
“Failure Is Not an Option” CFPB Consent Order Against Money Transmitter May Be a Prelude for How the Final Debt Collection Rule Will Be Enforced

By Ann E. Lemmo, Joann Needleman / Sep 12, 2019

On August 27, 2019, the Consumer Financial Protection Bureau (CFPB or Bureau) settled its first enforcement action based on alleged violations of its money transfer rules with Maxitransfers Corp. (Maxitransfers), a Texas-based money transmitter. Maxitransfers agreed, among other things, to pay a civil money penalty in the amount of \$500,000.00. The company provides remittance transfers using six retail branches and a network of more than 1,600 independent third-party agents in the United States, and more than 19,500 third-party payment locations in Mexico and other countries in Central and South America. As a remittance company, Maxitransfers is a covered entity under the Consumer Financial Protection Act (CFPA), 12 U.S.C. §5531, and by the nature of its business it is subject to the Electronic Fund Transfer Act (EFTA) 15 U.S.C. § 1693 *et seq.*

The Rules in Play

In 2010, the EFTA was amended to address international money transfers sent by U.S. consumers to individuals and businesses in foreign countries. Section 15 U.S.C. §1693o-1 requires among other things that:

- remittance-transfer providers disclose the exchange rate, the amount to be received, and other information both before and at the time the consumer pays for the transfer;
- consumers have certain rights regarding cancellation and refunds;
- remittance-transfer providers must investigate disputes and remedy errors regarding remittances; and
- remittance-transfer providers are liable for certain acts of their agents.

In 2012, the Bureau issued the Remittance Transfer Rule (RTR), 12 C.F.R. §1005 *et seq.*, to implement the EFTA. The RTR became effective as of October 28, 2013, following almost a year’s implementation period. The Consent Order against Maxitransfers found they violated the RTR from the effective date of the rule.

RTR Rules Violated

From October 28, 2013 until May 8, 2017, Maxitransfers processed about 14.5 million transfer remittances. Maxitransfers provided a disclosure form containing the following statement:

We will take responsible measures to carry out the transaction adequately, but Maxitransfers Corp. is not responsible for errors made by banks or payment agents, or for any other reasons out of our control.

However, the EFTA and RTR specifically provide that remittance-transfer providers are responsible for errors by their agents. The Bureau found that this disclosure “misled or was likely to mislead consumers acting reasonably under the circumstances because [Maxitransfers] in fact was responsible for their errors under EFTA and the [RTR].” The Bureau also found that the disclosure “was material to consumers because the statement was likely to affect their decisions whether and how to exercise their right to assert errors under EFTA and the Remittance Rule.”

Maxitransfers had no written policies and procedures ensuring compliance with error-resolution requirements of the RTR pursuant to § 1005.33(g)(1) from October 28, 2013 to November 2016. While Maxitransfers did develop a policy titled “CFPB Policy,” the policy failed to meet the requirements of § 1005.33(g)(1) because, for example, it “did not address what constitutes an error under the [RTR]; what constitutes a notice of errors from a consumer; what investigation is required, how investigation results should be provided to consumers; or the time limits for an investigation.”

Further, Maxitransfers failed to use specified or substantially similar terms in its remittance disclosures as required under § 1005.31(b)(1). For instance, Maxitransfers used the term “Dollars” instead of “Transfer Amount;” and “amount MXP (Mexican Pesos)” instead of “Total to Recipient.”

Little Margin for Error

As the debt collections industry races to the finish line on rulemaking and awaits final rules, all entities that will be covered either directly or indirectly by the new regulations, must assess their internal operations to ensure that they will be able to comply from Day One. According to the Bureau, Maxitransfers failed to establish compliance from the onset, despite an implementation period that lasted well over a year. When the final debt collection rules arrive there will be no opportunities for do-overs. This Consent Order suggests that the margin for error will be razor thin.

Like the Notice of Proposed Rule (NPR) for debt collection, the RTR provided model forms, disclosures and required use of specific terms or substantially similar terms. The Official Interpretation of the RTR went so far as to give examples of substantially similar terms as well as mandating that foreign language translations must be accurate. The Consent Order states that Maxitransfers did not follow the RTR mandates, which resulted in significant fines and penalties. The debt collections industry must start planning now for the implementation of Regulation F. This includes revising operational policies and procedures and assessing internal infrastructure to accommodate these forthcoming changes. Well-intended efforts will not be enough, the CFPB will

expect perfection.

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