

September 13, 2019

Commissioner George Joyner
Office of the Commissioner of Financial Institutions
Commonwealth of Puerto Rico
1492 Ave. Ponce De León Suite 600
Central Europe Building,
San Juan, Puerto Rico 00909

RE: Amending Money Services Business Regulations

Dear Commissioner Joyner:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our comments with the Office of the Commissioner of Financial Institutions on your proposed Money Services Business Regulations (“Draft Regulations”). The Draft Regulations would impose significant and unprecedented obligations on licensed money transmitters and their agents. These changes would increase the cost and complexity of compliance while not meaningfully improving either the safety and soundness of licensed money transmitters and their agents or enhancing efforts to fight money laundering and illicit activity.

As background, ETA is the leading international 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, money transmitters, 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.

General Comments

Last year, Puerto Rico adopted Act No. 301-2018 through Puerto Rico House Bill 1255. ETA provided comments on that bill with a number of recommendations, many of which were addressed in the final law. These Draft Regulations seem to go beyond the scope of the changes authorized by the legislation and include significant new prescriptive requirements including agent due diligence, supervision, oversight, financial recordkeeping, and information security.

Additionally, ETA members that are licensed money transmitters in Puerto Rico are Money Services Businesses regulated by the FinCEN and are subject to extensive money laundering, recordkeeping, and reporting requirements. These requirements are part of a larger Banks Secrecy Act (“BSA”) and Anti-Money Laundering (“AML”) regime in which licensees have comprehensive compliance programs. A number of the requirements from the Draft Regulations impose significant prescriptive obligations that are not likely to provide meaningful improvement

of either the safety and soundness of licensed money transmitters and their agents or enhancing efforts to fight money laundering and illicit activity.

Specific Comments:

Online Money Transmission / Stored Value / Business-to-Business

The Draft Regulations introduce a number of significant obligations for licensed money transmitters and most notably their authorized agents. From ETA's reading of the Puerto Rico House Bill 1255, the legislative changes that are driving the Draft Regulations implicate traditional peer to peer money transmission taking place between physical locations rather than transactions initiated online or for business-to-business transactions.

ETA recommends that any final regulations include language that clearly spells out that the new requirements would only apply to in-person transactions not apply to stored value (such as adding money to a prepaid card, gift card, or virtual wallet), transactions initiated online or via a mobile device or internet-enabled device, or for business-to-business transactions.

Redundant Compliance Requirements

A number of provisions in the Draft Regulations would be redundant when considering the requirements in place for licensees including the Puerto Rico Money Services Business Regulatory Act and federally under the BSA and its implementing regulations.

Section 5B

Section 5B of the Draft Regulations require licensees to have policies and procedures in place that, as required by the BSA, address money laundering, but also address additional requirements. Specifically, the Draft Regulations requires policies and procedures in place to address "swindling, human smuggling and human trafficking, and fraud." These additional requirements are not explicitly addressed by the BSA, and it is unclear how licensees would comply with this requirement other than establishing a program reasonably designed to prevent and detect money laundering, which would include illicit financial activity related to these types of activities and others. Because AML requirements and compliance programs already address those concerns, we believe that this provision is unnecessary and should be removed.

Section 5C

Section 5C of the Draft Regulations requires licensees to conduct criminal background checks on employees and authorized agents and "prove" that employees and agents agreed to comply with laws applicable to the licensee's money transmission business. Licensees are not in a position to conduct criminal background checks on the employees of authorized agents. This type of requirement making the use of authorized agents cost-prohibitive. ETA proposes that these provisions be removed, or in the alternative, replaced with an affirmation of the requirement in the

Act that licensees require by contract that their authorized agents operate in full compliance with applicable money transmission laws including the BSA.

Physical Security – Section 5D

Section 5D of the Draft Regulations include requirements that licensees and their authorized agents, establish procedures for the daily opening and closing of their businesses and for addressing robberies and assaults. Additionally, the section includes physical security requirements including installing security cameras and alarm systems. These types of security requirements are highly irregular as part of a money transmission regulatory regime. ETA recommends that this entire section be removed.

Information Security – Sections 5E and Section 6(I)

Information Security is addressed in several sections in the Draft Regulations including Section 5E and Section 6, Subsection I. In order to be more consistent with current regulatory standards, these two sections could be combined into a single section. However, ETA encourages the Commissioner to consider harmonizing any requirements with other state or federal requirements. For example, any final regulations should consider the requirements imposed on money transmitters as non-bank financial institutions under the Safeguards Rule. *16 C.F.R. Part 314*.

