



April 20, 2020

Department of Business Oversight  
Attn: Pamela Hernandez  
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San Francisco, CA 94104  
[regulations@dbo.ca.gov](mailto:regulations@dbo.ca.gov)

**Re: PRO 07/17 – Money Transmission Act – Agent of Payee Exemption**

To Whom It May Concern:

Financial Innovation Now (“FIN”)<sup>1</sup> appreciates the opportunity to provide the following comments on proposed regulations (the “Proposed Rulemaking”) regarding the California Money Transmitter Act, Cal. Fin. Code § 2000 *et. seq.* (the “Act”) promulgated by the Department of Business Oversight (the “DBO”) on February 19, 2020.

General Comments

The Proposed Rulemaking is intended clarify the scope of the exemption from the Act for an “agent of a payee” as defined by Cal. Fin. Code § 2010(*l*) (the “Exemption”). As explained in the Initial Statement of Reasons (the “Statement”) accompanying the Proposed Rulemaking, the DBO’s intent in promulgating these regulations is “to further clarify the application of this Exemption to avoid uncertainty and confusion” due to the “self-executing” nature of the Exemption.

The Proposed Rulemaking follows an Invitation for Comments on Proposed Rulemaking (the “Invitation”) released by the DBO in February 2019 in which the DBO stated its intent to clarify, via a rulemaking, the scope of the Exemption. FIN provided comments in response to the Invitation in support of a broad interpretation of the scope of the Exemption because, among other reasons, an agent of a payee does not engage in money transmission. In this regard, we noted that the legislative history indicates that AB 2209 (which added the Exemption to the Act) was intended to “*clarif[y]*” that money transmission does not include a transaction in which the

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<sup>1</sup> FIN is an alliance of technology leaders working to modernize the way consumers and businesses manage money and conduct commerce. We believe that technological transformation will make financial services more accessible, safe and affordable for everyone, and we promote policies that enable these innovations. FIN member companies include Amazon, Apple, Google, Intuit, PayPal, Square and Stripe. For more information regarding FIN’s policy priorities and principles, please visit [www.financialinnovationnow.org](http://www.financialinnovationnow.org).

recipient of the payment (currency or other value) is an agent of the payee and delivery of payment satisfies the payor's obligation to the payee."<sup>2</sup>

The Proposed Rulemaking appears to be largely consistent with the point of view expressed in our prior comments regarding the appropriate interpretation of the Exemption's scope. In particular, we appreciate and agree with the DBO's proposed confirmation that the Exemption does not preclude multiple parties acting in an agent capacity in connection with a single purchase transaction; as we stated in our prior comments, a sub-agency arrangement should not turn an exempt payee-agency arrangement into a regulated money transmission transaction because payment is still deemed received by the payee upon acceptance of funds by the agent.

In particular, § 80.126.10 of the Proposed Rulemaking states that an "agent of a payee has not received money for transmission." Consistent with this proposed new rule, the Statement provides that "the use of terms 'payee' and 'agent' [in the statutory exemption, *i.e.*, 2010(l)] were meant to . . . clarify that transactions which involve an agent of payee are not money transmission at all." That is, as the DBO indicates in the Statement, an agent of a payee transaction is not money transmission "because the payor's funds are deemed received by the principal upon receipt by the agent." Where "the agent acts in the place of the principal and does not hold money on behalf of a payor for transmission . . . no money has been received for transmission." Therefore, "the agent of payee exemption applies even if there are multiple agents used in the settlement of funds to the payee so long as the statutory criteria are met." FIN supports this interpretation because it is consistent with the legislative history of AB2209, the language of the Exemption, and the nature of the common law of agency that forms the basis for the Exemption.<sup>3</sup> This clarification will help ensure that California remains a haven for innovative, financial technology companies seeking to make financial services more accessible, safe and affordable for consumers.

### Charitable Contributions

Section 80.126.30 of the Proposed Rulemaking would affirm that "services . . . include charitable purposes." We understand this clarification to mean that an organization that provides charitable services can be a "payee" as defined by Cal. Fin. Code 2010(l)(2) and as

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<sup>2</sup> See AB 2209 Assembly Floor Analysis (Aug. 13, 2014) (emphasis added).

<sup>3</sup> *People v. Treadwell* (1886) 69 Cal. 226, 236 (emphasis in original); accord *Channel Lumber Co. v. Porter Simon*, 78 Cal. App. 4th 1222, 1227 (2000) (an agent acts "not only for, but in the place of, his principal").

clarified by § 80.128 of the Proposed Rulemaking, because the charitable organization is a provider of services “owed” payment by a payor for the purchase of those services.

