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Dodd-Frank 1073: Creating the Well-Informed Remittance Consumer

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DODD-FRANK 1073: CREATING THE WELL-INFORMED REMITTANCE CONSUMER

*Michael J. Lorden**

I. INTRODUCTION

Approximately $110 billion dollars leaves the United States and makes its way into developing countries every year; however, the vast majority is not coming from the government but individuals instead.[1] Individuals working in the United States send money to friends and family abroad through a wire transfer called a remittance.[2] A U.S. Census survey suggests that around six million households conduct remittances each year.[3] Common reasons for a remittance are to pay for tuition of children living abroad, to purchase real estate, to pay for online purchases, and most commonly, to assist relatives with expenses.[4]

The World Bank estimates that more money enters developing countries through remittances than through governmental aid.[5] International remittances on a global scale total $325 billion,[6] while other forms of aid dropped over the past decade, remittances stayed consistent over the same time period.[7]

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[1] Penny Crosman, Dodd, Frank and Payments, AM. BANKER (Aug. 1, 2012, 1:00 AM), http://www.americanbanker.com/btn/25_8/dodd-frank-begins-heavier-regulations-on-overseas-payments-1051179-1.html.

[2] *Id.*

[3] CONSUMER FINANCIAL PROTECTION BUREAU, REPORT ON REMITTANCE TRANSFERS, 4 (July 20, 2011), *available at* http://files.consumerfinance.gov/f/2011/07/Report_20110720_RemittanceTransfers.pdf.

[4] *Id.* at 3.

[5] *Id.* at 4.

[6] Colin C. Richard, *Mobile Remittances and Dodd-Frank: Reviewing the Effects of the CFPB Regulations*, 12 U. PITT J. TECH. L. & POL'Y 1, 1 (2012).

[7] IBRAHIM SIRKECI, JEFFRY H. COHEN & DILIP RATHA, MIGRATION AND

Even as economies struggled through the recent global recession and labor markets froze, remittances continued at a steady rate.[8] Studies show that impoverished families receiving remittances are likely to spend that money on education, housing, or entrepreneurial activities.[9] Further studies show that an increase in remittances usually results in an increase to that country's education, health, and investments.[10] Specifically, studies, in rural Mexico for example, show that "international remittances reduce both the level and depth of poverty."[11]

On the other side of the transaction is the sender and the financial institution completing the transaction, known as the remittance transfer provider ("RTP").[12] The RTP could be a traditional financial institution such as a bank, credit union, or a company that's primary function is remittance transfers.[13] The RTP charges an exchange fee for the remittance, which is taken out of the amount that is received by the other party.[14]

The sender may pay with cash, or in some circumstances credit or debit cards; the recipient may receive cash or have the money deposited into a bank account.[15] Some RTPs also allow for mobile remittances.[16] A mobile remittance, as the name suggests, uses mobile phones to transfer funds.[17] Mobile transfers offer a variety of options: mobile-to-cash, cash-to-mobile, and mobile-to-mobile.[18] Mobile transfers require a "mobile wallet" that allows the recipient to use a telephone to pay for things just as they

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REMITTANCES DURING THE GLOBAL FINANCIAL CRISIS 15, 16 (World Bank Publications, 2012).

[8] *Id.*

[9] William M. Fonta, Onyukwu E. Onyukwu & Emmanuel O. Nwosu, *International Remittance Inflows and Household Welfare: Empirical Evidence from Nigeria*, 2 IISTE RES. J. FIN. & ACCT., 140, 142 (2011).

[10] *Id.*

[11] *Id.*

[12] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 3, at 5.

[13] Emily Stephenson, *U.S. Exempts Small Banks from New Foreign Money Transfer Rules*, REUTERS, (Aug. 8, 2012), http://www.reuters.com/article/2012/08/07/financial-regulation-cfpb-idUSL2E8J7CUP20120807.

[14] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 3, at 1.

[15] *Id.* at 7.

[16] Richard, *supra* note 6, at 4.

[17] *Id.* at 1.

[18] WESTERN UNION, *Mobile Money Transfer Fact Sheet*, http://corporate.westernunion.com/Mobile_Money_Transfer_Fact_Sheet.html (last visited Feb. 10, 2013).

would with cash.[19] Mobile banking and mobile remittances could potentially yield serious benefits to consumers through increased security and access to services.[20] On average, mobile remittances offer a less expensive alternative to traditional forms of remittances. Mobile remittances cost about 7.36% of the amount sent (compared to 7.60% for cash transfers, 8.76% for online transfers, and 14.52% for account-to-account transfers).[21] The speed of the service, as well as the sending and receiving locations may also alter the price.[22]

The Consumer Financial Protection Bureau ("CFPB") issued a new regulation regarding remittances, known as Dodd-Frank 1073, on February 7, 2012, that went into effect on February 7, 2013. The regulation aimed to increase transparency and protection for consumers.[23] Dodd-Frank 1073 was met with praise from consumer advocates[24] and criticism from the banking community.[25]

This note will focus on the advantages and protections of Dodd-Frank 1073. Part I will introduce the CFPB along with a discussion of its mission and goals. Part I also discusses opinions for and against the CFPB generally.

