



National Payroll Reporting Consortium

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The National Payroll Reporting Consortium (NPRC) and its members would like to thank the Conference of State Bank Supervisors (CSBS) and the Fintech Industry Advisory Panel for their important work thus far. A uniform, consistently applied money transmission statute will increase the efficiency of obtaining money transmitter licenses while safeguarding the financial system and protecting consumers from potential bad actors.

The NPRC is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role in our nation's tax collection system as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections and reporting through electronic payment and reporting programs, and improve employer compliance.

We thank the Advisory Panel for recognizing the importance of harmonizing amongst states definitions, interpretations and exemptions of payroll service providers. While we can appreciate states seeking to sufficiently protect the financial system and consumers from harm, payroll processors have a long history of operating in a safe and sound manner. In fact, as noted within the Recommendations of the Payments Subgroup of the Fintech Industry Advisory Panel ("Recommendations"), California and other states have exempted payroll processors from licensing as money transmitters due to the reduced risk of adversely impacting consumers and the essential functions payroll service providers perform to many businesses. Much of the risk is reduced due to the scrutiny and restrictions payroll service providers receive from financial institutions and their banking regulators in order to gain access to the ACH network. In addition, payroll service providers provide services exclusively to employers. Consumers and the general public are not able to obtain money transmission services. Moreover, payroll service providers report 100% of monies they collect from clients (businesses) and subsequently remit to client employees, taxing authorities, child support agencies, and other payroll- related payees on W2s, 1099s, 940s, 941s and various other reconciliation reports. Classification of a payroll provider as a money transmitter requires additional cumbersome reporting compliance and audit processes that are largely duplicative and offer little incremental protections. The additional compliance obligations could present a barrier to smaller service providers and reduce competition in the industry

As indicated below, three other states have provided similar exemptions for payroll service providers:

North Carolina:

This Article shall not apply to any of the following: A person that is engaged exclusively in any of the following: a. Delivering wages or salaries on behalf of employers to employees. b. Facilitating the payment of payroll taxes to State and federal agencies. c. Making payments relating to employee benefit plans. d. Making distribution of other authorized deductions from employees' wages or salaries. e. Transmitting other funds on behalf of an employer in connection with transactions related to employees.¹

¹ See [North Carolina General Statutes § 53-208.44](#)



Ohio:

No person, regardless of the location of that person, its facilities, or its agents, shall receive, directly or indirectly and by any means, money or its equivalent for transmission from a person located in this state, unless that person receiving the money or its equivalent for transmission is a licensee, an authorized delegate of a licensee that is not itself required to be licensed under division (B) of this section, or is one of the following: (6) A person the only money transmitter activity of which is to deliver payroll money on behalf of employers to employees by check or deposit in a checking or savings account at a bank, savings bank, savings and loan association, savings association, or credit union.²

Washington:

This chapter does not apply to: (15) A person that transmits wages, salaries, or employee benefits on behalf of employers when the money transmission or currency exchange is an ancillary service in a suite of services that may include, but is not limited to, the following: Facilitate the payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, make distribution of other authorized deductions from an employees' wages or salaries, or transmit other funds on behalf of an employer in connection with transactions related to employees.³

Furthermore, as noted within the Recommendations, many states currently interpret similar statutory language differently, increasing confusion and burdensome steps for both states and potential licensees. Shown below is an example of two states with similar statutory language with varying interpretations:

State A:

This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

State B:

Nothing in this chapter shall apply to the sale or issuance or delivering of checks by: (f) Persons not carrying on the trade or business of money transmission, this exemption is intended to include persons who conduct money transmissions only as an incidental act to another trade or business regularly carried on by them and persons who only occasionally and infrequently conduct money transmissions for another person.

State A currently takes the position that payroll service providers should be licensed as money transmitters, while State B deems money transmission as an incidental act of payroll services and does not require a license. Without seeking a request for interpretation on a state-by-state basis, a costly, lengthy and uncertain process, many payroll service providers will continue to operate without a license. This is mainly a result of the understanding that payroll processors were not intended targets of money transmitter laws, varying laws and interpretations, and payroll service providers viewing money transmission as ancillary component of their overall business purpose, rather than a stand-alone business activity.

