ALERTS

CFPB Issues Request for Information Regarding Potential Changes to Remittance Rule

May 1, 2019

On April 23, 2019, the Consumer Financial Protection Bureau ("CFPB") issued a notice and request for information ("RFI") on its remittance transfer rule ("Remittance Rule") that implements Electronic Fund Transfer Act protections for consumers sending international money transfers. Due to the impending expiration of the temporary exception to the Remittance Rule's general disclosure requirement, and in order to hopefully mitigate the negative effects of the expiration on applicable financial institutions, the CFPB is requesting information regarding (1) the expiration of the temporary exception that allows certain institutions to estimate the exchange rate and certain fees they are required to disclose when sending remittance transfers; and (2) whether to propose changing the remittance transfer providers the Remittance Rule covers (and whether an exception for small financial institutions may be appropriate). The RFI includes a list of 18 questions and requests relating to these items, and is available for your reference here. Comments must be received on or before June 28, 2019.

Background

The Remittance Rule imposes requirements on companies which send international money transfers, or remittance transfers, on behalf of consumers "in the normal course of business." Among its requirements, the Remittance Rule mandates that providers generally must disclose (both prior to and at the time the consumer pays for the transfer) the exact exchange rate, the amount of certain fees and the amount to be delivered to the recipient. Insured depository institutions and credit unions ("Insured Institutions") that are unable to know, for reasons beyond their control,[1] the exact exchange rate or covered third-party fees may estimate such amounts and thereby disclose an estimated amount of currency that will be made available to the designated recipient ("Temporary Exception"). The Temporary Exception is not available for non-bank remittance transfer providers. Unless Congress changes the law, the Temporary Exception is set to expire on July 21, 2020. The Remittance Rule also contains a safe harbor whereby a person that provides 100 or fewer remittance transfers in the previous and current calendar years would be deemed not to meet the "normal course of business" definition, and therefore be outside of the Remittance Rule's coverage.

Information Requested

The CFPB believes the expiration of the Temporary Exception may affect a large number of remittance transfers — specifically wire transfers — thereby restricting consumer choice and accessibility. In an effort to reduce negative externalities, the CFPB is requesting specific data on the industry's current utilization of the Temporary Exception. In general, the CFPB is interested in learning about the:

1. Characteristics of transactions for which Insured Institutions are relying on the Temporary Exception;

2. Circumstances under which Insured Institutions are consistently able to provide exact amounts;

3. Currencies for which a specific exchange rate applicable to a remittance transfer cannot be provided at the time a consumer requests a transfer because foreign laws or obstacles bar the purchase of that currency in the United States;

4. Specific destinations for which Insured Institutions cannot disclose fees charged by third parties due to a lack of contractual relationships with financial institutions in those destinations;

5. Foreign financial institutions that cannot, or will not, provide information about the fees they impose on a remittance transfer; and

6. Challenges to the further reduction of need to provide estimates rather than actual amounts in disclosures.

The CFPB will use the information in determining potential next steps.

Additionally, the CFPB is interested in potentially adjusting the Remittance Rule's coverage of certain remittance transfer providers that provide remittance transfers "in the normal course of business," even though they account for a relatively small number of transfers overall. To this aim, the CFPB is interested in learning about, among other details, (1) what factors, in addition to the total number and frequency of remittance transfers provided, should be considered in determining whether a person is providing remittance transfers "in the normal course of business"; and (2) any information that could help inform the CFPB as it considers the burden of the Remittance Rule on providers that provide more than 100 remittance transfers per year but account for a relatively small number of remittance transfers overall. With this information, the CFPB will assess whether the threshold "in the normal course of business" safe harbor should be raised and whether an exception for small financial institutions may be appropriate.

Authored by Kara A. Kuchar, Donald J. Mosher and Adam J. Barazani.

If you have any questions concerning this Alert, or would like assistance in engaging with the CFPB regarding the RFI, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] The Remittance Rule provides that an Insured Institution cannot determine exact amounts "for reasons beyond its control" when "a person other than the insured institution or with which the insured institution has no correspondent relationship sets the exchange rate . . . or imposes a covered third-party fee. . . ." Official Interpretation Comment 32(a)(1)–1.

Related People

Kara Kuchar

Partner

New York

Donald Mosher

Partner

New York

Adam Barazani

Special Counsel

New York

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