

May 14, 2018

Cindy Fazio  
Chief of Regulatory Affairs – Consumer Services  
Washington Department of Financial Institutions  
P.O. Box 41200  
Olympia, WA 98504-1200

**RE: Amending Wash. Admin. Code 208-690 WAC**

Dear Ms. Fazio:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our comments with the Washington Department of Financial Institutions (“WA DFI”) on your proposal to amend the regulations implementing the Uniform Money Services Act and Regulation of Money Services Providers (Wash. Admin. Code 208-690 WAC) and harmonize it with the statutory changes from SSB 5031 (chapter 30, Laws of 2017) as well as provide any other necessary clarification. This follows upon our comments submitted in March and hopefully provide additional context to our thoughts on these important issues.

As background, ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include all parts of the electronic payments ecosystem including financial institutions, acquiring banks, merchant service providers and processors, and payment card networks. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, secure, and rewarding payment solutions.

**Specific Comments:**

***WAC 208-690-010 Definition – Closed Loop Prepaid Access***

The proposal removes the definition of Closed Loop Prepaid Access.

Recommendation: We prefer use of the federal definition of closed loop prepaid access to ensure consistency for businesses operating in numerous jurisdictions. *See 31 CFR 1010.100(kkk)*. In the alternative, you should revert to the existing definition but incorporate your new ideas to include intangibles if you are concerned that they are not adequately covered already.

Proposed amended language: “means prepaid access that can primarily be redeemed for a limited universe of goods, intangibles, services, or other items.”

***WAC 208-690-018(3)(c)***

This section includes a proposed list of exemptions that do not require a Money Transmitter license as well as a list of activities that do not qualify for the exemptions. We appreciate that the

Department of Financial Institutions is attempting to exclude “wallet” providers from the processor exemption, however the language is not that clearly focused and therefore we have these concerns.

One of the items that does not qualify for an exemption includes the payment processing by a person meeting the requirements in RCW 19.230.020(9), but not a person engaged in payment processing activities if “holding funds longer than the time period needed to complete a transaction.”

Comments: Parties should be able to contract to terms mutually beneficial and agreed upon. Exempt payment processing activities should not prohibit a payment processor from holding funds longer than needed to complete the transaction when such time period has been agreed upon by the recipient and the payment processor and is nonetheless in conjunction with payment processing activity. Holding funds for pre-defined period outside of the literal time needed to complete the transaction is not dispositive of the role of a payment processor and does not make the activity money transmission. For example, it may be in the best interests of the buyer, seller, and payment processor for the payment processor to hold funds for certain periods to protect against chargebacks and fraud or more quickly facilitate refunds for buyers. This inclusion is in-line with the principle that parties should be free to enter into contract on terms of their choosing and presents no unanticipated risk to the recipient of funds.

The reason for disqualification from exemption does not have a clear definition. The department has not provided a definition of “holding funds longer than the time period needed to complete a transaction.” Current WA DFI Money Transmitter licensed activity requires transmission or issued instructions within ten business days of receiving the funds. However, the reason to deny the exemption does not indicate the timeframe used for the “holding funds longer than the time period needed to complete a transaction” determination.

Recommendation: Include proposed amended language and also consider clarity as to what the timeframe is be disqualified for an exemption due to processing timeframe.

Proposed amended language: “[...] (3) Payment processing by a person meeting the requirements in RCW 19.230.020(9), but not persons engaged in payment processing activities: [...] (c) Holding funds longer than the time period needed to complete a transaction or the time period otherwise reasonably agreed to between the parties pursuant to a payment processing contract.”

#### ***WAC 208-690-030(4)***

The proposed amendment allows the WA DFI Director to require all fees to be paid through the Nationwide Multistate Licensing System (“NMLS”).

Comments: A third party, NMLS, is collecting the fees for the state agency. The majority of states are now utilizing NMLS for the same purpose. However, there is an internal state communication mechanism that needs to be developed between the licensing and examination staff to address the duplication of requests due to information received in the NMLS system not being internally communicated to both units.

**Recommendation:** The proposed amendment should include language to include the creation of an NMLS report that can be shared by the state licensee unit with the state examination unit limiting duplication of requests to the licensee.

**Proposed amended language:** (4) An application fee as prescribed by WAC 208-690- 130(1). The application fee is not refundable. The director may require all fees to be paid through the NMLS. ***The director will require the NMLS to provide a monthly written report to the state agency and licensee on the information collected, including fees and reports, per licensee, per item submitted, per date submitted and per date paid.***

***WAC 208-690-030(8)***

The proposed amendment allows the WA DFI to deny a proposed license or trade name if the proposed name is similar to a currently existing licensee name, including trade names, or is otherwise unsuitable.

**Comments:** The WAC proposed amendment expands the WA DFI ability to deny a proposed name deemed unsuitable. The term unsuitable is not defined.

**Recommendation:** Define the term unsuitable.

***WAC 208-690-040***

The proposed amendment allows the Director to provide for an alternative to a surety bond under certain circumstances.

**Comments:** While providing for a required alternative (which would allow for smaller companies that might be declined by providers of surety bonds to comply with this requirement and bring important new technological advancements to the industry), the concern is that said alternative may become a way to decline properly issued surety bonds.

**Recommendation:** Include language within the proposed amendment that expands upon under which “certain circumstances” the Director can allow an alternative.

***WAC 208-690-080(1)***

The proposed amendment allows the Director to waive the audited annual financial statement requirements for a licensee with minimal or no business activity conducted under the license.

