

To the Point!

legal, operations, and strategy briefs for financial institutions

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Final Remittance Transfer Rule

The CFPB has published revisions to its remittance transfer rule amending Regulation E effective on October 28, 2013 (the “*Final Rule*”). The Final Rule addresses concerns raised by financial institutions related to their (i) responsibility for errors caused by incorrect information provided by senders; and (ii) obligation to provide information to senders related to foreign taxes and recipient institution fees. The changes are summarized below:

Error Resolution

The remittance transfer provider is not liable for unrecovered funds when funds are deposited into the wrong account, if the sender provides an incorrect (i) account number; or (ii) recipient institution identifier. To be eligible for this exception from liability, the remittance transfer provider must show that it used reasonable means to verify the recipient institution identifier and notified the sender about the possibility of loss. The remittance transfer provider must also establish that it used reasonable efforts to recover the transfer amount.

The Final Rule also contains revisions to the remedy that applies when an error is caused by the sender’s provision of incorrect or incomplete information other than an incorrect account number or recipient institution identifier. In such case, the remittance transfer provider is not required to refund fees or taxes deducted from the transfer amount by third parties although the remittance transfer provider is obligated to refund any fees it charged the sender.

Disclosure of Foreign Taxes and Recipient Institution Fees

The remittance transfer provider is required to disclose only (i) foreign taxes collected by the remittance transfer provider; and (ii) fees imposed by the recipient’s financial institution if such financial institution acts as the agent of the remittance transfer provider. Unlike the prior proposal, the remittance transfer provider is not required to provide an estimate of the foreign taxes or fees charged by all recipient institutions. The remittance transfer provider is required to include a statement on its disclosure that the recipient may receive less than the disclosed total value due to these fees and taxes.

In its announcement of the Final Rule, the CFPB stated that the revisions were designed to facilitate compliance for remittance transfer providers while preserving consumer access to these services and providing consumers the new protections mandated in the Dodd-Frank Act.



CFPB Rules on Gift Cards and Unclaimed Property Laws in Maine and Tennessee

On April 19 the CFPB published its first preemption determination. The preemption determination addresses preemption of the unclaimed property laws of Maine and Tennessee related to gift cards under the Electronic Funds Transfer Act (“*EFTA*”).

The EFTA prohibits the sale of a gift card that expires earlier than five years after the date the card is issued or five years after the date when funds were last loaded onto the card. The unclaimed property laws of Maine and Tennessee consider some gift cards abandoned property as early as after two years of card inactivity and require escheatment of unused balances to the state. Tennessee law allows the issuer to either honor a gift card or decline a gift card after it is considered abandoned property. Maine law requires the issuer to honor gift cards indefinitely even after the card is considered abandoned and funds have been escheated to the state.

The CFPB applied the preemption standard in the EFTA that preempts a state law only to the extent of any inconsistency and does not consider a state law inconsistent with the EFTA if the state law affords consumers greater protection than the EFTA. The CFPB found that the Maine law did not prevent the consumer's ability to use a gift card before the minimum five year period expired since the issuer was obligated to honor a gift card indefinitely and so did not preempt Maine law. In its analysis of Tennessee law, the CFPB found that the Tennessee law did prevent the consumer's ability to use a gift card before the minimum five year period expired since the issuer had the option to decline to honor a gift card after escheatment, and therefore the EFTA preempted the Tennessee law only to the extent an issuer can decline to honor a gift card after the gift card is deemed abandoned.

In its decision the CFPB, relying on a United States Supreme Court opinion, provided its expectation regarding treatment of abandoned property as it relates to gift cards. The CFPB followed the Court's precedent by stating that abandoned property should be escheated using the law of the state of the last known address of the property owner (the card recipient), and if the property owner's address is unknown, the abandoned property should be escheated under the law of the state where the issuer is incorporated, not where the property owner is located.

Gift card issuers should review their policies and procedures related to escheatment and relevant state abandoned property law to ensure that abandoned funds are escheated properly. Despite state law that may contain requirements to the contrary, consumers must have the ability to use their gift cards for the minimum five year period (or the minimum period under state law, if longer) even if funds have been escheated to the state.



Prohibition on Financing Credit Insurance Premiums

The CFPB has published a proposal to delay the June 1, 2013 implementation date of the prohibition on financing credit insurance premiums on credit transactions secured by a dwelling contained in the loan originator compensation rule amending Regulation Z. The prohibition applies to credit life, credit disability, credit unemployment, credit property insurance, and other similar products but does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis or to credit unemployment insurance for which premiums are reasonable, the creditor receives no compensation, and the premiums are paid pursuant to a separate insurance contract and not to the creditor's affiliate. Industry concerns have been raised as to when credit insurance premiums can be charged on a periodic basis. The delay is to allow the CFPB to seek public comment and respond to these industry concerns related to its interpretation of the prohibition.



Mortgage Rules Update

Since issuance of the new mortgage rules, the CFPB has issued compliance guides for small entities on the following topics: Ability to Repay and Qualified Mortgage Rule, HOEPA, ECOA Appraisal Rule, TILA Escrow Rule and Appraisal Rule. Although targeted at small entities, we encourage all originators and servicers to become familiar with the guides. They are written in question and answer format and include "implementation tips" that may be particularly helpful when developing a compliance plan.

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To the Point! is a summary of items of interest and current issues for financial institutions with primary focus on regulatory, consumer, and corporate issues. Chapman and Cutler LLP maintains a dedicated practice group with expertise to counsel on these issues and other enterprise risk management matters facing financial institutions. If you would like to discuss any of the items contained in these briefings or other legal, regulatory, or compliance issues facing your institution, please contact one of the partners in our Bank Regulatory Group:

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