Payment Processing – A Deep Dive

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Any maps presented are based on surveys that have been conducted in previous years and such maps may not have been updated for purposes of this presentation.
Federal and State Coverage

State Regulated Money Transmission

Federal MSB Activity
## Potential State and Federal "Payment Processor" Exemptions

<table>
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<th>State*</th>
<th>Federal</th>
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| - Agent of Payee  
- Operator of Payment System  
- Integral or Incidental  
- Other (e.g., contracted service provider of a bank to provide network access, processing, clearance or settlement services that is subject to examination by bank's regulators) | - Acts as a payment processor to facilitate the purchase of goods or services or bill payment through clearance and settlement system by agreement with creditor or seller  
- Accepts and transmits funds integral to sale of goods or provision of services other than money transmission  
- Operates a clearance and settlement system or otherwise acts as an intermediary between BSA regulated institutions  
- Other (e.g., provider of prepaid access; MT communication and network access services; armored car services) |

* Source, availability, and conditions to obtaining exemptions vary by state.
Express "Agent of Payee" Exemption

- **In non-shaded states, there is a potential common law exemption / exemption under statutory interpretation.**

- **Express statutory agent of payee exemption**
- **Public interpretive guidance exemption for agent of payee**

*Conditions may apply by statute or guidance*
Statutory Agent of Payee Exemption – Examples

• California: Cal. Fin. Code § 2010
  – (l) A transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee.
    • For purposes of this subdivision, "agent" has the same meaning as that term is defined in Section 2295 of the Civil Code.
    • For purposes of this subdivision, "payee" means the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services.
    • For purposes of this subdivision, "payor" means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.
Statutory Agent of Payee Exemption – Examples

  - (a)(8) A person appointed by a payee to collect and process payments as the bona fide agent of the payee, provided the person can demonstrate to the Commissioner that:
    - There exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf;
    - The payee holds the agent out to the public as accepting payments on the payee's behalf; and
    - Payment is treated as received by the payee upon receipt by the agent.
  - (b) Any person who seeks to engage in the business of money transmission in this State subject to exemption under (a)(7) or (a)(8) of this section shall submit a written request for verification of exemption to the Commissioner. Such request shall be in a form acceptable to the Commissioner and shall include a copy of any written agreement and related documentation that is the basis for the specified exemption.
Interpretive Guidance Exemptions – Examples

• **Texas Interpretive Opinion No. 14-01 (May 9, 2014)**
  
  "In your example, under what the industry terms the "payee agent model," the Provider would not be conducting money transmission. To be clear, this is not a statutory exception but rather a function of common law, the effect of which is that the agent is not conducting money transmission."

• **Kansas Guidance Document MT 2016-01 (Nov. 20, 2016)**
  
  "While under the KMTA an agent-of-the-payee engages in money transmission, Kansas agency common law recognizes the customer’s transaction is completed once the agent-of-the-payee receives payment in certain situations. Because the customer’s transaction is completed upon the agent-of-the payee receiving payment, there is no money transmission."
Common Law "Exemptions" – Examples

• For example, see state cases:
  – *Cloran v. Houlehan*, 88 Me. 221, 33 A. 986, 987 (1895) ("[I]n order to show that a payment to an agent, or one who is claimed to be the agent, was a payment to the principal, it was necessary to show that the agent had authority to make such settlement.")
  – *Loveday v. Barnes*, 909 S.W.2d 448, 450 (Tenn. Ct. App. 1995) ("Payment made to an agent having authority to receive or collect payment is equivalent to payment to the principal himself; such payment is complete when the money is delivered into the agent's hands.") (quoting from 3 Am.Jur.2d Agency § 278)
Federal MT Payment Processing Exemption

• “Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller”

• Four elements
  – (1) The entity facilitates the purchase of or payment for goods or services (other than money transmission itself);
  – (2) The entity operates through a clearance and settlement system that admits only BSA-regulated financial institutions;
  – (3) The entity operates pursuant to a formal agreement; and
  – (4) The entity’s agreement is at a minimum with the seller or creditor that provided the goods or services and receives the funds.

Citation: 31 C.F.R. § 1010.100(ff)(5)(ii)(B)
Checklist for Payment Processor Analysis

- **Funds Flow Chart**
  - Include bank account information (e.g., name and location of bank, owner of bank account, and title of account)
  - Identify movement of funds, movement of transactional data, and contractual relationships
  - Identify whether funds are being transferred via ACH, Fedwire, e-check, or other method (e.g., internal accounting, virtual card)

- **Contracts for Relationships Identified in Funds Flow Chart**

- **Consumer Facing Materials**
  - e.g., terms and conditions, website disclaimers

- **Sample Receipt**

- **Card Network Participation / Registration (if any)**
  - e.g., MasterCard PSP, Visa SP Status
Bill Payment Processor Funds Flow Example

Consumer
Owner: Consumer
Bank: Varies
Title: Varies

Bill Payment Processor
Owner: Processor ABC, LLC
Bank: XYZ Bank, NY
Title: "Processor ABC, LLC F/B/O Billers"

Biller
Owner: Biller
Bank: Varies
Title: Varies
Merchant Processor Funds Flow Example

Consumer's Credit Card ➔ Merchant Processor ➔ U.S. Merchant

Merchant Processor
Owner: Processor ABC, LLC
Bank: XYZ Bank, NY
Title: "Processor ABC, LLC F/B/O Merchants"

U.S. Merchant
Owner: Merchant
Bank: U.S. Bank
Title: Varies

* Actual funds flow from consumer's credit card issuing bank through the applicable credit card network and through merchant acquiring bank and / or its processor.
1. The consumer's credit/debit card issuing bank remits settlement funds for approved cardholder transactions to the card networks.

2. Depending upon the card network rules and arrangements with sponsor banks, the card networks remit settlement funds to the merchant acquiring bank, or the card networks remit settlement funds to the merchant acquirer as service provider processor for the sponsor bank.

3. Depending upon the card network rules and arrangements with sponsor banks, settlement funds less applicable fees/charges are remitted directly from the sponsor bank-owned account to the merchant's bank account, or the merchant acquirer remits settlement funds to the merchant's bank account less applicable fees/charges.
Downstream Processor Funds Flow Example

Licensed Money Transmitter or Agent → Licensed Money Transmitter's Bank Account → Downstream Processor → Recipient
(c) Downstream Payment Processors. A payment processor that acts as an intermediary between a consumer-facing entity that has incurred an outstanding money transmission obligation to a consumer, and the consumer's designated recipient, does not need a license under Finance Code Chapter 151, provided that the consumer-facing entity:

(1) is properly licensed, excluded under Finance Code § 151.003, or has been granted an exemption under Finance Code §151.302(c);

(2) provides a receipt to the consumer identifying the consumer-facing entity as the provider of money services in the transaction; and

(3) bears sole responsibility to satisfy the outstanding obligation to the consumer, including the obligation to make the consumer whole in connection with any failure to transmit the funds.
Corporate Disbursement Funds Flow Example

Manufacturer / Retailer → Rebate / Rewards Program Manager → Consumers
Federal MT Integral Exemption

• “Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds”

• Three elements:
  – (1) The MT component must be part of the provision of goods or services distinct from MT itself;
  – (2) The exemption can only be claimed by the person that is engaged in the provision of goods or services distinct from MT; and
  – (3) The MT component must be integral (that is, necessary) for the provision of the goods or services.

Citation: 31 C.F.R. § 1010.100(ff)(5)(ii)(F)