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ATTORNEYS AT LAW

REGULATORY GUIDE TO MONEY TRANSMISSION & PAYMENT LAWS IN THE U.S.©

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I. Introduction

In the United States, money transmission laws have been the focus of legal and regulatory conversation in the payments space for over two decades. If you believe your business may fall within the definition of a "money transmitter" or a "money services business," this e-book will provide you with some important background, regulatory, and statutory information to note before moving forward in this space.

The federal government and 49 states (sans Montana) have enacted regulations to control entities that engage in the business of money transmission. These federal and state regulations serve the purpose of preventing financial crimes and protecting consumers who use money transmission services. The statutory definitions of money transmitters are often so broad under federal and state laws that many organizations that administer virtual currencies, or even manage transactions with print currencies, may come under the purview of these laws.

The money transmission space is large, growing, and increasingly fintech-based. In the last ten years the payments space has seen an increase in global fintech companies coming to the US. These companies often offer innovative financial and fintech solutions in the traditional payments space, prepaid payments, cryptocurrencies, etc. According to data collected by the Nationwide Multistate Licensing System (NMLS), money transmission represents roughly 60 percent of all Money Service Business transactions. In the last few years alone, the dollar volume of money transmission transactions has increased by 57% and in the last ten years alone, 73% of new entities rely on an internet business model.[1]

As an exponentially increasing space with no slowing down in sight, it is important for companies that are both veterans in the space, and those considering entering the space, to keep abreast of the various state and federal regulations and potential changes to come to the industry.

II. Money Service Businesses (MSB)

Enacted in 1970 and administered by a bureau of the United States Treasury called the Financial Crimes Enforcement Network (FinCEN), the federal government began regulating money transmission pursuant to the Bank Secrecy Act (BSA). Under federal law 31 U.S.C. § 5330, MSBs must register with FinCEN and renew their registration every two years.

FinCEN Definition of MSB

FinCEN defines an MSB as "any person[2] doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

(1) Currency dealer or exchanger.
(2) Check casher.
(3) Issuer of traveler's checks, money orders or stored value.
(4) Seller or redeemer of traveler's checks, money orders or stored value.
(5) Money transmitter.
(6) U.S. Postal Service.

An activity threshold of greater than $1,000 per person per day in one or more transactions applies to the definitions of: currency dealer or exchanger; check casher; issuer of traveler's checks, money orders or stored value; and seller or redeemer of travelers' checks, money orders or stored value. The threshold applies separately to each activity -- if the threshold is not met for the specific activity, the person engaged in that activity is not an MSB on the basis of that activity.

No activity threshold applies to the definition of money transmitter. Thus, a person who engages as a business in the transfer of funds is an MSB as a money transmitter, regardless of the amount of money transmission activity."[3]

USA Patriot Act

In 2001, in response to the September 11 terror attacks Congress passed the USA Patriot Act. The Patriot Act gave law enforcement agencies across the United States a range of new investigative powers. These powers comprise of measures to address the financial crimes associated with terrorism, including money laundering and the financing of terrorism. The Patriot Act authorizes FinCEN to oversee these registered MSBs companies and any investigations.

The Patriot Act impacted the BSA significantly by expanding its legislative scope and adding new legal requirements to it including the Anti Money Laundering (AML) and Know Your Customer (KYC) provisions. The Patriot Act requires all financial institutions to develop and implement their own AML program and emphasizes a number of mandatory checks and screening capabilities. Every company should tailor their AML program to meet their company's particular vulnerabilities. The AML criteria states that a company must develop internal AML policies, procedures, and controls; an AML Compliance Officer must be appointed to oversee the AML program; employees must receive ongoing AML training; and the AML program must be independently audited regularly.

Similar to the AML policy, a company must implement a KYC policy to verify their customers' identities. This way, the company can ensure the customer is who they say they are and that they are being truthful about the nature of their business. These KYC measures allow companies to check that their customers are not involved in criminal activities like money laundering or terrorism. Customer identity verification should at least involve verifying personal details including the customer's name, date of birth, address; the maintaining of records to facilitate ongoing identification; and checking customers against lists of known or suspected terrorists and terrorist organizations. One of the lists to check customers against known or suspected terrorists is known as the United States' Office of Foreign Assets Control (OFAC). MSBs are required to screen their customers against these lists before establishing any kind of business relationship.

In conjunction with the strict AML/KYC policies that companies must have in place, the Patriot Act requires MSBs (including money transmitters) to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. Companies are expected to constantly perform due diligence checks against their consumers and monitor their activities.

FinCEN/BSA Main Takeaways and Suspicious Activity Reports (SARs)

FinCEN regulates money transmitters pursuant to a legislative framework in the BSA which includes elements of the Patriot Act together with other laws and implementing regulations. The primary consequences of this regulation are that money transmitters must:

- register with FinCEN;
- undergo an initial risk assessment and adopt a written AML policy based on those risks;
- appoint a qualified compliance officer with a sufficient budget and qualifications commensurate with the business' risks;
- train employees in the operationalization and implementation of the compliance program; and;
- undergo regular independent testing and review of the business' compliance program.

Money transmitters and MSBs must also make SARs reports to FinCEN no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report.[4] A SARs report is made when an MSB customer has cash transactions exceeding $10,000 (daily aggregate amount) or there is any other suspicious activity that may signal criminal activity. FinCEN may also directly seek information from its MSBs regarding their customers without requiring justification.

FinCEN Travel Rule

FinCEN and the Federal Reserve Board (Board), pursuant to their shared authority, proposed a new rule that would amend the current "Recordkeeping Rule" and "Travel Rule" under the BSA and expand them significantly. Under the current recordkeeping and travel rule regulations, financial institutions must collect, retain, and transmit certain information related to funds transfers and transmittals of funds over $3,000. The proposed rule lowers the applicable threshold from $3,000 to $250 for international transfers. The threshold for domestic transactions remains unchanged at $3,000. The proposed FinCEN/Board rule also further clarifies that those regulations apply to transactions above the applicable threshold involving convertible virtual currencies, as well as transactions involving digital assets with legal tender status, by clarifying the meaning of "money" as used in certain defined terms.[5]

According to FinCEN the effect of the proposed regulation would be broad. The new regulation would affect an estimated 5,306 banks, 5,236 credit unions, and 12,692 money transmitters – including exchangers of digital assets, who arguably would be most impacted by the new regulation. Further, FinCEN estimates that compliance would require no less than 3.3 million additional hours, annually. FinCEN and the Board strongly suggest that such compliance burdens are worth the effort, given the perceived value to law enforcement in combatting terrorism, which tends to be funded by small international transfers.

Office of Comptroller of the Currency (OCC) Fintech Charter

On July 31, 2018, the OCC announced that non-depository fintech firms engaged in core banking functions may apply for a special purpose national bank charter. For a bit of background, The OCC is an independent agency within the U.S. Treasury Department, and it is responsible for overseeing the nation's biggest banks. So, businesses with this OCC Fintech Charter would be able to conduct some financial service activities without state licenses, but would still be subject to supervision and examination by the OCC. This would be quite significant for money transmitters and MSBs which currently must have multiple state licenses in order to operate successfully in the US.

While we appeared to be moving toward national process, a few weeks after the OCCs announcement, the New York Department of Financial Services (NYDFS) filed a lawsuit against the OCC for the OCC's attempt to issue these federal charters to non-banks. And though the OCC began considering applicants for a special-purpose national bank charter built for nonbank fintech companies in 2018, the Southern District of New York (SDNY) invalidated the regulation underlying the fintech charter in 2019 in lawsuit brought by the NYDFS

The SDNY determined the OCC lacks authority to issue charters to fintech companies that do not receive deposits because, under federal banking laws, the "business of banking" requires receiving deposits – and the court explicitly said that its decision applies nationwide. The OCC has appealed the SDNY's decision to the Second Circuit, and as of October 2020 both appellate briefs have been filed by the petitioner (OCC) and respondent (NYDFS) but the case is still in front of the Second Circuit for a decision. The case is *Lacewell v. Office of the Comptroller of the Currency*, case number 19-4271, in the U.S. Court of Appeals for the Second Circuit.

III. Money Transmitters

While financial regulators such as the Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC) have been ensuring that money transmitters adhere to the Bank Secrecy Act/Anti-Money Laundering federal law (BSA/AML) outlined in the FinCEN guidance, state financial regulators have exclusive jurisdiction over money transmitter licensing, examination, enforcement, and complaint handling.

Federal law requires mere registration, but state law requires licensure. A money transmission license is not a right; it's a privilege, and whether any particular state will consider a business worthy of such a privilege depends entirely on the state in question.