**Comments:** The proposed amendment does not take into account the fees charged for late submission of documents.

**Recommendation:** Include language that the Director will provide written waiver to the licensee and the third-party agency collecting fees for recordkeeping purposes.

***WAC 208-690-090 (2-6)***

The proposed amendment expands the information required to be provided for the annual report and annual assessment. This includes:

1. Requires a licensee to provide a certification that the authorized delegate information on the NMLS is current,
2. Verification that an adequate surety bond and net worth are adequate,
3. A certification that material changes have been reported through the NMLS and are current, and
4. The annual report and assessment fee may be submitted through the NMLS

Comments: The proposed amendment expands the requirement placed on the licensee.

Recommendation: Delete the section as the licensee already provides confirmation when submitting the NMLS Call Report.

#### ***WAC 208-690-100***

The proposed amendment provides that the annual report and annual assessment fees are not considered submitted until both items have been submitted.

Comments: Licensees submit annual reports separate from assessment fees. Therefore, even if an annual report is submitted timely, a late fee can still be incurred if the assessment fee is not paid at the same time.

Recommendation: Eliminate the proposal.

#### ***WAC 208-690-105***

The proposed amendment implements a reporting requirement to submit a quarterly call report through the NMLS on the dates and in a form prescribed by the NMLS.

Comments: The RCW 19.230.152 requires a licensee to submit reports of condition through the NMLS, which must be in the form and must contain the information as the Director requires. This proposal places reporting requirements onto the licensees.

Recommendation: The Director communicates to the licensees that quarterly reporting is mandated through NMLS. If fees are to be assessed, this needs to be formerly communicated.

#### ***WAC 208-690-110(6)***

The proposed amendment expands the definition of a material change to include the commencement of an administrative action against the licensee, an executive officer, responsible individual, board director, AML compliance officer, principal, or other person in control, in any jurisdiction.

Comments: The legislation passed changed the notification requirement from 30 business days to 30 days. The proposed language in the WAC does not make this change. The proposed WAC

language expands what the definition a material change to include the commencement of an administrative action.

Recommendation: We request that the additional language added to material change be removed from the proposal. Additionally, the language around the due dates needs to be corrected to harmonize the statute and regulation. We highlight the important work currently being done by the CSBS Fintech Industry Advisory Panel, and this proposed amendment seems to contradict it.

#### ***WAC 208-690-180(5)***

The first proposal draft amendment allows the Director to participate in a joint or concurrent examination with other state or federal agencies. This was removed in this draft.

Comments: We recommend that this section be put back in. This potentially reduces regulatory burden and duplicative examination. We support this proposed amendment and encourage the department look for additional ways to reduce regulatory burden.

#### ***WAC 208-690-205***

The proposed amendment imposes disclosure and other customer experience requirements for virtual currencies.

Comments: Many of these disclosures ((b) and (c)) are either self-evident or apply to all money transmission products and therefore serve little value in re-informing consumers. The disclosure required as part of (e) is particularly bad, possibly false and misleading, and there is not precedent for this type of disclosure in this market.

Under section (d), a notice regarding liability for unauthorized transfers is at best misleading and puts licensees in an unfair position. There is no general legal requirement that licensees engaged in traditional money transmission or virtual currency activities take on liability for unauthorized transaction. The EFTA/Reg E's unauthorized transfer protections do not generally apply to money transmission activities. And since these transactions are irreversible, there is no true error-resolution process that can be imposed without companies going out of pocket to make customers whole.

Recommendation: We recommend that sections (b), (c), (d), and (e) be removed.

#### ***WAC 208-690-240***

The proposed amendment changes the requirement for an information or cyber security program to an information security program.

Comments: This is the first notification of a change to the Washington Administrative Code around Information Systems. This expands the regulatory expectation and examination scope.

Recommendation: A notification process similar to what New York provided to the licensees for the changes implemented for the New York cyber security requirements should have been given

to the licensees for this proposed change. We recommend that the WA DFI offer this component as a separate notice and comment rulemaking so that interested parties can participate in that discussion.

***WAC 208-690-250(3)***

The proposed amendment deletes that compliance with GLBA and Regulation P is compliance with having an information security program.

Comments: This is the first notification of a change to the Washington Administrative Code around Information Systems. This expands the regulatory expectation and examination scope.

Recommendation: A notification process similar to what New York provided to the licensees for the changes implemented for the New York cyber security requirements should have been given to the licensees for this proposed change. We recommend that the WA DFI offer this component as a separate notice and comment rulemaking so that interested parties can participate in that discussion.

***WAC 208-690-280***

The proposed amendment expands the requirement to include in the business resumption plan a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records or a data breach.

Comments: This expands the regulatory expectation and the requirement of the business resumption plan to include a written plan for a data breach event.

Recommendation: A notification process similar to what New York provided to the licensees for the changes implemented for the New York cyber security requirements should have been given to the licensees for this proposed change. We recommend that the WA DFI offer this component as a separate notice and comment rulemaking so that interested parties can participate in that discussion.

\* \* \*

Thank you for the opportunity to comment on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,



PJ Hoffman  
Director of Regulatory Affairs



1620 L Street NW, Suite 1020  
Washington, DC 20036

202.828.2635  
electran.org

Electronic Transactions Association  
[PJHoffman@electran.org](mailto:PJHoffman@electran.org)  
(202) 677-7417