dates of delivery are actually kept. Others have studied the overall structure of remittance prices, and the CFPB need not replicate those efforts.⁷

⁴ See generally, The World Bank, Migration and Remittances Unit, Development Prospects Group, [Migration and Development Brief](http://siteresources.worldbank.org) (Nov. 20, 2012), available at <http://siteresources.worldbank.org>; Manuel Orozco, [Future Trends in Remittances to Latin America and the Caribbean](http://www.thedialogue.org), InterAmerican Dialogue (May 2012), available at www.thedialogue.org; Manuel Orozco, Markets and Financial Democracy: The Case For Remittance Transfers, 1 J. of Payments Systems Law 166 (2005).

⁵ See, e.g., Nurith Aizenman, *Mexicans In The U.S. Are Sending Home More Money Than Ever*, February 10, 2017, available at <http://www.npr.org/sections/goatsandsoda/2017/02/10/514172676/mexicans-in-the-u-s-are-sending-home-more-money-than-ever>.

⁶ 82 Fed. Register 15009, 15013.

⁷ See, e.g., *The World Bank, The Cost of Sending Remittances: June 2015 Data* (the average global cost of sending remittances fell to 7.68% as of June 2015, from 7.72% in the first quarter of the year; in three-quarters of all country corridors, it is now possible to send money for a cost of 10% or less, while at the end of 2009, only half of the corridors had a cost of 10% or less.)

Therefore, we encourage the CFPB to look at following specific questions. In particular, we hope that the CFPB will analyze the costs versus the benefits, if any, in the reduction of consumer protections allowed for some remittance providers.

- 1) Whether prices are generally lower at one kind of provider versus another (i.e. insured financial institutions versus money transmitters). For example, the World Bank recently determined that insured financial institutions have among the most costly remittance prices.⁸ Yet, insured financial institutions are permitted to avoid the most critical of consumer protections: the requirement for exact statements of the amount to be received by the recipient. *The CFPB should evaluate whether the ongoing reduction in consumer protections continues to be appropriate given the higher prices charged by these institutions, or whether the availability of the remittance service through these institutions justifies both the higher prices and the reduction in consumer protections.*
- 2) Whether there are differences in prices for different types of transmission methods (i.e. wire transfer versus electronic transfer).
- 3) Whether there are differences in prices for the same product charged by the same provider in different neighborhoods (i.e. charging more to consumers who have limited choices in providers). *This question does not appear to have been evaluated previously. Yet, price discrimination is a well-known scourge in poor communities.⁹ The CFPB should evaluate whether it is occurring in relation to remittances.*
- 4) Whether there are differences between the prices charged for remittances for which the exact Total to Recipient need not be disclosed¹⁰ and the prices for remittances for which this disclosure is required. *In addition to the time-limited exception permitted to insured financial institutions for providing the exact amount, the CFPB has continued to permit estimates of charges for remittance sent to certain nations, and for charges imposed by third parties for delivering the funds to recipients.*

II. Evaluating the Ongoing Justification for the Exceptions

Remittance transfer providers are permitted, under three circumstances, to use estimates for the amount to be received by the recipient:

1. All insured depository institutions are permitted to use estimates until April 1, 2018.¹¹

<http://www.worldbank.org/en/topic/paymentsystemsremittances/publication/cost-sending-remittances-june-2015-data>.

⁸ *Id.* (Using banks to send money remained most expensive at 10.96%; however, these charges have been falling and were recorded below 11% for the first time.)

⁹ See e.g. DeNeen L. Brown, *The High Cost of Poverty: Why the Poor Pay More*, Washington Post, May 18, 2009; *Tackling poverty - It's expensive to be poor: Why low-income Americans often have to pay more*, The Economist, Sept. 3, 2015.

¹⁰ Permitted pursuant to Reg. E 12 C.F.R. § 1005.31 (b)(1)(vii) or (viii).

¹¹ Reg. E, 12 C.F.R. § 1005.32(a).

2. Estimates can be provided permanently for remittance transfers to certain countries whose rules do not permit providers to indicate non-estimated amounts.¹²
3. Estimates can be provided for fees imposed by a third-party.¹³ The estimates are to include fees and taxes collected on the transfer by a person other than the provider.¹⁴ It is optional for the provider to decide whether the estimates include “non-covered third-party fees,”¹⁵ which are defined as “fees imposed by the designated recipient’s institution for receiving a remittance transfer into an account.”¹⁶

There is a requirement that if estimates are used in disclosures they must be identified as such.¹⁷ But this may not adequately inform consumers. Unfortunately, the extensive allowance of estimates by the CFPB seriously undermines the reliability and value of the disclosures required by the statute. We have advocated in the past that whenever estimates are used, consumers should be informed that other remittance providers provide commitments on the amount to be received by the recipient, rather than estimates. *The degree of consumer confusion about the use of estimates versus the availability commitments regarding the amount to be received should be specifically evaluated by the CFPB. In addition, the CFPB should evaluate the accuracy of estimates disclosed to consumers under the rule.*

A critical question that the CFPB must also address in this evaluation of the effectiveness of this rule is whether these estimates are still appropriate and justified, and the extent to which they undermine consumer understanding.

III. Evaluating Whether the Exception for the Requirement to Correct Errors for Deposits into Wrong Accounts is Still Appropriate.

The error resolution requirements for remittance transfers are among the most important new rights that the regulations give remittance senders. They are triggered by oral or written notice from the sender, within 180 days of the “promised date of delivery,” that an error occurred.¹⁸ The provider is required to investigate promptly and determine, within ninety days after receiving notice of the error, whether an error occurred and report all results to the sender.¹⁹ If an error is found to have occurred, the provider is required, within one business day of receiving the sender’s instructions regarding the appropriate remedy, to correct the error as instructed.²⁰

However, in a significant—and in our opinion an unjustified—break from the specific language in the statute, the CFPB provided an exception to errors if the sender (that is, the consumer) provided

¹² Reg. E, 12 C.F.R. § 1005.32(b).

