



STATE OF CALIFORNIA  
**Department of Business Oversight**

GOVERNOR **Gavin Newsom** • COMMISSIONER **Jan Lynn Owen**

IN REPLY REFER TO:  
FILE NO: PRO 07/17

February 8, 2019

INVITATION FOR COMMENTS ON PROPOSED RULEMAKING  
MONEY TRANSMITTER ACT: AGENT OF PAYEE  
(PRO 07/17)

BACKGROUND

Financial Code section 2030, subdivision (a), states: “A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division . . . .”

Financial Code section 2010, subdivision (l), exempts from licensing “[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.”

Financial Code section 2010, subdivision (l), defines the key terms as follows:

- (1) For purposes of this subdivision, “agent” has the same meaning as that term is defined in Section 2295 of the Civil Code.
- (2) For purposes of this subdivision, “payee” means the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services.
- (3) For purposes of this subdivision, “payor” means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.

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As a matter of legislative history, it appears clear that Financial Code section 2010, subdivision (l), operates, at a minimum, to exempt online marketplace platforms like Amazon and Airbnb. Owing to Financial Code section 2010, subdivision (l), an online marketplace would not need to obtain a money transmitter license even though, as a platform for buying and selling goods and services, it receives funds from buyers to transmit to sellers. Thus, at a minimum:

- The term “goods and services” includes the types of goods and services that are typically offered on online marketplace platforms like Amazon and Airbnb;
- The term “payor” includes consumers who order goods and services on online marketplace platforms;
- The term “payee” includes merchants who offer goods and services on online marketplace platforms.

As Internet-based commerce grows and evolves, payment chains have become longer and more convoluted. Consequently, the Commissioner of Business Oversight (Commissioner) has received several inquiries about whether certain actors qualify as “payor” and “payee,” and whether certain transactions qualify as “goods” or “services” transactions.

### INVITATION FOR COMMENTS

The Commissioner seeks input from stakeholders in developing regulations to clarify the applicability of section 2010, subdivision (l). The Commissioner has identified various areas where rulemaking may be appropriate, desirable, or necessary. The Commissioner has formulated questions to assist interested parties in providing input on rulemaking. However, stakeholders are not limited in providing comments to the areas the Commissioner has identified and may comment on any potential area for rulemaking.

### POTENTIAL TOPICS FOR RULEMAKING

1. Financial Code section 2010, subdivision (l)(1), makes the agent-of-payee exemption available for transactions in “goods or services.” What items do and do not fall within the term “goods or services”?
  - (a) In particular, does the term “goods or services” encompass assets, rights, interests, or benefits of any kind or nature (e.g., residential housing, real estate, right of publicity, goodwill, intellectual property, insurance, etc.)?
  - (b) Alternatively, does the term “goods or services” refer only to the types of items and services one typically finds available on online marketplaces like Amazon and Airbnb?

- (c) Are payments in satisfaction of debts to the government (e.g., taxes, fees, fines) a payment for “goods or services?”
  - (d) Please cite legal authorities (e.g., case law, legislative history, dictionaries) in support of the interpretation you advocate.
  - (e) With respect to each of the alternative interpretations described in (a), (b) and (c) above, what is the economic impact that each interpretation would have on industry?
2. Financial Code section 2010, subdivision (1)(3), defines “payor” as a “recipient” of “goods.” What does it mean to “receive” goods?
- (a) In particular, does one “receive goods” only by being an end consumer – i.e., someone who intends to consume, experience, use, or gift those goods?
  - (b) Alternatively, does one “receive goods” by physically receiving them but without consuming or experiencing them (e.g., by being a retailer that maintains goods in stock)?
  - (c) Alternatively, does one “receive goods” merely by receiving title to them, without having either physically received or consumed them (e.g., by being a merchant of record for goods that it acquired title to but never physically received)?
  - (d) Please cite legal authorities (e.g., case law, legislative history, dictionaries) in support of the interpretation you advocate.
  - (e) With respect to each of the alternative interpretations described in (a), (b) and (c) above, what is the economic impact that each interpretation would have on industry?
3. Financial Code section 2010, subdivision (1)(3), also defines “payor” as a “recipient” of “services.” What does it mean to “receive” services?
- (a) Clearly, one “receives services” by virtue of experiencing and enjoying such services as an end user. For example, a Lyft passenger is “receiving services” from a Lyft driver when the passenger receives a ride to the airport. Does a commercial entity “receive services” when contractors perform contractual duties owed to the entity? For example, is Lyft “receiving services” from a Lyft driver within the meaning of Financial Code section 2010, subdivision (1)(3)?
  - (b) Generally, does a party “receive services” from a counterparty whenever that counterparty performs contractual duties owing to that party?

- (c) Please cite legal authorities (e.g., case law, legislative history, dictionaries) in support of the interpretation you advocate.
- (d) With respect to the interpretation articulated in (a) and (b) above, what is the economic impact that the interpretations would have on industry if recognized? What is the economic impact if the interpretations were rejected?
- (e) Under Financial Code section 2011, the Commissioner may, by regulation, allow exemptions from money transmitter law in addition to what is currently provided in statute. Assuming that Financial Code section 2010, subdivision (l), is properly interpreted as applying only to a simple, three-party online marketplace transaction (as described on the bottom of page 1 and top of page 2) and that the Commissioner is open to exempting a broader range of commercial transactions based on agency law principles, describe the full range of commercial transactions to which you believe the agency-based exemption should apply. Please provide proposed exemption language reflecting your recommendation.

#### TIME FOR COMMENTS

The Commissioner invites interested parties to submit comments by **April 9, 2019**.

#### WHERE TO SUBMIT COMMENTS

You may submit comments by the following means:

##### Electronic Mail

Comments may be submitted electronically to [regulations@dbo.ca.gov](mailto:regulations@dbo.ca.gov). Include “PRO 07/17” in the subject line with copy to Senior Counsel Jennifer Rumberger at [Jennifer.Rumberger@dbo.ca.gov](mailto:Jennifer.Rumberger@dbo.ca.gov).

##### U.S. Mail

Department of Business Oversight, Legal Division  
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#### CONTACT PERSONS

Questions regarding this invitation for comments may be directed to Senior Counsel Jennifer Rumberger at (415) 263-8528.