

CFPB Amends the Remittance Rule to Raise Safe Harbor Threshold and Provide Permanent Exceptions

June 3, 2020

The Consumer Financial Protection Bureau (“CFPB”) has amended the international remittance transfer rule (the “Remittance Rule”) to increase the normal course of business safe harbor threshold from 100 remittance transfers to 500 remittance transfers annually, and to create two new tailored permanent exceptions that permit insured institutions to disclose estimates of certain fees and exchange rates if certain conditions are met. These changes will take effect on July 21, 2020.

Background

The Electronic Fund Transfer Act and its implementing subpart B of CFPB Regulation E provide certain protections for consumers sending international remittance transfers^[1] to any individual or business in a foreign country. Specifically, consumers have cancellation and refund rights, and remittance transfer providers must disclose certain information such as the exact cost of a remittance transfer, as well as follow required procedures to resolve errors.

The Remittance Rule applies to remittance transfer providers. The term “remittance transfer provider” is defined, in part, to mean any person (defined as a natural person or an organization) that provides remittance transfers for a consumer in the normal course of its business. Under current requirements, if a person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year, such person is deemed not to be providing remittance transfers for a consumer in the normal course of its business and is thus not subject to the Remittance Rule.

The current version of the Remittance Rule provides certain exceptions to the general requirements on disclosure of exact costs to allow estimates of disclosures in certain circumstances. These exceptions include a temporary exception for insured depository institutions and credit unions, and permanent exceptions for transfers to certain countries and for certain back-end fees and taxes that are not otherwise required to be disclosed. The temporary exception is set to expire on July 21, 2020.

Safe Harbor Threshold Change

Pursuant to the Final Rule amending Regulation E issued by the CFPB, the definition of remittance transfer provider is revised to increase the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually. This means that any person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year will be qualified for the safe harbor and exempt from the Remittance Rule.

Beginning on July 21, 2020, a remittance transfer provider that determines that it qualifies for this safe harbor as of a particular date may cease complying with the Remittance Rule with respect to any remittance transfers for which payment is made after that date. If a person provided 500 or fewer remittance transfers in the previous calendar year but provides more than 500 remittance transfers in the current calendar year, the normal course of business safe harbor applies to the first 500 remittance transfers that the person provides in the current calendar year. Additionally, if the person determines that it is providing remittance transfers in the normal course of its business, it has a reasonable period of time, not to exceed six months, to begin complying with the Remittance Rule for the 501st and any subsequent remittance transfers.

Two Permanent Exceptions

Estimate of Exchange Rate and Other Dependent Disclosures

Assuming that the exact exchange rate cannot be determined at the time of disclosure for account-based transfers, the first permanent exception permits insured institutions to estimate the exchange rate (and transfer amount, other fees, and total to recipient if the estimated exchange rate affects amounts of these disclosures) for a remittance transfer to a particular country if, among other things, the remittance payment is made in the local currency of the designated recipient's country and the insured institution made 1,000 or fewer remittance payments to that country in the previous calendar year.

Estimate of Third-Party Fees and Other Dependent Disclosures

Assuming that the exact covered third-party fees^[2] cannot be determined at the time of disclosure for account-based transfers, the second permanent exception allows insured institutions to estimate covered third-party fees and other covered third-party fee dependent disclosures (i.e., Total to Recipient), if among other things, an insured institution made 500 or fewer remittance transfers to the recipient's institution in the prior calendar year; or a United States federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees. For purpose of counting the 500 remittance transfers threshold, the insured institution is only required to count remittance transfers sent to the designated recipient's institution and any of its branches in the country to which the particular transfer is sent.

Transitional Period for Compliance

For both permanent exceptions, insured institutions that did not exceed the applicable threshold in the prior calendar year but exceed the threshold in the current calendar year can begin providing exact disclosure within a reasonable time. This transition period must not exceed the later of six months after exceeding the applicable threshold in the current calendar year or January 1 of the next calendar year.

Enforcement Relief

On April 10, 2020, the CFPB issued its [Statement on Supervisory and Enforcement Practices Regarding the Remittance Rule](#) in Light of the COVID-19 Pandemic providing relief for remittances that occur on or after July 21, 2020, and before January 1, 2021. The statement provides that the CFPB does not intend to cite in an examination or initiate an enforcement action in connection with the disclosure of exact third-party fees and exchange rates against any insured institution that will be required to disclose the exact amounts of these fees and rates when the temporary regulation expires on July 21, 2020.

Additional Information

The Final Rule amending the Remittance Rule can be found [here](#). An executive summary issued by the CFPB is available [here](#). If you have any questions regarding the Remittance Rule or its Amendments, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Please note that this is a general overview of the Amendments to the Remittance Rule and does not constitute legal advice.

Footnotes

[1] The term “remittance transfer” means: “[The] electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in [subpart A of Regulation E].” This definition specifically excludes (1) transfer amounts of \$15 or less and (2) certain securities and commodities transfers. 12 CFR 1005.30(e).

[2] The term "covered third-party fees" means any fees imposed on the remittance transfer by a person other than the remittance transfer provider except for "non-covered third-party fees." “Non-covered third-party fees” means any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider. 12 CFR 1005.30(h).

Practices

- Regulatory and Compliance

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