The main components of Dodd-Frank 1073 will be introduced in Part II. Next, Part III will introduce opinions in support of and in opposition to the regulation. Finally, Part IV includes an analysis of Dodd-Frank 1073 and the conclusion that the regulation ultimately benefits consumers by increasing transparency, creating an error resolution process, promoting mobile remittances, and establishing a fair and evenly regulated market.

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[19] WESTERN UNION, *Frequently Asked Questions*, https://wumt.westernunion.com/WUCOMWEB/staticMid.do?method=load&pagename=faqmtmobile (last visited Feb. 10, 2013).

[20] *See* Richard, *supra* note 6, at 9, 21. Benefits include physical security from theft or loss of property. Additionally, mobile banking creates an audit trail that hinders corruption and the financing of terrorism.

[21] Richard, *supra* note 6, at 4-5.

[22] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 3, at 10.

[23] Press Release, National Consumer Law Center, Advocates Applaud CFPB's New Fee-Disclosure Rule for Overseas Electronic Transactions (Aug. 8, 2012), *available at* http://www.nclc.org/images/pdf/regulatory_reform/pr_cfpb-remittances_8aug2012.pdf.

[24] *Id.*

[25] *See* Crosman, *supra* note 1.

II. THE CONSUMER FINANCIAL PROTECTION BUREAU

In order to understand Dodd-Frank 1073 and its origins, the history and context of the CFPB is necessary. The CFPB was created, in large part, to respond to the financial crisis of 2008.[26] Prior to the crisis, seven separate agencies regulated consumer finance, but were unable to prevent misinformed borrowers from taking out loans they did not understand.[27] In 2009, President Barack Obama proposed the idea of the CFPB.[28] A year later, the Dodd-Frank Act created the CFPB as a part of the Federal Reserve System.[29]

The CFPB was created to make markets for consumer financial products work in a fair, transparent, and competitive way.[30] Congress entrusted the CFPB with six ways to make this possible: (1) examination and supervision; (2) enforcement; (3) rulemaking; (4) consumer education; (5) collecting and responding to consumer complaints; and (6) monitoring consumer financial markets.[31] One of the primary ways the CFPB believes they can create markets that are fair, transparent, and competitive is to ensure the consumer is made aware of price, risk, and comparisons among products.[32] Elizabeth Warren, current U.S. Senator and former professor of law and special advisor to the CFPB, wants more educated consumers in the marketplace making informed decisions.[33]

The CFPB, created in political and financial strife, has been both lauded and loathed. It has been called a "pit-bull type" agency that protects consumers, and an agency that helps curb abusive practices.[34] Some believe the CFPB is nothing more than

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[26] Leonard J. Kennedy, Patricia A. McCoy & Ethan Bernstein, *The Consumer Financial Protection Bureau: Financial Regulation for the Twenty-First Century*, 97 CORNELL L. REV. 1141, 1144-45 (2012).

[27] *Id.* at 1145.

[28] *Id.*

[29] *Id.* at 1145-46.

[30] Elizabeth Warren, *Warren Outlines CFPB's Mission for Consumers*, AM. BANKR. INST. L.J., Apr. 2011, at 10, 103.

[31] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of the U.S. Code), codified in relevant part at 12 U.S.C. § 5518.

[32] Warren, *supra* note 30, at 10.

[33] *Id.*

[34] Michelle Singletary, *Consumer Financial Protection Bureau Got Off to a Good Start in its Inaugural Year*, WASH. POST, July 10, 2012, *available at* http://www.washingtonpost.com/business/economy/consumer-financial-

an "invitation for regulation based on the myriad of studies that it requires to be conducted for purposes of future regulatory action."[35] Moreover, critics believe that the CFPB is ineffectual because it is too focused on the domestic market, and fails to address the global market.[36] Further, the CFPB has been called a "job-killer" and "anti-capitalist."[37]

Likely, a person's belief in size, scope, and role of the government will dictate their opinion of the necessity and effectiveness of the CFPB. For example, Republican Mitt Romney vowed to repeal Dodd-Frank, and shut down the CFPB, when he was actively campaigning for the presidency in 2012.[38] The courts will soon have their say in the matter, as a group of three state Attorney Generals have joined a conservative group challenging the constitutionality of the bureau in federal court.[39]

III. THE REGULATION – DODD FRANK 1073, REGULATION E

On February 7, 2012, the CFPB issued its final rule, known as Regulation E, that implements section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[40] The rule is intended to create a "comprehensive new system of consumer protections for remittance transfers" and "provide consumers with better information for comparison shopping."[41] The statute, effective February 7, 2013, has four main components, which are explored in greater detail below. First,

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protection-bureau-got-off-to-a-good-start-in-its-inaugural-year/2012/07/10/gJQAN3TNbW_story.html.

