Client Alert

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Are You a Money Transmitter in Connecticut? In Hawaii?

By Sean Ruff, Adam J. Fleisher, and Jennifer S. Talbert

As we have noted previously, one of the defining aspects of the payments revolution of the past few years—at least from a regulatory perspective—has been the question of whether a particular payments service is subject to regulation as money transmission. Almost all U.S. states regulate money transmitters under state-specific licensing regimes, and the statutory definitions of money transmission are quite broad and typically cover any entity that "receives" or "transfers" money.

Money transmission licensing laws were crafted to address what today would be called "traditional" money transmitters—i.e., major, well-known brands that sell money orders or stored value cards, or offer domestic and international person-to-person funds transfers. However, there are a number of new and innovative companies that function differently: they facilitate the *receipt* of payments by merchants and other sellers of goods and services (such as utilities), rather than facilitate the transmission of funds *on behalf of a sender*. An entity providing this type of service may have a contractual relationship with the recipient under which the entity is appointed as an agent to receive funds on behalf of that recipient (i.e., the merchant).

In recent years, state regulators have grappled with whether, and to what extent, this type of activity should be subject to state money transmitter licensing laws. In that regard, a number of states have—whether through legislation, regulation, guidance, opinion letter or otherwise—established that, subject to certain conditions, state money transmission licensing laws do not apply to services provided as an agent of a merchant or other recipient of funds pursuant to a direct contractual agreement. In the past year or so, for example, Kansas has issued guidance affirming that payee agents are not engaged in money transmission, and statutory changes in Washington[1] and Pennsylvania[2] have explicitly established that payee agents are not subject to regulation as money transmitters (provided, in all cases, that certain specific criteria are met).[3]

The most recent states to affirm that such activity does not constitute money transmission are Hawaii and Connecticut.

The Hawaii Division of Financial Institutions ("DFI") recently posted FAQs on its website stating that a Hawaii money transmitter license "will not be required" if: (1) the agent "operates pursuant to a written agreement with the payee to act on the payee's behalf"; and (2) any payment processed by the agent "is deemed to have been made to the payee when that payment transaction is successfully processed." The DFI adds that a "receipt provided to the payer by the person for such payment is in all legal respects provided on behalf of, and binding upon, the entity for which the person acted as agent."

[1] Rev. Code Wash. § 19.230.020(9)(c).

[2] 7 Pa. Stat. and Cons. Stat. Ann. § 6103(4).

[3] *See also, e.g.*, Cal. Fin. Code § 2010(*l*); 10 Va. Admin. Code 5-120-10; Illinois Division of Financial Institutions interpretive guidance, "Statement Regarding Third-Party Payment Processors and the Transmitter of Money Act".

In addition, the Connecticut Department of Banking ("Department") has issued a statement affirming that it takes a "no-action position with respect to the money transmitter licensure requirement for persons who receive money on behalf of another person pursuant to a principal-agent relationship" that satisfies certain conditions.[4] Specifically, there must be a written contract between the payee and the recipient that: (1) expressly designates the recipient as an agent accepting payment on the payee's behalf; (2) provides that payment to the agent constitutes payment to the payee; and (3) "evidences an understanding . . . that the payee will be in control of the undertaking." Furthermore, according to the statement, the recipient of the funds (i.e., the agent) must be acting as agent of a merchant who receives payments for goods or services (other than money transmission) that have been or will be provided by the merchant and the agent must be publicly held out by the merchant as accepting payments on its behalf.[5]

While the Hawaii FAQs do not elaborate on the DFI's thinking with respect to why payee agency is not money transmission, the Connecticut Department statement, consistent with the conclusions of other states, explains that in such payee-agent scenarios, "when a payment is made to the principal's agent, there is no current or future transmission to be made because the payment is, in effect, being made to the principal." The guidance from Hawaii and Connecticut appears to be part of a larger trend, albeit an inconsistent one, toward regulatory clarity in this space. Without any statutory or regulatory changes, these two states have explicitly affirmed that regulated money transmission activity—that is, receiving money for transmission—does not include a duly appointed agent receiving payments for goods or services on behalf of a payee.

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[4] The statement notes that other states, such as Texas and Kansas, have reached the same conclusion.

[5] In addition, the statement notes that an entity regulated by the Department as a consumer collection agency, mortgage servicer, small loan licensee or student loan servicer may also act as an agent of the payee provided that the entity is acting within the scope of its regulatory regime.

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