¹³ Defined in 12 C.F.R. § 1005.30(h)(1) as “fees imposed on the remittance transfer by a person other than the remittance transfer provider except for non-covered third-party’s fees.”

¹⁴ Reg. E, 12 C.F.R. §§ 1005.31(b)(vii).

¹⁵ Reg. E, 12 C.F.R. § 1005.32(b)(3).

¹⁶ Reg. E, 12 C.F.R. § 1005.30(h)(2).

¹⁷ Reg. E, 12 C.F.R. § 1005.31(d).

¹⁸ 15 U.S.C. § 1693o-1(d)(1)(A), as added by Pub. L. No. 111-203, tit. X, § 1073(a)(4), 124 Stat. 2060 (July 21, 2010); Reg. E, 12 C.F.R. § 1005.33(b).

¹⁹ Reg. E, 12 C.F.R. § 1005.33(c)(2).

²⁰ Reg. E, 12 C.F.R. § 1005.33(d)(2).

certain incorrect information. This exception applies if the sender provided an “incorrect account number or recipient institution identifier for the designated recipient’s account or institution.”²¹

Even though the remittance transfer provider must take a number of steps (before and after the transfer) in order to avoid responsibility for the error,²² we strongly believe that this exception is inappropriate and unjustified. The CFPB had allowed this exception based on the requirements imposed on providers of wire transfers pursuant to the Uniform Commercial Code.²³ The CFPB justified this rule on the ground that it was consistent with that state law, specifically UCC Art. 4A, especially § 4A-207.²⁴ The problem is that the Bureau has not acknowledged that Congress *intentionally departed from 4A in drafting remittance requirements*. Congress could have copied the language from § 4A-207 if it wanted to make the exception the Bureau now proposes, but it did not. Congress did the exact opposite. Congress deliberately ensured that the consumer-unfriendly rules of § 4A-207 do not apply to remittances. It accomplished this by recognizing and *not overriding* the UCC’s provision that Article 4A does not apply to fund transfers that are governed by the EFTA, but are instead solely governed by the new, federal, consumer protection law.²⁵ It was entirely backwards, and in derogation of the clear intent of Congress, for the Bureau to defer to a state law that Congress deliberately *declined* to apply to these very transactions.

The Bureau has mistakenly looked at one aspect of state law, written for commercial transfers and deliberately rejected by Congress as applicable, and has erroneously made the rule for this state law applicable to small remittances made by consumers. This was wrong when the CFPB proposed it in 2012, and wrong when the CFPB adopted it in 2013. It remains wrong.

In this assessment of the remittance rule, we encourage the CFPB to fully evaluate the effect on consumers of this exception.

IV. Whether the required disclosures should be provided in more foreign languages.

With regard to requiring disclosures in foreign languages, currently the remittance regulations only require that --

The remittance transfer provider must either provide a sender disclosures in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services at the office in which a sender conducts a transaction or asserts an error, or provide disclosures in the

²¹ Reg. E, 12 C.F.R. § 1005.33(a)(1)(iv)(D)

²² Reg. E, Official Interpretations § 1005.33(a)-7.

²³ 77 Fed. Reg 77188, 77198 (December 31, 2012).

²⁴ 77 Fed. Reg 77188, 77198 (December 31, 2012).

²⁵ The Bureau has recognized this itself: UCC § 4A-108 provides that Article 4A does not apply “to a funds transfer, any part of which is governed by the [EFTA]. Under EFTA Section 919, wire transfers sent on a consumer's behalf that are remittance transfers will now be governed in part by the EFTA. As a result, it appears that, by operation of Article 4A-108, Article 4A will no longer apply to such consumer wire transfers.” *See* 76 Fed Reg 29902, 29908 (May 23, 2011).

language primarily used by the sender to conduct the remittance transfer or to assert an error.²⁶

Probably more than any other consumer protection rule promulgated by the CFPB, additional foreign language requirements should be considered for the remittance rule. This assessment process should be used to evaluate whether the CFPB should add additional language requirements to the remittance rule.

In 2015, approximately 25.9 million individuals, some 9 percent of the U.S. population, were considered limited English proficient (LEP). Approximately five-sixths (83.4%) of all LEP residents speak one of eight languages: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole. About 64% of the LEP population speaks Spanish, followed by Chinese, spoken by 6% of the LEP population.²⁷ These individuals use financial products and services, but those who are not proficient in English have greater difficulty navigating the marketplace and resolving challenges when they arise.

Remittances are clearly an essential service provided for many American residents whose primary language is other than English. In 2013, about 25 percent of LEP individuals lived in households with an annual income below the official federal poverty line—nearly twice as high as the share of English-proficient persons.²⁸ *The CFPB should evaluate whether the current construct of the regulation—triggering the foreign language disclosure only if the transaction was conducted in the foreign language—is sufficient protection for these consumers, or whether additional language disclosures should be required.*

²⁶ EFTA section 919(b); Reg E, 12 C.F.R. § 1005.31(g).

²⁷ U.S. Census Bureau, *2010–2014 American Community Survey 5-Year Estimates*, American Community Survey (Washington, DC: U.S. Census Bureau) Table B16001 (accessed February 22, 2016).

²⁸ Jie Zong and Jeanne Batalova, The Limited English Proficient Population in the United States, Migration Policy Institute (July 8, 2015), available at <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.