



March 29, 2016

Via Electronic Submission

Sara Rietcheck
Department of Financial Institutions
Division of Consumer Services
PO Box 41200
Olympia, WA 98504-1200

Re: Notice of Proposed Rulemaking Regarding Uniform Money Services Act

Dear Ms. Rietcheck:

Amazon Payments, Inc. ("Amazon Payments") respectfully submits the following comments to the Notice of Proposed Rulemaking on the Uniform Money Services Act ("UMSA") ("Proposed Rulemaking") issued by the Washington Department of Financial Institutions ("DFI"). Amazon Payments appreciates the opportunity to comment upon the issues raised in the Proposed Rulemaking.

The Proposed Rulemaking clarifies existing requirements, allows credit card receivables to count as permissible investments, and adopts use of the national multistate licensing system ("NMLS"). However, the Proposed Rulemaking also contains several new provisions that could have a negative impact on Washington businesses if adopted. For example, it includes new provisions related to the Gramm-Leach-Bliley Act (the "GLBA"), Regulation P, and data security programs that could be interpreted more expansively than existing federal requirements, raising the risk of conflicting compliance standards. It also introduces new terms, such as "corporate foreign exchange service", which are unclear. Amazon Payments respectfully requests that the DFI reconsider the provisions listed below.

WAC § 208-690-010 Definitions.

The Proposed Rulemaking creates a new definition for "corporate foreign exchange services". They are "a type of money transmission where an intermediary accepts money or its equivalent value from a business, by way of contract, to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location. The intermediary may or may not charge a fee for this service." This definition does not require that corporate foreign exchange services conduct any cross-border transactions or currency conversion, one or both of which is usually associated with the phrase "foreign exchange services". This broad definition seems to indicate that any money transmitters that conduct transmissions pursuant to a contract with a business (as opposed to a contract with a consumer) would be conducting corporate foreign exchange services.

Moreover, the only reference to “corporate foreign exchange services” in the existing regulations or Proposed Rulemaking is with respect to their annual assessment fees, so the implication of conducting corporate foreign exchange services is unclear. It does not appear that such businesses are required to obtain a “currency exchange license” as discussed in RCW § 19.230.100 or to comply with any other specific regulatory requirements. Amazon Payments requests that the DFI clarify both the definition of “corporate foreign exchange services” and the applicability of such services to the current licensing regime.

WAC § 208-690-110(8) Report of Material Change.

The Proposed Rulemaking requires a licensee to report “material changes” to the DFI, including but not limited to “any change in the business plan from that submitted at application.” Amazon Payments understands the DFI’s interest in receiving notice of material changes to a licensee’s business plans in the event such changes could impact the DFI’s assessment of the licensee’s regulated activities. However, use of the word “any”, particularly when “a” is used in the other items in the enumerated examples of material changes, could be read to imply that *all* changes to a licensee’s business plan must be disclosed to the DFI, regardless of whether they are “material”, “non trivial”, or might cause the DFI to be “misled.” A number of changes to a licensee’s business plan, such as a one-day launch date delay, could fall within the proposed definition and require unnecessary notice to DFI. Amazon Payments recommends that the DFI revise the Proposed Rulemaking to require notice only in the event of

“any material or significant change in the business plan from that submitted at application”, or at a minimum to state “a change in the business plan from that submitted at application”.

WAC § 208-690-120(a) Quarterly reports.

The Proposed Rulemaking requires licensees to file a quarterly report informing the DFI of “any change in the e-mail address or business address of locations where you provide money services, including mobile locations.” Amazon Payments requests that the DFI confirm what is meant by a change in the address of a mobile location. Amazon Payments conducts payment processing on Amazon.com as well as on a number of third-party merchant websites. It would be extremely burdensome, potentially impossible, for Amazon Payments to provide the DFI with a quarterly report of all new websites on which it conducts payment processing or urls that it has adopted. For instance, one website could have hundreds of derivative urls for different advertising or product detail pages, and those specific urls could change each time content on the page is changed, without any impact to the product or to consumers. To require notice to the DFI every time a new derivative url is created would serve no consumer protection or regulatory benefit. Amazon Payments recommends that the provision be revised to require notification of:

Any change in the e-mail address or business address of locations where you provide money transmission services, including mobile locations, where such change indicates the introduction of new products or services about which DFI has not already been notified".

