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May 21, 2018

Sent via Email

The Honorable J. Michael Mulvaney  
Acting Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552  
[FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov)

***Re: Docket No. CFPB-2018-0004/ Comments to CFPB's Request for  
Information Regarding Supervision***

Dear Acting Director Mulvaney:

This letter is submitted on behalf of the Money Services Business Association ("MSBA"). The MSBA is a trade association focused on the non-bank money services industry, including licensed money transmitters and their agents and/or authorized delegates, payment card issuers and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, eWallet providers and other similar money services providers that are engaged in payments. For additional information, please see: [www.msbassociation.org](http://www.msbassociation.org).

The MSBA is appreciative of the opportunity to provide comments and information in response to the Consumer Financial Protection Bureau's request for information regarding its supervisory practices. Many of the MSBA's members have undergone or are subject to Consumer Financial Protection Bureau ("CFPB") examination and are, therefore, directly impacted by the CFPB's supervisory practices. While the MSBA's members understand the CFPB's need to ensure compliance with its governing statutes and regulations, MSBA respectfully submits that the CFPB's examination practices to date have forced money services businesses to incur costs and assume burdens that far outweigh the benefits provided by the CFPB's current examination procedures. We also respectfully submit that, in this particular instance, the issues that the CFPB seeks to examine are already adequately regulated by other qualified regulators.

**Introduction**

Money Services Businesses ("MSBs") are a broad category of non-bank financial institutions ranging from brick-and-mortar money transmitters, check cashers and currency exchangers, to more modern e-wallet and prepaid card providers, bitcoin exchangers, and Remittance Transfer Providers

(“RTPs”). RTPs are a subset of providers within the category of MSBs that provide “remittance transfers for a consumer in the normal course of its business.”<sup>1</sup>

To show how critical MSBs are to the functioning of the U.S. financial system and the lives of millions of Americans, a survey published by the FDIC in 2013 found that 9.6 million households in the US were unbanked, while 24.8 million households – 20% of the U.S. population – were underbanked, meaning that while a member of the household had a bank account, they also used alternative financial services outside of the banking system. MSBs not only offer critical financial services to the unbanked and underbanked population, but they also understand the unique needs and priorities of their consumers that differ substantially from the majority of Americans with access to traditional banking. MSBs are used by millions of people each year to accomplish basic and fundamental tasks such as paying bills and sending money to family members, domestically and abroad.

In addition to federal oversight, MSBs are highly regulated at the state level. Like the CFPB, the state regulators of MSBs are primarily focused on the protection of consumers, and in this regard, state laws and regulations are designed to require MSBs to meet strict licensing standards, satisfy minimum financial requirements, post sufficient bond or other collateral amounts, and limit the fees MSBs may charge, among many other requirements. State regulators have extensively regulated the day-to-day activities of MSBs for many years and the state laws governing MSBs adequately protect and promote the consumer protection interests of each state’s residents. Like the CFPB, state regulators are also permitted to undertake examinations of MSBs to ensure compliance with the governing state-level statutes and regulations.<sup>2</sup>

Accordingly, much of the CFPB’s supervisory efforts overlap with those undertaken by state regulators. While some overlap is inevitable and unavoidable, we ask that the CFPB keep this overlap in mind in reviewing this and other letters it receives commenting on ways it can improve its supervisory practices. Often, any consumer protection benefits afforded by dual federal-state regulatory efforts are outweighed by the burdens they correspondingly impose. We therefore highlight several areas of the CFPB’s supervisory practices, which, if modified, should greatly reduce the burden and costs imposed on MSBs without sacrificing the CFPB’s mission of protecting consumers in the United States.

### **Inefficient Examination Procedures**

Several of our members have reported that the CFPB’s examination of their businesses resulted in unnecessary costs and declines in productivity during the examination period. Specifically,

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<sup>1</sup> 12 C.F.R. § 1005.30(f).

<sup>2</sup> Additionally, most MSBs utilize bank accounts and are therefore subject to the oversight and regulation inherent in maintaining a bank account in the United States.

these members noticed a pattern during CFPB examinations in which CFPB examiners receive what amounts to on-the-job training at the member's expense. For instance, members have reported that they have been required to divert personnel and other resources to support a CFPB examination, and that from their perspective a better trained examiner would not have needed as much, or any, assistance, or could have accomplished the relevant task more efficiently. Our members understand that some aspects of a job can only be learned through actual practice, but the pattern discussed by our members reveals a gap in the training received by the CFPB's examiners. Providing CFPB examiners additional training in areas they are likely to encounter during an MSB examination would help mitigate this issue.

According to one member, simply preparing the documents requested by the CFPB in the lead up to the examination took months. As an example, one actual examination involved 8 examiners from all over the country, who examined the business four days a week for two months. The exam resulted in the identification of a single violation. In contrast, state level examinations (which are just as thorough, and which are conducted by each state in which the MSB holds a license) generally last 2-3 days and involve 2 examiners, for a single state examination. Preparation of requested documents takes a fraction of the time. In our members' opinion, this difference is in part the result of the CFPB examiners having been trained as bank, not MSB, examiners and being unfamiliar with how MSBs operate, which in turn leads to not performing the examination in an efficient manner.