[35] Eric C. Chaffee, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: A Failed Vision For Increasing Consumer Protection and Heightening Corporate Responsibility in International Financial Transactions*, 60 AM. U. L. REV. 1431, 1432 (2011).

[36] *Id.* at 1433.

[37] Scott Powell & Jay Richards, *A New Dog in the Pack: What Dodd-Frank Unleashed on the Financial Services Industry*, BARRON'S (Sept. 29, 2012), *available at* http://online.barrons.com/article/SB50001424053111904414004578022553442234038.html?mod=BOL_twm_fs.

[39] *Id.*

[39] *Id.*

[40] Electronic Fund Transfers (Regulation E) Part II, 77 Fed. Reg. 6,194 (Feb. 7, 2012) (to be codified at 12 C.F.R. pt. 1005) [hereinafter Regulation E Part II].

[41] *Id.*

Dodd-Frank 1073 increases disclosures. Second, it creates consumer cancellation and refund policies. Third, it requires RTPs to investigate disputes and errors. Finally, it establishes RTP liability standards by making RTPs strictly liable for the actions of their agents. Additionally, certain CFPB authorities can make official interpretations that will be made publicly available, and requests can be made for official interpretations.[42]

A. Disclosures

Dodd-Frank 1073 requires an RTP to provide a written pre-payment disclosure to the consumer.[43] Additionally, a post-payment receipt is required.[44] The disclosures must be clear and conspicuous[45] and provided in writing[46] or orally if the transaction is done over the phone.[47] The pre-payment disclosure must contain the exchange rate, the amount of the transfer and fees, and the amount that to be received by the recipient.[48]

The post-payment receipt must include the pre-payment information in addition to promised date of delivery, contact information of the recipient, the sender's error resolution rights, and contact information for the RTP and regulatory agencies.[49] A disclosure may be described to the consumer as an estimate in certain situations.[50] For example, estimates can be used if: (1) the RTP cannot determine exact prices for reasons beyond its control; (2) the RTP is an insured institution; (3) or the sender has an account with the institution.[51]

B. Procedures for Cancellation and Refund

Dodd-Frank 1073 requires an RTP to comply with any written or oral request to cancel a remittance transfer from the

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[42] *Id.* at App. C.
[43] *Id.* at 6,214.
[44] *Id.*
[45] Electronic Fund Transfers (Regulation E) Part III, 77 Fed. Reg. 50,244, 50,258 (Aug. 20, 2012) (to be codified at 12 C.F.R. pt. 1005) [hereinafter Regulation E Part III].
[46] *Id.*
[47] *Id.*
[48] *Id.* at 50,254.
[49] *Id.*
[50] *See* Regulation E Part II, *supra* note 40, 77 Fed. Reg. 6,194, 6,218.
[51] *Id.* at 6,242

sender as long as it is received within thirty minutes of payment.[52] There are two conditions that must be met for the cancelation period to be effective. First, the sender must be able to prove her identity or the transaction in question by providing a confirmation number, an e-mail address, the sender's name, the sender's address, or through some other method.[53] Second, the transferred funds cannot have been picked up by the recipient or deposited into the recipient's account.[54] The refund must be the total amount of funds provided by the sender, including fees and taxes on the transfer.[55]

C. Procedures for Resolving Errors

Dodd-Frank 1073 creates an avenue for consumers to address errors. The procedure allows for the sender to provide notice for an error within 180 days of the date of delivery.[56] Thereafter, the RTP has a duty to investigate the claim and correct any error within 90 days of receiving the notice.[57] If the error is verified by the RTP, the RTP must remedy the situation within one business day by refunding the sender or correcting the amount owed to the recipient.[58] If the RTP determines there was no error they must provide an explanation of the investigation and documentation relating to the determination, if the sender so requests.[59]