Bank Secrecy Act Definition of a Money Transmitter

The definition of a money transmitter changes slightly from state to state so it would be improper to choose one of them as the "true" definition, but at their foundation, the state definitions connect back to the federal BSA definition of a money transmitter found at 31 CFR 103.11(uu)(5) which includes:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.[6]

In our section "Current State Regulations" below we will outline how every state defines what a money transmitter is, for your convenience and reference.

The Uniform Money Services Act (UMSA)

In 2001, UMSA was approved by the National Conference of Commissioners on Uniform State Laws as a worthwhile Uniform State Law to help regulate money service businesses. The point of the Act was to codify the nature of MSBs, which were becoming a more and more prominent type of financial institution, and to then ensure that these financial institutions were properly regulated. MSB bear many traits of banks but are not banks. As such, MSB escape some of the more stringent regulations aimed at banks. This, coupled with the extreme Internet growth and technology changing the very nature of financial transactions, led to the development of the UMSA.

Though the thought process behind creating UMSA was in the correct place, in practice only a handful of states actually replaced their existing licensing laws with the UMSA which effectively made the Act quite useless. To date, less than one-third of states have enacted the UMSA.

Who needs to register as a Money Transmitter?

If your services fall within the definition of money transmitter in the state(s) in which you currently operate you must not only register with FinCEN and the federal government, but you must also apply for registration or a license in the state(s) that they wish to partake in these money transmission services. It is best for any company that believes they may fall within a money transmission statute to check their state's particular statute and by the same token check the next steps for what a company must do if they wish to be a licensed money transmitter.

It is also likely that payment processing companies may need to license as money transmitters in some states as well. Please see our section below regarding “Payment Processors” which will explain in more depth when this analysis should be made for your company and what the best practices would be for you.

It is very important to note that acting as an unlicensed money transmitter is both a civil and criminal offense with up to five years in prison, so it is very important that you understand whether you must be licensed and the proper steps it takes to be licensed in each state you are doing business.

What does it take to register?

The overall goal of the application process is to ensure safety, soundness, and solvency of the companies applying for a license. Some states have their money transmission license applications done via NMLS. NMLS is a single platform where you can apply “in bulk” to multiple states. Some states are part of the Multistate Money Services Businesses Licensing Agreement (MMLA) Program which consists of submitting documents in two phases. Phase one is all of the documents that these states have in common, and phase two is more individually tailored for each state. For states that do not use the NMLS system, those applications can be found via the state regulator’s website.

The registration and/or money transmitter license application process varies depending on the state, but there are a few common threads, documents, and requirements that you can expect from most states.

Applicant is often required to provide all of the following:

- Audited financial statements of the applicant business and any subsidiaries
- Personal financial records of all directors, principal officers, owner or 10% shareholders (“Control Persons”)

- Records of occupations for all Control Persons for the last fifteen years, including any disciplinary actions taken by any employer
- List of all lawsuits or criminal complaints against any Control Person in the last fifteen years
- Comprehensive compliance policy AML/KYC
- Compliance Officer
- IT infrastructure
- Proforma and financial projections over 2-3-year period
- Source of funds
- Banking relationship
- Bonding
- Third-party criminal and civil background checks
- Fingerprints of Control Persons

In addition to the disclosure requirements, the financial obligations can be quite substantial for companies wishing to apply for a money transmitter license. Applicants are required to get surety bonds based on the statutory requirements of each of the states. For example, some states require money transmitters to carry at least a $500,000 surety bond, and an applicant must also satisfy minimum capitalization requirements that push well into the six figures. State regulators also have the discretion to seek additional bonding if they believe it is necessary for consumer protection purposes. The initial financial expenditure for what is often referred to as “full compliance” with federal and state laws can approach a seven-figure amount over the course of a year. Add to that the ongoing costs of annual reporting, recordkeeping, audits, and legal fees, which after a few years tend to exceed the initial total invested in applying for a license.

Once your application is filed, there are some states that will not approve all applications for licensure. It is the state regulators discretion whether or not they believe an applicant’s submission for licensure should be accepted. The application process itself is rigorous and even so, some applications will be rejected. Whereas FinCEN’s federal regulators see themselves as money laundering preventers, state regulators see themselves as consumer protectors.

Caselaw Regarding Money Transmitters

CFPB v. Dwolla

In 2016 the CFPB took action against Dwolla Inc., an online payment system company, for its deceptive statements relating to its data-security practices. Since December 2009, Dwolla had collected and stored consumers’ sensitive personal information and provided a platform for financial transactions. For each account, Dwolla collected very personal information including the consumer’s name, address, date of birth, telephone number, Social Security number, bank account and routing numbers, a password, and a unique 4-digit PIN.

But rather than setting “a new precedent for the payments industry” as Dwolla had asserted on their website, Dwolla’s data security practices fell far short of its claims. Specifically, the CFPB found, among other issues, that Dwolla misrepresented its data-security practices by falsely claiming its data security practices “exceed” or “surpass” industry security standards. And, falsely claiming its “information is securely encrypted and stored.”

The consent order filed by the CFPB stated that Dwolla needed to immediately stop deceiving consumers about the security of its online payment system and enact comprehensive data security measures and policies, including a program of risk assessments and audits. Dwolla also needed to train employees on the company’s data security policies and procedures, and on how to protect consumers’ sensitive personal information. And they had to fix any security weaknesses found in their web and mobile applications, and securely store and transmit consumer data. Lastly, Dwolla was required to pay a $100,000 penalty to the CFPB’s Civil Penalty Fund.

FTC v. Western Union

In 2017, the FTC filed a complaint against Western Union with charges that they were engaging in deceptive and unfair acts or practices in violation of the Telemarketing Sales Rule (TSR) in the course of providing money transfer services through its worldwide money transfer network. The complaint alleged that for many years, fraudsters around the world used Western Union’s money transfer system (even though the company has long been aware of the problem) and that some Western Union agents had been complicit in fraud. The FTC’s complaint also alleges that Western Union refused to put in place effective anti-fraud policies and procedures and failed to act promptly against these problematic agents.

According to the admissions from Western Union contained in the deferred prosecution agreement (DPA) with the Justice Department and the accompanying statement of facts, Western Union violated U.S. laws—the BSA and anti-fraud statutes—by processing hundreds of thousands of transactions for Western Union agents and others involved in an international consumer fraud scheme.

The FTC order prohibited Western Union from transmitting a money transfer that it knows or reasonably should know is fraud-induced, and requires it to, block money transfers sent to any person who is the subject of a fraud report; provide clear and conspicuous consumer fraud warnings on its paper and electronic money transfer forms; increase the availability of websites and telephone numbers that enable consumers to file fraud complaints; and refund a fraudulently induced money transfer if the company failed to comply with its anti-fraud procedures in connection with that transaction.

Also, pursuant to the DPA, Western Union agreed to forfeit $586 million dollars and also agreed to enhanced compliance obligations to prevent a repeat of the charged conduct, including creating policies and procedures for corrective action against agents that pose an unacceptable risk of money laundering or have demonstrated systemic, willful or repeated lapses in compliance; that ensure that its agents around the world will adhere to U.S. regulatory and AML standards; and that ensure that the company will report suspicious or illegal activity by its agents or related to consumer fraud reports.

This is not the only instance (or even the most recent instance) where such a large money transmitter as Western Union has found itself in trouble with the FTC. Since 2001, the FTC charged and convicted 29 owners or employees of Western Union agents for their roles in fraudulent and structured transactions. The U.S. Attorney's Office of the Middle District of Pennsylvania charged and convicted 26 Western Union agent owners and employees for fraud-related violations; the U.S. Attorney's Office of the Central District of California has secured a guilty plea from one Western Union agent for BSA violations, and the U.S. Attorney's Office for the Eastern District of Pennsylvania has secured guilty pleas for BSA violations of two other individuals associated with Western Union agents for BSA violations.

This case is merely included to show that no matter how large of a market share a company may have in the MSB industry, following the AML/KYC and data protection rules and state regulations are not optional requirements. There are plenty of more examples where the federal and state governments have brought action against alleged fraudulent behavior of money transmitters, but the takeaways from all of these CFPB and FTC cases are the same – if you do not have proper policies in place to protect consumers and dissuade quasi-terroristic behavior the justice system will not take that lightly.

IV. Prepaid Access: Open and Closed Loop Systems

There are forms of money transmission that seem more "traditional" (like the money transmission business models of Western Union and MoneyGram) and other forms that have only emerged recently as our financial institution landscape has changed (like Venmo and PayPal). The definition of a money transmitter has grown to encompass these new fintech based companies, and the most apparent reason for this growth in the sector is that the rate of "unbanked"[7] and "underbanked"[8] individuals has grown exponentially. This new form of "prepaid access" payment (both closed and open loop) usually does not force a consumer to be connected to a bank or bank account which continues to be very helpful in an ever-changing digital space.

