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Executive Summary of the May 2020 Amendments to the Remittance Transfer Rule

On May 11, 2020, the Consumer Financial Protection Bureau (Bureau) issued a final rule (2020 Final Rule) amending the Remittance Transfer Rule. As discussed in more detail below, the 2020 Final Rule:

- Increases the Remittance Transfer Rule’s normal course of business safe harbor threshold from 100 remittance transfers to 500 remittance transfers annually; and
- Creates two new tailored permanent exceptions that permit insured institutions to disclose estimates of certain fees and exchange rates if certain conditions are met.

The 2020 Final Rule also adopts technical corrections to the existing regulatory text and commentary of the Remittance Transfer Rule in order to address clerical errors. These technical corrections do not change or alter the meaning of the existing regulatory text and commentary.

The 2020 Final Rule, which is effective on July 21, 2020,¹ is available on the Bureau’s website, at <http://www.consumerfinance.gov/policy-compliance/guidance/remittance-transfer-rule/>.

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau’s approach to Compliance Aids.

¹ On April 10, 2020, the Bureau released a statement announcing that for remittances that occur on or after July 21, 2020, and before January 1, 2021, the Bureau does not intend to cite in an examination or initiate an enforcement action in connection with the disclosure of actual third-party fees and exchange rates against any insured institution that will be newly required to disclose actual third-party fees and exchange rates after the temporary exception expires. The statement is available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-guidance-remittance-transfers-during-covid-19-pandemic/>.

Increases the threshold for the normal course of business safe harbor

The Remittance Transfer Rule imposes requirements on remittance transfer providers. A remittance transfer provider is a person that provides remittance transfers for consumers in the normal course of its business. 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 Remittance Transfer Rule contains a safe harbor for persons that provide fewer than a set number of remittance transfers in the previous and current calendar years. Such persons are not providing remittance transfers in the normal course of business and are not subject to the Remittance Transfer Rule. This safe harbor is sometimes referred to as the normal course of business safe harbor. Currently, the Remittance Transfer Rule sets the number of remittance transfers for the normal course of business safe harbor threshold at 100 remittance transfers annually. 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 providing remittance transfers in the normal course of business, is not a remittance transfer provider, and is not subject to the Remittance Transfer Rule.

Effective July 21, 2020, the 2020 Final Rule increases the normal course of business safe harbor threshold to 500 remittance transfers annually. Beginning on that date, a person will not be subject to the Remittance Transfer 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. Thus, if a person provided 500 or fewer remittance transfer in 2019 and provides 500 or fewer remittance transfers in 2020, the person qualifies for the safe harbor and is not subject to the Remittance Transfer Rule in 2020 beginning on July 21, 2020. The safe harbor will also apply to the person's first 500 remittance transfers in 2021.

The 2020 Final Rule also addresses transition periods related to the normal course of business safe harbor. It addresses the situation where a person ceases to qualify for the safe harbor and the situation where a person newly qualifies for the safe harbor.

Beginning on July 21, 2020, 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, for the 501st and any subsequent remittance transfers, the person will need to determine if it is a remittance transfer provider absent the safe harbor (*i.e.*, whether based on the facts and circumstances the person is providing remittance transfers in the normal course of its business). If so, the person has a reasonable period of time, not to exceed six months, to begin complying with the Remittance Transfer Rule.

The 2020 Final Rule also addresses the situation where a remittance transfer provider newly qualifies for the normal course of business safe harbor. A remittance transfer provider that determines that it qualifies for this safe harbor as of a particular date may cease complying with the Remittance Transfer Rule's requirements with respect to any remittance transfers for which payment is made after that date. The requirements in Electronic Fund Transfer Act and the Remittance Transfer Rule continue to apply to the remittance transfers for which payment is made prior to the date that the remittance transfer provider qualifies for the safe harbor. Additionally, qualifying for the safe harbor does not excuse compliance with other applicable laws or regulations. For example, if a remittance transfer is also an electronic fund transfer, any Regulation E requirements that apply to electronic fund transfers continue to apply to that transfer.

The 2020 Final Rule includes examples of how the transition period applies in each of these situations.

