

FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

January 30, 2013

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Electronic Fund Transfers (Regulation E); Docket No. CFPB-2012-0050; RIN 3170-AA33

Dear Ms. Jackson,

The Financial Information Forum (FIF)¹ would like to take this opportunity to comment on the remainder of the proposed filing (“the Proposed Filing”) of the final Electronic Fund Transfers (Regulation E) Rule (“the Rule”).² The FIF Regulation E Working Group is made up of broker dealers who provide remittance transfer services (“providers”) and may be impacted by the Rule. We have reviewed the Proposed Filing and would like to comment on several aspects of the proposed changes to the Rule.

In general, we are pleased that the Consumer Financial Protection Bureau (CFPB) is considering extending the permanent use of estimates beyond insured institutions to include broker-dealers and other types of providers. We also support proposals to limit the liability of providers due to sender error. Additionally, we would like to offer the following comments.

1005.31(b)(1)(vi) Reporting Only Central Government Foreign Taxes

FIF agrees that the disclosure of subnational taxes is not warranted given that the burden to determine those charges outweighs the benefits of having this data. In general, we do not believe any foreign tax data is useful to consumers in terms of comparison shopping of provider services since the taxes should be consistent across all providers. Instead of specific disclosures of central government foreign taxes, simply stating that “foreign taxes may apply” should be sufficient.

Alternately, we respectfully request that the CFPB define the term central government and indicate that if a tax does not meet that definition it is subject to the relief outlined in the Proposed Filing. Additionally, we request that firms be allowed to use reliable sources of information for taxes that are updated at least annually. The use of reliable sources should be sufficient to meet provider obligations to report central government taxes without requiring providers to validate information that third parties are providing.

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² FIF previously commented in support of the temporary delay of the February 7, 2013 effective date. See <http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0050-0059>

1005.31(d) Use of the Term "Estimated"

FIF supports using the term, "Estimated" on all tax disclosures since "Estimated" is a common and customary term that clients will understand. The term should be used in lieu of variable language disclosures due to the complexity of these determinations and possible confusion this may cause. While changing systems to accommodate this new term will require development effort, FIF agrees that the consistent use of the term "Estimated" is the most operationally feasible alternative. As stated earlier, firms should be allowed to use a reliable source for taxes that is updated on an annual basis. Requiring reliable sources to constantly refresh information would drive up the cost of services for providers and their customers. When relying on a third party, the term "Estimated" should always be permitted since there may be variables that a firm is unaware of and will be unable to ascertain.

1005.32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees

FIF is concerned with several aspects of this proposed section and respectfully requests that the CFPB provide additional information on what is meant by the term "specific knowledge." The term "specific knowledge" is ambiguous with respect to knowledge that may be held by another department of the provider (e.g., the cash management or trust department, as opposed to the wire department). The section also discusses the use of "information ascertained from prior transfers" as one source of information for fees. We are concerned that prior client transfers would not necessarily be representative of future transactions. Information gained as a result of a previous transaction or review may be out-of-date or may be based on different variables. As a practical matter, providers conducting transactions entirely by telephone do not have the time or opportunity to compare information (e.g., variables) regarding a pending transaction with past transactions. Additionally, provider systems do not capture data on prior transfers that includes all the potential variables a transfer may be subject to by the recipient institution.

We agree with the reasonable sources of information proposed in 1005.32(b)(4)(2) and would suggest that reliable third parties be added as an additional reasonable source. It is in the best interest of US consumers that providers be allowed to depend on reliable third party sources of fee and tax information because it will keep the cost of wire transfers down and allow transactions to be conducted promptly while consumers are on the phone or at the provider's location. Forcing the provider to conduct research on either detail will slow transactions, force smaller providers to exit the business (or refuse transactions for many countries), and will generally impose a burden on both the consumer and the provider that outweighs the benefits of disclosure, especially in connection with payments to foreign merchants. Unless providers can safely rely on a "reliable source" for fee information, they may elect to send transfers through the Guaranteed OUR program, which has the provider absorb (and pass along to US consumers) the fees paid by foreign recipients. Consumers who have no responsibility to pay a recipient's wire fees, may be forced to absorb these fees because broker-dealers otherwise would not know how to quickly identify and disclose that information during a transaction. The ultimate cost to a US consumer for obtaining information from a reliable source is likely to be less than the cost of the Guaranteed OUR program.

