



Money Services Business Association
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Submitted via E-Mail at: modelepaymentslaw@csbs.org

**Emerging Payments Task Force
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, D.C. 20036**

The Money Services Business Association (“MSBA”) greatly appreciates the opportunity to provide input to the CSBS on your Request for Information (RFI) on the State Model Payments Law.

Established in 2015, the MSBA is the largest trade association focused on the non-bank money services industry. Specifically, we represent licensed money transmitters and their agents and/or authorized delegates, payment card issuers, and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, money orders, eWallet providers and other similar money services providers that are engaged in payments. The MSBA encourages the continued innovation and development in the payments industry while promoting education and communication with Federal and State Regulators.¹

Our outreach focuses on the inclusion of organizations of all sizes. A cornerstone of our membership is commitment to operating in full compliance with applicable state regulations, federal anti-money laundering laws and regulations, protection of consumer rights, and the creation and adoption of industry best practices. We strive to create opportunities for improved cooperation between our members, regulators and the law enforcement community based on the belief that cooperation yields better understanding and a more compliant and transparent industry.

Our membership is supportive of the efforts to modernize money service laws and policies that not only encourage new companies to enter the US market place responsibly but allow the existing licensed entities to operate more efficiently.

¹ For additional information, please see: www.msbaassociation.org.



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The MSBA is pleased to present our input on the following subjects:

- I. Exemptions from application of money transmission rules
- II. Definition of Control Persons for purposes of licensing and regulatory responsibility
- III. Supervision processes

I. The Scope of covered money transmission activities and the applicable exemptions:

As a general premise, the MSBA supports the continued exemptions from application of money transmitter licensing requirements in the areas noted below where members do business.

1. Agent of the Payee
2. Insured Prepaid Cards
3. Closed Loop Prepaid Access
4. Payment Processors, and
5. Business-to-Business Activities.

The MSBA position about each of the above is based on the following considerations:

Currently, for service providers that cross state lines, there is inconsistency in the definitions of the same service or product, there is no uniformity in the application of the definitions, and there is no certainty of process.

The current mosaic of rules creates inefficiencies, confusion and deterrence of innovation when entities that participate in this sector attempt to identify rules to ensure compliance of their operations.

Uniformity in the definition of the exemption, and consistency in the application of the requirement across the states would promote operational efficiencies, create regulatory certainty, would foster the sustainable innovation of service delivery methods, while addressing regulatory concerns of oversight and fiscal responsibility and consumer protection.

We cannot always site the Federal regulation as a source for a definition of exemption as not all exemptions are defined at the Federal Level.



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I. **Agent of the Payee.** The Agent of Payee exemption is instructive.

Agents of the Payee are exempted from money transmission licensing laws when they provide otherwise regulated money transfer services as agents of a merchant or other payee, pursuant to a direct contractual agreement between the parties.

Overall, the states fall in three general categories: Statutory Exemption, Exemption Per Guidance or No Action Positions or Opinions

We are supportive of final definitions that are (i) clear and (ii) consistent with the AOTP exemption in all states and can be relied upon for business decisions. The MSBA favors a broad-based statutory exemption.

The MSBA believes that the process of determining of whether a product is covered and subject to regulation should be done based on rules and not identification of specific products. We understand that the state framework needs to be reviewed on an individual basis in order to effectively implement a Uniform Law.

II. **Change in Control Process:**

The definition of control persons for the purposes of licensing and regulatory responsibility currently rests on identifying an individual with ownership in a licensed entity that equals or exceeds a certain threshold. Generally, the threshold is established at 25% at the federal level and in some states, however there are states that can go as low as 10%.

The net result of the above definition is a net that is cast too wide and obligates entities, such as venture investors, to comply with requirements that do not reflect the reality. Despite their investments, many investors do not exert operational control. Rather, their focus is on the return their investments yield.

The MSBA proposes that instead of relying strictly on a level of control anchored in ownership of the entity, the definition of control should encompass anyone who can actually effect control, and who should assume the responsibility for the entity's operation because they do in fact exert such.

The MSBA proposes the use of a definition similar to that employed by the New York Division of Financial Services (NYDFS), which requires an individual to certify and assume responsibility for the implementation of an effective monitoring system consistent with NYDFS requirements.

By creating this requirement for the identification of Control Person, the regulations would avoid penalizing investors whose only position is to maximize their investments and who also may not know the day-to-day activities of those entities in which they invest.



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The above would mitigate the regulatory concerns of having accountable individuals operating the businesses licensed or authorized to operate in their jurisdictions while at the same time fostering investment and participation of parties that are otherwise tangentially related to the operation.

III. Supervision Processes:

Establishing a state standard would provide clarity to define and report varying business models and services. As an example, states have different interpretations on how a business should report their information. Standard rules will insure that consumer safety and soundness is accounted for and that businesses can rely on being treated consistently by State Exam teams.

We anticipate that the state exam system (SES) will be helpful for viewing state exam requests, uploading documents and tracking status; it would encourage increased efficiency if there could be an increased emphasis to have states share and rely on Reports of Examination. Encouraging more states to move towards this effort would result in fewer exams, reduced costs, and reduce time spent on each exam.

The MSBA members prefer to generate information such as transaction volume as a regular part of reporting. We believe that It is much more efficient if the state regulator can download transactional data and financial statements from NMLS rather than including these items in the state individual exam request letters sent prior to examination.

IV. Conclusion

We appreciate the opportunity to provide input into some of the requested topics. We look forward to continuing the conversation on these complex issues, and the next steps in modernizing and improving state regulation.

Sincerely,

A handwritten signature in black ink that reads "Kathy Tomasofsky". The signature is written in a cursive, flowing style.

Kathy Tomasofsky
Executive Director
Money Services Business Association, Inc.