There are a variety of situations that can or cannot be classified as an error. Errors include: (1) an incorrect amount paid by the sender unless the disclosure stated the amount was an estimate; (2) a bookkeeping error made by the RTP; (3) the failure to make available the correct amount to the recipient as stated in the disclosure, unless the disclosure was an estimate or the failure resulted from extraordinary circumstances;[60] (4) failing to make funds available to the correct recipient unless there are extraordinary circumstances, delays regarding fraud screening procedures, or the sender was fraudulent; and (5) failing to adhere

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[52] *Id.* at 6,270.
[53] *Id.* at 6,306.
[54] *Id.* at 6,290.
[55] *Id.*
[56] *Id.* at 6,289.
[57] *Id.*
[58] *Id.*
[59] *Id.* at 6,259.
[60] *Id.* at 6,249.

to the sender's request for documentation or for additional information or clarification concerning a remittance transfer.[61]

Dodd-Frank 1073 provides that the following situations do not constitute an "error": (1) an inquiry about the status of a remittance if the necessary disclosures were met; (2) a request for information for tax purposes; (3) a change requested by the recipient; or (4) a change in the amount or type of currency provided in the disclosure if the RTP relied upon information provided by the sender.[62]

D. Acts of Agents

The final rule also increases liability for RTPs regarding their employees. The RTP is strictly liable for violations of subpart B by an agent when the agent is acting for the provider.[63] Subpart B includes disclosures, estimates, procedures for resolving errors, and transfers scheduled before the date of transfer.[64]

E. Transfers scheduled before the date of transfer

For one-time transfers scheduled five days business days in advance of the transfer, Dodd-Frank 1073 requires RTPs to provide the necessary disclosures.[65] If estimates are allowed, the RTP must send a receipt of actual costs one business day after the transfer.[66]

F. Official Interpretations: Coverage and Exceptions

An RTP is defined as any person that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person.[67] The CFPB announced, in August 2012, that the regulations will only be applied to institutions that handle more than a 100 remittances a year.[68] Additionally, remittances under $15 are

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[61] *Id.* at 6,250.
[62] *Id.* at 6,252-53.
[63] *Id.* at 6,265.
[64] *Id.*
[65] *Id.* at 6,266.
[66] *Id.*
[67] *Id.* at 6,205.
[68] Press Release, Consumer Financial Protection Bureau, Consumer

excluded from coverage.[69] Further, transfers of funds that are for the purchase or sale of certain securities or commodities are excluded.[70] There are no exclusions for remittances above a certain dollar amount.[71]

IV. SUPPORT OF AND OPPOSITION TO THE REGULATION

With the polarization of Congress and an increase in partisan politics, it is of no surprise that the CFPB's remittance regulation has adamant supporters as well as fierce critics. The two sides differ on a variety of issues. First, does the regulation place an unnecessary burden on depository financial institutions, such as banks and credit unions? Second, does the transaction hinder mobile remittances? Third, and most importantly for this Note, is the consumer in a better position because of the regulation? The impact on the consumer is discussed in Part IV of this Note. Ultimately, the concerns over Dodd-Frank 1073 are not enough to outweigh the benefit to the consumer.

A. Burden on Depository Institutions

One major point of contention is the potential burden placed on depository institutions by the remittance regulation. When the regulation was first released in February of 2012, the CFPB did not create an exception for RTPs that only performed a minimal amount of remittances.[72] In response to comments, the CFPB amended the rule to exclude RTPs that perform fewer than 100 remittances a year.[73]

CFPB Director, Richard Cordray, stated that this exception would make it easier for small community banks and credit unions to continue to process remittances.[74] This move was

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Financial Protection Bureau Makes International Money Transfers Easier for Certain Financial Institutions (Aug. 7, 2012), *available at* http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-makes-international-money-transfers-easier-for-certain-financial-institutions/.

[69] *See* Regulation E Part II, *supra* note 40, 77 Fed. Reg. 6,194, 6,210.

[70] *Id.* at 6,215.

[71] *Id.*

[72] Press release, Consumer Financial Protection Bureau Makes International Money Transfers, *supra* note 64.

[73] *Id.*

[74] *Id.*

likely in response to a Republican-led House of Representatives committee that held a congressional hearing to delve into the effect of the regulation on small institutions.[75] Currently, the regulation only applies to larger banks, credit unions, and non-depository transmitters like Western Union and MoneyGram.[76] Banks and credit unions are pushing for a higher threshold, and the CFPB could extend the minimum past the 100-remittance threshold if the agency sees a negative effect on small institutions.

