



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF CONSUMER SERVICES

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UNIFORM MONEY SERVICES ACT

INTERPRETIVE STATEMENT 2015-1: PAYMENT PROCESSORS

EFFECTIVE DATE: JANUARY 1, 2016

DATE: December 7, 2015 **REVISED:** May 2, 2016

TO: Financial Services Companies Operating or Wishing to Operate in Washington State as a Payment Processor

FROM: Charles Clark, Director, Division of Consumer Services *CEC*

RE: **Payment Processing under the Uniform Money Services Act**

Purpose. This interpretive statement expresses the department's interpretation of the Washington Uniform Money Services Act, chapter 19.230 RCW (Act)¹ and provides the criteria under which certain companies acting as payment processors may be eligible for a waiver from the licensing provisions of the Act pursuant to RCW 19.230.020.

Interpretation. Payment processing is money transmission as defined in the Act. However, companies engaged in that activity typically contract with merchants to act as the merchants' agent for receiving consumer payments. An agency relationship provides the consumer with some protection and is therefore a lower-risk financial transaction for the consumer. The lower risk is present because, as a merchant's agent, when the payment processor receives the consumer's payment, the consumer's payment obligation to the merchant is extinguished, as if the consumer paid the merchant directly. If the payment processor and merchant have this agency relationship and if the payment processor meets the additional criteria set forth below, the payment processor may be eligible for a waiver from the license provisions of the Act (license waiver). The department may also issue a license waiver to companies acting as the

¹ <http://apps.leg.wa.gov/rcw/default.aspx?cite=19.230&full=true>

payment processor in a transaction where the consumer receives the goods or services instantaneously after the purchase. This includes, for example, digital goods available for immediate download.

Criteria for Eligibility for a License Waiver. When the following criteria are met, the department may issue a license waiver:

1. The company facilitates payments for goods or services (not including money transmission itself) or bill payment. The company may receive money or its equivalent value from consumer/debtor/payor and deliver it to merchant/creditor/payee or the company may constructively control the flow of money without actual receipt of the money;
2. The company operates through a settlement system that admits only BSA-regulated financial institutions;
3. The company operates pursuant to a formal agreement with the merchant/creditor/ payee; and
4. The formal agreement creates an agency relationship between the merchant/creditor/payee and the company so that payment from the consumer/debtor/payor to the company satisfies the consumer/debtor/payor's obligation to the merchant/creditor/payee.

A payment processor of virtual currency transactions cannot meet the required criteria and is not eligible for the license waiver. Contact the department for more information about virtual currency regulation.

A payment processor providing services to the marijuana industry is not eligible for the license waiver. Contact the department for more information about business models in this industry.

A payment processor holding value beyond the time period necessary to complete the purchase of a good or service is not eligible for the license waiver.

Purchase of Goods or Services Immediately Available. Some payment processors contract with merchants whose goods and services are only digital. Consumers who purchase the goods or services receive them immediately. Payment processors using this type of business model may receive a license waiver.

Additionally, some business models provide the consumer with a receipt or voucher immediately following a purchase and the consumer redeems the receipt or voucher for a good or service with little or no risk of not receiving the good or service purchased. Payment processors using this type of business model may receive a license waiver.

Background. Payment processors provide money transmission services between various types of consumer/debtor/payors and merchant/creditor/payees. Merchant payment processors contract with merchants to facilitate the receipt by merchants of payments from consumers for the merchants' goods or services. Bill payment processors contract with creditors to facilitate the creditors' receipt of payments from consumer/debtors. Payment

processors receive, either in accounts they own or constructively control, payments from consumers, settle payment transactions with or without financial institutions, and transmit payments to merchants' or creditors' accounts. Alternatively, payment processors conduct these activities constructively by transmitting instructions electronically on behalf of merchants to financial institutions for the clearing and settlement of the transactions. Payment processors may also provide marketing, billing, or other merchant service functions. Companies often engage in multiple types of payment processing as well as other types of money transmission.

The Act. The Act defines money transmission broadly: "Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. See RCW 19.230.010(18).

The payment processor exclusion in RCW 19.230.020(9) is very limited:

[This chapter does not apply to:] An operator of a payment system only to the extent that it provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearinghouse transfers, or similar funds transfers.

Most payment processor business models provide services between merchants/creditors and consumers/debtors. The exclusion at (9) does not apply because merchants/creditors and consumers/debtors are not typically persons all excluded from the Act.

