

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: December 2014 **NO:** 14-RA-10

TO: Federally Insured Credit Unions

SUBJ: CFPB Amendments to the Remittance Transfer Rule

ENCL: (1) [NCUA Regulatory Alert 13-RA-06 on CFPB's Amended Remittance Transfer Rule](#)
(2) [NCUA Regulatory Alert 12-RA-04 on CFPB's New Remittance Transfers Rule](#)
(3) [CFPB International Fund Transfers Small Entity Compliance Guide](#)

Dear Board of Directors and Chief Executive Officer:

If your credit union sends money to foreign countries on behalf of members or non-members within your field of membership, you may have to comply with the remittance transfer provisions of Regulation E, which implements the Electronic Fund Transfer Act.

The purpose of this Regulatory Alert is to notify you of recent additional changes to the Remittance Transfer Rule (“Rule”) by the Consumer Financial Protection Bureau (“CFPB”), which became effective on November 17, 2014.

A key change to the Rule extends the applicability of a temporary exception permitting federally insured institutions, including federally insured credit unions, to estimate certain pricing disclosures. CFPB extended the temporary exception’s applicability by five years, from July 21, 2015 to July 21, 2020. This change is discussed under the **Use of Estimates** section found below in this Regulatory Alert.

Other changes:

- Clarify that United States military installations located outside the U.S. are considered to be located in a state in the U.S. for purposes of the Rule (see the **Application to U.S. Military Bases** section);
- Clarify the Rule does *not* apply to transfers sent from non-consumer accounts (see the **Application to Non-consumer Accounts** section);
- Clarify fax transmissions are considered “in writing” for purposes of providing disclosures and that oral disclosures are permitted in certain circumstances (see the **Faxes and Oral Disclosures to Sender** section);

- Allow creditors to include on disclosures a uniform resource locator (URL) for CFPB remittance-specific webpages and also revise model disclosure forms to include those URLs (see the **Disclosure of Web Site Addresses** section);
- Clarify that a remittance delay related to an investigation necessary to address potentially suspicious, blocked, or prohibited activity that is not reasonably foreseeable is not an “error” subject to procedures for error resolution (see the **Delays Due to Investigations** section); and
- Provide an example of how to determine the appropriate amount needed to resolve an error that occurred due to a delay on the part of the provider (see the **Amount Appropriate to Resolve an Error** section).

This Regulatory Alert supplements two previous Regulatory Alerts regarding the Rule, provided as enclosures to this Regulatory Alert.

Background

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added to the Electronic Fund Transfer Act new requirements for remittance transfers sent by consumers in the U.S. to individuals and businesses in foreign countries. On February 7, 2012, CFPB published a final rule implementing the law.¹ CFPB subsequently amended the regulations implementing the remittance transfer rules.² This Regulatory Alert refers to the first final rule and subsequent amendments collectively as the “Rule.”

On August 22, 2014, CFPB issued a final rule to amend the Rule. This final rule was published in the *Federal Register* on September 18, 2014, and is available [here](#) (September 2014 Final Rule). The purpose of this Regulatory Alert is to provide information on how the September 2014 Final Rule amends the Rule.

What Types of Remittances Are Covered?

A “remittance transfer” is an international electronic transfer of funds requested by a sender to a designated recipient and sent by a remittance transfer provider (“provider”). The Rule applies to a remittance transfer that is:

- More than \$15 (U.S.);
- Made from a consumer account located in the U.S. or by a consumer in the U.S.; and
- Sent to a person or business in a foreign country.

Which Credit Unions Are Exempt?

A credit union is exempt from the Rule if the credit union does not provide international wire/ACH remittance transfers in what CFPB defines as the “normal course of business.” The

¹ 77 FR 6194 (Feb. 7, 2012).

² 78 FR 49365 (Aug. 14, 2013) (Correction); 78 FR 30662 (May 22, 2013); 78 FR 6025 (Jan. 29, 2013) (Delayed effective date); 77 FR 50244 (Aug. 20, 2012); 77 FR 40459 (Jul. 10, 2012) (Correction).

