STATE OF CONNECTICUT
DEPARTMENT OF BANKING
260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800

Jorge L. Perez
Commissioner

MEMORANDUM

TO: All Connecticut Money Transmission, Small Loan, Consumer Collection Agency, Student Loan Servicer and Mortgage Servicer Licensees

FROM: Jorge L. Perez, Banking Commissioner J. L. P.

RE: No Action Position on Money Transmission Licensure Requirement for Persons Acting as an Agent of a Payee

DATE: October 24, 2017

This Department has recently received several inquiries concerning whether a person that receives money on behalf of another person pursuant to a principal-agent relationship must be licensed as a money transmitter in this state. In Connecticut, courts have recognized three elements that must be present to show the existence of a principal-agent relationship: "(1) a manifestation by the principal that the agent will act for him, (2) acceptance by the agent of the undertaking, and (3) an understanding between the parties that the principal will be in control of the undertaking". *See e.g., Wesley v. Schaller Subaru, Inc.*, 277 Conn. 526 (2006); *Gordon v. Tobias,* 262 Conn. 844 (2003); and *Beckenstein v. Potter and Carrier, Inc.*, 191 Conn 120 (1983). As further explained herein, this Department 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 the conditions specified below.

Money Transmission Licensure Requirement

Connecticut's money transmission licensure requirement is set forth in Section 36a-597(a) of the Connecticut General Statutes, which states, in pertinent part, that:

> No person shall engage in the business of money transmission in this state, or advertise or solicit such services, without a license issued by the commissioner as provided in sections 36a-595 to 36a-612, inclusive . . . .

Section 36a-596(8) of the Connecticut General Statutes, as amended by Public Act 17-233, provides, in pertinent part, that:

> "Money transmission" means . . . receiving money or monetary value for current or future transmission or the business of transmitting money or monetary value within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

Further, Section 36a-597(a) provides that a person engaged in money transmission is acting in this state if such person "receives money or monetary value in this state or from a person located in this state" or "transmits money or monetary value from a location in this state or to a person located in this state".

On its face, Connecticut's money transmission statutory scheme appears to include receiving monies in Connecticut or from persons located in Connecticut pursuant to a principal-agent relationship. While some explicit exemptions are set forth in Section 36a-609 of the Connecticut General Statutes, none are for agents who receive money or monetary value on behalf of a principal. In addition, Connecticut money transmission laws apply equally to persons who transmit money on behalf of consumers, as well as persons who transmit money on behalf of businesses.

Agent of Payee Relationship

Connecticut case law recognizes that in certain instances, payment is deemed made to the principal when made to the principal's agent. For example, in *Gordon v. Tobias*, 262 Conn. 844 (2003), the Connecticut Supreme Court held that a consumer's payment to a mortgage servicer of the total amount due under a mortgage discharged the consumer's mortgage obligation to the mortgage holder, even though the mortgage servicer had failed to forward such monies to the actual mortgage holder. As the basis for its conclusion, the Court found that there was sufficient evidence that the mortgage servicer was acting as an agent of the mortgage holder when it had collected such monies. *Id.* at 850. As a result of this common law premise, one may argue that 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 Department is also aware that several other states have recognized an exception from money transmission licensure for certain entities that receive money or monetary value on behalf of another person pursuant to a principal-agent relationship, often referred to as an "agent of payee". Such exceptions have been granted on a case-by-case basis, by statute or opinion letter, and often, states have set forth specific criteria to qualify for the exception. For example, Texas Department of Banking Opinion 14-01 provides guidance that "a properly authorized agent of a principal who receives payment on behalf of the principal within the scope of that agency, does not engage in the business of money transmission, and therefore does not need a license under the [Texas Money Services] Act" provided that "actual express authority to receive money on behalf of the Biller [Principal], in the form of a written contract" is demonstrated to the Texas Department of Banking. *See also,* Kansas Office of the State Bank Commissioner Guidance Document, MT 2016-01 issued on November 30, 2016; and State of Washington, Department of Financial Institutions, Uniform Money Services Act Interpretive Statement 2016-1: Payment Processors, dated December 7, 2015.

In addition, several types of Department licensees may receive money or monetary value on behalf of another person pursuant to a principal-agent relationship when performing their licensed activities. Since such activity is already regulated by this Department, money transmission licensure appears redundant and unduly burdensome. For example, mortgage servicer licensees receive payments from consumers acting as agents of mortgage holders, and such activity is already regulated by this Department pursuant to Sections 36a-715 to 36a-719*l*, inclusive, of the Connecticut General Statutes. Other licensees who may receive money or monetary value on behalf of a principal within the scope of their regulated activity are consumer collection agencies that receive payments from consumers on behalf of creditors, small loan licensees that receive payments from consumers on behalf of small loan holders, and student loan servicers that receive payments from consumers on behalf of student education loan holders.

No Action Position

Consistent with these principles and pursuant to Section 36a-1-8 of the Regulations of Connecticut State Agencies, this Department takes a no-action position concerning the requirement for licensure as a money transmitter set forth in Section 36a-597(a) when the following conditions are present between the principal (payee) and the recipient of money or monetary value:

1. A written agreement between the payee and the recipient of money or monetary value that: (a) expressly designates the recipient as an agent accepting payment on the payee's behalf, (b) provides that payment to the agent constitutes payment to the payee, and (c) evidences an understanding between the parties that the payee will be in control of the undertaking; and

2. The recipient of money or monetary value is: (a) an agent of a merchant payee who receives payments for goods or services other than money transmission that has been or will be provided by the merchant payee and such merchant payee holds the agent out to the public as accepting payments on the payee's behalf; or (b) a person duly licensed with this department as a consumer collection agency, mortgage servicer, small loan licensee or student loan servicer that receives money or monetary value on behalf of a payee in accordance with and within the scope of its regulatory scheme.

Please be advised that a person receiving money or monetary value in this state or from persons located in this state acting in an agent of payee capacity must maintain sufficient documentation to demonstrate satisfaction of such criteria at all times in order to avail itself of this no-action position.

Lastly, please note that this no-action position shall only apply to agents who receive money or monetary value on behalf of a payee and shall not apply to agents who remit money or monetary value to other persons on behalf of a payor, such as bill payment providers and payroll processors. The Department's position concerning whether persons who remit money to other persons require money transmission licensure has not changed. For example, in a letter dated August 21, 2015, this Department opined that a company that provided payroll solutions to employers in the United States, including various administrative and technical services, would have to be licensed as a money transmitter, stating that inasmuch as funds are being held in a payroll processor's account before being sent to the intended payees, the activities would constitute engaging in the business of money transmission. In that opinion, the Department also recognized that there was no exception to Connecticut's money transmission licensure requirement simply because the money transmission was incidental to the payroll management business. In the agent of payor relationship, payment obligations are not fulfilled simply by delivery of money or monetary value to the payor's agent. Upon delivery of money or monetary value to the agent by the payor, money or monetary value must still be remitted to persons who are not party to or bound by the principal-agent relationship. FinCEN recognized a similar distinction in a Ruling dated November 20, 2009, opining that when a bill payment company does not have an ongoing contractual relationship with the person receiving the bill payment, the company's transmission of payments from bill payers to billers would cause the company to be considered a money transmitter under FinCEN regulations. *See* FIN-2009-R004.

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