

Who Is an Agent of a Payee in California? With Rulemaking Pending, Possible Scope Suggested by Opinion Letters

March 29, 2021

Any company that intermediates payments for other parties — such as a marketplace platform, a billing service, a payment facilitator or a B2B platform provider — must take into consideration the applicability of money transmission licensing laws. Almost all US states regulate money transmission under state-specific laws that, due to broad statutory definitions of regulated activity, can cover any entity that receives money from a payor and disburses payments to a payee.

However, a number of state money transmission laws, including California's Money Transmission Act (MTA), expressly exempt from the licensing requirement a person that is acting as an "agent of a payee," provided that certain specified criteria are met. These criteria include an express agency appointment pursuant to a written agreement between the payee and the agent, and that the payment to the agent satisfies the payor's obligation to the payee. In addition, many statutory exemptions, including in the MTA, require that the payor's payment to the payee must be for goods and services provided by the payor to the payee. Therefore, among other key issues, the question of what constitutes a good or a service can determine whether exemptions apply to a particular intermediary's activities.

In 2019, the California Department of Financial Protection and Innovation [began a rulemaking](#) process with an invitation for comments on the scope of its statutory agent of a payee exemption, including the matter of what constitutes "goods and services." In April of 2020, the DFPI issued [draft rules](#) and then in July 2020 issued [proposed modified text](#). If published in their current form, the final rules, which the DFPI had [indicated](#) would be finalized by February 2021, would affirm a broad interpretation of the scope of the exemption and of what constitutes "goods or services." However, the final rules have not, to date, been published.

While awaiting the finalized regulation, the DFPI has remained active in addressing the scope of regulated money transmission under the MTA. In particular, in [a January opinion letter](#) the DFPI indicated that California's statutory agent of a payee exemption, Cal. Fin. Code § 2010(I), can apply to sales of so-called "closed loop" stored value — i.e., stored value that can only be redeemed for goods and services provided by the merchant issuing the stored value. In the same letter, the DFPI also affirmed — without explanation — that "So long as the agent-of-payee exemption applies to a [purchase] transaction, the exemption also applies to a [r]efund of the same transaction."

In [another letter](#) addressing similar facts in early February, the DFPI reaffirmed that "the exemption can be applied to transactions involving payments to purchase closed loop stored value because the sale or issuance of closed loop stored value is not money transmission."

In a slightly different vein, the DFPI issued a separate recent opinion letter concluding that a specific type of payments activity did not meet the definition of money transmission in the first place. According to [the letter](#), the payment processor provides a service whereby a US customer provides an *authorization* to initiate a funds transfer, at which point the company places a hold of funds on the sender's debit card and then settles the specified amount of funds from a local-country settlement account to the designated recipient's mobile wallet or bank account. The company represented that the funds are immediately available for the designated recipient to use and that after the designated recipient has been paid, the company reimburses itself by charging the sender's debit

card to initiating payment of funds from the sender to itself. The DFPI explained that because the funds are paid to the recipient before the company is reimbursed, it never “receives money for transmission.” Therefore, the activity was not subject to regulation as money transmission under the MTA.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

Key Contacts

Adam Fleisher Washington, DC	afleisher@cooley.com +1 202 776 2027
Obrea Poindexter Washington, DC	opoindexter@cooley.com +1 202 776 2997
Sean Ruff Washington, DC	sruff@cooley.com +1 202 776 2999

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.