The Credit Union National Association ("CUNA") has requested that the CFPB amend the exception to include institutions that process up to 1,000 remittances a year.[77] CUNA President/CEO, Bill Cheney, believes the regulation will impose high compliance costs and legal liabilities on credit unions.[78] CUNA is looking to challenge the regulation with the Financial Stability Oversight Council, which has the power to overturn the CFPB.[79] Cheney recently met with Director Cordray to urge the CFPB to consider more exemptions for credit unions.[80]

Another credit union group, the National Association of Federal Credit Unions ("NAFCU"), has also voiced its concerns with Dodd-Frank 1073.[81] NAFCU is concerned that a situation may arise where credit unions do not have compliance resources and may near the 100 remittance threshold. If such a situation arises, the credit union would be in a situation where it must deny service to members in order to comply with the regulation.[82] Currently, only about 10% of credit unions actually offer remittance services,[83] and the CFPB believes that 80% of credit unions would be exempt under the 100-remittance limit without

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75 Stephenson, *supra* note 13.

76 *Id.*

77 Heather Anderson, *CFPB Remittance Rule Faces Trade Objections: CUNA, NAFCU Cite Fears of Compliance Costs, Legal Liabilities*, CREDIT UNION TIMES, Aug. 12, 2012, http://www.cutimes.com/2012/08/12/cfpb-remittance-rule-faces-trade-objections.

78 *Id.*

79 *Id.*

80 *CUNA Meets With CFPB on Remittance Rule Changes*, CUNA NEWS NOW, Sept. 25, 2012, http://www.cuna.org/newsnow/12/wash092412-5.html.

81 Anderson, *supra* note 77.

82 *Id.*

83 UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, COMMUNITY BANKS AND CREDIT UNIONS: IMPACT OF THE DODD-FRANK ACT DEPENDS LARGELY ON FUTURE RULE MAKINGS 59 (2012), *available at* http://www.gao.gov/assets/650/648210.pdf.

the need to turn away customers.[84] Understandably, CUNA and NAFCU advocate for the member-institutions, but it seems that the number of credit unions that Dodd-Frank 1073 actually effects could be quite minimal.

Banks and conservative groups are concerned that the regulation will impose heavy paperwork burden hours on banks.[85] The conservative leaning American Action Forum ("AAF") conducted a study on the regulation's potential effects based on data collected by the Government Accountability Office.[86] The study estimates that the regulation will impose 7.6 million hours of paperwork on banks.[87] The CFPB counters that the paperwork hours are cost-free.[88] Additionally, the CFPB offers model disclosure clauses and forms for an easier transition to Dodd-Frank 1073.[89] Further, Western Union is looking to partner with smaller institutions that may not want to pay costs ancillary to the regulation requirements.[90] With a cooperative CFPB and potential partnerships among remittance institutions, the transition could be relatively smooth.

Another concern among banks is that the regulation favors non-depository institutions, such as Western Union and MoneyGram, because of the difference in the way to the two groups actually transmit the remittance.[91] Banks and credit unions use open networks, while institutions like Western Union and MoneyGram use closed networks.[92] An open network means that the RTP uses other institutions or a third party to transmit the money to its final recipient. Closed networks do not use third parties to transmit the funds. Banks and credit unions contend that the use of open networks makes it difficult for them to

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[84] CUNA, *supra* note 80.

[85] Dunstan Prial, *Study: $488B in Regulation Costs Since 2009*, FOX BUSINESS, (Sept. 19, 2012), http://www.foxbusiness.com/government/2012/09/19/study-488b-in-regulation-costs-since-200/./print.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *See* Regulation E Part II, *supra* note 40, 77 Fed. Reg. 6,194, 6,269.

[90] Jonathan Camhi, *CFPB's New Remittance Regulations Could Shake Up the International Payments Market*, BANKS SYSTEMS AND TECHNOLOGY, (Aug. 9, 2012), http://www.banktech.com/regulation-compliance/cfpbs-new-remittance-regulations-could-s/240005274.

[91] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 83, at 59.

[92] *See id.*

comply with the regulation's disclosure requirements.[93] In response, the CFPB allowed for banks and credit unions to offer estimates in their disclosures.[94] In order to reduce compliance burdens, the estimates apply to exchange rates, foreign fees, and taxes.[95] Two open-network providers, Earthport and Banker's Toolbox, have already announced that they are updating their services to comply with the regulation, and both indicate that they already have many of the necessary requirements in place.[96]

Regulators and industry leaders mostly agree that it is too early to determine the CFPB's full impact on banks and credit unions.[97] Remittances were previously unregulated,[98] so it is understandable that depository institutions are challenging the CFPB's effort to increase transparency and accountability. While these contentions are important to banks and credit unions, they may not matter to the market as a whole because the remittance market is dominated by non-depository institutions, in particular Western Union.[99]

B. Mobile Remittances

Mobile remittances offer a 21st century option for consumers. Opinions differ on whether the new regulation promotes or limits the mobile option. Dodd Frank 1073's influence on mobile remittances could significantly impact certain communities. For example, Latinos, a large part of remittance

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[93] *Id.*

[94] *See* Regulation E Part II, *supra* note 40, 77 Fed. Reg. 6,194, 6,204.

