

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

February 6, 2018

Re: Request for a legal opinion under Financial Code section 2010(l)

Dear _____

This letter addresses _____'s January 30, 2017 interpretive opinion request to the Department of Business Oversight ("Department"). In that letter, you asked the Department for confirmation that the agent of payee exemption under the California Money Transmission Act ("MTA") applies to specific payment services offered by _____. Your letter argues that many of _____'s payment services should be exempt from the MTA under the agent of payee exemption.¹

The Department intends to propose a regulation concerning the agent of payee exemption in the near future. While the Department engages in that process, we decline to opine on the applicability of the exemption to those products that may be affected by the rulemaking. However, while the rulemaking is pending, the Department will not treat those products as requiring licensure. Those products include _____'s payment services for rent, transportation, loans, collections, eCommerce, cable and telecommunications, healthcare, auto insurance, legal and accounting services and child support.

However, two of _____'s services, Pre-Payment for Prison Accounts and Advanced Deposit Wagering, will not be impacted by the Department's impending rulemaking. The Department has concluded that Pre-Payment for Prison Accounts and Advanced Deposit Wagering fall outside the scope of the agent of payee exemption for the reasons stated below.

The agent of payee exemption is available in a transaction where "the recipient of money...is an agent of the payee pursuant to a preexisting written contract." "Payee" is defined as "the provider of goods or services, *who is owed payment...from the payor* for the

¹ Fin. Code § 2010, subd. (l).

goods or services.”² “Payor” is defined as “the recipient of goods or services, *who owes payment...to the payee.*”³ The definitions of “payor” and “payee” make clear that the agent of payee exemption is only available where a payment obligation for a good or service exists. The requirements of this exemption cannot be met in the case of pre-payment for prison accounts or advanced deposit wagering, because there is no payment obligation in either case.

Prefunding a prison account for later use does not satisfy any payment obligation owed. Rather, prefunding a prison account provides the account beneficiary with a pool of funds for later use. Here, there is no payment obligation because the money is being put into an account for the user to use when he chooses; at the time the funds are being transferred to the account, there is no obligation by the person putting money into the account in the sense that that person is not paying anyone for goods or services. For the same reasons, prefunding an advanced deposit wagering account does not meet the agent of payee exemption.

This letter is limited to the facts and circumstances as presented to the Department in _____’s correspondence, beginning in July 2016. Should any of the facts or circumstances change, the Department’s opinion may also change.

If you have any questions, please contact the undersigned at _____.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Alexander M. Nourafshan
Counsel

² Fin. Code § 2010, subd. (1)(2) (emphasis added).

³ Fin. Code § 2010, subd. (1)(3) (emphasis added).