Schulte Roth & Zabel

Alert

CFPB Extends Temporary Remittance Rule Exception for Depository Institutions to 2020 and Issues Clarifications and Technical Corrections

August 26, 2014

On Aug. 22, 2014, the Consumer Financial Protection Bureau ("CFPB") issued a final rule (the "Final Rule") to provide interpretive clarifications and technical corrections to subpart B of Regulation E (the "Remittance Rule") and to extend the temporary exception that permits insured depository institutions to estimate third-party fees and exchange rates for which they cannot determine exact amounts for reasons beyond their control (the "Temporary Exception").[1] The Final Rule finalizes revisions to the Remittance Rule as proposed by the CFPB in April 2014 (the "April Proposal"). This *Alert* provides a brief summary of the Final Rule, which is effective 60 days after publication in the *Federal Register*.

Temporary Exception Extended

The sunset date of the Temporary Exception has been extended from July 21, 2015 to July 21, 2020.

Applicability of the Remittance Rule to U.S. Military Installations Abroad

The CFPB clarified that U.S. military installations abroad are to be treated as a State for purposes of the Remittance Rule. Therefore, remittance transfers from the United States to U.S. military bases in foreign countries would be treated as domestic transfers not subject to the Remittance Rule, but transfers from a U.S. military base in a foreign country to any foreign country would be subject to the Remittance Rule.

Determining the Purpose of a Remittance Transfer

In the April Proposal, the CFPB proposed a bright-line test for determining whether a remittance transfer from an account is requested for consumer purposes — and thus covered under the Remittance Rule — based on whether the account was originally established as a consumer or non-consumer account with the account-holding financial institution. To accommodate non-bank providers that do not establish or hold such accounts, the Final Rule clarifies that a provider may also rely on whether the consumer indicates that the transfer is being sent for personal or business purposes. The Final Rule also clarifies that if a transfer is being requested from a non-consumer account, such as a sole proprietor account or an account held by a financial institution under a *bona fide* trust agreement, then a provider may deem that the transfer is not requested for personal reasons and is therefore not covered by the Remittance Rule.

Disclosures Provided by Fax

The Final Rule clarifies that disclosures provided by a fax transmittal are considered to be "in writing" and not subject to the requirements for electronic disclosures.

---

[1] A copy of the Final Rule in its entirety is available here. The CFPB also issued a revised *Small Entity Compliance Guide*, which is available here.

Oral Disclosures for Remittance Transfer Inquiries
The Final Rule clarifies that a provider may treat a written or electronic communication (e.g., a mailed letter, fax transmittal or email) as an inquiry and not a request for a remittance transfer when it believes that treating the communication as a request would be impractical for purposes of providing Remittance Rule disclosures. In these cases, the provider would subsequently respond to the inquiry by telephone and orally gather or confirm information needed to process the remittance transfer, and the transaction would be subject to the oral disclosure requirements, and not the written or electronic disclosure requirements, as otherwise applicable.

Disclosing Remittance-Specific Website of CFPB
The Final Rule permits providers to include URLs for the CFPB's new remittance-specific consumer web pages as the CFPB website that providers must disclose on remittance transfer receipts. The CFPB is not requiring providers to amend their current receipts with these new URLs.

"Error" Exclusion for Delays Caused by Fraud, and Other Screening Procedures
Section 1005.33(a)(1)(iv)(B) of the Remittance Rule provides that a delay is not an "error" if it was caused by a provider's fraud-screening procedures or in accordance with the Bank Secrecy Act, Office of Foreign Assets Control requirements, or similar laws or requirements (the "Error Exclusion"). The Final Rule clarifies that the Error Exclusion applies if the delay was caused by a "necessary investigation or other special action" by the provider or a third party as required by the provider's procedures or in accordance with applicable laws.

This amendment clarifies that: (1) the Error Exclusion may be applied where the delay is caused by action taken by a third party and not the provider; and (2) the Error Exclusion only applies where the provider did not and could not have reasonably foreseen the delay so as to enable it to timely disclose an accurate date of availability reflecting the delay when providing the sender with a receipt or combined disclosure. The CFPB emphasized that the clarification is not intended to dictate to providers the type of screening procedures they could adopt.

Procedure for Resolving Error Due to Sender Providing Incorrect or Insufficient Information
The Final Rule clarifies that when resolving an error for failure to make funds available by the disclosed date of availability due to the sender providing incorrect or insufficient information, the provider cannot deduct its own fee from the amount refunded or applied toward a new transfer.

Authored by Donald J. Mosher and Kara A. Kuchar.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

Schulte Roth & Zabel
New York | Washington DC | London
www.srz.com