A 2014 Pew survey found that 41 percent of prepaid card users did not have a checking account, and that 26 percent of the consumers in this group believed that they would not be approved for a checking account. The survey also found that 33 percent of monthly users of open-loop prepaid products have never had a credit card. More broadly, the survey found that 19.7 percent of underbanked and 27.1 percent of unbanked households, as well as 33 percent of previously banked households, reported having used such cards (compared with 12 percent reported use in the entire population). This further illustrates why these forms of payment methods have increased, and why companies that wish to get into this space must stay abreast of money transmission laws and statutes to ensure that they are registering and licensing their companies appropriately.

Open Loop Payments System

Open loop payment systems link a customer's payment device directly to a credit or debit card. Consumers can then use the device in the same way that they would use the linked card, subject to whatever terms and conditions the card issuer provides to the consumer.

An open loop card is a general-purpose charge card that can be used anywhere that brand of card is accepted. An open loop card is a card type more commonly associated with all kinds of standard transactions. Open loop systems require intermediaries, and these intermediaries are almost always banking or depository financial institutions. Open loop cards can be credit cards, debit cards, gift cards, or prepaid cards. The partnerships involved with the issuance of open loop cards can be structured in various ways. In the case of cards offered through financial institutions, like Visa or Mastercard, it often shows the name of the issuing bank or credit union as well. Even a credit card company that offers you points which can then be redeemed to pay off a balance or converted into cash, is considered an open loop payment form of points/loyalty rewards.

Prepaid cards loaded with funds for future use can be open loop cards too. General prepaid cards are reloadable and can be consistently used for payments and recurring billing. Gift cards, usually defined as cards that can usually only be used until the loaded funds have been depleted, are open loop if they are not specific to a certain store. Although they may have their own proprietary cards, many retailers also team up with a bank and a credit card network processor to offer open loop credit cards, like an Amazon Visa or a SaksFirst MasterCard.

Open loop prepaid cards are most like credit or debit cards because they're accepted at the same merchants who accept those credit and debit cards. They are often issued in partnership with major card brand networks like Visa or Mastercard, or in the case of Discover and American Express, issued by the card brands themselves. Open loop prepaid cards are popular as gifts because they can be used anywhere credit or debit cards are accepted. They're widely available at retail locations via gift card kiosks and checkout counters. Open loop stored value cards can be purchased, transferred and used online for eCommerce purchases. And, if a return is made for an item purchased with an open loop card, the return can be made in cash or another form of payment. Since it is an open loop card a return does not need to be made via store credit.

Closed Loop Payments System

Closed loop payments system is the term used for what is more commonly known as a gift or credit card that can be used only in a single store or group of stores. Closed loop cards rarely have purchase fees, dormancy fees, or other fees associated with the general purpose, open loop gift cards. Closed loop payments allow consumers to pre-load funds into a spending account that is linked to the payment device. Customers can reload amounts during the event through a variety of mechanisms, including automatic top-up (like a MetroCard). Unspent funds at the end of the event are not usable outside of the system and so must be refunded to the customer or retained by the system.

A closed loop system is an electronic payment card that a cardholder can only use to make purchases from a single company/entity. A closed loop card, also called a single purpose card, will often have the company's logo on it, indicating where the card can be used. Merchants often issue closed loop cards for customers to use in-store or on-line as a form of debit or credit card. But it is important to note that closed loop cards do not offer as much flexibility as other cards.

A closed loop payments system operates without intermediaries and the end parties have a direct relationship with the payments system. Closed loop prepaid access systems provide prepaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system. Some common examples of a closed loop card are the Starbucks gift card or any other specific store gift cards. A Starbucks gift card can only be used at Starbucks, and the money on that card would not be accepted at a Dunkin Donuts for example. Unlike the open loop cards, if you make a return with your closed loop card, you will often get a stored credit, not cash.

Closed loop gift cards are great ways for brands to connect with new customers. They represent cost-effective marketing that helps build brand awareness, drive more sales and better engage with new and existing customers. Stored value card programs are affordable for almost any size business. For example, Starbucks executives credit the coffee shop chain's loyalty program and closed loop system with increasing revenue by $2.65 billion.

Another example is with the airline industry. Loyalty points that an airline awards you after flying a certain number of miles or spending a certain amount are considered closed loop. To further illustrate – if you have points through Delta, you can use them in Delta's network of airlines, but you cannot use them for a United flight, nor can you exchange it for money. Similar to Starbucks rewards points, it is also a way for companies to build brand loyalty and the points and money received remain within the same ecosystem.

CFPB Prepaid Card Rule

Upon its creation in 2010, the CFPB began to share the regulatory oversight of the prepaid card space with the FTC. Therefore, the CFPB put in place "Regulation E" otherwise known as the "Prepaid Card Rule," which integrated the FTC's Electronic Fund Transfer Act. The CFPB Prepaid Card Rule focuses on open loop prepaid cards, and the consumer protections that must be followed regarding open loop cards. Some of the consumer protections they focus on include, companies having clear and concise disclosures; there being very specific requirements for fees and whether a company may charge fees or not; and the expiration dates of various prepaid cards (gift cards).

Regulation E even defines what types of businesses fall into this Prepaid Card Rule, and as you will see it focuses more on open loop rather than closed loop payment systems. "For purposes of paragraphs (b)(3)(i)(C) and (D) of this section, the term "prepaid account" does not include:

- A gift certificate;
- A store gift card;
- A loyalty, award, or promotional gift card, or
- A general-use prepaid card that is both marketed and labeled as a gift card or gift certificate;
- Since closed loop cards fall within this exception, they do not have to follow the strict regulations outline in CFPB's Regulation E"[9]

FinCen and Prepaid Access

FinCEN has also issued a guidance on these prepaid access cards. On July 26, 2011, FinCEN issued a final rule amending the BSA's regulations and establishing comprehensive regulatory requirements for prepaid access ("Final Rule"). Both providers and sellers of prepaid access must collect personal information from customers, maintain transaction records, file suspicious activity reports and comply with other requirements of MSBs. Providers of prepaid access must register with FinCEN. Forms of prepaid access that FinCEN has determined pose a lower risk of money laundering and terrorist financing are exempt from these regulations, with some limitations.

Before 2011 the FinCEN rule did not include closed-loop cards, but with the increase in usage and popularity, some closed-loop prepaid cards now apply. Closed loop prepaid access (including in-store credit for merchandise returns) are regulated, for the first time, if more than $2,000 can be associated with the prepaid access device or vehicle on a given day. Low-value ($1,000 or less) open loop prepaid access are regulated, for the first time, if it can be (1) used internationally, (2) transferred between or among other persons within the prepaid program, or (3) reloaded by a non-depository (nonbank) source. Retailers who sell non exempt forms of prepaid access are regulated if the prepaid access can be used before the customer's identity has been verified. Persons who sell $10,000 or more of prepaid access per person per day (including bulk sales of prepaid closed loop cards) are either regulated or required to have policies and procedures in place to prevent such sales. And, providers and sellers of prepaid access are required to collect and store personally identifying information from customers on an increased range of prepaid products.

State Regulations

As previously mentioned, open and closed loop products often fall within a state's money transmission statutes. Some states have more specific requirements for open loop and closed loop products, with more restrictions falling on open loop products. Closed loop products are usually not performing the act of money transmission whereas open loop products are offering stored value, but it is important to review whether your particular company, even if you are only offering closed loop-type payments, fall within the definition of a money transmitter.

V. Payment Processors

What is a payment processor?

A payment processor is the "mediator" between a company and the customer involved in a transaction, and sometimes even the "mediator" between the merchant and the financial institutions involved. A payment processor is a company that handles transactions so that a customer can buy products or services. The payment processing company communicates and relays information from the customer's credit or debit card to both the bank and the customer's bank. The payment processor also checks for security measures such as making sure that the customer's card data is correct. Fraudulent practices occur sometimes, so the payment processing company's duty is to ensure that doesn't happen. A processor can authorize transactions and works on merchants getting paid on time by facilitating the transfer of funds. Some processors provide equipment for card acceptance, security solutions, PCI compliance assistance, customer support, and other value-added services.

If your company is a payment processor or considering entering the payment processor space, more often than not there are money transmission statutes that your company may fall into. It is best to do the analysis for your particular company and what states you are doing business in to decide whether or not you should be a registered and licensed money transmitter.

FinCEN and Payment Processors

FinCEN has also issued a guidance on payment processors and whether or not they should register as an MSB. As we mentioned above, according to FinCEN an MSB is "any person doing business, whether or not on a regular basis or as an organized business concern, in one or more [listed capacities, one of which is] ...a money transmitter." MSBs must register with FinCEN and are subject to a variety of recordkeeping and reporting requirements pursuant to FinCEN regulations.

Since FinCEN does not automatically assume that all payment processors are MSBs or money transmitters, FinCEN sets out four conditions for an entity to be designated as a payment processor (and therefore exempt from the MSB registration).

