

Remittance Transfer Rules Under Regulation E

This white paper is part of the Risk Management White Paper Series, which CUNA Mutual Group provides exclusively to its Bond policyholders.



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Introduction

The Consumer Financial Protection Bureau (CFPB) issued a final rule on January 20, 2012 amending Regulation E (Reg E) to add provisions for consumer-initiated remittance transfers to individuals and businesses in foreign countries. The new remittance transfer rule is intended to provide new protections, including disclosures and error resolution and cancellation rights, to consumers who send remittance transfers to other consumers or businesses in a foreign country. Credit unions should take steps necessary to comply with the remittance transfer rule by the February 7, 2013 mandatory compliance date.

The remittance transfer rule, which is contained in Subpart B to Reg E, requires credit unions acting as “remittance transfer providers” to provide certain disclosures, error resolution and cancellation rights to consumers who send “remittance transfers” to individuals and/or businesses in a foreign country. A “remittance transfer” is an electronic transfer of funds of more than \$15 requested by a sender and sent to a designated recipient located in a foreign country by a remittance transfer provider. Examples of remittance transfers include international wire transfers, electronic bill pay to foreign recipients, and international ACH transfers. A “remittance transfer provider” (provider) is any person that provides “remittance transfers” for a consumer “in the normal course of its business,” regardless of whether the consumer holds an account with the provider.

What is a Remittance Transfer Provider?

Determining whether a credit union provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent. When the final rule was issued on January 20, 2012, the CFPB asked for comments regarding a numerical threshold for determining whether a person is providing remittance transfers in the normal course of business. In this concurrently-issued proposal, the CFPB proposed a safe harbor of 25 remittance transfers. However, the CFPB announced on August 7, 2012 that the final rule on the numerical safe harbor is 100 remittance transfers. Therefore, a credit union that provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of business and is not considered a remittance transfer provider.

If a credit union falls under the safe harbor in one calendar year but subsequently crosses the 100 remittance transfer threshold the following calendar year, it will be considered a remittance transfer provider and must comply with the regulation within a reasonable period of time, not to exceed six months. If a credit union that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the

current calendar year, the safe harbor applies to the first 100 remittance transfers in the current calendar year. For the 101st remittance transfer in the current calendar year and remittance transfers in the subsequent calendar year, the credit union is considered a remittance transfer provider and must comply with Subpart B within a reasonable period of time, not to exceed six months.

Comment 30(f)-2.iv provides an example of the safe harbor and transition period:

Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor will apply to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provides a 101st transfer on September 5, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provides in 2014. Furthermore, the person would not qualify for the safe harbor described in § 1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2015 (i.e., six months after September 5, 2014). After March 5, 2015, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

What is a Remittance Transfer?

Under the new rule, a covered remittance transfer is an electronic transfer of funds of more than \$15 to a designated recipient, individual or business, in a foreign country that is initiated by a remittance transfer provider at the request of the sender. Remittance transfers include international wire transfers and international ACH transactions.

Another example of a remittance transfer subject to the new rule is an electronic payment initiated by a member via bill pay that is sent to a foreign recipient. According to the new rule, an electronic transfer of funds initiated by a consumer using the remittance transfer provider's bill pay service accessed via computer or other electronic means, is considered a remittance transfer unless the terms of the bill pay service explicitly states that all payments, or all payments to a particular payee(s) will be solely by check, draft, or similar paper instrument drawn on the consumer's account to be mailed abroad and the payee(s) that will be paid in this manner are identified to the consumer. Thus, bill pay transactions that generate a paper check are not considered remittance transfers so long as this method of remittance is disclosed to the consumer.

In addition, remittance transfers could also include prepaid cards (e.g., as a gift card) sent by the provider to an individual or business in a foreign country even if the consumer sending the card retains the ability to withdraw the funds from the card.

What Is Not Considered a Remittance Transfer?

The following are examples of transactions that are not considered remittance transfers:

- Payment of a consumer's bill via check, draft, or other paper instrument to a foreign recipient initiated by the consumer through the credit union's online banking bill pay service. However, if the method of remittance (i.e., paper check) is not disclosed to the consumer, it is considered a remittance transfer.
- A consumer using a debit or credit card to make purchases in a foreign country.
- A consumer paying a bill to a foreign entity through the entity's website by providing the consumer's checking account information, or debit or credit card information.
- Withdrawing funds from an account held in the United States by an authorized user in a foreign country.

