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CFPB Finalizes Wider Safe Harbor For Remittance Rule

By **Jon Hill**

Law360 (May 11, 2020, 11:14 PM EDT) -- The Consumer Financial Protection Bureau on Monday released finished changes to its regulations for international money transfer providers, widening a safe harbor to cover potentially hundreds of more banks and moving to replace a temporary exception that's set to expire in two months.

In a final rulemaking document, the CFPB said it is adopting a December proposal to increase the number of international money transfers, or remittances, that a financial institution can routinely conduct before it becomes covered by the agency's so-called remittance rule, which lays out certain disclosure requirements, error resolution standards and other protections for consumers sending money overseas.

The CFPB decided in 2012 to excuse providers from the rule if they send 100 or fewer remittances annually, but in response to longstanding industry complaints about compliance burdens, the safe harbor will be expanded to include providers that send up to 500 remittances annually, according to the agency.

More than 400 banks and nearly 250 credit unions are expected to qualify for the safe harbor under the higher threshold, the CFPB said. Although this means the remittance rule will cover fewer than half as many banks and credit unions as it once did, the agency said these newly exempted institutions only account for about 0.054% of all remittances sent each year in a market that is heavily dominated by money services businesses.

"The bureau has better information than it did in 2012 to understand the impact of the rule and recognizes that certain entities that make a limited number of remittance transfers per year as an accommodation to their customers face challenges complying with the remittance rule," the CFPB said.

Some banking industry groups had pushed for the threshold to go even higher, but the CFPB said Monday that it "did not receive data or other evidence indicating that a specific higher number would have been more appropriate."

And while consumer groups had argued that lifting the threshold would free too many banks from having to comply with the rule and could be especially problematic in light of how larger-value remittances often get sent via these institutions, the CFPB said it expects a "relatively small" number of consumers will be affected based on its analysis of call report data.

"The bureau also concludes, based on the feedback of several industry commenters, that consumers that are customers of the entities that will newly qualify for the revised … safe harbor threshold might still receive protections similar to those provided under the remittance rule," the agency said.

Monday's final rule also adopted "permanent exceptions" that the CFPB pitched to address the upcoming July 21 expiration of rule provisions that give banks and credit unions flexibility to use fee and exchange rate estimates in their required disclosures to consumers when exact figures aren't feasible.

These new exceptions will permit banks and credit unions to retain flexibility to keep using estimates depending on, among other things, whether the number of remittances they've sent to a particular destination in the past year falls below a certain threshold.

For exchange rate disclosures, that threshold will be set at 1,000 or fewer remittances sent to the recipient's country, while for third-party fee disclosures, the threshold will be 500 or fewer remittances sent to the recipient's financial institution.

If either of those thresholds is exceeded in a given year, the CFPB said it will provide transition time of at least six months before it expects a bank or credit union to stop relying on the associated exception and start providing exact exchange rate or fee disclosures.

That transition period builds on the lenience that the agency pledged last month in the face of the COVID-19 crisis. Citing the pandemic's potential to disrupt industry preparations for the July expiration of the remittance rule's allowances for estimated disclosures, the CFPB said it would not take action against a bank or credit union that's still using estimates on transfers through the end of the year.

But the rulemaking effort completed Monday began well before the pandemic with an April 2019 request for information on potential changes to the remittance rule, which took effect in 2013 and implements consumer protections mandated by the Dodd-Frank Act for the multibillion-dollar international money transfer market.

Although the CFPB was up against a hard deadline to address the expiring rule provisions, Eamonn Moran, of counsel at Morgan Lewis & Bockius LLP and former attorney in the CFPB's Office of Regulations, told Law360 that the decision to adjust the safe harbor threshold as well is a good sign that shows the agency is willing to take an iterative approach to its rulemaking.

"Back in 2012, a lot of this data wasn't available on the remittance market, and so the rule was designed in a certain way," Moran said. "I think now we see the benefit of having additional data points and a more nuanced understanding of the structure and operations of the remittance transfer market."

In keeping with that process, Moran said the agency will now need to monitor the impact of the new permanent exceptions on the correspondent banking networks used to send remittances, where a bigger institution may no longer able to use estimated disclosures while its smaller partner still can.

"Will [larger insured institutions] continue to act as correspondent banks for sending institutions that can continue to estimate? If so, will the cost borne by the correspondents ineligible to use the estimates be passed on to the community institutions that do not themselves exceed the thresholds?" Moran said.

"The bureau was not expecting any significant effects along those lines, but obviously, that's something they're going to have to continue to watch," Moran added.

--Editing by Michael Watanabe.

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