



BANKING AND FINANCIAL SERVICES UPDATE

CFPB Finalizes Remittance Rule

The Consumer Financial Protection Bureau (“CFPB”) released on April 30, 2013 a final rule (“Final Rule”) implementing the remittance transfer provisions in section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Final Rule provides important new flexibility for remittance transfer providers, especially in open-loop environments such as international wire transfers. The CFPB also extended the effective date of the Final Rule to October 28, 2013. This doubles the proposed period of 90 days, and will give remittance transfer providers almost six months to implement the Final Rule.

Background

The rulemaking process to implement section 1073 of the Dodd-Frank Act, which added a new provision addressing remittance transfers as section 919 of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o-1, has been lengthy. An original final rule was issued by the CFPB in February 2012, with an intended effective date in February 2013 (the “2012 Rule”). 77 Fed. Reg. 6194 (Feb. 7, 2012). The CFPB made several changes to the rule thereafter. In December 2012, the CFPB proposed several revisions to address particular industry concerns about the feasibility of disclosing third-party fees and taxes, and the risks of loss and fraud arising from errors caused by consumers’ providing incorrect information (the “December Proposal”). 77 Fed. Reg. 77188 (Dec. 31, 2012). A summary of the December Proposal can be found at [“CFPB Proposes Revisions to Remittance Rule and Extension of Effective Date.”](#)

The Final Rule

The CFPB’s Final Rule makes three important changes to the remittance rule, as well as numerous technical corrections. The three changes provide substantial new flexibility for remittance transfer providers.

First, the Final Rule provides additional flexibility for disclosing third-party fees. Under the 2012 Rule, providers needed to disclose the exact amount of all fees that would be imposed by the provider as well as third parties, with limited exceptions. The December Proposal would have modified this requirement to allow estimates, and to allow providers to disclose the highest possible fees. The Final Rule provides even greater flexibility because it requires a provider to disclose the fees imposed by the recipient’s financial institution *only* if that institution acts as an agent of the remittance transfer provider. For open-loop systems, where the recipient’s institution is not an agent of the remittance transfer provider, the provider need not disclose or estimate these fees at all.

Second, the Final Rule provides similar flexibility for disclosing foreign taxes. Instead of precise disclosure of foreign taxes as required by the 2012 Rule, the December Proposal would have allowed providers to estimate foreign taxes, to disclose the highest possible taxes, and to omit subnational taxes. The Final Rule requires providers to disclose *only* those taxes collected by the provider, and not taxes that may be imposed by others (such as the recipient’s financial institution).

In connection with this flexibility on third-party fees and taxes, remittance transfer providers will instead be required to include on the disclosure forms provided to the sender, a disclaimer that these types of fees and taxes may result in the recipient's receiving less than the amount calculated by the provider. Providers may, if they choose, provide the amount (or an estimate) of such fees and taxes.

Third, the Final Rule finalizes the portion of the December Proposal creating an exception from the error resolution procedures for errors caused when the consumer provides an incorrect account number. The Final Rule also extends this exception to an incorrect institution identifier, but not to other incorrect information (such as a mobile telephone number). The exception means that institutions cannot be held liable for re-transmitting or refunding money if the original funds are lost because of an incorrect account number or institution identifier. In order to take advantage of this exception, the provider must demonstrate that: the consumer provided the incorrect account number or institution identifier, the provider used reasonable means to verify the institution identifier, the provider notified the consumer about the possibility of loss, the error resulted in the deposit of the funds into the wrong account, and the provider used prompt and reasonable efforts to recover the money.

The Final Rule also sets out requirements for how institutions must resolve errors that involve other incorrect information provided by a consumer. Notably, the CFPB has attempted to simplify these rules from the rather complex regime proposed in the December Proposal.

Conclusion

The Final Rule provides significant and important new flexibility for compliance with the remittance rules, in response to substantial industry concerns about whether many industry participants could continue to offer remittance transfers under the prior rules. Providers will now have until October 28, 2013 to comply with the requirements of the Final Rule.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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