In addition, excluded from the definition of remittance transfer are transfers for the purchase of a security or commodity as defined in 1005.3(c)(4).

Credit unions governed by the new rule must comply with the following

consumer protections when conducting remittance transfers, even though they may use a third-party provider of electronic fund transfer services (e.g., a corporate credit union) to facilitate the transfers or contract out remittance transfers to an agent.

Pre-Payment Disclosure

Credit unions must provide members requesting a remittance transfer with a pre-payment disclosure at the time of the transfer request but prior to payment. Determining when payment is made depends on the nature of the transaction and can include when cash is handed over to the remittance transfer provider or when the consumer authorizes the provider to debit the funds from his/her deposit account. The pre-payment disclosure must contain the following seven elements (inapplicable information may be omitted):

1. **Transfer Amount** - the amount that will be transferred to the recipient in the currency in which the remittance transfer is funded, using the term "transfer amount."
2. **Transfer Fees and Transfer Taxes** - any fees and taxes imposed on the remittance transfer by the remittance transfer provider, including those imposed on the remittance transfer by any state or other government bodies, in the currency in which the remittance transfer is funded, using the terms "transfer fees" for fees and "transfer taxes" for taxes. These must be separate and itemized.
3. **Total Amount of Transaction or Total** - the sum of the Transfer Amount, Transfer Fees and Transfer Taxes in the currency in which the remittance transfer is funded.
4. **Exchange Rate** - if the recipient will receive funds in a currency other than the currency in which the remittance transfer is funded, the exchange rate for the remittance transfer must be disclosed. The exchange rate must be rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places. The credit union cannot disclose, for example, that the exchange rate is "unknown," "floating," or "to be determined."

If the credit union does not have specific knowledge regarding the currency in which the funds will be received, it can rely on the member's representation. If the member does not know the currency in which funds will be received, the credit union can assume that the currency in which the funds will be received is the currency in which the remittance transfer is funded. For example, if the member requests that a remittance transfer be sent in U.S. dollars, the credit union need not disclose an exchange rate, even if

the account is actually denominated in foreign currency and the funds are converted prior to deposit into the account.

Exchange rates will not typically apply to pre-paid cards (and need not be disclosed) because they are loaded in U.S. dollars and remain on the card in U.S. dollars until a cardholder withdraws funds in a foreign country.

5. **Transfer Amount** - in the currency in which the recipient will receive the funds. This disclosure only applies if fees or taxes are imposed by a third-party (e.g., third-party provider of electronic funds transfer service)
6. **Other Fees and Other Taxes** - any fees and taxes imposed on the remittance transfer by a person other than the credit union (e.g., third-party provider of electronic funds transfer service) in the currency in which the funds will be received by the recipient. The fees and taxes must be directly related to the remittance transfer. Other fees and taxes must be disclosed separately from one another. If the credit union does not know the currency in which the funds will be received, it can rely on the member's representation or assume other fees and taxes are in the same currency in which the remittance transfer is funded.
7. **Amount Received or Total to Recipient** - the amount to be received by the recipient in the currency in which the funds will be received net of all fees and taxes, whether the fees and taxes are imposed by the credit union or a third-party provider of electronic funds transfer service. The exchange rate to be used must be that which is imposed on the transfer.

Receipt (Post-Payment Disclosure)

Once the member pays for the remittance transfer (e.g., authorizing the credit union to debit the funds from his/her account or handing over payment), the credit union must issue a receipt to the member that must include the following information (inapplicable information may be omitted by using "N/A" or "inapplicable"):

1. A recap of pre-payment disclosure requirements listed above.
2. **Date Available** - the date in the foreign country on which the funds will be available to the recipient. Credit unions cannot provide a range of dates that the remittance transfer may be available to the recipient nor an estimate of the date. Credit unions may not know the exact date on which the funds will be available to the recipient, especially with international wire transfers that may go through

multiple intermediary institutions. Credit unions may disclose the latest date on which the funds will be available. For example, if the funds may be available on January 3rd, but are not certain to be available until January 10th, the credit union can disclose January 10th as the date of the funds will be available to the recipient. They may also include a statement that says "funds may be available sooner."

