

## California Finalizes Rulemaking for Agent-of-a-Payee Exemption in Money Transmission Licensing

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The California Department of Financial Protection and Innovation (DFPI) has finally adopted final rules relating to the scope of the agent-of-a-payee exemption under the California Money Transmission Act (MTA), Cal. Fin. Code § 2000 *et seq.*

The scope of potentially regulated activity under the MTA is broad because the MTA, like most other money transmission laws, requires a license to engage in “[r]eceiving money for transmission” unless otherwise exempt, Cal. Fin. Code §§ 2010(q)(3), 2030(a). Based on this broad definition, any payments intermediary that receives money from a sender or payor and settles funds to a recipient or payee could potentially be a money transmitter. However, the MTA excludes from regulation an agent-of-a-payee transaction, which is defined by Cal. Fin. Code § 2010(l) as a transaction “in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor’s obligation to the payee.” The MTA defines a “payee” as “the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services,” and a “payor” as “the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.”

The question of whether the agent-of-a-payee exemption applies is of considerable importance for any platform involved in facilitating payments — including consumer marketplace platforms, billing services, payment facilitators and other payment processors, and business-to-business (B2B) payments platforms. The DFPI’s promulgation of final regulations, which comes more than a year after draft regulations were issued, is significant for the payments industry. It not only addresses the potential applicability of the MTA, but also may impact other states’ interpretations of their own money transmission laws because other states tend to be influenced by California’s approach to regulation in this area.

Like the draft regulations, the DFPI’s final regulations address each element of the exemption, and affirm a broad interpretation of its scope.

First, the rules affirm that an agent of a payee does not receive money for transmission because “the receipt of money or other monetary value by an agent of the payee from a payor is the equivalent of receipt of money or monetary value directly by the payee.”

Second, in general, for the exemption to apply, there must be a payment for goods or services other than money transmission services. The final rule defines “goods or services” as any good or service (other than money transmission) for which the payor has a payment obligation to the payee. The final rule also affirms that the exemption may apply to payment processing for charitable organizations on the basis that “charitable activities” constitute “services,” so the charity would be a payee as a provider of services. However, only payment processing as a duly appointed agent of an organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code is expressly in scope, according to the final rule.

The DFPI’s [Final Statement of Reasons](#) explains that the reference to 501(c)(3) charities in the characterization of what constitutes “services” is intended to align with the existing exemption from money transmission licensing for “a public benefit nonprofit [that is engaging in money transmission] which has received recognition of tax exemption under IRC Section 501(c)(3),”

10 CCR 80.3002(a)(2). However, the Final Statement of Reasons doesn't appear to explain why this alignment is relevant to whether the charitable entity is providing "services." The Final Statement of Reasons does differentiate the agent-of-a-payee exemption related to charitable activities from instances in which a covered charity is *itself* engaging in money transmission and is exempt under the existing exemption at 10 CCR 80.3002(a)(2), in which case a payments services provider that is a common law agent of the charity would also be exempt, pursuant to the general exemption for an agent of an exempt entity, Cal. Fin. Code 2030(a).

The final rules also affirm that the exemption can apply to multiparty transactions in two ways. First, the DFPI's draft rules indicated that the exemption could apply to processors that facilitate transactions on behalf of marketplaces and sellers of goods and services on behalf of marketplaces. The final rules appear to affirm this interpretation by defining a payee to include an "indirect provider" of goods or services, which is an entity that "enables the provision of goods or services even if it does not have title to, or take actual or constructive possession of, the goods or services provided."

The Final Statement of Reasons largely summarizes what the DFPI said in its Initial Statement of Reasons. Specifically, it appears it is possible for the agent-of-a-payee exemption to apply to a transaction in which a payment processor facilitates the customer's payment to a marketplace and the subsequent settlement of funds to the merchant. This is because, according to the DFPI, the marketplace may be an "indirect provider of a good or service by facilitating the purchase of goods or services through an online platform that matches consumers with third-parties," providing a "bundle of services to the consumer including a search function, an infrastructure for purchasing, shipping and processing returns, and other customer services." The marketplace is a payee for the first transaction. Then, in a second transaction, the marketplace is a payor, "purchas[ing] goods from a Merchant, as payee, to fulfill an order or to restock its own supply." The Final Statement of Reasons still doesn't seem to address this apparent disconnect: If the marketplace is just the indirect provider and doesn't directly sell the underlying good or service the customer is purchasing, what stock would it be replenishing?

The second scenario is when there are two processors but no other party; that is, the customer makes a purchase from a merchant payee and has a payment obligation to the payee. This constitutes one transaction. If the merchant appoints a payment processor in a manner compliant with the agent-of-a-payee criteria of the MTA, the payment processor can appoint another processor as its common law agent, and neither processor will be subject to the MTA as a money transmitter.

Finally, the regulations affirm that the agent of payee exemption does not apply to open-loop stored value transactions. The issuance of stored value is not exempt "because when stored value is issued, no payee is identified and therefore, there is no immediate obligation to deliver funds to a specific person." In this case, the DFPI is not thinking of the issuer of the stored value as a payee, in the sense that a payments intermediary could facilitate payment to the issuer from the purchaser of the stored value. The DFPI seems to think of payment for stored value as a "sale" of stored value, and reasons that the sale of store value is not exempt "because the transaction involves the sale of a money transmission product and therefore, does not constitute the sale of goods or services 'other than money transmission services.'"

With the final rules now promulgated, payments intermediaries will be able to assess how the exemption may apply and whether the regulatory treatment of any of their activities may change – at least in California. Even though other states may follow California's lead, interpretations of the state-specific agent-of-a-payee exemptions can diverge, and compliance strategies for payments intermediaries likely still require a state-by-state approach.

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