Rule includes a safe harbor under which a provider is exempt from the Rule if it does not transact more than 100 covered remittance transfers in the previous calendar year and has not transacted more than 100 covered remittance transfers in the current calendar year.³

You are expected to track the number of covered remittance transfers you perform on an annual basis to confirm your eligibility for the safe harbor exemption. When your credit union is no longer eligible for the exemption, you will have up to six months to begin complying with the Rule.

What Changes and Clarifications Did CFPB Make to the Rule?

Use of Estimates – CFPB amended the Rule to extend, until July 21, 2020, a temporary exception permitting federally insured institutions, including federally insured credit unions, to disclose estimates rather than exact amounts for exchange rates, the total amount to be transferred, covered third-party fees, and the total amount to be received. Previously, the temporary exception was set to expire on July 21, 2015. This exception provides a transition period to allow credit unions, banks, and thrifts to develop better communication mechanisms with foreign financial institutions that may help execute wire transfers and certain other types of remittance transfers.

Until July 21, 2020, federally insured credit unions may provide certain remittance transfer disclosures using estimated, rather than actual, amounts.

For a federally insured credit union to take advantage of this exception, the remittance transfer must meet the following criteria:

- The remittance transfer must be sent from the sender’s account with the credit union; and
- The credit union must be unable to determine the exact amounts for reasons outside the credit union’s control.

The Official Interpretations to Regulation E⁴ provide two examples where estimates are permissible:

- *Exchange rate example:* A federally insured institution cannot determine the exact exchange rate to disclose under the rule for an international wire transfer if:
 - The federally insured institution does not set the exchange rate;
 - The rate is set when the funds are deposited into the recipient’s account by the designated recipient’s institution; and

³ This safe harbor exemption is not related to your credit union’s asset size or complexity, number of members, or number of accounts engaged in money transfer services. Instead, you must count the actual number of covered transactions you provide to determine whether the safe harbor exemption applies. For example, if one member routinely sends money outside the United States twice a month beginning in January, you will have provided 24 covered remittance transfers by the end of the calendar year.

⁴ The Official Interpretations of Regulation E are in Supplement I of Part 1005 of Title 12 of the Code of Federal Regulations. An electronic version of Regulation E and its Official Interpretations is available [here](#).

- The federally insured institution does not have a correspondent relationship with the designated recipient’s institution.
- *Covered third-party fees example:* A federally insured institution cannot determine the exact covered third-party fees to disclose under the Rule if an intermediary institution with which the insured institution does not have a correspondent relationship imposes a remittance transfer or conversion fee.

The Official Interpretations also provide two examples of instances where the federally insured institution would be able to determine exact amounts and therefore the exception would *not* apply:

- *Exchange rate example:* A federally insured institution can determine the exact exchange rate required to be disclosed if the insured institution converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. The determination of the exchange rate is in the insured institution’s control even if there is no correspondent relationship with an intermediary institution in the transmittal route or the designated recipient’s institution.
- *Covered third-party fees example:* A federally insured institution can determine the exact covered third-party fees required to be disclosed if it has agreed upon the specific fees with an intermediary correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient’s institution.

Application to U.S. Military Bases – CFPB revised the Official Interpretations to clarify that U.S. military installations outside the U.S. are considered to be located in a state within the U.S. for purposes of the Rule. Therefore, remittance transfers from the United States to a military base outside the U.S. will be treated as remittances within the United States and not subject to the Rule. However, a remittance transfer from a military base outside the U.S. to an account in a foreign country could be subject to the rule.

Application to Non-consumer Accounts – CFPB revised the Official Interpretations to clarify that a transfer sent from a non-consumer account (including an account under a bona fide trust agreement) is not requested primarily for personal, family, or household purposes, and a consumer making such a transfer is not a “sender” under the Rule.

Faxes and Oral Disclosures to Sender – CFPB revised the Official Interpretations to clarify that disclosures provided by facsimile transmission (i.e., fax) are considered to be provided “in writing” for purposes of providing disclosures to senders under the Rule. CFPB also clarified that a provider may treat a written or electronic communication as an “inquiry” when treating the communication as a “request” would be impractical. In such circumstances, the provider may provide disclosures orally as long as the provider otherwise conducted the transaction orally and entirely by telephone.