3. Recipient - the name of the recipient and, if provided by the member, the telephone number and address of the recipient.
4. Rights of Sender - an abbreviated statement describing the rights of the member regarding error resolution and cancellation rights using Model Form A-37 (short form) or substantially similar language. For any remittance transfer scheduled by the member at least three business days before the date of the transfer, the statement of the sender's cancellation rights must follow the requirements of 1005.36(c), Transfers Scheduled in Advance, which requires credit unions to comply with any oral or written request by the sender to cancel the remittance transfer provided it is received at least three business days before the scheduled date of remittance transfer. The long form error resolution must be provided promptly to the sender upon request.
5. Contact Information -the telephone number and website for the credit union, the State agency that licenses or charters the credit union with respect to remittance transfers and the CFPB.
6. Questions and Complaints - a statement that members can contact the State agency that licenses or charters the credit union with respect to remittance transfers and the CFPB for questions or complaints about the credit union.
7. Transfer Date - for any remittance transfer scheduled at least three business days in advance, or the first in a series of preauthorized transfers, the date the remittance transfer will be made using the term "Transfer Date," or substantially similar term.

If the remittance transfer involves a transfer from the members' account, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

Form of Disclosure

The disclosures must be clear and conspicuous and must generally be in writing or electronic format. All disclosures must be made in English and in each foreign language principally used by the provider, or any of its agents, to advertise the service, either orally or in writing, at the office at which the transaction is conducted or where an error is claimed. There are also specific formatting requirements for disclosures, including grouping, proximity, prominence, size and segregation. Disclosures can be provided in-person, electronically, or by telephone depending on how the member requests the remittance transfer:

- Members requesting remittance transfers in-person at a branch office must be given written disclosures.
- For electronic requests for remittance transfers, credit unions can provide an electronic pre-payment disclosure without regard to the consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). The receipt (post-payment disclosure) may also be provided electronically; however, it is subject to the consumer consent and other applicable provisions of the E-Sign Act. Combined disclosures (see below) that are provided electronically must also comply with the consumer consent provision and other applicable provisions of the E-Sign Act.

Oral Disclosures

The pre-payment disclosure may be given orally but only if the transaction is conducted orally and entirely by telephone. The oral disclosure must be in the language primarily used by the member with the credit union in conducting the transaction. Additionally, credit unions must orally disclose the member's cancellation rights using language contained in Model Form A-37 or substantially similar language. In the case of remittance transfers scheduled at least three business days in advance, or the first in a series of preauthorized transfers, credit unions must orally disclose the date the credit union will make the remittance transfer using the term "Transfer Date," or a substantially similar term. When providing disclosures orally, credit unions must ensure they are given at a volume and speed sufficient for a member to hear and comprehend. The credit union must mail the receipt to the member no later than one business day after the date on which the member funds the remittance transfer.

Risk Management Best Practices for Oral Requests

If credit unions elect to take remittance transfer requests orally over the telephone and provide the disclosures orally, a best practice is to ensure the phone call is recorded or logged to provide proof the member actually requested the transfer and the credit union provided the disclosure orally. When logging the phone call, credit unions should ensure employees record the date and time of the request.

Credit unions should consider requiring members to make large dollar remittance transfer requests in-person at a branch office where the member's identity is easily verified. A monetary threshold can be established for this purpose.

Credit unions should also adopt strong out-of-wallet security questions to confirm the identity of members requesting remittance transfers by telephone. Avoid asking for a member's personal information since this is easily compromised by fraudsters.

Credit unions are cautioned in relying on callback verifications to confirm the transfer request with members. Fraudsters easily control the callback phone number by having the member's home phone forwarded or by having the phone number on the member's account changed by the credit union.

Disclosures via Mobile Application/Text Message

Credit unions can provide the pre-payment disclosure orally or by mobile application or text message if the transaction is conducted entirely by telephone via mobile application or text message. The disclosure must be in the language primarily used by the member with the credit union in conducting the transaction. Credit unions must also disclose orally or by mobile application or text message the member's rights regarding cancellation using language contained in Model Form A-37 or substantially similar language. In the case of remittance transfers scheduled at least three business days in advance, or the first in a series of preauthorized transfers, credit unions must disclose orally or by mobile application or text message the date the credit union will make the remittance transfer using the term "Transfer Date," or a substantially similar term.

Combined Disclosure

The rule allows credit unions to provide members with a combined disclosure rather than the pre-payment disclosure and receipt (post-payment disclosure) if the information disclosed is accurate at the time of a request and before payment is made. A combined disclosure must contain all of the information required on both the pre-payment disclosure and receipt. Credit unions providing a combined disclosure at the time of the transfer request must provide the member with proof of payment when payment is made for the remittance transfer. The proof of payment must be clear and conspicuous, provided in writing or electronically, and in a retainable form. The proof of payment can be on the same or a different piece of paper.