If a provider is able to provide accurate information, rather than an estimate, it can always choose not to use "Estimated." If a provider is able to eliminate the highest fee from being applicable, but does not feel comfortable that a lower fee is absolutely accurate (or up-to-date), it should be allowed to use "Estimated." Providers who rely upon a reliable source should always be allowed to use "Estimate" due to unknown variables in the information provided by reliable sources.

1005.33(h) Incorrect Account Number Provided by the Sender

FIF agrees that providers should not be held liable for incorrect account numbers provided by the sender and respectfully requests that the CFPB expand this section to state that providers should not be held liable for any Sender errors where they are unable to recover the funds. While other sources of errors may be infrequent, Sender errors such as the following would also result in unrecoverable funds:

- Incorrect Routing Number
- Incorrect Beneficiary names
- Incorrect escrow account numbers related to a foreign escrow
- Missing or invalid additional instructions (for example, paying into an annuity and the wire requires "reference Policy Number 1234").
- Incomplete wiring instructions (for example wire must go to an intermediary institution and it is missing in the instructions).

As the CFPB considers the scope of errors for which providers are liable, we also request that they examine 1005.33(a)(iv) which discusses the failure to make the delivery date. We believe that if the delay is caused by circumstances outside of the control of the provider, the provider should not have to refund the customer's fees and taxes. Additionally if the delay is the provider's fault, we request the CFPB to consider:

- Not requiring the provider to refund the taxes associated with the transfer, because regardless of when the funds are delivered, the taxes still need to be paid.
- Only requiring the provider to reimburse the fees that they charge on the transfer and not the fees that other intermediary firms may charge on the transfer, since those are outside of the provider's control.

1005.33(c)(2)(ii)(A)(2) Imposing Fees and Taxes When Resending Funds

While it may not always be an issue, FIF believes that a provider should also be permitted to impose taxes incurred when resending funds for the same reasons that third party fees are currently imposed. In re-examining this section, FIF also recommends considering affiliate charges as eligible fees to impose on resends. Federal Reserve Act 23B requires banks to charge their affiliates the same fees as non-affiliated companies. Broker dealers will be charged by their bank affiliates for remittance transfers and these charges should be treated the same as other third party fees.

Additionally, FIF is comfortable with the examples in proposed comment 33(h)-1 outlining how a provider might use reasonable means to recover funds. Firms should be afforded as much flexibility as possible based on their knowledge of the customer and capabilities of their systems.

Effective Date of Rule

FIF is supportive of extending the effective date of the Rule. Firms will need additional time to make the changes in the Proposed Filing and require certainty in the form of an approved filing in order to begin analysis and development efforts. Additionally, firms need time to obtain internal budget approval in order to fund the required development. The FIF Regulation E Working Group respectfully requests a 180 day extension of the rule. This is based on the assumption that the term "Estimated" is uniformly applied and that reliable third parties are added as an additional reasonable source. Additional time would be required if that is not the case.

Conclusion

We are concerned about the impact to our clients if our comments to the Proposed Filing are not reflected in the Final Rule. We anticipate several negative consequences to our clients including: significantly higher fees, restrictions on countries to which transfers can be made, and potential delays in completing transfers. Due to the costs of compliance, we are aware of several providers who have chosen to discontinue or limit offering covered remittance transfers. We urge the CFPB to continue to exercise its exception authority and provide additional flexibility in implementing this rule to avoid these unintended consequences.

Regards,

A handwritten signature in black ink that reads "Manisha Kimmel". The signature is written in a cursive, flowing style.

Manisha Kimmel
Executive Director
Financial Information Forum