1. The entity providing the service must facilitate the purchase of goods or services, or the payment of bills for goods or services (other than money transmission itself);
2. The entity must operate through clearance and settlement systems that admit only BSA [U.S. Bank Secrecy Act]-regulated financial institutions;
3. The entity must provide the service pursuant to a formal agreement; and
4. The entity's agreement must be at a minimum with the seller or creditor that provided the goods or services and receives the funds.[10]

But even so with the list above and guidance from FinCEN it is important for any payment processing company to do their own analysis on whether they must register as an MSB and receive the appropriate state money transmitter licenses.

TSR and Payment Processors

When a payment processor helps “mediate” the payments between a debt settlement company and a consumer who is enrolled in a debt management program the payment processor must also consider the TSR and the sections that now apply to them as well. There are five important factors listed in the TSR that a payment processor must follow to maintain a strong level of separation from the debt settlement company that they work with.

The TSR states: “Nothing in §310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;
(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;
(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;
(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and
(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.”[11]

OCC Proposed Payments Charter

On July 9, 2020, Acting Comptroller of the Currency Brian Brooks discussed the OCC’s plans to introduce another special purpose national bank charter that would give payment companies a nationwide servicing platform and federal preemption of state laws regarding licensing and regulation of money transmitters and payment services providers. As explained by the OCC, the payments charter would supplant the state-by-state money transmitter licensing approach currently used by many non-bank payment processors and emerging fintech companies.

The program would be in two steps. “Payments Charter 1.0,” slated to launch this fall, would be akin to a national money transmitter license that preempts state licenses, according to Acting Comptroller Brian Brooks. Roughly a year and a half later, “Payments Charter 2.0” would be launched, giving nonbanks direct access to the Federal Reserve's payment clearing system, and with that, additional obligations. Acting Comptroller Brooks added that the OCC would work to ensure alignment with the Federal Reserve on the legal bases allowing Fed access by companies holding this special-purpose charter.

Similar to the fight over the OCC’s attempt at a Fintech charter, the Conference of State Bank Supervisors (CSBS) which is the nationwide organization of financial regulators from all 50 U.S. states, the District of Columbia and US territories has already issued a blunt statement against the OCC’s payments charter.

The statement by John W. Ryan, CSBS president and CEO: "The OCC’s proposed payments charter is no different than the fintech charter already rejected in federal court and subject to a nationwide order preventing the OCC from accepting applications from a company that does not take deposits. State regulators are opposed to this unconstitutional expansion of power. While the OCC disregards the statutory limits of its authority as set by Congress and the rule of law in ignoring a federal court ruling, state regulators are focused on their responsibility to protect consumers and foster economic development across the country."

Those in the money transmission and payments space should continue to watch the trajectory of this OCC payments charter and see whether it has a similar fraught future as the OCC’s fintech charter.

VI. Pending State Regulations for Money Transmitters

"Vision 2020"

On September 15, 2020, the Conference of State Bank Supervisors (CSBS) posted a press release stating their plans to launch a program called the "MSB Networked Supervision." According to the press release, this program hopes to simplify licensing in the money transmitter and payments space by administering a single exam to companies who are operating in 40 or more states. The Office of the Comptroller of the Currency (OCC) agrees that this new program will streamline the regulatory process and provide a more efficient regulatory experience for larger money service businesses who register in multiple states.

The most important takeaways from this new announcement are that the "MSB Networked Supervision" would provide multistate licensing and supervision for nonbanks; nationwide payments firms will undergo a single comprehensive exam to satisfy all state regulatory requirements; the CSBS will introduce the same rules and standards across 48 states; money transmitters operating in 40 or more states will benefit from this streamlined state supervision starting in 2021; one state will lead a group in representing all 49 regulatory bodies in evaluating each different company; currently, this new model will apply to 78 MSBs, including Western Union and PayPal; companies that together move a reported $1 trillion annually; this will streamline compliance, making it easy for state-licensed money transmitters to work across multiple states, instead of going through the time and expense of getting regulated in each and every one.

The debate between state regulators and the OCC on who is best equipped to regulate and monitor these nonbank financial providers has been ongoing for quite a few years now. This new federal program will likely increase the debate between state and federal regulators, with the potential to bring them to a promising compromise and conclusion.

Through their "Vision 2020" program, US state regulators, as the primary regulators of non-bank and fintech firms, committed to fostering innovation are transforming the licensing process, harmonizing supervision, engaging fintech companies, assisting state banking departments, making it easier for banks to provide services to non-banks, and make supervision more efficient for third parties.

VII. Current State Regulations for Money Transmitters

Alabama

Statute:
Alabama Monetary Transmission Act, 8-7a-1 to 8-7a-27

Important Definitions:

"Money" - A medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Money Transmission" - Selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

"Monetary Value" - A medium of exchange, including virtual or fiat currencies, whether or not redeemable in money.

- The definition of "monetary value" in this state includes "virtual or fiat currencies, whether or not redeemable in money." This change was included in SB 173/HB215, effective August 1, 2017, which replaced Alabama's Sale of Checks Act.

"Payment Instrument" - A check, draft, money order, traveler's check, or other means utilized for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit voucher, letter of credit, or instrument that is redeemable by the issuer in goods and services.

Alaska

Statute:
Alaska Uniform Money Services Act; Chapter 55: Money Services; Article 1. Money Transmission Licenses (Sec. 06.55.101)

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government, including a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

“Money transmission” means selling or issuing payment instruments or stored value, or receiving money or monetary value for transmission, but does not include the provision solely of delivery, online services, telecommunications services, or network access.

“Monetary equivalent” means, for money transmissions that will be redeemed in a currency other than the currency that the customer uses to purchase the money transmission, the amount of money in the currency of the government that the recipient of the money transmission is to receive, as converted at the retail exchange rate offered by the money transmission licensee to the customer for the money transmission.

“Payment instrument” means a check, a draft, a money order, a traveler’s check, or another instrument for the transmission or payment of money or monetary value, whether or not negotiable, but does not include a credit card voucher, a letter of credit, or an instrument that is redeemable by the issuer in goods or services.

“Monetary value” means a medium of exchange, whether or not redeemable in money.

Arizona

Statute:
Arizona Revised Statutes §6-126 et seq.

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

"Money transmitter" means a person who is located or doing business in this state, including a check casher and a foreign money exchanger, and who does any of the following:

(a) Sells or issues payment instruments.
(b) (b) Engages in the business of receiving money for the transmission of or transmitting money.
(c) (c) Engages in the business of exchanging payment instruments or money into any form of money or payment instrument.
(d) (d) Engages in the business of receiving money for obligors for the purpose of paying that obligor's bills, invoices or accounts.

(e) (e) Meets the definition of a bank, financial agency or financial institution as prescribed by 31 United States Code section 5312 or 31 Code of Federal Regulations section 1010.100.

"Payment instrument" means a check, draft, money order, traveler's check or other instrument or order for the transmission or payment of money sold to one or more persons whether or not that instrument or order is negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher or a letter of credit.

"Transmitting money" means the transmission of money by any means including transmissions within this country or to or from locations abroad by payment instrument, wire, facsimile, internet or any other electronic transfer, courier or otherwise.

"Engage in the business" means conducting activities regulated under this chapter more than ten times in any calendar year for compensation or in the expectation of compensation. For purposes of this paragraph, "compensation" means any fee, commission or other benefit.

Arkansas

Statute:
Uniform Money Services Act 23-55-101 to 23-55-207

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an
intergovernmental organization or by agreement between two or more governments.

(12) (A) "Money transmission" means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission.

(B) "Money transmission" does not include providing delivery services such as courier or "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Currency exchange" means receipt of revenues from the exchange of money of one government for money of another government.

California

Statute:
California Financial Code, Division 1.2, Section 2000

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Money transmission" means any of the following:

(1) Selling or issuing payment instruments
(2) (2) Selling or issuing stored value
(3) (3) Receiving money for transmission."

"Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate."

"Stored value" means monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value."

"Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term does not include sale or issuance of payment instruments and stored value."

"Monetary value" means a medium of exchange, whether or not redeemable in money."

Colorado

Statute:
Colorado Revised Statutes title 11, Article 110

Important Definitions:

"Money transmission" means the sale or issuance of exchange or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including but not limited to payment instrument, wire, facsimile, or electronic transfer.

"Exchange" means any check, draft, money order, or other instrument for the transmission or payment of money or credit. It does not mean money or currency of any nation.

Connecticut

Statute:
General Statutes of Connecticut; The Banking Law of Connecticut - Money Transmission Act §§ 36a-595 to 36a-612

Important Definitions:

“Money transmission” means engaging in the business of issuing or selling payment instruments or stored value, receiving money or monetary value for current or future transmission or the business of transmitting money or monetary value within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

“Monetary value” means a medium of exchange, whether or not redeemable in money.

