

May 31, 2002

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183
Attn: Section 352 CC Regulations

Re: Anti-Money Laundering Programs for Operators of a Credit Card System

Ladies and Gentlemen:

The Electronic Funds Transfer Association ("EFTA") appreciates the opportunity to comment on the interim final rule on anti-money laundering programs for operators of credit card systems (the "Rule") issued on April 23 by the U.S. Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN").¹ Founded in 1977, the Electronic Funds Transfer Association is an inter-industry trade association dedicated to the advancement of electronic payment systems and commerce. Its members include bankcard associations, financial institutions, manufacturers, technology companies, ATM networks, and government agencies.

EFTA looks forward to participating in a dialogue with FinCEN regarding whether debit card system operators should be deemed financial institutions under the Bank Secrecy Act ("BSA"), and thus subject to the BSA's anti-money laundering program requirement.² We agree with FinCEN that the question of whether to apply the BSA to operators of debit card systems as well deserves additional study, as there are fundamental differences between the services provided by credit card systems and debit card systems. We think it important that FinCEN not prematurely and inadvertently impose anti-money laundering program requirements on debit card system operators. As a result, we believe that it is crucial for the Rule to distinguish clearly between operators of credit card systems (to which the Rule applies) and operators of debit card systems.

Unfortunately, the Rule does not make this distinction clear. From the supplementary information accompanying the Rule, it is obvious that FinCEN is aware that cards are used to initiate both credit transactions, generally subject to the Truth In Lending Act ("TILA") and Federal Reserve Board Regulation Z,³ and debit transactions, generally

¹ 67 Fed. Reg. 21121 (April 29, 2002).

² 67 Fed. Reg. 21123, note 9 (April 29, 2002).

³ 15 U.S.C. 1601 *et seq.*; 12 C.F.R. Part 226.

subject to the Electronic Funds Transfer Act (the "EFT Act") and Federal Reserve Board Regulation E:⁴

In addition, a debit card may at times also be used as a credit card. A debit card generally accesses an existing deposit account at an insured depository institution from which funds are withdrawn upon use of the debit card. Debit cards generally require the use of a personal identification number at the point of sale. Some debit cards can also function as a credit card and some credit card system operators also authorize, clear, and settle debit card transactions.⁵

We assume this language expresses FinCEN's intent that credit card systems authorizing signature-based debit card transactions be subject to the Rule as to those transactions. Unintentionally, however, this language goes much farther, casting doubt on FinCEN's basic position that the Rule applies only to credit card networks, and not to debit card networks.

A card that provides access to both a deposit account and a line of credit is both a debit card and a credit card. A transaction initiated using such a card in a PIN-based system will be authorized, cleared and settled by a debit card network. Such transactions should not necessarily be subject to the Rule, but because the Rule defines credit cards exclusively with reference to TILA and Regulation Z,⁶ it appears to treat all networks processing such transactions as credit card networks.

Faced with a similar problem, the Board of Governors of the Federal Reserve System (the "Board") has created a clear rule for distinguishing between those cards to which the TILA issuance rule primarily applies (broadly speaking "credit cards") and those to which that of the EFT Act applies (broadly speaking "debit cards"):

(a)(1) The Electronic Fund Transfer Act and this part [Regulation E] govern ...

(ii) the issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account[.]

⁴ 15 U.S.C. 1693 *et seq.*; 12 C.F.R. Part 205.

⁵ 67 Fed. Reg. 21123 (April 29, 2002).

⁶ 67 Fed. Reg. 21127 (April 29, 2002) (proposed 31 C.F.R. 103.135(a)(5)).

(2) The Truth in Lending Act and Regulation Z (12 C.F.R. 226), which prohibit the unsolicited issuance of credit cards, govern ...

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.⁷

The Board clearly considers debit cards with overdraft protection to be primarily debit cards, and EFTA urges FinCEN to revise the Rule to provide the same. If the Rule is left unchanged, there will continue to be uncertainty as to whether debit card networks are subject to the Rule.

EFTA therefore respectfully requests that FinCEN incorporate into the Rule a definition of "credit card" that distinguishes credit cards from debit cards that also have a credit component in a manner no less clear than that adopted by the Board in Regulation E. By doing so, it will insure that debit card system operators that process transactions with such cards will not be deemed to be credit card system operators subject to the Rule.

Sincerely,

H. Kurt Helwig
Executive Director

⁷ 12 C.F.R. 205.12(a).