New permanent exceptions to permit insured institutions to use estimates in certain circumstances

The Remittance Transfer Rule requires remittance transfer providers to disclose certain information to consumers that send remittance transfers. Among other things, remittance transfer providers generally must disclose the exact exchange rate, the exact amount of any covered-third party fees, and the exact amount that the designated recipients will receive. However, the Remittance Transfer Rule has exceptions to these general requirements that permit certain remittance transfer providers to disclose estimates instead of exact amounts in certain circumstances.² The 2020 Final Rule creates two additional tailored exceptions, which permit insured institutions to provide estimates for certain disclosures if certain conditions are met. Each of the new exceptions is discussed below.

PERMANENT EXCEPTION PERMITTING INSURED INSTITUTIONS TO ESTIMATE THE EXCHANGE RATE AND OTHER DISCLOSURES THAT DEPEND ON THE EXCHANGE RATE

First, the 2020 Final Rule adds a new permanent exception that permits insured institutions to estimate the exchange rate and other disclosures that depend on the exchange rate if certain conditions are met. This exception applies to a remittance transfer to a particular country if the designated recipient will receive funds in that particular country's local currency and all the following conditions are met:

² Currently, the Remittance Transfer Rule has a temporary exception that permits insured institutions to estimate certain information in disclosures if certain conditions are met. The temporary exception will expire on July 21, 2020.

- *The remittance transfer provider is an insured institution, as defined in the Remittance Transfer Rule (i.e., an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act).*

- *The insured institution cannot determine the exact exchange rate for the remittance transfer at the time it must provide applicable disclosures.* For this purpose, an insured institution cannot determine the exact exchange rate if the exchange rate for the remittance transfer is set by a person other than: (a) the insured institution; (b) an institution that has a correspondent relationship with the insured institution; (c) an insured institution's service provider; or (d) an insured institution's agent. The 2020 Final Rule provides examples of when an insured institution can and cannot determine the exact exchange rate for purposes of this new exception.

- *In the prior calendar year, the insured institution did not exceed the exception's threshold with regard to the particular country to which it is sending the remittance transfer.* The threshold is 1000 or fewer remittance transfers to the particular country for which the designated recipients of those transfers received funds in the particular country's local currency. For purposes of the 1000-transfer threshold, an insured institution counts each remittance transfer made in the prior calendar year to the particular country for which the designated recipient received funds in that country's local currency. The remittance transfer is counted regardless of whether the exchange rate was estimated for the transfer. However, the insured institution does not count a remittance transfer sent to the particular country if the designated recipient of the transfer did not receive funds in the particular country's local currency. For example, the insured institution does not count a remittance transfer sent to Mexico if the funds were received in U.S. dollars. The threshold is determined separately for each foreign country. The 2020 Final Rule provides examples of how an insured institution determines the number of remittance transfers for purposes of the 1000-transfer threshold. It also provides a transition period for insured institutions that did not exceed the 1000-transfer threshold in the prior calendar year but exceeded the 1000-transfer threshold in the current calendar year. Such an insured institution has a reasonable amount of time after exceeding the 1000-transfer threshold to begin providing exact exchange rates and other exchange rate dependent disclosures (assuming it cannot rely on another exception to provide estimates). The reasonable amount of time must not exceed the later of six months after exceeding the 1000-transfer threshold in the current calendar year or January 1 of the next calendar year. The 2020 Final Rule provides an example of how this transition period applies.

- *The remittance transfer is sent from the sender’s account with the insured institution.* For this purpose, a sender’s account includes a payroll card account or a government benefit account but does not include any other prepaid account.

If the new exception applies to a remittance transfer, the insured institution is permitted to estimate the exchange rate that must be disclosed pursuant to 12 CFR 1005.31(b)(1)(iv). Additionally, if an insured institution is permitted to provide an estimated exchange rate for a remittance transfer under the new exception, the insured institution is permitted to provide estimates for the following disclosures if the estimated exchange rate affects the amount of the disclosure:

- The amount that will be transferred to the designated recipient disclosed in the currency that the designated recipient will receive, inclusive of covered third-party fees (*i.e.*, “Transfer Amount” as described in 12 CFR 1005.31(b)(1)(v));
- The amount of any covered third-party fees disclosed in the currency that the designated recipient will receive (*i.e.*, “Other Fees” as described in 12 CFR 1005.31(b)(1)(vi)); and
- The amount the designated recipient will receive disclosed in the currency that the designated recipient will receive, after deducting covered third-party fees (*i.e.*, “Total to Recipient” as described in 12 CFR 1005.31(b)(1)(vii)).