For remittance transfers scheduled at least five business days in advance for which payment is not made at the time of the request, the credit union may provide confirmation that the transaction has been scheduled in lieu of providing proof of payment.

Transfers Scheduled in Advance/Preauthorized Transfers

Under the remittance transfer rule, a "preauthorized remittance transfer" means a remittance transfer authorized in advance to recur at substantially regular intervals. The following is an example of a preauthorized remittance transfer:

If a member, using the credit union's bill pay system, sets up a recurring (e.g., monthly) electronic payment to an individual or business in a foreign country and the payments take place without further involvement by the member, the payments are considered preauthorized remittance transfers. In contrast, if the member must take action each month to initiate the transfer, the payments are not considered preauthorized remittance transfers.

The same disclosure content and accuracy requirements apply for all remittance transfers; however timing requirements differ for remittance transfers scheduled in advance, including preauthorized remittance transfers. For one time transfers or the first scheduled transfer in a series of preauthorized remittance transfers that are scheduled at least at least five business days in advance, credit unions must provide the pre-payment disclosure at the time of the request but prior to payment and receipt after payment is made. The receipt must be mailed or delivered to the sender no later than one business day after the date on which the transfer is made. However, if the transfer involves a transfer of funds from the member's account, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

If any of the disclosures (pre-payment disclosure, receipt, or combined disclosure) contain estimates permitted under the "permanent exception" (see below) for the use of estimates, credit unions must mail or deliver an additional receipt containing accurate figures no later than one business day after the date of the transfer. If the transfer involves a transfer of funds from the member's account, the receipt may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

When a member schedules a series of preauthorized remittance transfers, credit unions are not generally required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, when any of the information contained in the most recent receipt is no longer accurate (e.g., fees imposed by the credit union) with respect to subsequent preauthorized remittance transfers for reasons other than the use of permitted estimates (see below), the credit union must provide an updated receipt within a reasonable period of time prior to the scheduled date of the next preauthorized transfer. The commentary to 1005.36 (Transfers Scheduled Before the Date of Transfer) provides an example:

For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is \$20 and, after six preauthorized remittance transfers, the provider increases its fee to \$30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and .36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and .36(b)(2) within a reasonable time prior to the seventh transfer.

Estimates

The final rule contains provisions allowing two exceptions, one temporary and one permanent, which permit the use of estimates in the disclosures in certain circumstances. The temporary exception remains in effect until July 15, 2015.

Temporary Exception

The temporary exception allows an insured credit union conducting remittance transfers directly from member accounts to provide estimates, which must be reasonably accurate, for certain information that is unknown “for reasons beyond its control.” An insured credit union cannot determine exact amounts when a person other than the credit union, or with which the credit union has no correspondent relationship, sets the exchange rate or imposes a fee required to be disclosed. For example, an insured credit union cannot determine the exchange rate for an international wire transfer if the credit union does not set the exchange rate, and the rate is set when the funds are deposited into the recipient’s account by the designated recipient’s institution with which the credit union does not have a correspondent relationship.

Under the temporary exception, an insured credit union can use estimates for the following disclosure items using an approach approved by the Bureau, as listed below:

1. Exchange rate: In estimating the exchange rate, the estimate must be based on one of the following:
 - For international ACH transfers, the most recent exchange rate set by the recipient country’s central bank or other governmental authority and reported by the Federal Reserve Bank; or
 - The most recent publicly available wholesale exchange rate and, if applicable, any spread that the remittance provider or its correspondent typically applies to such rate; or
 - The most recent exchange rate offered or used by the person making funds available directly to the recipient or the person setting the exchange rate.
2. Transfer amount in the currency to be received by the recipient: In estimating this amount, the estimated exchange rate must be used (before rounding).
3. Other fees and other taxes imposed by a person other than the credit union: Other fees and other taxes are based on the estimated exchange rate (before rounding). Estimating other fees imposed by intermediaries can be based on the remittance transfer provider’s most recent remittance transfer to the recipient’s institution, or

based on representations made by the intermediaries in the transmittal route.

4. Amount received by recipient in the currency in which the funds will be received net of all fees and taxes: This amount is based on the previously discussed estimated amounts.

