AMERICAN
Savings Bank

K. Elizabeth Whitehead
Executive Vice President
Chief Administrative Officer

American Savings Bank Tower
1001 Bishop Street, 30th Floor
P.O. Box 2300
Honolulu, HI 96804-2300
Office: 808.539.7156
Fax: 808.538.2023

Hawaii Business magazine
Best Places to Work
2010

Hawaii Business magazine
Best Places to Work
2011

Member FDIC

July 22, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: *Electronic Fund Transfers*
76 Federal Register 29902 (May 23, 2011)
Docket No. R-1419 and RIN No. 7100-AD76

Dear Ms. Johnson:

On behalf of American Savings Bank, F.S.B. ("ASB"), please accept this comment on the above-referenced proposal ("Proposal") by the Board of Governors of the Federal Reserve System ("Board") to amend Regulation E and its official staff commentary relating to remittance transfers. [1] ASB is an FDIC-insured, federally chartered savings bank headquartered and operating retail branches solely in the State of Hawaii. ASB offers its customers a variety of consumer loans, credit card loans, residential mortgage loans, home equity loans, insured deposit accounts and commercial banking services. As of June 30, 2011, ASB's assets total approximately $4.9 billion.

As you know, the Proposal seeks to establish new rules for "remittance transfers." Under the proposed rules, a remittance transfer would be any electronic transfer of funds from a person in the United States to persons or entities located outside of the United States regardless of whether or not the person has an account with the remittance transfer provider. Consequently, the proposed rules would apply to banks and money transmitters.[2]

Under the proposed new rules, remittance transfer providers must establish new disclosure requirements and procedures for error resolution and cancellation rights for senders of remittance transfers. The proposed new rules would also impose liability on remittance transfer providers for acts or omissions of an agent under one of two proposed alternative standards.

---

[1] The Proposal is the result of amendments to the Electronic Fund Transfer Act ("EFTA") by Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("The Act").

[2] The proposed rules would not apply to "small-value transfers" of $15 or less.

Effect of the Proposed New Rules on ASB and Small Banks Similarly Situated.

Required Disclosures.

Under the proposed new rules, two sets of disclosures must be provided to senders of remittance transfers.[3,4] The first set of disclosures must be provided before the sender pays for the remittance. These "pre-payment" disclosures include: (i) the amount that will be transferred to the recipient in currency to be transferred; (ii) fees and taxes that the provider will apply to the transfer; (iii) the sum of items (i) and (ii); (iv) the exchange rate rounded to 1/100th of a decimal; (v) fee and taxes expressed in the recipient's currency that will be applied by parties other than by the provider; (vi) if such fees and taxes are applied by parties other than by the provider, the amount of the transfer in the currency to be received; and finally (vii) the net amount that will be received by the recipient expressed in the currency that will be received.

The second set of disclosures must be given to the sender on a receipt provided to the recipient upon payment for the transfer and, in addition to all of the information above, must include: (i) the promised date of delivery; (ii) the name, and if provided, the contact information for the designated recipient; (iii) information about the sender's error resolution and cancellation rights; (iv) contact information for the remittance transfer provider; and (v) contact information for the transfer provider's primary state regulator and the Consumer Financial Protection Bureau.

As to the proposed rule requiring disclosure of the amount that will be received by the recipient in the currency to be received, until July 20, 2015, a bank may provide a "reasonably accurate estimate of the foreign currency to be received," if the exact amount cannot be determined for reasons beyond its control, and the transfer is conducted through an account that the sender holds with the bank. In addition, estimates would be permitted if a remittance transfer provider cannot determine exact amounts if the Board determines that the laws or transaction methods of a recipient country do not allow a remittance transfer provider to know the amount of currency that will be received by the designated recipient.

Despite these permissible estimations, however, ASB (and likely small banks similarly situated) may not be able to meet these disclosure standards. ASB does not have the fee information of entities other than the one with whom ASB has an immediate relationship. ASB also cannot calculate taxes that recipient countries may impose on the transfer and which could change without notice. Finally, exchange rates can change multiple times per day and the rate at the time of a sender's instruction could be different at the time of the receipt of funds by the receiving agent. Despite its best efforts, therefore, ASB would not be able to disclose to the sender the accurate amount to be received by the recipient.

Liability for Acts and Omissions of Third Parties.

---

[3] These may be combined into one pre-payment disclosure.

[4] These disclosures must be in writing or may be electronic if the request was conveyed electronically or verbally if the transaction is conducted entirely by telephone. These disclosures must also be in English and either (i) the foreign language(s) principally used by the transfer provider and its agents, or (ii) in the foreign language that the sender used with the transfer provider.

As to liability for conduct of third parties, the Board has proposed two alternative standards. The first alternative broadly imposes liability on transfer providers for any violation of the proposed rules by an agent when the agent acts for the provider. The second alternative would make the provider liable for violations by an agent acting for the provider unless the provider establishes and maintains policies and procedures designed to assure compliance by its agents and the provider appropriately corrects any violations.

As proposed, the first alternative could make it difficult for small banks like ASB to effectuate remittance transfers. As stated above, ASB does not operate any branches outside of the State of Hawaii or the United States. To provide remittance transfers to its customers, therefore, ASB (as do many small to mid-sized banks in the United States) utilizes open network systems. In such systems, banks like ASB employ the services of a third party, such as a large national bank, when our customers request a remittance transfer to a recipient located in a foreign country. That large national bank, in turn, uses a third international or foreign correspondent bank with which the national bank has a relationship. Even more entities could be employed thereafter depending upon the funds' destination. Under this proposed alternative, therefore, although in the example described above ASB has a direct relationship with only the large national bank, ASB could be exposed to liability for acts or omissions of any of the subsequent banks or entities effectuating the remittance transfer of whose identity ASB is unaware.

Therefore, we ask that any final rules state that intermediary and correspondent institutions with whom sending banks do not have a direct relationship are not agents or authorized delegates. ASB is not able to monitor or supervise such persons, and holding ASB liable for their acts would severely disrupt our ability to provide remittance services. As to other relationships, ASB respectfully proposes that the Board adopt the second alternative standard for third party liability. Under that standard, remittance transfer providers like ASB would be able to adopt and implement written policies and procedures designed to monitor and assure compliance by its agents.

Thank you for allowing ASB this opportunity to comment on the proposed rules.

Yours Very Truly,

Beth Whitehead

Beth Whitehead