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Practice Update

CFPB Announces "Flexible" Approach to the Expiration of the Remittance Rule's Temporary Exception

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On April 10, the Consumer Financial Protection Bureau (CFPB) issued a Policy Statement regarding the pending July 21, 2020, expiration of the Remittance Rule's temporary exception that allows insured institutions to provide estimated remittance disclosures. The Policy Statement says that from July 21, 2020 through January 1, 2021, the CFPB will not cite supervisory violations nor initiate enforcement actions for insured institutions that continue to rely on the temporary exception after its expiration.

The Remittance Rule's temporary exception (12 C.F.R. § 1005.32(a)) allows insured institutions to disclose estimated amounts on required remittance transfer disclosures instead of exact amounts when the institutions cannot ascertain exact third party fee or exchange rate information for reasons beyond the institutions' control. By statute, the exception expires on July 21, 2020, ten years after its enactment. In December 2019, the CFPB issued a proposal designed to address insured institutions' concerns that they may not unable to provide exact amounts due to technological and other limitations on their international wire transfer capabilities. While the proposal would not have extended temporary exception, it would have allowed insured institutions to provide estimates of covered third party fees and

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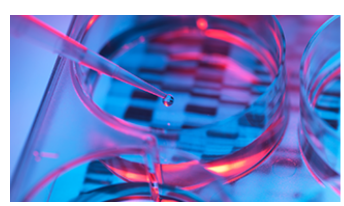

exchange rats in situations where institutions could satisfy specified criteria. *See* Proposed §§ 1005.32(b)(4) and (b)(5)). Among other things, the proposal would have imposed caps that would limit some the ability of some insured institutions to provide estimated disclosures. In its policy statement, the CFPB reiterated that it expects to release a final rule in May 2020 and that the revisions will take effect on July 21.

Notwithstanding the pending rulemaking, in the Policy Statement, the CFPB expresses its concerns about the impact COVID-19 may have on institutions and their ability to prepare for the expiration of the temporary exception. As a results, will take “flexible” approach to supervision and enforcement of remittance providers. Specifically, the CFPB states 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 CFPB explains that it recognizes the importance of remittance transfers for consumers and because it wants to minimize the impact of the pandemic on the remittance market.

Finally, the CFPB hints at the content of its final rule. The CFPB notes that not all institutions that estimate today will be able to estimate in the future. Absent the Policy Statement, these institutions would have to start providing exact amounts. By relying on the Policy Statement, these institutions may continue to disclose estimated amounts until January 1 without fear of CFPB supervisory or enforcement action.

Importantly, the CFPB's Policy Statement does not apply to prudential regulators or state agencies that may also have jurisdiction to enforce the Remittance Rule. Nor does the Policy Statement apply to potential private rights of action consumers may be able to bring against insured institutions that continue to provide estimates after July 21, 2020, and who are unable to qualify for an exception under the CFPB's forthcoming rule.