Permanent Exception

The permanent exception is provided for remittance transfers to countries with laws that do not permit a determination of the exchange rate that is set by the government of the recipient country after the remittance transfer provider sends the remittance transfer, or the method by which transactions are made in the recipient country does not permit such a determination. Credit unions may rely on the list of countries published by the CFPB to determine whether estimates may be provided unless the credit union has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount. Estimates are available for the same entries as discussed above under the temporary exemption.

Cancellation Rights

Under the new rule, members have the right to cancel remittance transfers. Different rules apply to remittance transfers scheduled at least three days in advance. For those remittance transfer requests received less than three days in advance, credit unions must comply with a member's oral or written request to cancel the remittance transfer if it is received no later than 30 minutes after the member pays for the transfer, which includes an authorization to debit funds from the member's account, provided members provide enough information to allow the credit union to identify the member's name and address or telephone number and the particular transfer to be cancelled. Credit unions must provide the 30 minute cancellation right regardless of their normal business hours.

For example, a member requests a remittance transfer at a branch office (or over the phone) and authorizes the credit union to debit the funds from his/her account at 4:45 pm. The credit union closes at 5:00 pm. The member has until 5:15 pm to cancel. The credit union must comply with the member's cancellation request provided the request is received no later than 5:15 pm and the member provides enough information to allow the credit union to identify the particular transfer in question.

For remittance transfers scheduled at least three days in advance, members must provide oral or written notice of cancellation at least three business days before the scheduled date of the transfer. For example, if on March 1st a sender schedules a remittance transfer for March 23rd, the sender must provide oral or written notice to cancel at least three business days before March 23rd.

Risk Management Best Practice

To mitigate the risk of receiving a cancellation request from members after normal business hours when employees are not available to take the request, credit unions should consider establishing a cut-off hour after which remittance transfer requests will not be accepted. For example, if a credit union closes at 4:30, a cut-off time for accepting requests could be set at 4:00. Another option is to provide a phone number on the receipt that members must call after normal business hours to cancel the transfer. This option would require an employee to take the calls and the necessary steps to cancel any instructions the credit union provided to its third-party provider of electronic fund transfer services.

Error Resolution

The error resolution process for remittance transfers is quite extensive and imposes new liabilities on credit unions as remittance transfer providers. Under the new rule, members have 180 days from the disclosed date of availability to the recipient (shown on the receipt) to report errors with respect to the remittance transfer. The new rule categorizes errors as follows:

- Incorrect amount paid by the sender unless the disclosure stated an estimate for remittance transfers scheduled at least five business days in advance and the difference results from applying the actual exchange rate, fees and taxes rather than the estimated amount;
- Computational or bookkeeping errors;
- Incorrect amount received by the designated recipient;
- Failure to make funds available to the recipient by the disclosed date including situations, such as, late or non-delivery of a remittance transfer, delivery of funds to the wrong account, fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient, and the recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient; and
- Sender's request for additional documentation to determine if an error exists.

If the error involved an incorrect electronic fund transfer from the sender's account and the remittance transfer provider is also the holder of the account, the process for resolving errors is governed by the error resolution process specified in the new rule (Reg E 1005.33). If, however, the institution holding the account is not the remittance transfer provider, the error resolution process for the incorrect electronic fund transfer is governed by Reg E 1005.11. In this case, the sender may report the error to the account holding institution under Reg E 1005.11, and also report the error to the remittance transfer provider under Reg E 1005.33, as the sender will have independent error resolution rights against the remittance transfer provider.

If the error involves an incorrect extension of credit to pay for the remittance transfer, an incorrect amount received by the designated recipient that is an extension of credit for property or services not delivered as agreed, or the failure to make funds available by the disclosed date of availability that is an extension of credit for property or services not delivered as agreed, and the sender provides a notice of error to the creditor extending the credit, the error resolution process under Reg Z 1026.13 applies to the creditor even if the creditor is the remittance transfer provider. However, if the creditor is also the remittance transfer provider, the sender must comply with the 180 day time frame for reporting the error under Reg E 1005.33(b).

Unauthorized Remittance Transfers

For unauthorized remittance transfers that are unauthorized electronic fund transfers from a member's deposit account, the new rule requires account-holding credit unions to follow the error resolution process specified in Reg E 1005.6 (Liability of Consumer for Unauthorized Transfers) and 1005.11 (Procedures for Resolving Errors). If, however, a sender receives credit to correct an error for an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), if separate parties, and subsequently asserts the same error with another party, that party has no further error resolution responsibilities under Reg E because that error has been resolved. Reg E 1005.6 provides for tiered-liability dependent upon when the member notifies the credit union of an unauthorized remittance transfer using an access device. Additionally, members must report unauthorized remittance transfers appearing on the periodic statement within 60 days of the statement mailing date.

