



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 /877-276-5554

www.dob.texas.gov

INTERPRETIVE STATEMENT 2020-01

Date: November 18, 2020

To: All Money Services Business License Holders

Subject: Payment Processor Rule and Prior Legal Opinions 03-01 and 14-01

The Texas Department of Banking (Department) administers the Money Services Act, Chapter 151, of the Texas Finance Code and related regulations at Chapter 33 of Title 7 of the Texas Administrative Code. The Money Services Act regulates, among other things, the business of money transmission.¹ The Money Services Act permits the Finance Commission of Texas (Commission), which oversees the Department, to issue rules excluding certain classes of persons or transactions from regulation under the Money Services Act.²

In 2015 the Commission enacted the Payment Processor Rule, which excludes “payment processors” from regulation under the Money Services Act under various circumstances.³ As explained by the Commission in adopting the Payment Processor Rule, the Rule “expands and clarifies two exclusions that already exist under Texas law.”⁴ The first exclusion in question was rooted in the statutory exclusion from money transmission licensing for

*a person that acts as an intermediary on behalf of and at the direction of a license holder in the process by which the license holder, after receiving money or monetary value from a purchaser, either directly or through an authorized delegate, transmits the money or monetary value to the purchaser’s designated recipient, provided that the license holder is liable for satisfying the obligation owed to the purchaser.*⁵

The second exclusion clarified by the Payment Processor Rule applies to “a payment processor who is appointed in a written contract as a merchant’s agent to receive payments.”⁶ Prior to the Payment Processor Rule, this exclusion had been previously expressed by the Department in Legal Opinion 14-01.⁷ The Payment Processor Rule “expand[ed] the application of Legal Opinion 14-01 to some situations where there is no explicit agency appointment in a contract” as long as the requirements of the Payment Processor Rule are satisfied.⁸

¹ Tex. Fin. Code § 151.302(a).

² *Id.* § 151.003(10).

³ 7 Tex. Admin. Code § 33.4.

⁴ 40 Tex. Reg. 7622 (2015).

⁵ *See* Tex. Fin. Code § 151.003(7).

⁶ 40 Tex. Reg. at 7623.

⁷ *Id.*

⁸ *Id.*

Legal Opinion 14-01 comported with Legal Opinion 03-01, which similarly found that a third-party payment processor providing origination services for electronic fund transfer transactions as agent for its merchant customers did not need a license under the Texas statutes preceding the Money Services Act, which have now been repealed.⁹

Legal Opinion 14-01 has been superseded by the Payment Processor Rule, as stated by the Commission when adopting this Rule. Because the Payment Processor Rule “expands and clarifies” Legal Opinion 14-01, that Opinion is now both inapplicable and unnecessary, and has been withdrawn.

Further, since Legal Opinion 03-01 interpreted statutes that have now been repealed, and applied those former statutes to payment processors acting as agents for merchants in a manner similar to Legal Opinion 14-01 and then the Payment Processor Rule, Legal Opinion 03-01 is also now inapplicable and unnecessary, and has been withdrawn.

As stated in the Money Services Act, third-party bill-payment services presumably do constitute money transmission.¹⁰ As indicated in the Department’s Legal Opinions 99-29, 06-01, and 13-01, the following examples do constitute money transmission under the Money Services Act:

- a company that “takes control of or holds [a third-party merchant’s] customer’s funds for further transmission or payment”;¹¹ or
- a company that “receives funds from [a] purchaser [of real or personal property] and holds them in escrow[.]”¹²

Such money transmission regulation helps ensure, among other things, that “the agent [or other money transmitter] will have the funds necessary to complete its agency [or other money transmission] obligation to make payment.”¹³

This interpretive statement does not address the business practices of any particular person, company, or case, retroactively invalidate prior written determinations issued by the Department, or modify or affect the exclusions from money transmission licensing under the Payment Processor Rule.

###

⁹ See Tex. C.S.H.B. 2218, 79th Leg., R.S. (May 17, 2005) (repealing former chapters 152 and 153 of the Texas Finance Code and enacting the Money Services Act).

¹⁰ Tex. Fin. Code § 151.301(b)(4)(iii).

¹¹ Tex. Dept. of Banking, Legal Opinion 06-01 (May 15, 2006).

¹² Tex. Dept. of Banking, Legal Opinion 13-01 (May 8, 2013).

¹³ Tex. Dept. of Banking, Legal Opinion 99-29 (July 18, 2000).