“Payment instrument” means a check, draft, money order, travelers check or electronic payment instrument that evidences either an obligation for the transmission of money or monetary value or payment of money, or the purchase or the deposit of funds for the purchase of such check, draft, money order, travelers check or electronic payment instrument.

“Virtual currency” means any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology. Virtual currency shall be construed to include digital units of exchange that

(A) have a centralized repository or administrator;
(B) are decentralized and have no centralized repository or administrator; or
(C) may be created or obtained by computing or manufacturing effort. Virtual currency shall not be construed to include digital units that are used
    i. solely within online gaming platforms with no market or application outside such gaming platforms, or
    ii. exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for fiat currency.

Delaware

Statute:
Delaware Code - Title 5 - Banking; Chapter 23. Sale of Checks and Transmission of Money; "The Sale of Checks Act" 5 Del. C. 1953, § 2301

Important Definitions:

"Check" means any check, draft, money order, personal money order or other instrument for the transmission or payment of money.

"Sell" means to sell, to issue, or to deliver a check.

"Deliver" means to deliver a check to the first person who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.

“Money” or “payment instrument” is not defined. When money is not defined, there is a reasonable assumption that virtual currencies are deemed money or otherwise used as medium of exchange. Until such time that the State or the courts of Delaware opine on this subject matter, we consider this to be a state that would likely require a money transmitter license.

Florida

Statute:
Chapter 560, Florida Statutes - Money Services Businesses

Important Definitions:

“Money transmitter” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.

“Currency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

“Monetary value” means a medium of exchange, whether or not redeemable in currency. 560.103

“Money services business” is defined as any person … who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

“Payment instrument seller” in this section as “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.” § 560.103(30).

“Payment instrument” is a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable.

“Monetary value” means a medium of exchange, whether or not redeemable in currency.

Georgia

Statute:
O.C.G.A. § 7-1-680

Important Definitions:

"Money transmission," "transmit money," or "transmission of money" means engaging in the business of receiving money or monetary value for transmission or transmitting money or monetary value within the United States or to locations abroad by any and all means, including, but not limited to, an order, wire, facsimile, or electronic transfer. The term does not include closed-loop transactions.

"Money transmitter" means a person licensed under this article to transmit money.

"Virtual currency" means a digital representation of monetary value that does not have legal tender status as recognized by the United States government. The term does not include the software or protocols governing the transfer of the digital representation of monetary value. The term also does not include units of value that are issued in an affinity or rewards program and that cannot be redeemed for money or virtual currencies. Neither does the term include an affinity or rewards program tied to a credit, debit, or prepaid card that awards points for purchases or other transactions, which points can be redeemed for dollar denominated credit to a checking, credit card, or prepaid account, or for a gift card, goods, travel, or services.

"Monetary value" means a medium of exchange whether or not redeemable in money.

Hawaii

Statute:
Hawaii Revised Statutes - Title 26. Trade Regulation and Practice; 489D. Money Transmitters Act

Important Definitions:

"Money transmission" means to engage in the business of:
(1) Selling or issuing payment instruments; or
(2) Receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer.
(3) Money transmission does not apply to courier services.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.

Idaho

Statute:
Idaho Money Transmitters Act; Chapter 29, Title 26, Idaho Code

Important Definitions:

"Money transmission" means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

"Payment instrument" means any check, draft, money order, traveler's check or other instrument or written order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

Illinois

Statute:
205 ILCS 657

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

"Money transmitter" means a person who is located in or doing business in this State and who directly or through authorized sellers does any of the following in this State:

(1) Sells or issues payment instruments
(2) Engages in the business of receiving money for transmission or transmitting money
(3) Engages in the business of exchanging, for compensation, money of the United States Government or a foreign government to or from money of another government.

"Payment instrument" means a check, draft, money order, traveler's check, stored value card, or other instrument or memorandum, written order or written receipt for the transmission or payment of money sold or issued to one or more persons whether or not that instrument or order is negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. A written order for the transmission or payment of money that results in the issuance of a check, draft, money order, traveler's check, or other instrument or memorandum is not a payment instrument.

"Transmitting money" means the transmission of money by any means, including transmissions to or from locations within the United States or to and from locations outside of the United States by payment instrument, facsimile or electronic transfer, or otherwise, and includes bill payment services.

Indiana

Statute:
IC 28-8-4

Important Definitions:

"Money transmission" means an activity that:

a. involves:
    a. The sale or issuance of payment instruments primarily for personal, family, or household purposes; or
    b. Engaging in the business of:
        i. receiving money for transmission from; or
        ii. transmitting money to; any location and by any means, including a payment instrument, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes; and
b. is performed:
    a. from an office or place of business, wherever located; or
    b. over the Internet or by any other means of transmission.

c. The term includes any activity described in subsection (a) that is performed by an authorized delegate, wherever located.

"Authorized delegate" means an entity designated by a licensee to:
(1) sell or issue payment instruments; or
(2) engage in the business of transmitting money on behalf of the licensee.

"Licensed activities" means money transmission activities:
(1) that a licensee engages in:
   a. from a place of business in Indiana; or
   b. with a consumer who is a resident of Indiana and who enters into the transaction in Indiana; and
(2) for which a licensee has obtained a license under this chapter.

Money or payment instrument is not defined. When money is not defined, there is a reasonable assumption that virtual currencies are deemed money or otherwise used as medium of exchange. Until such time that the State or the courts of Indiana opine on this subject matter, we consider this to be a state that would likely require a money transmitter license.

Iowa

Statute:
Uniform Money Services Act, 533C.102

Important Definitions:

"Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or
more governments.

"Money transmission" means any of the following:
   a. Selling payment instruments to one or more persons or issuing payment instruments which are sold to one or more persons.
   b. Conducting the business of receiving money or monetary value for transmission.

c. Conducting the business of receiving money for obligors for the purpose of paying obligors' bills, invoices, or accounts.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Money services" means money transmission or currency exchange.

"Payment instrument" means a check, draft, money order, traveler's check, stored-value, or other instrument or order for the transmission or payment of money or monetary value, sold to one or more persons, whether or not that instrument or order is negotiable. "Payment instrument" does not include an instrument that is redeemable by the issuer or an affiliate in merchandise or service, a credit card voucher, or a letter of credit.

The money transmission definition includes the concept of monetary value, which is defined as a "medium of exchange, whether or not redeemable in money".

Kansas

Statute:
Kansas Money Transmitter Act; K.S.A. 9-508 - K.S.A. 9-513e

Important Definitions:

"Money transmission" means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means, except that money transmission does not include currency exchange where no transmission of money occurs.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term
"payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

Kentucky

Statute:
Kentucky Revised Statutes, KRS 286.11

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange, including a monetary unit of account established by an intergovernmental organization or by agreement between two (2) governments.

"Money transmission" means engaging in the business of receiving money or monetary value to transmit, deliver, or instruct to be transmitted or delivered, money or monetary value to another location inside or outside the United States by any and all means, including but not limited to wire, facsimile, electronic transfer, or issuing stored value.

"Money transmitter" means a person that is engaged in money transmission.

"Monetary value" means a medium of exchange whether or not redeemable in money.

"Payment instrument" means:

1. A check, draft, money order, traveler's check, or other written or electronic instrument or order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable; or
2. The purchase or the deposit of funds for the purchase of a check, draft, money order, traveler's check, or other written or electronic instrument;

"Payment instrument" does not include any credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

The money transmission definition includes the concept of monetary value, which is defined as a "medium of exchange, whether or not redeemable in money".

Louisiana

Statute:
Louisiana Laws, Revised Statutes Title 6 Chapter 13 - The Sale of Checks and Money Transmission Act; 6:1031

Important Definitions:

“Money” or “monetary value” means currency or a claim that can be converted into currency through a financial institution, electronic payments network, or other formal or informal payment system.

“Money transmission” means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including but not limited to wire, facsimile, or electronic transfer. The term includes:

(a) Selling or issuing stored value or payment instruments including checks, money orders, and traveler’s checks.
(b) Receiving money or monetary value for transmission including by payment instrument, wire, facsimile, electronic transfer, or Automated Clearing House (ACH) debit.
(c) Providing third-party bill paying services.

“Currency” means the coin and paper money of the United States or another country that is designated as legal tender and circulates and is customarily used and accepted as a medium of exchange in the country of issuance.

“Payment instrument” means any electronic or written check, draft, money order, traveler’s check, or other electronic or written instrument or order for the transmission or payment of money or monetary value, sold or issued to one or more persons, whether or not such instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer of goods or services.