PERMANENT EXCEPTION PERMITTING INSURED INSTITUTIONS TO ESTIMATE COVERED THIRD-PARTY FEES AND OTHER DISCLOSURES THAT DEPEND ON COVERED THIRD-PARTY FEES

Second, the 2020 Final Rule adds a new permanent exception that permits insured institutions to estimate covered third-party fees and other disclosures that depend on covered third-party fees if certain conditions are met. This new permanent exception applies to a remittance transfer to a particular designated recipient’s institution if all the following conditions are met:

- *The remittance transfer provider is an insured institution, as defined in the Remittance Transfer Rule.*
- *The insured institution cannot determine the exact covered third-party fees required to be disclosed for the remittance transfer at the time it must provide applicable disclosures.* For this purpose, an insured institution cannot determine, the exact covered third-party fees when all of the following conditions are met: (a) the insured institution does not have a correspondent relationship with the designated recipient’s institution; (b) the designated recipient’s institution does not act as the insured institution’s agent; (c) the insured institution does not have an agreement with the designated recipient’s institution with respect to the imposition of covered third-party fees on the remittance

transfer; and (d) the insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

Conversely, an insured institution can determine exact covered third-party fees for a remittance transfer (and may not use this exception for the transfer), if any of the following conditions are met: (a) the insured institution has a correspondent relationship with the designated recipient's institution; (b) the designated recipient's institution acts as an agent of the insured institution; (c) the insured institution has an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; or (d) the insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

- *Either (a) the insured institution made 500 or fewer remittance transfers to the designated recipient's institution in the prior calendar year or (b) a United States federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees required to be disclosed for that remittance transfer.* For purposes of the 500-transfer threshold, the insured institution counts remittance transfers to that designated recipient's institution regardless of whether covered third-party fees were estimated for those transfers. It also counts remittance transfers provided to the designated recipient's institution regardless of whether the designated recipients received the funds in the country's local currency or in another currency. 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. It is not required to count remittance transfers sent to branches of the designated recipient's institution in another country. The 2020 Final Rule provides examples of how an insured institution determines the number of remittance transfers for purposes of the 500-transfer threshold. It also provides a transition period for insured institutions that did not exceed the 500-transfer threshold in the prior calendar year but exceed the threshold in the current calendar year. Specifically, such an insured institution has a reasonable amount of time after exceeding the 500-transfer threshold to begin providing exact covered third-party fees and other covered third-party fee dependent disclosures (assuming a United States federal statute or regulation does not prohibit the insured institution from being able to determine the exact covered third-party fees or another exception does not apply). The reasonable

amount of time must not exceed the later of six months after exceeding the 500-transfer threshold in the current calendar year or January 1 of the next calendar year. The 2020 Final Rule provides an example of how this transition period applies.

Even if an insured institution exceeded the 500-transfer threshold in the prior calendar year, the insured institution satisfies this condition of the exception for a remittance transfer if a United States federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees for that remittance transfer. A United States federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees for the remittance transfer if the federal statute or regulation: (a) prohibits the insured institution from disclosing exact covered third-party fees in disclosures for transfers to a designated recipient's institution; or (b) makes it infeasible for the insured institution to form a relationship with the designated recipient's institution and that relationship is necessary for the insured institution to be able to determine, at the time it must provide the applicable disclosures, exact covered third-party fees.

- *The remittance transfer is sent from the sender's account with the insured institution. A sender's account includes a payroll card account or a government benefit account but does not include any other prepaid account.*

If this new exception applies, an insured institution may provide estimates for covered third-party fees required to be disclosed pursuant to 12 CFR 1005.31(b)(1)(vi). The insured institution may also estimate the "Total to Recipient" required to be disclosed pursuant to 12 CFR 1005.31(b)(1)(vii) if the insured institution is permitted to estimate the covered third-party fees under the new exception and the estimated covered third-party fees affect the amount disclosed as the "Total to Recipient."

Safe Harbor Countries List

The Remittance Transfer Rule has an exception allowing remittance transfer providers to disclose estimates for remittance transfers to certain countries as determined by the Bureau. 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 transfer provider has information that it is possible to determine the exact amount to be disclosed.

The 2020 Final Rule does not amend this exception or the countries list. However, the Bureau will update the process it uses to consider requests to add or remove countries from the countries list.

Additional resources and implementation support

The Bureau has released an unofficial redline to assist industry and other stakeholders. It and other implementation resources are available at <http://www.consumerfinance.gov/policy-compliance/guidance/remittance-transfer-rule/>.