Due Diligence Requirements – Agents - Section 6(I)(A)

These proposed changes would impose extensive and onerous due diligence requirements on licensees with respect to authorized agents in Puerto Rico. Specifically, Section 6(1)(A) seems to require licensees to comply with duplicative requirements to a BSA compliance program for money services businesses. Instead of restating these requirements, the Commissioner should consider replacing Subsection 1(A) with a general requirement that licensees have in place policies and procedures reasonably designed to ensure that authorized agents are onboarded in accordance with the licensee's risk assessment processes; and comply with their independent BSA obligations as money services businesses.

Agent Supervision – Sections 6(I)(B) – (C)

Sections 6(1)(B) and (C) would seem to institute a prescriptive set of obligations onto licensees regarding the training, supervising, and direction of their agents. This set of requirements would result in a fundamental change in the licensee/agent relationship while attempting to solve a problem (stopping the illegal flow of funds) already addressed in existing provisions in money transmission laws, including the Puerto Rico Money Services Business Regulatory Act. Those existing provisions outside of these Draft Regulations do not upset the nature of the licensee/authorized delegate relationships by affirming that the contract between the licensee and its authorized agents must require the authorized agent to operate in full compliance with money transmission laws. Additionally, the Act already provides that an authorized delegate is prohibited from providing “money transmission services outside the scope of activity permissible under the

contract between the authorized delegate and the licensee...” As such, ETA recommends that these requirements of Sections 6(1)(B) and (C) be removed.

Recordkeeping - Section 6(1)(F)(4)

The Draft Regulations would require licensees and their agents to collect and maintain a great deal more information for recipients including, among other information, requiring a beneficiary to present a photo identification to receive funds. This requirement has the possibility of slowing access to funds for Puerto Rico residents.

ETA recommends a few changes to the recordkeeping section of the Draft Regulations.

1. ETA recommends that the recordkeeping requirement of Subsection 1(F), should apply only to transactions initiated by a sender in Puerto Rico through an authorized agent location. In order to clearly delineate between those types of services and others, the Draft Regulations should affirm that these requirements would only apply to in-person transactions not to stored value (such as adding money to a prepaid card, gift card, or virtual wallet), transactions initiated online or via a mobile device or internet-enabled device, or for business-to-business transactions.
2. ETA recommends that Subsection 1(F)(4) be revised to make it clear that name and address information must be collected only from and about senders located in Puerto Rico. The reference to documents to validate home address should be removed as well, as it is not clear what authorized agents would be required to do.
3. ETA recommends that the requirement for a Puerto Rico beneficiary to show identification as a condition of receiving funds should be waived, as this type of requirement risks making it very challenging or impossible for some Puerto Rico residents to receive remittances from abroad.
4. ETA recommends that the requirement to retain the number of the identification document used to verify the identity of the sender or beneficiary should be waived (if the requirement itself is otherwise maintained). This type of information is sensitive personal information and keeping it creates unnecessary risks to consumers’ personal information.
5. ETA recommends that the records that licensees are required to maintain should not be required to include contact information about the licensee itself nor the regulator. A more appropriate place for this information would be a receipt, as is generally required by the federal Remittance Transfer Rule.
6. ETA recommends removing item 9 which is duplicative and unnecessary because licensees are already compelled to comply with applicable law.

Financial Information – Section 6(1)

Section 6, Subsection 1(D) of the Draft Regulations would add a number of financial information requirements that are outside of the normal requirements for state money transmission laws. Specifically, that licensees must provide within 36 hours of a request from the Commissioner information necessary to analyze the liquidity and capital required for operating in Puerto Rico and the requirements to maintain daily cash reconciliations and monthly bank reconciliations that meet certain specific requirements.

Most other state money transmission laws generally require that licensees maintain records to enable the regulator to assess the financial condition of the licensee. These records include “a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts” and “bank statements and bank reconciliation records.” ETA believes that this type of information should be sufficient. ETA recommends that these requirements be clarified so that such information would include the general ledger, and also that the information to be provided must be as of the most recently closed month. If licensees were required to instead generate one-off financial reports at any time it could be disruptive and in many cases, it may not be possible to generate such reporting, especially without significant advance notice regarding what type of information may be required.

Implementation Date

ETA has significant concerns about the Draft Regulations, and we ask that an amended draft regulation be prepared for comment and review prior to any final regulations being issued. Additionally, ETA requests that any final regulations include a minimum 180-day transition period. This would allow for time to make necessary changes to policies, procedures, and operations as a result of any final rule can be appropriately implemented.

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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.

Sincerely,



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