Maine

Statute:
Maine Revised Statutes, Title 32: Professions and Occupations, Chapter 80: Money Transmitters and Check Cashers, Subchapter 1: Money Transmitters; "Money Transmitters Act"
32 MRSA 6101

Important Definitions:

"Money transmission" means the business of selling or issuing payment instruments or the business of receiving money for transmission or transmitting money within the

United States or to locations abroad by any means, including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

"Payment instrument" means a check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

The state does not define money and the term payment instrument is overly broad and could encompass virtual currencies. Until such time as the state takes a stance, we will have to assume that a license is required.

Maryland

Statute:
Md. FINANCIAL INSTITUTIONS Code Ann. § 12-401

"Money transmission" means the business of selling or issuing payment instruments or stored value devices, or receiving money or monetary value, for transmission to a location within or outside the United States by any means, including electronically or through the Internet.

"Money transmission" includes:

i. A bill payer service;
ii. An accelerated mortgage payment service; and
iii. Any informal money transfer system engaged in as a business for, or network of persons who engage as a business in, facilitating the transfer of money outside the conventional financial institutions system to a location within or outside the United States.

"Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable.

"Payment instrument" does not include any credit card voucher, letter of credit, or tangible object redeemable by the issuer in goods or services.

"Stored value device" means a card or other tangible object used for the transmission or payment of money:

(1) That contains a microprocessor chip, magnetic stripe, or other means for the storage of information;
(2) That is prefunded; and
(3) The value of which is reduced after each use.

"Stored value device" does not include any tangible object the value of which is redeemable only in the issuer's goods or services.

"Monetary value" means a medium of exchange whether or not redeemable in money.

Massachusetts

Statute:
209 CMR 45.00

Important Definitions:

“Foreign Transmittal Agency” means a person who engages or is financially interested in the business of receiving deposits of money for the purpose of transmitting the same or equivalents thereof to foreign countries.

“Licensee” means any person who is licensed as a: check seller under M.G.L. c. 167F, § 4; foreign transmittal agency under M.G.L. c. 169; or a check casher under M.G.L. c. 169A.

Michigan

Statute: Money Transmission Services Act 250 of 2006

Important Definitions:

"Money" means a medium of exchange authorized or adopted by the United States or a foreign government as a part of its currency that is customarily used and accepted as a medium of exchange in the country of issuance. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more governments.

"Money transmission services" means selling or issuing payment instruments or stored value devices or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online, or telecommunications services or network access.

"Payment instrument" means any electronic or written check, draft, money order, travelers check, or other wire, electronic, or written instrument or order for the transmission or payment of money, sold or issued to 1 or more persons, whether or not the instrument is negotiable. The term includes any stored value device or facsimile. The term does not include any credit card voucher, letter of credit, or tangible object redeemable by the issuer in goods or services.

"Stored value device" means a card or other tangible object used for the transmission or payment of money that contains a microprocessor chip, magnetic stripe, or other means for the storage of information; that is prefunded; and the value of which is reduced after each use. The term does not include a tangible object the value of which is redeemable in the issuer's goods and services.

Statute definitions of money and payment instrument excludes virtual currencies.

Minnesota

Statute:
2018 Minnesota Statutes, Chapter 53B. Money Transmitters "Minnesota Money Transmitters Act" 53B.01

Important Definitions:

"Money transmission" means selling or issuing payment instruments or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile, or electronic transfer.

"Payment instrument" means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term does not include any credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

Authorized delegates of a licensee or of an exempt entity, acting within the scope of authority conferred by a written contract as described in section 53B.20, are not required to obtain a license under this chapter.

The state does not define money and the term payment instrument is overly broad and could encompass virtual currencies. Until such time as the state takes a stance, we will have to assume that a license is required.

Mississippi

Statute:
Title 75. Regulation of Trade, Commerce and Investments; Chapter 15. Mississippi Money Transmitters Act "Mississippi Money Transmitters Act" 75-15-1

Important Definitions:

"Money transmission" means to engage in the business of the sale or issuance of checks or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including but not limited to wire, facsimile or electronic transfer.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

The money transmission definition includes the concept of monetary value, which is defined as a "medium of exchange, whether or not redeemable in money".

Missouri

Statute:
Sale of Checks Law, per §§361.700-361.727

Important Definitions:

"Check", any instrument for the transmission or payment of money and shall also include any electronic means of transmitting or paying money;

"Director", the director of the division of finance;

"Licensee", any person duly licensed by the director pursuant to sections 361.700 to 361.727;

"Person", any individual, partnership, association, trust or corporation.

Money or payment instrument is not defined. When money is not defined, there is a reasonable assumption that virtual currencies are deemed money or otherwise used as medium of exchange. Until such time that the State or the courts of Missouri opine on this subject matter, we consider this to be a state that would likely require a money transmitter license.

Montana

There is currently no legislation from the Montana Division of Banking regulation Money Transmitters. Money Transmitters do not have to be licensed with the Division. However, they do need to be registered as a business with the Montana Secretary of State.

Nebraska

Statute:
Nebraska Money Transmitters Act; Chapter 8, Article 28

Important Definitions:

"Money transmission" means the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. Payment instrument does not include any credit card, any voucher, any letter of credit, or any instrument that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

The money transmission definition includes the concept of monetary value, which is defined as a "medium of exchange, whether or not redeemable in money".

Nevada

Statute:
Nevada Revised Statutes 671; Issuers of Instruments for Transmission or Payment of Money

Important Definitions:

“Check” means any check, draft, money order or other instrument used for the transmission or payment of money. “Check” does not include a traveler’s check.

“Licensee” means any person licensed under this chapter.

Money or payment instrument is not defined. When money is not defined, there is a reasonable assumption that virtual currencies are deemed money or otherwise used as medium of exchange. Until such time that the State or the courts of Nevada opine on this subject matter, we consider this to be a state that would likely require a money transmitter license.

New Hampshire

Statute:
2017 New Hampshire Revised Statutes; Title XXXVI - Pawnbrokers and Money Lenders; Chapter 399-G - Licensing of Money Transmitters NH Rev Stat § 399-G:3 (2017)

Important Definitions:

"Money transmission" means:

1. Engaging in the business of selling or issuing payment instruments or stored value; or
2. Receiving currency or monetary value for transmission to another location. 399-G:1

"Convertible virtual currency" means a digital representation of value that:

a. Can be a medium of exchange, a unit of account, and/or a store of value;
b. Has an equivalent value in real currency or acts as a substitute for real currency;
c. May be centralized or decentralized; and
d. Can be exchanged for currency or other convertible virtual currency.

"Currency" means the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance.

"Monetary value" means a medium of exchange, whether or not redeemable in currency, and includes convertible virtual currency.

"Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of currency or monetary value, sold or issued to one or more persons, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

New Jersey

Statute:
New Jersey Money Transmitters Act C.17:15C

Important Definitions:

"Money" means a medium of exchange authorized or adopted by the United States or a foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

"Money transmitter" means a person who engages in this State in the business of:

1. the sale or issuance of payment instruments for a fee, commission or other benefit;
2. the receipt of money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit; or
3. the receipt of money for obligors for the purpose of paying obligors' bills, invoices or accounts for a fee, commission or other benefit paid by the obligor.

"Foreign money transmitter" means a person who engages, in this State, only in the business of the receipt of money for transmission or transmitting money to locations outside of the United States by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit.

"Payment instrument" means any check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

New Mexico

Statute:
New Mexico Uniform Money Services Act 58-32-101

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or
a foreign government. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Money transmission" means selling or issuing payment instruments, stored value or receiving money or monetary value for transmission. "Money transmission" does not include the
provision solely of delivery, online or telecommunications services or network access.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means a check, draft, money order, traveler's check or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit or instrument that is redeemable by the issuer in goods or services.

New York

Statute:
Article 13-B of the Banking Law (Sections 640 to 652-b)
Note* New York State Department of Financial Services Title 23, Chapter 1, Part 200 has comprehensive regulations of virtual currencies found outside of New York's banking law.

Important Definitions:

“Payment instrument” means any check, draft, money order, or other instrument or order for the transmission or payment of money, whether or not such instrument or order is negotiable, and sold to one or more persons.

"Payment instrument" does not include a traveler's check, any instrument which is redeemable by the issuer in merchandise or services, a letter of credit or a permissible investment as defined in this section.

“Agent” means any person designated or appointed by the licensee pursuant to a written agency contract to engage in money transmission activities at locations other than a duly authorized office of the licensee as provided in section six hundred forty-eight of this article. Except for a licensee, any person acting as agent engaging in money transmission activities absent such a written agency contract shall be deemed to be in violation of section six hundred forty-one of these articles and may be subject to criminal prosecution pursuant to section six hundred fifty of this article. Such term shall not be deemed to include any banking corporation incorporated or licensed under this chapter or under the laws of the United States or any other state or any casher of checks licensed under this chapter.