[95] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 83, at 60.

[96] Johnathan Camhi, *Earthport Updates International Payments Service in Line with Dodd-Frank 1073*, BANK SYSTEMS AND TECHNOLOGY, (Aug. 17, 2012), http://www.banktech.com/regulation-compliance/earthport-updates-international-payments/240005730; *Regulation E Amendment: Banker's Toolbox Prepared to Help Community Financial Institutions*, MIDDLE EAST NORTH AFRICA FINANCIAL NETWORK, (Sept. 10, 2012), http://www.menafn.com/menafn/57a6bf03-4c20-4d32-b589-f62d28292795/Regulation-E-Amendment-Bankers-Toolbox-Prepared-to-Help-Community-Financial-Institutions?src=main.

[97] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 83, at 60.

[98] Press Release, Consumer Financial Protection Bureau Makes International Money Transfers, *supra* note 68.

[99] Ronald J. Mann, *After the Great Recession: Regulating Financial Services for Low- and Middle-Income Communities*, 69 Wash. & Lee L. Rev. 729, 737 (2012).

senders in the U.S.[100], use mobile phones but are less likely to use the Internet or have bank accounts.[101] Additionally, with increased mobile remittance use, the cost attributed to RTP agents decreases, with the possibility that savings will be passed on to consumers.[102] While mobile remittances may seem to be far off, in actuality, the technology is spreading extremely fast. AT&T, T-Mobile, and Verizon (representing two-thirds of the U.S. market) all collaborated on a joint venture, Isis, to create a mobile payment network.[103] Western Union and MoneyGram already have mobile-based platforms.[104]

There is a large disparity in the access to financial services among the rich and the poor.[105] Mobile technology can help reduce this gap, partially through remittances.[106] Additionally, mobile banking and remittances offer a safer option in a physical sense because if a phone is lost, stolen, or destroyed, the owner's money can still be recovered.[107] On the other hand, if mobile services are compromised, a sender or recipient is unable to transmit money. Further, mobile remittances require an upfront knowledge of mobile technology, which may be lacking in some populations. However, another benefit to consumers is that mobile remittances reduce the reliance on fixed-location providers such as a local bank or Western Union store.[108]

Dodd-Frank 1073 rarely mentions mobile remittances directly, but key provisions help promote the service. The CFPB makes the RTP responsible for fraudulent "pick-ups" of

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[100] CONSUMER PROTECTION FINANCIAL BUREAU, *supra* note 3, at 10.

[101] *Id.*

[102] *Id.* at 15.

[103] Colin C. Richard, *Dodd-Frank, International Remittances, and Mobile Banking: The Federal Reserve's Role in Enabling International Economic Development*, 105 NW. U. L. REV. COLLOQUY 248, 254 (2011).

[104] *Id.*

[105] Elisa Sitbon, *How Does Finance's Outreach Compare to Other Utilities*, CGAP MICROFINANCE BLOG, Feb. 4, 2010, http://microfinance.cgap.org/2010/02/04/how-finance%E2%C80%99s-outreach-compares-to-other-utilities%E2%C80%99/.

[106] Richard, *supra* note 6, at 8. Richard writes, "The mobile phone, as the delivery vehicle for mobile financial services, is revolutionizing the way international development is approached and has the potential to open the door for billions of individuals to a wide-array of financial products that can help to protect their families from the daily risks and uncertainties of poverty."

[107] *Id.* at 9.

[108] Richard, *supra* note 103, at 253.

remittances.[109] Mobile remittances greatly reduce the chance of fraudulent pick-ups and RTPs could reduce their liability of errors if they increase the option for mobile remittances, which would in-turn be a benefit for consumers.[110] Additionally, the regulation requires RTPs to have a standardized receipt.[111] This requirement will make it easier for companies to adapt their receipts to the mobile platform. Conversely, the regulation also applies strict liability to RTPs' agents, which may hinder mobile providers from entering the remittance market from fear of increased liabilities.[112] Overall, Dodd-Frank 1073 should increase the availability and usage of mobile remittances.

V. THE CONSUMER

Dodd-Frank 1073 offers a variety of benefits for consumers. This Note asserts that the regulation increases transparency, educates consumers, increases options, and holds RTPs more accountable to consumers. Transparency allows for consumers to easily find much needed information. A more informed consumer is in a better place to make decisions that best fit their needs.[113] Further, it is my belief that Dodd-Frank 1073 supports the increasing mobile remittance market. Mobile remittances offer a variety of benefits to consumers.