Similarly, our members have reported that the work of examiners has not been beneficial to either the business being examined or consumers. For instance, one of our members reported that a single examiner spent two months working to ensure that the member's employees were able to identify and explain the Remittance Rule Long Form to the business's customers, in the event a customer actually asked for an explanation of the form. The amount of time spent on this task was unnecessary and far out of proportion with the potential benefit. Occurrences like that also lead to two further problems. First, a key business resource—employee time—is diverted to and occupied by a task that does not provide a substantial benefit to the business or its customers. Second, another important resource, the examiner's time, could be devoted to educating the business and its customers on more pressing issues. A valuable opportunity for the CFPB to provide the business with guidance as to how it can improve its operations, and to improve products for customers, is lost. Part of the CFPB's training of MSB examiners should include guidance regarding the practical aspects of operating an MSB and developing the examiner's understanding of how their time, and the examined entity's time, can be best used.

### **Lack of Understanding of the Remittance Rule**

Additionally, our members have reported that examiners have displayed a fundamental lack of understanding of the Remittance Rule, see 12 C.F.R. § 1005 and its real-world application. As you know, the Remittance Rule governs electronic funds transfers from the United States to individuals and businesses in foreign countries and imposes disclosure and other procedural requirements on the

originating institution in the United States, among them disclosure of the exchange rate governing the subject transaction.<sup>3</sup> One component of the Remittance Rule is that the originating institution must cancel a remittance transfer within 30 minutes after the sender pays for the remittance transfer if the sender requests (either verbally or written) to cancel his or her remittance transfer within the allotted time.

To the MSBA's understanding, the rationale underlying this rule is that it gives consumers time to compare fees and exchange rates prior to committing to a transfer. However, in our members' experience consumers rarely, if ever, avail themselves of this opportunity. First, the consumer has performed price comparisons prior to coming to transact. Second, a 30-minute window is insufficient to meaningfully compare competing fees or exchange rates. Third, and more importantly, in our members' experiences, customers choose an originator based on where the recipient will be able to retrieve the transmitted funds. Many of our members' customers send money to countries where running errands is a complicated, time-consuming task. A convenient pickup location may well be worth additional fees. Moreover, once a pickup location has been agreed upon, our members' customers are not going to alter their plans and the plans of the recipient of the remittance in the span of 30 minutes (for instance, it may not be possible to get in touch with the recipient in order to communicate the new pickup location). In our members' experience CFPB examiners have demonstrated a lack of understanding of these types of real-world applications of the Remittance Rule. We believe that businesses and consumers would benefit from CFPB examiners being trained to recognize similar situations, and to account for them in the examination process rather than always adhering to strict, unrealistic interpretations of the Remittance Rule. We believe that the 30-minute provision should be removed, as it will also allow the entrance of additional service providers, such as Credit Unions and Banks, to provide options to consumers.

Moreover, we feel that the CFPB has overreached with respect to its regulation of international mobile phone top up plans. Specifically, the CFPB has sought to include such plans within the scope of the Remittance Rule, and has sought to supervise them accordingly. The CFPB's interpretation of the Remittance Rule to capture mobile top up services in excess of \$15 is overly technical and fails to account for the practical realities of providing the service. Topping up mobile phone minutes is intended (by the seller and the buyer) to be a quick, seamless transaction—an intention hampered and contradicted by the disclosure obligations and cancellation period of the Remittance Rule. The Remittance Rule is incompatible with international mobile phone top up plans, and has forced MSBA members to stop offering them to consumers. As a result, the CFPB's actions have hurt consumers, rather than help them. Additionally, businesses offering mobile top up services are already adequately regulated on the state level (through MSB licensing requirements and state banking regulations). Almost uniformly, they also have bank accounts—and thus, are subject to restrictions that go along

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<sup>3</sup> See 12 C.F.R. § 1005.31.



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with opening and maintaining a bank account. At the very least, the MSBA urges reconsideration of the dollar threshold to an amount substantially higher than \$15.

### **Examination Uniformity**

Our members believe that the CFPB should strive for uniform application of its examination process, regardless of the size of the regulated entity. Exempting entities of a certain size from the examination process can lead to abuses and competitive disadvantages. Subjecting a small entity to the same type of examination process a large entity undergoes is obviously not practical or cost-efficient. However, complete exemption from the exam process based on an entity's size is also not ideal. We believe the CFPB should establish checks and balances that apply to small entities and have the same effect as the CFPB examination process does for large entities.

### **Sharing Examination Information**

Finally, our members believe that the current process of not being able to share examination findings with the rest of the industry or other MSBs does not lend itself to developing best practices or strengthening the industry.

We are happy to meet with you and discuss our comments and recommendations in greater detail.

Sincerely,

A handwritten signature in black ink, which appears to read "Kathy Tomasofofsky". The signature is fluid and cursive, with the first name "Kathy" being more prominent.

Kathy Tomasofofsky

Director, Money Services Business  
Association, Inc.