North Carolina

Statute:
Article 16B. Money Transmitters Act. § 53-208.41

Important Definitions:

“Money transmission” To engage in the business of any of the following:

a. Sale or issuance of payment instruments or stored value primarily for personal, family, or household purposes; or
b. Receiving money or monetary value for transmission or holding funds incidental to transmission within the United States or to locations abroad by any and all means, including payment instrument, stored value, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes. This includes maintaining control of virtual currency on behalf of others.

“Payment instrument” A check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer exclusively in goods or services.

“Monetary value” A medium of exchange, whether or not redeemable in money.

“Virtual currency” A digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account, or a store of value but only to the extent defined as stored value under subdivision (19) of this section, but does not have legal tender status as recognized by the United States Government.

North Dakota

Statute:
North Dakota Century Code Chapter 13-09; Money Transmitters

Important Definitions:

"Money transmission" means to engage in the business of the sale or issuance of payment instruments, stored value, or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, "money transmission" also includes bill payment services not limited to the right to receive payment of any claim for another, but does not include payment processing activities conducted for a merchant under an agency relationship.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.

Ohio

Statute:
Ohio Money Transmitter Act, Ohio Revised Code Section 1315.03

Important Definitions:

"Transmit money" means to receive, directly or indirectly and by any means, money or its equivalent from a person and to deliver, pay, or make accessible, by any means, method, manner, or device, whether or not a payment instrument is used, the money received or its equivalent to the same or another person, at the same or another time, and at the same or another place, but does not include transactions in which the recipient of the money or its equivalent is the principal or authorized representative of the principal in a transaction for which the money or its equivalent is received, other than the transmission of money or its equivalent. "Transmit money" also includes the sale of checks and other payment instruments.

Money or payment instrument is not defined. When money is not defined, there is a reasonable assumption that virtual currencies are deemed money or otherwise used as medium of exchange. Until such time that the State or the courts of Ohio opine on this subject matter, we consider this to be a state that would likely require a money transmitter license.

Oklahoma

Statute:
Oklahoma Statutes, Title 85 - State Banking Department, Chapter 15 - Money Service Business 85:15-1-1

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Money transmission" means receiving money for transmission of the money or the value of the money, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System or both, or any other electronic network by which money or its value may be transmitted. Money transmission does not include the business of selling or issuing checks that is required to be licensed under the Oklahoma Sale of Checks Act, Title 6 O.S. § 2101 et seq.

The state's statutory definition of money is stated as "a medium of exchange that is authorized or adopted by the United States or a foreign government" which would exclude virtual currencies from the scope of money transmission.

Oregon

Statute:
2017 Oregon Revised Statutes; Vol. 16 Financial Institutions, Insurance; Chapter 717 Money Transmission "Oregon Money Transmitters Act" 2017 ORS 717.200

Important Definitions:

“Money” means a medium of exchange that:

a. The United States or a foreign government authorizes or adopts; or
b. Represents value that substitutes for currency but that does not benefit from government regulation requiring acceptance of the medium of exchange as legal tender.

“Money transmission” means selling or issuing payment instruments or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile or electronic transfer.

“Payment instrument” means any electronic or written check, draft, money order, traveler’s check or other electronic or written instrument or order for transmitting or paying money, sold or issued to one or more persons, whether or not the instrument is negotiable.

“Payment instrument” does not include any credit card voucher, any letter of credit or any instrument that is redeemable by the issuer in goods or services.

Pennsylvania

Statute:
Money Transmission Business Licensing Law Act of Nov. 3, 2016, P.L. 1002, No. 129

Important Definitions:

"Money" means currency or legal tender or any other product that is generally recognized as a medium of exchange.

"Transmittal instrument" means any check, draft, money order, personal money order, debit card, stored value card, electronic transfer or other method for the payment of money or transmittal of credit, other than a merchandise gift certificate or instrument with a similar purpose sold in the regular course of business by a vendor of personal property or services in a closed loop system or hybrid closed loop system.

"Closed loop system" means a system in which an entity issues a transmittal instrument which can be used at various physical or virtual locations of that entity.

"Hybrid closed loop system" means a system in which an entity issues a transmittal instrument which may be used at a limited number of establishments or entities which have a common bond to the issuing entity and in which the establishments or entities have a written agreement to honor the transmittal instrument.

"Stored value" means money or monetary value in a digital electronic format, stored or capable of storage on an electronic medium in such a manner as to be retrievable and transferable electronically.

Rhode Island

Statute:
Chapter 19-14.3 Sale of Checks and Electronic Money Transfers

Important Definitions:

"Electronic money transfer" means receiving money for transmission within the United States or to locations abroad by any means including, but not limited to, wire, facsimile, or other electronic transfer system.

Money or payment instrument is not defined. When money is not defined, there is a reasonable assumption that virtual currencies are deemed money or otherwise used as medium of exchange. Until such time that the State or the courts of Rhode Island opine on this subject matter, we consider this to be a state that would likely require a money transmitter license.

South Carolina

Statute:
South Carolina Code of Laws; Title 35 - Securities; Chapter 11 - "South Carolina Anti-Money Laundering Act" Section 35-11-100

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Money transmission" means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

“Monetary value” a medium of exchange, whether or not redeemable in money

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South Dakota

Statute:
South Dakota Codified Laws; Chapter 51A-17 - Money Transmission

Important Definitions:

"Money transmission," engagement in the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any means, including wire, facsimile, or electronic transfer.

"Monetary value," any medium of exchange, whether or not redeemable in money.

"Payment instrument," any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term, payment instrument, does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer in goods or services.

The money transmission definition includes the concept of monetary value, which is defined as a "medium of exchange, whether or not redeemable in money."

Tennessee

Statute:
Tennessee Money Transmitter Act of 1994 45-7-201

Important Definitions:

"Money transmission"" means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

"Payment instrument" means any check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not the instrument is negotiable.

"Payment instrument" does not include any credit card voucher, any letter of credit or any instrument that is redeemable by the issuer in goods or services.

Texas

Statute:
Texas Finance Code; Money Services Act Sec. 151. 301

Important Definitions:

"Money" or "monetary value" means currency or a claim that can be converted into currency through a financial institution, electronic payments network, or other formal or informal payment system.

"Money transmission" means the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location. The term includes:

a. selling or issuing stored value or payment instruments, including checks, money orders, and traveler's checks;

b. receiving money or monetary value for transmission, including by payment instrument, wire, facsimile, electronic transfer, or ACH debit;
c. providing third-party bill paying services; or
d. receiving currency or an instrument payable in currency to physically transport the currency or its equivalent from one location to another by motor vehicle or other means of transportation or through the use of the mail or a shipping, courier, or other delivery service; and

"Money transmission" does not include the provision solely of online or telecommunication services or connection services to the Internet.

"Payment instrument" means a written or electronic equivalent of a check, draft, money order, traveler's check, or other written or electronic instrument, service, or device for the transmission or payment of money or monetary value, sold or issued to one or more persons, regardless of whether negotiable. The term does not include an instrument, service, or device that:

1. transfers money directly from a purchaser to a creditor of the purchaser or to an agent of the creditor;
2. is redeemed by the issuer in goods or services or a cash or credit refund under circumstances not designed to evade the obligations and responsibilities imposed by this chapter; or
3. is a credit card voucher or letter of credit.

"Stored value" means monetary value evidenced by an electronic record that is pre-funded and for which value is reduced on each use. The term includes prepaid access as defined by 31 C.F.R. Section 1010.100(ww). The term does not include an electronic record that is:

1. loaded with points, miles, or other non-monetary value;
2. not sold to the public but distributed as a reward or charitable donation; or
3. redeemable only for goods or services from a specified merchant or set of affiliated merchants, such as:
    a. a specified retailer or retail chain;
    b. a set of affiliated companies under common ownership;
    c. a college campus; or
    d. a mass transportation system.

Utah

Statute:
Utah Code, Chapter 25 - "Money Transmitter Act" 7-25-101

Important Definitions:

"Money transmission" means the sale or issuance of a payment instrument or engaging in the business of receiving money for transmission or transmitting money within the United States
or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.

"Payment instrument" means a check, draft, money order, travelers check, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable.

"Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

The state does not define money and the term payment instrument is overly broad and could encompass virtual currencies. Until such time as the state takes a stance, we will have to assume that a license is required.

Vermont

Statute:
Vermont Statutes, Title 8: Banking and Insurance; Chapter 79: Money Services

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Money transmission" means to engage in the business of selling or issuing payment instruments, selling or issuing stored value, or receiving money or monetary value for transmission to a location within or outside the United States.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

"Virtual currency" means stored value that:
1. can be a medium of exchange, a unit of account, or a store of value;
2. has an equivalent value in money or acts as a substitute for money;
3. may be centralized or decentralized; and
4. can be exchanged for money or other convertible virtual currency.