Nevertheless, we respectfully request that the DBO revise the Statement to clarify the nature of this exclusion. In this regard, the Statement indicates (emphasis added) that:

... to the extent that a charity has appointed a person as its agent (*under either general agency law or the agent of payee exemption*) to accept funds on the charity’s behalf, the agent is considered not to have received money for transmission and therefore meets the spirit and purpose of the agent of payee exemption.

However, § 80.126.30 appears to indicate that a charity’s activities are consistent with the definition of a payee under the Act (as interpreted by the DBO), and that a person acting as a duly appointed agent of such a payee in accordance with the requirements of the Exemption would be acting within the scope of the Exemption and therefore not engaged in money transmission under the Act when processing payments for a charity. We do not disagree with this interpretation, but the text of the proposed rule and the above-cited interpretation in the Statement do not appear to be consistent. In particular, if the DBO is suggesting that a common law agency appointment is sufficient to exclude a payment processor or payments services provider acting on behalf of a charity from regulation under the Act, it is not clear why a payment processor or payments services provider acting on behalf of any other type of payee would need to rely on the express statutory Exemption (if that is the case). Accordingly, we believe that in the final rule and accompanying final Statement the DBO should consider expressly stating:

- That the arrangement with a charity does *not* need to meet the express requirements of the Exemption as interpreted by the DBO in the Proposed Rulemaking and that an appointment as an agent of a payee under general agency law is sufficient; and
- That because an appointment under general agency law is sufficient, it is sufficient *not only* in the case of serving as an agent for a charity but also in what other instances in which any payments intermediary that is providing payments services on behalf of a principal consistent with general agency law would be excluded from the Act and not required to meet the specific criteria set forth in the Exemption, even if no party to a transaction meets such criteria.

We also believe that the final rule should appropriately clarify what constitutes “charitable purposes” under § 80.126.30. In this regard, current regulations implementing the Act exclude

from licensing a “public benefit nonprofit which has received recognition of tax exemption under Internal Revenue Code Section 501(c)(3).” 10 Cal. Code Regs. § 80.3002(a)(2). Under this existing regulation, it would appear that an agent—even a common law agent—of a charity that is itself exempt from regulation as a money transmitter should also be exempt because no license is required under the Act for an agent of an exempt person.<sup>4</sup> What constitutes an exempt charity, however, is unclear and neither “charity” nor “charitable purposes” is defined in the current regulations, the Proposed Rulemaking, or the Statement.

To mitigate potential uncertainty and confusion, we respectfully request that the Proposed Rulemaking be amended as follows:

“Services” include charitable ~~purposes~~ activities including, but not limited to, activities engaged in by organizations that have received recognition of tax exemption under Internal Revenue Code.

We believe this revision would make clear the DBO’s intent to interpret the scope of goods and services under the Act to include engagement by an organization in charitable activities, and would affirm that a payment processor or other person acting as an agent of such an organization to facilitate the organization’s acceptance of funds does not constitute money transmission activity subject to licensure under the Act.

### Conclusion

FIN agrees with the DBO’s interpretation that any transaction—other than a transaction involving money transmission—is outside the scope of regulation as money transmission based on common law agency principles and the nature of the Exemption. The Proposed Rulemaking would affirm the exclusion from the Act of any transaction not involving money transmission in which [1] an agent [2] receives payment on behalf of a payee [3] for an obligation owed by a payor to the payee [4] arising out of a transaction between the payor and the payee.

The DBO’s interpretation of the Exemption is consistent with the fact that, regardless of the specifics of the underlying transaction—whether for payment of an insurance premium, a utility bill, a rideshare ride, a short-or-long term property lease, a loan payment, or a television sold by a retailer through an e-commerce platform—the nature of the agent of a payee transaction is the same. Receipt of funds by the agent extinguishes the payor’s obligation to the payee, no payor

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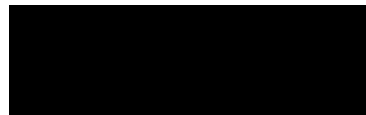
<sup>4</sup> See Cal. Fin. Code section 2030(a) (Prohibition on engaging in the business of money transmission without a license does not apply to a person that is “an agent of a person . . . exempt from licensure under” the Act).

funds are at risk, and the transaction is not money transmission. Accordingly, subject to the minor suggestions herein, we believe the Proposed Rulemaking affirms the basic principles of agency law and should help ensure that consumers and business are able to benefit from innovative payments services that facilitate commerce and opportunity for millions of Americans and others around the world.

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FIN and its participating members would be happy to meet with representatives from the DBO to discuss further the issues raised herein, or to address any questions that you may have.

Respectfully submitted,



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