

Client Alert

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Are You a Money Transmitter in Vermont?

By Sean Ruff and Adam Fleisher

The Banking Department of the Vermont Department of Financial Regulation (the “Banking Department”) recently entered into a consent order with a money transmission licensing applicant (the “Applicant”). The consent order makes it clear that “Vermont does not exempt a payment processor or an agent of a payee from [money transmission] licensure.” According to the Banking Department, the Vermont money transmission law defines money transmission “broadly” to include “receiving money or monetary value for transmission to a location within or outside the United States” and, based on this definition, payment processing and payee agency transactions are money transmission subject to regulation in Vermont.

As a result, the Applicant was required to be licensed to “operat[e] a technology platform to provide an e-commerce marketplace that enables users to buy and sell items online or from their mobile devices” and to “facilitat[e] payments between users who buy and sell items on the platform and offe[r] stored value accounts for platform users.” Vermont’s position is at odds with the recent trend of state banking departments affirming that payee agency or payment processing transactions involving the sale of goods or services are not money transmission subject to licensing and regulation, provided certain conditions are met. As a result, the Vermont consent order could have far reaching implications for consumers, businesses, and payments companies alike.

WHAT IS AN AGENT OF A PAYEE AND WHY DOES IT MATTER?

As we have previously noted (see [here](#) and [here](#)), one of the defining aspects of the recent payments revolution—at least from a regulatory perspective—has been the question of whether a particular payments service is subject to regulation as money transmission. The question is important because nearly every state regulates money transmitters under a state-specific licensing regime. Therefore, businesses that engage in activity deemed to be money transmission are generally required to obtain licensure on a state-by-state basis and operate as regulated financial institutions under each state’s regulatory framework. Any entity that engages in unlicensed activity is at risk of both civil and criminal penalties under state and federal law.

While the statutory definitions of money transmission can be construed broadly 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, such as the well-known brands that sell money orders or stored value cards, and 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 payees (such as public 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 payee). Vermont is referring to these types of entities when it states that a payment processor or agent of a payee is a money transmitter subject to licensure.

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California was one of the first states to formally address the applicability of a money transmission licensing law to such payments services. In 2014, California passed AB 2209, which created a formal exemption from the state's money transmission law for an "agent of the payee," provided that certain specific criteria are met. See Cal. Fin. Code § 2010(l). Since California's enactment of AB 2209, a number of states including North Carolina, Virginia, Kansas, Washington, Hawaii, and Connecticut have determined through legislation, regulation, or guidance that state money transmission licensing laws do not apply to services provided as an agent of a merchant or other payee pursuant to a direct contractual agreement, provided that certain criteria are met. For example, both Kansas and Hawaii, whose statutes define money transmission to include "receiving money or monetary value for transmission to a location within or outside the United States," reasoned that such broad definitions nevertheless did not encompass payments received as agent of the payee.

AFTER VERMONT

While state money transmission laws generally provide statutory authority for very large fines for unlicensed activity (such as \$1,000 per day for unlicensed activity), the monetary penalty imposed by the Vermont Banking Department in this case was small. The Applicant paid roughly \$4,000, based primarily on the allegedly unpaid licensing, renewal, and assessment fees during the period of unlicensed activity. However, the ramifications of being a regulated money transmitter, in Vermont or elsewhere, can be much more significant. Thus all participants in the "payments revolution," whether payee agents, payment processors, platforms, or marketplaces, may wish to consider their compliance approaches in light of the Vermont consent order.

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