Additionally, I believe RTPs are held to a higher standard to deliver a more complete and satisfactory service. Increased accountability should mean fewer errors and increased satisfaction for consumers. Finally, consumers are given certain options to cancel the remittance. Banking and Credit Union industry leaders may oppose the regulation, but their opinions are self-interested and do not speak for consumers. Overall, I conclude the consumer benefits from Dodd-Frank 1073.

First, the new regulation creates educated consumers thanks to increased transparency and disclosures. As previously noted in Part II, the pre-payment disclosure must contain the exchange rate, the amount of the transfer and fees, and the amount that would be received by the recipient. This is extremely important to consumers because exchange rates are one of three

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[109] *See* Regulation E Part II, supra note 38, 77 Fed. Reg. 6,194, 6,204.
[110] Richard, *supra* note 6, at 21.
[111] *Id.*
[112] *Id.* at 22.
[113] Warren, *supra* note 30, at 10, 103.

key factors that consumers consider when choosing their RTP.[114] Further, the nature of exchange rates makes it difficult for a consumer to make direct comparisons among RTPs unless the consumer has access to information about currency markets.[115]

The other two key factors consumers consider when choosing their RTP are fees charged at the time of transfer and fees deducted from the amount sent after the time of transfer.[116] Dodd-Frank 1073 requires that these two factors must be disclosed.[117] Currently, approximately 25% of adults in the U.S. only have a basic level understanding of mathematics, and would likely have difficulty determining the total cost of the remittance without pre-payment disclosures.[118] The pre-payment disclosures easily allow a consumer to compare prices and determine which RTP offers the lowest price based on exchange rate, the amount of transfer and fees, and the amount that will ultimately get into the hands of the recipient. Therefore, a well-informed consumer will be most likely to choose the RTP based on the lowest price, which would consequently spur competition and likely lower prices in the process.[119]

As previously stated, the post-payment receipt must also include the pre-payment information, in addition to promised date of delivery, contact information of the recipient, the sender's error resolution rights, and contact information for the RTP and regulatory agencies.[120] This is important for a variety of reasons. First, it confirms to the consumer the product that was purchased by restating the pre-payment disclosures. Second, it ensures the consumer that the remittance will arrive on the proper date and to the proper party. Third, it educates the consumer on their rights in the event that something goes awry during the remittance. Without such knowledge, only consumers that read about the CFPB for their leisure would probably be aware of new remittance regulations. Fourth, the post-payment disclosure alerts the consumer to RTP regulators that may offer assistance in an

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114 CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 3, at 11.

115 *Id.* at 19-20.

116 *Id.* at 12.

117 *Id.*

118 *See id.* at 20.

119 *Id.* at 11. "[I]nformation about exchange rates has the potential to help remittance senders make well-informed choices about which services best meet their needs, and to facilitate competition among RTPs."

120 *See* Regulation E Part III, *supra* note 45, 7 Fed. Reg. 50,244, 50,258.

event that the RTP is unwilling to cooperate. In effect, the post-payment disclosure protects the consumer by assuring they will receive the correct service and gives the consumer avenues to pursue if they have not.

Dodd-Frank 1073 also supports the mobile mode of transfer that has the potential to provide a great deal of benefits to consumers. Mobile remittances may at times be around 50% cheaper than other modes of transfer.[121] Dodd-Frank 1073 indirectly supports mobile remittances by making RTPs reliable for fraudulent pick-ups. Since mobile technology greatly reduces this threat, mobile remittances should increase. Also, standardized receipts make it easier for RTPs to enter the mobile remittance market. The CFPB may not have gone as far as many had hoped in promoting mobile remittances,[122] but any effort is important to the consumer.

I believe the consumer is better off when he or she has more transfer modes to choose from. Additionally, mobile remittances give the consumer the option to send a remittance from anywhere with a mobile signal, and avoids burdensome trips to a fixed location RTP.[123] Moreover, mobile remittances can extend financial services that were previously unavailable to some communities, in particular, low-income communities.[124] Ultimately, the consumer will greatly benefit if the CFPB has spurred mobile remittances indirectly through Dodd-Frank 1073.

Furthermore, Dodd-Frank 1073 raised accountability for RTPs in two ways that will benefit consumers. RTPs are now strictly liable for the actions of their agents regarding disclosures, estimates, procedures for resolving errors, and pre-scheduled remittances.[125] Strict liability for RTPs' agents benefits consumers because it encourages RTPs to make sure their agents are well trained, well equipped, and aware of the requirements of Dodd-Frank 1073. As a result, consumers can expect fewer errors and improved satisfaction. The strict liability requirement also gives consumers a way to hold RTPs responsible for errors made by their agents.