WAC § 208-690-240 Cyber security program.

The Proposed Rulemaking implements a new section stating that licensees “shall establish and maintain an effective cyber security program to ensure the availability and functionality of the licensee's electronic systems and to protect those systems and any sensitive data stored on those systems from unauthorized access, use, or tampering.” Amazon Payments prioritizes security of sensitive customer data, but Amazon Payments is concerned that the proposed standard of maintaining an “effective” cyber security program is too vague. For example, a licensee may have an industry-leading cyber security program that successfully repels countless malicious attacks a day. Yet, the security program might fail to stave off one minor attack, which would also have breached any other entity’s security framework. It is unclear from the Proposed Rulemaking whether such a program would be deemed “effective” in light of the numerous successful defenses or “ineffective” in light of the single, minor breach.

To prevent this ambiguity, the DFI should require licensees to each have a cyber security program that is tailored to the licensee’s individual business needs and risks, rather than one that is deemed “effective”. Shifting the regulatory focus to a licensee’s effort and engagement in creating a cyber security program, and away from an efficacy measurement that depends on variables outside of the licensee’s control, provides more stability for licensees. Licensees may in turn be more willing to invest in strong cyber security programs if they have confidence such an investment will result in compliance with the statute. Requiring a program to be appropriate in light of a licensee’s business would also be consistent with the new proposed § 208-690-250, which emphasizes the need for a licensee to have a cyber security program appropriate for the licensee’s size and complexity. Accordingly, Amazon Payments requests that the DFI modify this provision to state:

“Each licensee shall establish and maintain ~~an effective~~ a cyber security program, developed in consideration of the size and risk profile of its business, to ensure the availability and functionality of the licensee's electronic systems and to protect those systems and any sensitive data stored on those systems from unauthorized access, use, or tampering.

WAC § 208-690-250 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act.

Section 208-690-250 appears to be based on the federal Gramm-Leach Bliley Act (“GLBA”), but as currently phrased, it extends significantly beyond existing GLBA requirements. It requires that licensees develop a security program that “*must* ensure the information’s security

and confidentiality, protect against anticipated threats or hazards...and protect against unauthorized access to or use of the information” (emphasis added). This provision could be interpreted to mean that a licensee is at risk of a regulatory violation in the event of any unauthorized system access, no matter how minor or unpredictable the breach or how strong the licensee’s overall security plan. Not only would this be difficult for a licensee to comply with, but it creates the possibility for tension with the existing GLBA framework. The GLBA Safeguards Rule acknowledges that cyber security requirements should be flexible and that the emphasis should instead be on whether an entity has put in place safeguards appropriate for its business. To eliminate the potential for tension between the GLBA framework and the DFI’s proposal, the DFI should track the federal GLBA requirement rather than develop new language. Accordingly, Amazon Payments recommends that the DFI revise the provision to state:

Licensees must comply with the GLBA to the extent the GLBA applies to a licensee or its regulated activities.

In the alternative, Amazon Payments requests that the DFI revise the provision to state:

... The program must be designed to ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information. . . .

WAC § 208-690-260 Consumer financial information privacy under the Gramm-Leach-Bliley Act (Regulation P).

The Proposed Rulemaking states that “licensees must comply with Regulation P.” Amazon Payments requests that the DFI clarify that licensees only need to comply with the requirements of Regulation P to the extent that Regulation P applies to them under federal law. Certain money services businesses that are licensed by the DFI may not be subject to the requirements of Regulation P because the federal government has appropriately realized that such licensees are lower risk than other businesses. While Amazon Payments appreciates that the DFI has attempted to track an existing federal requirement rather than create a new, potentially conflicting requirement, Amazon Payments recommends that the DFI make the following clarification to confirm it is not introducing a new compliance requirement to those institutions to whom Regulation P does not apply:

Licensees must comply with Regulation P to the extent Regulation P applies to the licensees or its business activities as regulated by the department.

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Thank you for considering these comments. We would also be pleased to meet with the DFI to discuss these issues. If you have any questions, please feel free to contact me at (206) 266-0849 or camcohen@amazon.com.

Sincerely,

A handwritten signature in cursive script that reads "Cameron Cohen".

Cameron Cohen
Associate General Counsel, Payments
Amazon.com, Inc.