



STATE OF CALIFORNIA
Department of Business Oversight

GOVERNOR Gavin Newsom · COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:
FILE NO: _____

September 11, 2020

VIA EMAIL ONLY

Re: _____ – Opinion Request

Dear Mr. _____:

Thank you for your letter to the Department of Business Oversight dated July 27, 2020 on behalf of _____ (“_____”). You request confirmation that the payment processing services conducted by _____ (“_____”), a company recently acquired by and merged into _____, are exempt from licensure under the Money Transmission Act (“MTA”).

BACKGROUND

_____ offers “_____” solutions to employers which allow the employers to provide their employees with _____ loan and _____ savings benefits. Specifically, _____ offers two solutions: (1) the _____ Benefit and (2) the _____ Benefit.

Through the _____ Benefit, _____ facilitates employer contributions to their employees’ _____ loans. The flow of funds is as follows: The employer’s contributions are transferred from the employer’s bank account to _____’s bank account. _____ then transfers the funds to the relevant _____ loan servicers.

The _____ Benefit is provided in two ways. First, _____ facilitates employer contributions to their employees’ _____ accounts (“_____ Benefit”). Second, an employee may authorize the employer to deduct a selected amount from the employee’s pay to be contributed to any _____ account of the employee’s choice (“_____ Benefit”). With respect to the _____ Benefit, the flow of funds is similar to the description above: The employer’s contributions are transferred from the employer’s bank account to _____’s bank account. _____ then transfers the funds to the relevant _____ accounts.

With respect to the _____ Benefit, the flow of funds is as follows: _____ supplies the employer with a file identifying all eligible employees with active _____ accounts and their selected payroll deduction amounts. During the employer's payroll processing cycle, the payroll administrator uploads the file into the payroll processing system and makes all necessary deductions. The employees' payroll deduction amounts are transferred from the employer's bank account to _____'s bank account. _____'s bank then issues check or ACH payments to the relevant _____ based on _____'s arrangement with the _____.

MONEY TRANSMISSION ACT

The MTA prohibits a person from engaging in the business of money transmission in California, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.¹ Financial Code section 2003, subdivision (q)(3) defines "money transmission" to include receiving money for transmission. Financial Code section 2003, subdivision (u) defines "receiving money for transmission" to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

_____ receives money in its bank account for transfer to _____ and _____ accounts. This constitutes receiving money for transmission pursuant to Financial Code section 2003, subdivision (u).

Financial Code section 2010, subdivision (j) exempts from the MTA a person that delivers wages or salaries on behalf of employers to employees or facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions from employees' wages or salaries, or transmits other funds on behalf of an employer in connection with transactions related to employees.²

With respect to the _____ Benefit, _____ facilitates the payment of employer contributions to their employee's _____. Employer contributions are transferred to _____ and _____ transfers the contributions to _____ loan servicers. This activity is exempt under Financial Code section 2010, subdivision (j) because _____ is making a distribution of other authorized deductions from employees' wages or salaries and is transmitting other funds on behalf of an employer in connection with transactions related to employees.

With respect to the _____ Benefit, _____ allows an employer to make contributions to a _____ account selected by its employee. Employer contributions are transferred to _____ and _____ transfers funds to the relevant _____ account. This activity is exempt under Financial Code section 2010, subdivision (j) because _____ is making a

¹ Fin. Code, §2030, subd. (a).

² Fin. Code, § 2010, subd. (j).

distribution of other authorized deductions from employees' wages or salaries and is transmitting other funds on behalf of an employer in connection with transactions related to employees.

Lastly, with respect to the _____ Benefit, employees authorize their employers to deduct selected amounts from their pay to contribute to a _____ account of their choice. Employee payroll deduction amounts are transferred to _____. _____'s bank then generates a check or ACH payment to the relevant _____. This activity is exempt under Financial Code section 2010, subdivision (j) because _____ is making a distribution of other authorized deductions from employees' wages or salaries and is transmitting other funds on behalf of an employer in connection with transactions related to employees.

This opinion is based solely on the facts represented in your correspondence. If any of the facts or circumstances change, the Department's opinion may also change.

If you have any questions, please feel free to contact me at (____) _____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Counsel

cc: _____ Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division