Another option that increases accountability is the new procedure for resolving errors. Consumers now have the right to

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[121] Richard, *supra* note 6, at 4-5.
[122] *Id.* at 20-24.
[123] Richard, *supra* note 103, at 253.
[124] *See* Richard, *supra* note 106.
[125] *See* Regulation E Part II, *supra* note 40, 77 Fed. Reg. 6,194, 6,266.

make a claim that an error occurred, and the RTP must investigate the validity of the consumers claim.[126] This benefits consumers in two ways. First, it gives a remedy if an error in fact occurred. Second, it encourages RTPs to avoid errors. Dodd-Frank 1073 should reduce errors and help the consumer be made whole after an error, a win-win for consumers.

Fourth, Dodd-Frank 1073 gives consumers an opportunity to cancel a remittance.[127] Consumers may cancel their remittance, either written or orally, within thirty-minutes of the transfer if the RTP can somehow identify the sender.[128] Consumers benefit from the cancelation provision because the provision allows consumers to avoid an unnecessary or unwanted remittance. For example, if the sender realizes that a cheaper alternative is available, or that the recipient requires different funds, then the sender can cancel the remittance and purchase a product that better fits their needs. Additionally, consumers are granted a full refund instead of being charged fees for a transaction that did not end up taking place.[129]

Banks have argued that this regulation will raise compliance and paperwork costs, and in the end, the consumer will end up bearing the additional costs through higher remittance prices. This argument has some merit. However, it fails to account for other considerations effecting prices. First, I assert that the cost disclosures will increase competition and lower prices due to informed consumers making educated choices based on pricing. In 1998, the Mexican government started to publish RTPs' exchange rates and the World Bank followed suit a decade later.[130] During that time, exchange rates fell approximately two percent.[131] The drop was likely due to a variety of factors, one being increased disclosures, which led to informed consumers choosing services based on cost.

Further, in some states a form of disclosures are already required.[132] At least nine states require some sort of disclosure requirements including: California, New York, Illinois, and Texas.[133] These four states represent over 30% of the country's

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[126] *Id.* at 6,289.
[127] *Id.* at 6,270.
[128] *Id.*
[129] *Id.* at 6,290.
[130] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 3, at 15-16.
[131] *Id.* at 14.
[132] *Id.* at 14.
[133] *Id.*

population.[134] Additionally, class-action lawsuits in other states required similar disclosures.[135] Therefore, much of the remittance industry has already been dealing with some version of disclosure requirements. Dodd-Frank 1073 is merely creating a more uniform regulatory market that is both fair to consumers and financial institutions.

VI. CONCLUSION

Remittances totaling approximately $300 million worldwide support individuals and families in-need. With around $110 billion leaving the United States in the form of remittances each year, it is important to ensure the consumer/sender is protected and educated about the service he or she is purchasing. The CFPB's mission is to ensure that financial markets work in a fair, competitive, and transparent nature. In line with its goals, the CFPB issued Dodd-Frank 1073, which aims to improve the remittance industry. Some industry leaders are opposed Dodd-Frank 1073, claiming it would cause small institutions to stop issuing remittances, increase workloads, and cause unfair burdens. To appease smaller institutions, the CFPB limited the final rule to institutions that conduct more than 100 remittances a year. In part, the final rule requires pre- and post-payment disclosures, allows for cancellation and refund, creates an error resolution procedure, and makes RTPs strictly liable for the acts of their agents.

Increased disclosures will allow consumers to more easily determine which product is the cheapest. This will lead to smarter buying practices and increased competition, which should in-turn lower prices. Additionally, increased transparency should lead to increased consumer satisfaction, as the consumer better knows what he or she is purchasing. Further, in the event the consumer is not pleased with the service, he or she benefits from the new error resolution procedures.

The consumer, especially in certain communities, benefits from the indirect support Dodd-Frank 1073 gives to mobile remittances. Mobile remittances may be the preferred mode of

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[134] *State & County QuickFacts*, U.S. CENSUS (Jan. 10, 2013, 15:06 EST), http://quickfacts.census.gov/qfd/states/00000.html.

[135] *See, e.g.*, In re W. Union Money Transfer Litig., CV-01-0335, 2004 WL 3709932, at *8 (E.D.N.Y. Oct. 19, 2004); *see also* In re Mex. Money Transfer Litig., 267 F.3d 743, 749 (7th Cir. 2001).

transfer in the future due to potential cost savings and convenience, so it is important that Dodd-Frank 1073 did not hinder mobile remittance growth. Overall, Dodd-Frank 1073 will prove to be a friend to the consumer.