Virginia

Statute:
Code of Virginia, Chapter 19 of Title 6.2

Important Definitions:

"Money transmitter" means a person engaged in the business of money transmission.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Money transmission" means receiving money or monetary value for transmission by wire, facsimile, electronic means or other means or selling or issuing stored value.

"Stored value" means monetary value that is evidenced by an electronic record.

Washington

Statute:
Uniform Money Services Act Chapter 19.230 RCW

Important Definitions:

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.
"Money transmission" means receiving money or its equivalent value (equivalent value includes virtual currency) to transmit, deliver, or instruct to be delivered to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" includes selling, issuing, or acting as an intermediary for open loop prepaid access and payment instruments, but not

closed loop prepaid access. "Money transmission" does not include: The provision solely of connection services to the internet, telecommunications services, or network access; units of value that are issued in affinity or rewards programs that cannot be redeemed for either money or virtual currencies; and units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms.

"Money transmitter" means a person that is engaged in money transmission.

"Currency exchange" means exchanging the money of one government for money of another government or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

a. Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;
b. A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;
c. A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and
d. A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

"Virtual currency" means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. "Virtual currency" does not include the software or protocols governing the transfer of the digital representation of value or other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

Washington D.C.

Statute:
Code of the District of Columbia 26-1001

Important Definitions:

"Money transmission" means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or transmitting money within the United States, or to locations abroad, by any and all means, including but not limited to payment instrument, wire, facsimile, or electronic transfer.

“Payment instrument” means any written or electronic check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, which is sold or issued to one or more persons, whether or not such instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer in goods or services.

The state does not define money and the term payment instrument is overly broad and could encompass virtual currencies. Until such time as the state takes a stance, we will have to assume that a license is required.

West Virginia

Statute:
WV Code, Chapter 32A, Articles 2 and 3

Important Definitions:

"Currency transmission" or "money transmission" means engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency, payment of money or other value that substitutes for money by wire, facsimile or other electronic means, or through the use of a financial institution, financial intermediary, the Federal Reserve system or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products' cards which are intended for general acceptance and used in commercial or consumer transactions.

"Currency" means a medium of exchange authorized or adopted by a domestic or foreign government.

"Check" or "payment instrument" means any check, traveler's check, draft, money order or other instrument for the transmission or payment of money whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

The state statute does not define money, but its definition of money transmitter includes "engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting..."

Wisconsin

Statute:
Wisconsin Statutes; Seller of Checks Law 217.01

Important Definitions:

“Seller of checks" means a person who, as a service or for a fee or other consideration, engages in the business of selling and issuing checks or the receiving of money for transmission or the transmitting of money, or the transmitting of money to foreign countries.

“Check" means any check, draft, money order, traveler's check, personal money order or other instrument for the transmission or payment of money.

Wyoming

Statute:
Title 40 - Trade and Commerce, Chapter 22 - "Wyoming Money Transmitters Act"

Important Definitions:

"Money transmission" means to engage in business to sell or issue payment instruments, stored value or receive money or
monetary value for transmission to a location within or outside the United States by any and all means, including but not limited to wire, facsimile or electronic transfer.

"Monetary value" means a medium of exchange whether or not redeemable in money.

"Payment instrument" means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not the instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

"Virtual currency" means any type of digital representation of value that:

1. Is used as a medium of exchange, unit of account or store of value; and

Is not recognized as legal tender by the United States government.

VIII. About Shipkevich PLLC

Felix Shipkevich, Founder and Principal of Shipkevich PLLC

Felix Shipkevich is the founder and principal of Shipkevich PLLC, a New York City-based law firm focusing on transactional and litigation services in global financial services, debt relief and settlement, FinTech, and emerging digital currency sectors.

Mr. Shipkevich is also a Special Professor of Law at his alma mater, the Maurice A. Deane School of Law at Hofstra University. He currently teaches popular courses on the business and policies of cryptocurrencies as well as corporate finance law. Additionally, Mr. Shipkevich gives talks on topics such as financial technology, digital currency, and regulation issues in the debt settlement industry. He has participated at gatherings across the United States, Europe and Asia, including Federal Bar Association's Blockchain: From Innovation to Regulation; Blockchain Law Summit's Blockchain and Cryptocurrency Regulations in the U.S. and Abroad; as well as NFT.NYC Token Regulations Panel; Reg A Conference; Hofstra University's Payments Processing Roundtable; The Blockchain Event; IMTC World; Revcon Debt Relief, Financial Services Convention and many others.

An entrepreneur as well, Mr. Shipkevich is the founder of Hotspot Law, a revolutionary new platform and mobile phone app that connects consumers with free consultations with local attorneys. He is also the founder of Payment Week, a payments industry news magazine covering mobile payments, which was sold to a national financial services company in 2015.

Mr. Shipkevich earned his undergraduate degree in political science and economics at State University of New York at Binghamton, and his J.D. from Maurice A. Deane School of Law at Hofstra University.

Following law school, Mr. Shipkevich held roles at both American International Group (AIG) and Morrison Mahoney LLP. He also worked at Capital Market Services (CMS Forex), a global FX brokerage, overseeing legal and compliance staff in New York, London, Shanghai and Tokyo.

Mr. Shipkevich has been a Director for New York County Lawyers' Association between 2012 and 2015. Mr. Shipkevich was a member of the Futures Industry Association, Law & Compliance Division from 2013 to 2016; and an Arbitrator with National Futures Association (NFA)'s Board of Arbitrators since 2006. He was a Chair for New York County Lawyers' Association Futures and Derivatives Committee and a Member of New

York City Bar Association Committee on Futures and Derivatives Regulation from 2008 to 2011.

Mr. Shipkevich and his firm have been featured in Wall Street Journal, Associated Press, U.S. News & World Report, Bloomberg Law, MarketWatch, Attorney At Law, Above The Law, The Startup Magazine, American Bar Association, Legaltech News, Law.com, and many other global news outlets.

Shipkevich PLLC's Work in Money Transmission and Payments Space

Shipkevich PLLC has quickly established itself as a leader in the payments industry by representing companies that engage in electronic commerce both through the Internet and mobile platforms. Not only are payments technologies emergent, but each new payment technology has the ability to reinvent the market and determine new outlets for growth.

We Keep Up With Changes In This Ever-Evolving Sector

We understand the inner workings of the payments industry and keep up with the fast pace changes of this ever evolving and growing sector. We keep our clients up to speed with the real-world operations of the payments industry, including the latest payments practices, technologies, and legal developments.

OUR CLIENTS INCLUDE:

- Money Transmitters
- Merchants
- Payment Processors
- Prepaid Program Managers
- Payment Networks
- Financial Institutions
- Corporate Payors and Payees
- Financial Technology Innovators
- Payments Associations and Clearing Houses
- Alternative Payment and Funding Innovators

Money service businesses is a comprehensive term which includes money transmitters, check sellers and stored-value companies. With the evolution of FinTech companies comes the evolution of money services businesses.

From telecommunications carriers that offer pay-to-mobile to e-vouchers based on proprietary web payment solutions. Like a traditional depository financial institution, money service businesses must handle corporate organization, federal and state registration and licensing, and consumer compliance issues.

Money service businesses also have to navigate the uniquely complex anti-money laundering and Bank Secrecy Act responsibilities; these are requirements that we have many years combined experience in handling in an efficient and effective manner.

At Shipkevich, our experienced lawyers help money service businesses traverse this legal terrain. We represent money service businesses that are start-ups creating first-view payment solutions, as well as the growing group of licensees operating under traditional money transmitter regimens.

We work with FinTech companies new to the industry, issuers who operate from banking charters with banks that book MSBs as clients, and with program administrators that manage stored-value programs.

We focus on licensing, compliance and supervisory, and administrative disputes to mitigate the hurdles your business must go through before it can properly operate.

IX. Endnotes

1. https://nationwidelicensingsystem.org/about/Pages/Reports.aspx

2. FinCEN defines a "person" is an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

3. https://www.fincen.gov/money-services-business-definition

4. https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html

5. https://www.fincen.gov/news/news-releases/agencies-invite-comment-proposed-rule-under-bank-secrecy-act#:~:text=Under%20the%20current%20recordkeeping%20and,to%20%24250%20for%20international%20transactions.

6. https://www.law.cornell.edu/cfr/text/31/1010.100

7. Unbanked: individuals who do not have their own bank accounts and rely on alternative financial services

8. Underbanked: refers to individuals or families who have a bank account but often rely on alternative financial services such as money orders, check-cashing services, and payday loans rather than on traditional loans and credit cards to manage their finances and fund purchases.

9. https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1005/1/

10. https://www.fincen.gov/resources/statutes-regulations/administrative-rulings/application-money-services-business

11. https://ecfr.federalregister.gov/current/title-16/chapter-I/subchapter-C/part-310?toc=1