² See [Ohio Revised Code § 1315.02](#)

³ See [Revised Code of Washington § 19.230.020](#)



If, through this process, states cannot align on an exemption to payroll service providers, they should, at a minimum, uniformly define money transmission as it relates to payroll services. Currently, there are no federal definitions that clearly and sensibly cover the realm of activities subject to state law.

There are, however, several states that provide clear and concise definitions and exemptions in statutes. For example, California provides adequate detail in its statute that would allow an entity to determine if the statute applies to its business model. Also, with the evolution of technology advances and more sophisticated payment platforms, some states have invited industry comments to clarify applicability of statutes to specific business models. As an example, California recently submitted a request for comments on proposed rulemaking that could impact the “agent of payee” definition within its statute. Although requesting public comment on proposed rule changes can appear burdensome, it is in fact a great opportunity for states to learn of different business models and identify potential risks that were misconstrued or not considered while drafting new legislation.

States can simplify the process of determining whether a product or business model is subject to regulation by adopting and executing a uniform money transmission statute. States can assist in this process by providing determinations if a business model and/or specific offerings are exempt from or subject to money transmission regulations, or uniformly create a clear standard or set of attributes that would help entities determine if they are subject to regulation. This would also require states to clearly define what the spirit and intent of money transmission statutes are designed for. Most industry professionals regard these statutes as anti-money laundering and consumer protection laws; however, many states still require payroll processors, who transact on behalf of businesses, to license as money transmitters.

States should also consider unifying an approach to determine the variety of risks different business models pose. For example, if states centralize oversight of money transmitters, different divisions could be established: international money transmission firms, emerging technology firms, payroll processing (if not exempted), etc. This would allow examiners to become specialized in a specific industry. Today, many states struggle with the varying business models. Training and developing examiners for a specific industry would allow for easier application processes and examinations.

If payroll service providers are required to become licensed money transmitters, states should expedite the licensing process for well-established businesses that are already well-known to their departments of revenue and other agencies. This should be a streamlined process that leverages information already on file with those departments, the secretaries of state and other agencies. Registrations of existing payroll processors should not be treated the same as *de novo* applications from newly formed companies. On a go-forward basis, if payroll service providers apply for a money transmission licenses on goodwill, the industry requests that states do not assess penalties for historical transactions, rather the focus should be on prospective compliance.

States should develop a clear, consistent and efficient approach to regulating this industry as it historically has not been considered a traditional money transmitter. This may require states to amend often-ambiguous statutes and provide industry specific guidance that acknowledges the robust policies and procedures already in place to ensure delivery of taxes to the government, paychecks and benefits to employees, and appropriate reporting to those parties and the employers



making the payments. To help protect consumers and ensure the safety and soundness of money transmitters, payroll service providers recognize that states may need to perform periodic examinations. For multi-state payroll processors, the industry requests that states unify the approach to multi-state exams. It can be challenging if States with varying notions of how money transmission applies to the payroll industry participate in the same multi-state exam.

Applications and ongoing maintenance can be further simplified through uniformity. It would be beneficial for states to adopt similar language to the CDD Final Rule issued by FinCEN, including the 25% ownership percentage threshold. Additionally, there are potential risks publicly traded companies face when providing a notice of a change in control 30 to 120 days in advance of the change. Moreover, states should consider adopting a process where entities provide a “Change Notice” within a stated timeframe (e.g., 30 days). In many cases, companies may not have sufficient advance notice to satisfy current Advance Change Notice requirements. There should also be an understanding that not all entities have fiscal years that align with the standard calendar year.

As previously noted, we certainly understand and support the responsibility of states to protect consumers from bad actors. The first step toward protecting consumers, as it relates to money transmission, is to ensure consumer funds are secured. Following the approach of the Uniform Money Services Act (UMSA) is the preferred method to securing these funds. Within the UMSA, the definition and amount of permissible investments required are clearly defined. Furthermore, creating different permissible investment requirements based on the footprint or geographic region of a money transmitter is not sustainable. There should be standardization and parity across the states and industry to align with the multi-state operations of today’s payroll providers.

Again, we appreciate the opportunity to provide comment, and would be glad to discuss the points above in greater specificity with the CSBS and the Fintech Industry Advisory Panel. Please let us know how we can be of service.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Trabold", is written over a thin horizontal line.

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