Federal Law. The department believes this interpretation is consistent with federal law, including the federal law analysis of payment processors of virtual currency, in that the department recognizes a lower risk of consumer harm and provides the license waiver as a way to avoid the narrow application of the applicable exemption stated above (whereas the federal law provides a more blanket exception for the activity). The federal definition of money transmission is similar to the Washington definition in that both are broad enough to encompass a wide array of activity². However, unlike Washington's law, the federal regulations provide that the identification of payment processor activities alone may not render the company a money transmitter; that whether a person is a money transmitter is a matter of facts and circumstances³. Under state law, the activity is not so broadly excluded.

The federal regulator in this space, FinCEN, issued an Interpretive Opinion stating payment processors, "act[ing] on behalf of merchants receiving payments rather than on behalf of

² See 31 CFR 1010.100(ff)(5): <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=9e0ae7d7c67b8de716efaa6c6037d5d5&n=sp31.3.1010.a&r=SUBPART&ty=HTML>

³ 31 CFR 1010.100(ff)(5)(ii): <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=9e0ae7d7c67b8de716efaa6c6037d5d5&n=sp31.3.1010.a&r=SUBPART&ty=HTML>

customers making payments” are likely exempt⁴. FinCEN further clarified the requirements that must be met for a payment processor to not be deemed a money transmitter.⁵ The Interpretive Opinion sets out four criteria for the payment processor exemption, that: 1) the entity actually facilitates the purchase of goods or services, or payment of bills for goods or services; 2) the entity operates through a clearance and settlement system; 3) the entity operates pursuant to a formal agreement; and 4) the entity’s agreement is at a minimum with the seller or creditor that is receiving the funds. Because Washington’s law requires licensure but for those limited entities meeting the applicable exemption, the department created the license waiver for payment processors who meet certain criteria similar to FinCEN’s criteria enumerated above.

FinCEN has issued other interpretive opinions clarifying the criteria applicable to the payment processor exemption, including how the exemption does not apply to payment processors of virtual currency. See FIN-2014-R012⁶ and FIN 2014-R009⁷. FinCEN finds that payment processors of virtual currency are not operating through clearing and settlement systems that only admit BSA-regulated financial institutions as members. In these circumstances a payment to a merchant takes place outside a BSA-regulated clearing and settlement system. The payments go either to a merchant-owned virtual currency wallet or to a larger virtual currency exchange that admits both financial institution and non-financial institution members, for the account of the merchant.

License Waiver Limitations. License waivers are limited to the licensing requirements of the Act. The department retains its jurisdiction over the money transmission activities of the company even with the license waiver in place. Companies operating under a license waiver are subject to entry and examination by the department to verify the companies’ eligibility for the license waiver and to conduct examinations or investigations as permitted by the Act.

License waivers are subject to withdrawal. If the department receives complaints of possible violations or if violations are otherwise discovered, the license waiver may be withdrawn. In that event, an unlicensed company would have to obtain a license.

This interpretation is limited to payment processing as described in this interpretation. If the company conducts other types of money services regulated under the Act a license is required for that money transmission.

⁴ See FinCEN Ruling 2003-8: http://www.fincen.gov/news_room/rp/rulings/pdf/fincenruling2003-8.pdf

⁵ https://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2013-R002.pdf

⁶ http://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2014-R012.pdf

⁷ http://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2014-R009.pdf

Implementation.

(1) Unlicensed Companies. Companies not licensed who think they may have an eligible business model must request an analysis by the department of their eligibility for the license waiver before conducting activity in the state. Unless the company was previously directed to obtain a license or is committing another violation of the Act, the department is unlikely to pursue action against the company solely based on the unlicensed activity covered by this interpretive statement through April 30, 2017. Companies must seek the license waiver analysis by April 30, 2017, to avoid a potential enforcement action.

(2) Current Licensees. A company licensed with the department and providing services eligible for the license waiver must request an analysis by the department to confirm their eligibility. Once confirmed, the company may choose to not report the eligible activity during the annual assessment period. All other activity by the company that requires licensure must be reported.

Prepared by: Cindy Fazio, Chief of Regulatory Affairs, Devon Phelps and Ken Sugimoto, Financial Legal Examiners. Contact Cindy Fazio at 360-902-8800 or cfazio@dfi.wa.gov if you have questions.

State statute and rules relied upon: Chapter 19.230 RCW and chapter 208-690 WAC.