Disclosure of Web Site Addresses – The Rule requires providers of remittance transfers to disclose the name, toll-free telephone number(s), and website of CFPB. CFPB added comments to the Official Interpretations and modified applicable Model Forms to provide URLs for remittance-specific CFPB webpages to include on consumer receipts.

CFPB provides revised Model Forms with URLs for webpages that specifically discuss remittance transfers, including webpages in foreign languages. Credit unions can provide this information instead of the general URL for CFPB’s website.

Delays Due to Investigations – The Rule defines certain delays in providing disclosures to be “errors” that require a resolution. CFPB revised the Official Interpretations to explain that errors do not include certain delays related to a necessary investigation under the provider’s fraud screening procedures or in accordance with the Bank Secrecy Act, Office of Foreign Assets Control requirements, or similar laws or requirements. CFPB added an additional comment in the Official Interpretations to clarify that a delay does not constitute an error if:

- Such delay is related to the provider’s or any third party’s investigation necessary to address potentially suspicious, blocked or prohibited activity, and
- The provider did not foresee, and could not have reasonably foreseen, the delay in time to disclose an accurate date of availability when providing the sender with a receipt or combined disclosure.

CFPB added examples to illustrate the application of the revised language (while noting that these examples are not exclusive):

- No error occurs where a provider delays a remittance transfer to investigate whether a designated recipient with a name similar to the name of a blocked person under a sanctions program is the blocked person, if the delay was not reasonably foreseeable.
- No error occurs where a provider delays a remittance transfer to investigate specific law enforcement information indicating that a remittance transfer may match a pattern of fraudulent activity, if the delay was not reasonably foreseeable.
- If a provider knows in time to make a timely disclosure that all remittance transfers to a certain area undergo a two-day long screening procedure, then it *is* an error to fail to include the additional two days in disclosing the date of availability.

Amount Appropriate to Resolve an Error – CFPB clarified requirements where a provider fails to make funds available to the recipient by the date stated in the disclosure provided to the sender. CFPB provided a new example explaining that in case of such an error, if the recipient receives the funds before the provider must determine the appropriate remedy, no additional funds are required to resolve the error, after the provider refunds the appropriate fees and taxes paid by the sender.

CFPB also made two amendments related to calculating the appropriate remedy for an error that occurred because the sender provided incorrect or insufficient information. The first amends the Rule to incorporate guidance already contained in the Official Interpretations, namely that the provider may not deduct its own fees from the amount refunded or applied to a new transfer.

The second amendment provides greater clarity on how to calculate the total amount that a sender has paid the provider, the total amount of the refund that such sender will receive, and the portion of the total refund that is attributable to the provider's refund of its own fee. This amendment is a technical amendment and does not alter the required calculations.

What Should You Do Next?

If your credit union offers remittance transfer services to members, you should take several actions to implement the regulatory requirements of the revised Rule immediately:

- Become familiar with the amendments the September 2014 Final Rule made to the Rule.
- Continue to track the number of covered remittance transfers your credit union completes each year, making appropriate adjustments based on revisions to the Rule.
- Modify your data processing systems as necessary to comply with the Rule as amended.
- Update your error resolution policies and procedures to ensure compliance with the amendments to the Rule.

What Resources Are Available?

The full text of the final rule adopting the amendments to the Rule is available [here](#). The supplementary information to the final rule explains the purpose and application of these changes.

The full text of the Rule as published in the electronic Code of Federal Regulations is available [here](#). Note that the text reflects CFPB's changes on the effective date.

CFPB has developed a web-based tool about Regulation E that includes inline official interpretations, highlighted defined terms, and a revision comparison view, available [here](#).

CFPB resources to help you understand the Rule and its implications, as well as information about subsequent adjustments to the Rule, are available [here](#).

CFPB's Remittance Transfer Rule – Small Entity Compliance Guide is available [here](#).

If you have questions, contact NCUA's Office of Consumer Protection at (703) 518-1140 or ComplianceMail@ncua.gov, your regional NCUA office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman