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December 3, 2019

Summary of Proposed Rulemaking: the 2019 Proposal to Amend the Remittance Transfer Rule

On December 3, 2019, the Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (NPRM) inviting the public to comment on potential amendments to the Bureau's Remittance Transfer Rule (Rule). As discussed in more detail below, the NPRM:

- Proposes to increase the Rule's normal course of business safe harbor threshold from 100 remittance transfers to 500 remittance transfers annually;
- Proposes to create two new exceptions that would permit insured institutions to use estimates in required disclosures if certain conditions are met; and
- Requests comment related to a safe harbor countries list.

The NPRM has a comment period of 45 days following publication in the *Federal Register*.

This summary provides an overview of the NPRM, but does not contain all information included in the NPRM. Readers are encouraged to review the NPRM in its entirety.

Background

The Dodd-Frank Act (DFA) amended the Electronic Fund Transfer Act (EFTA) to create comprehensive consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. The Bureau implemented these EFTA amendments through the Remittance Transfer Rule. Among the protections provided by EFTA

and the Rule is a requirement that remittance transfer providers generally must disclose (both prior to and at the time the consumer pays for the transfer) the exact exchange rate that applies to a remittance transfer and the amount to be received by the recipient of the transfer. The Rule also requires remittance transfer providers to disclose certain fees and other information.

A person that provides remittance transfers in the normal course of its business is a remittance transfer provider subject to the Rule's requirements. Generally, whether a person provides remittance transfers in the normal course of its business depends on the facts and circumstances, such as the number and frequency of the remittance transfers the person provides. However, the Rule contains a safe harbor whereby a person that provides 100 or fewer remittance transfers in each of the previous and current calendar years is deemed not to be providing remittance transfers in the normal course of its business, and therefore is outside of the Rule's coverage.

EFTA and the Rule also contain exceptions that permit some remittance transfer providers to estimate certain information in the required disclosures in certain circumstances. Two of these exceptions are relevant to the NPRM.

First, there is a "temporary exception" that permits certain insured institutions to estimate certain fees and the exchange rate (and information that depends on the fees and exchange rate) in their disclosures if certain conditions are met. Importantly, EFTA section 919 expressly limits the length of the temporary exception to July 21, 2020. As a result, the temporary exception will expire on July 21, 2020 unless Congress changes the law.

Second, there is an existing permanent exception that permits a remittance transfer provider to estimate the exchange rate and certain amounts in disclosures required by the Rule for transfers to certain countries. This exception applies if:

1. The laws of the recipient country do not allow determination of the exact amounts to be disclosed (law prong); or
2. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact amounts that must be disclosed (method prong).

The Bureau has published a safe harbor countries list related to this exception. If a remittance transfer provider is sending a remittance transfer to a country on the list, it can estimate the amount to be received by the recipient, the applicable exchange rate, and the amounts of certain fees, unless the remittance provider has information that it is possible to determine the exact amount to be disclosed. The Rule permits a provider to make its own determination that the laws

of other recipient countries not on the list, or the method of sending transfers to such countries, do not permit a determination of exact amounts. Unlike the temporary exception, this exception does not have an expiration date, and all remittance transfer providers (not just certain insured institutions) are permitted to use it if the conditions are met.

Proposed increase to the safe harbor threshold

Currently, 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, that person is not considered to be providing remittance transfers in the normal course of business and is not a remittance transfer provider under the Rule. The NPRM proposes to increase the safe harbor threshold to 500 remittance transfers so that a person would not be considered a remittance transfer provider under the Rule if the person provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year.

Proposed new exceptions to permit insured institutions to use estimates

The NPRM proposes two new exceptions that would permit financial institutions that are insured institutions under the Rule to use estimates of covered third-party fees and exchange rates (and information that depends on the fees and exchange rates) in disclosures if certain conditions are satisfied.

First, the NPRM proposes a new exception that would permit insured institutions in certain circumstances to disclose estimated covered third-party fees (and estimate other information that depend on those fees) with respect to a particular remittance transfer to a designated recipient's institution if:

1. The insured institution made 500 or fewer transfers to the designated recipient's institution in the prior calendar year; and
2. The insured institution cannot determine the exact amount of the covered third-party fees that will be imposed on that particular transfer at the time the disclosures must be given.

The NPRM explains an insured institution cannot determine the exact amount of covered third-party fees when certain conditions detailed in the NPRM are met.

Second, the NPRM proposes a new exception that would permit insured institutions in certain circumstances to disclose an estimate of the exchange rate (and estimate other information that depends on the exchange rate) for a particular transfer to a country, if the designated recipient of the remittance transfer will receive funds in the country's local currency and:

1. The insured institution made 1,000 or fewer transfers in the prior calendar year to the country for which the designated recipients of those transfers received funds in the country's local currency; and
2. The insured institution cannot determine the exact exchange rate for that particular remittance transfer.

The NPRM explains an insured institution cannot determine the exact exchange rate when certain conditions detailed in the NPRM are met.

Request for comments related to the safe harbor countries list

The Bureau maintains a safe harbor countries list for purposes of implementing an existing permanent exception in the Rule. As noted above, if a remittance transfer provider is sending a remittance transfer to a country that appears on the safe harbor countries list, the provider may estimate the exchange rate and certain amounts in the required disclosures unless the remittance provider has information that it is possible to determine the exact amount or rate to be disclosed. The safe harbor countries list currently includes five countries. The Bureau is seeking comment on this exception and the process for adding countries to the safe harbor countries list.

Additional resources and submitting comments

The Bureau has released a table of contents for the NPRM as well as an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the NPRM's proposed amendments would make to the regulatory text and commentary of the Rule.

The NPRM has a 45-day comment period that begins upon publication of the NPRM in the *Federal Register*. Detailed information on how to submit comments can be found in the NPRM.