If the unauthorized remittance transfer involves the use of a credit account for payment, the provisions of Regulation Z 1026.12(b), if applicable, and 1026.13 apply with respect to the creditor.

Interplay of Remittance Transfer Rule and UCC 4A

On the mandatory compliance date of the remittance transfer rule (February 7, 2013), wire transfers to foreign countries exceeding \$15 initiated by consumers through a remittance transfer provider will no longer be regulated by Article 4A of the Uniform Commercial Code (UCC 4A). Instead, they will be regulated by Subpart B to Reg E. Prior to February 7, 2013, consumers will continue to receive some protections under UCC 4A in the event the wire transfer is not completed, if there are errors in executing the wire, or in connection with unauthorized wires. This is an important change especially with respect to liability for unauthorized international wire transfers.

Unauthorized Wire Transfers Prior to February 7, 2013

In general, a credit union is liable for the loss from an unauthorized wire transfer (domestic and foreign) if the member denies making the wire transfer request and there is no evidence indicating otherwise. This would occur, for example, when a credit union executes a wire transfer debiting funds from a member's account based on a telephone request from an impostor. A credit union can shift liability for unauthorized wire transfers by establishing a written wire transfer agreement where the credit union and member agree on a "commercially reasonable security procedure" for authenticating wire transfer requests and the member's negligence contributed to a compromise of the "commercially reasonable security procedure."

International Wire Transfers Executed on or after February 7, 2013

Effective February 7, 2013, credit unions as remittance transfer providers must follow the applicable error resolution process for international wire transfers exceeding \$15. Credit unions as remittance transfer providers will no longer be able to shift liability for unauthorized international wire transfers exceeding \$15 to the member.

Agents

Credit unions are responsible for complying with the remittance transfer rule even though they may contract out their remittance transfer services to an agent. This liability, however, will depend upon the contract between the remittance transfer provider and its agent.

Remittance Transfer Rules Under Regulation E Insurance Coverage - Questions and Answers

Question: Do we have coverage for any litigation or member claims alleging noncompliance with the new regulations?

Answer: There may be some coverage under the Fidelity Bond, depending on the allegations of a claim. The Consumer Legislation coverage is designed to cover statutory penalties that are paid directly to the harmed consumer, plus related defense costs. Regulation E is one of the covered regulations.

We caution credit unions, however, that the existence of some insurance should not be considered a substitute for the credit union's compliance responsibilities. Consumer Legislation excludes any losses that are deliberate, intentional or willful violations of laws or regulations. Losses such as these are not fortuitous, and therefore not insurable. The new remittance transfer requirements are somewhat complex; there will be a number of credit unions that will conclude these requirements are too onerous or costly, and will simply discontinue providing foreign remittance transfer services.

The terms of the Consumer Legislation coverage are also designed to encourage a credit union's diligence in their compliance efforts. The coverage now comes with a default 20% copayment (which means the credit union retains 20% of any loss, and insurance covers 80% of any payable loss), plus a minimum \$1,000 per-loss deductible.

Certain other types of losses are not insurable. The following would not be covered:

- Any claims or costs for injunctive relief, such as prohibiting the credit union from certain actions, or requiring the credit union to come into compliance.
- Fines or penalties paid to a regulator or government agencies
- Criminal penalties
- Cease and desist orders
- Any other regulator sanctions

Question: The new remittance transfer regulation imposes new liability for errors. Under UCC Article 4A, a credit union could hold a member liable for any errors made by the member in providing the routing & transit or account numbers, if the credit union disclosed this liability through a signed funds transfer agreement or funds transfer request form. The new remittance transfer rules shift the liability back to the credit union. If a credit union has a loss due to member error, and is unable to retrieve the misdirected funds, is there insurance coverage available?

Answer: No, there is no insurance coverage that exists for this type of scenario.

Question: A remittance transfer provider will now be subject to liability under the new error resolution procedures. The commentary to Reg E 1005.33(a)(1)(vi) provides examples of liability for the following situations:

- Late or non-delivery of a remittance transfer;
- Delivery of funds to the wrong account;
- The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient;
- The recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient.

Is there any insurance coverage available for these types of exposures?

Answer: No, there is no insurance coverage that exists for these types of losses.

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