



September 29, 2015

To: ALL PERSONS THAT ARE ENGAGED IN MONEY TRANSMISSION BY SELLING SERVICES TO PERSONS INCLUDING NON-PROFITS, RELIGIOUS ORGANIZATIONS, CHARITIES AND POLITICAL CAMPAIGNS (“THIRD-PARTY RECIPIENT”) FOR THE MOVEMENT OF MONEY FROM A DONOR’S BANK ACCOUNT OR CREDIT CARD TO A THIRD-PARTY RECIPIENT.

With the rise of technological innovations in the financial services sector, an increasing number of Companies are offering services to third-party recipients, usually a charity, religious organization, political campaign, or other non-profit, and the Donors to those entities. The Company, for a fee, collects information from a Donor including either the Donor’s banking account number or credit card account number, the dollar amount to be transferred, and whether it is a recurring or one time transfer. The Company also collects bank account information from the third-party recipient, including the third-party recipient’s financial institution, the associated banking account number and the amount to be deposited. The Company uses the Donor and third-party recipient information to create a transmittal instrument. The transmittal instrument contains the instructions for debiting a Donor’s banking account or charging a debt to a Donor’s credit card in order to deposit those funds into the account of the third-party recipient. The transmittal instrument is sometimes executed by the Company through its own banking institution. Other times the transmittal instrument is passed along to a payment processor, who through a contract with a banking institution, processes the transaction through the Automated Clearing House (ACH) system.

The process of creating an instrument for the transmittal of money is money transmission as defined in the Act of 1965, P.L 490, No. 249, for which a license is required by the Commonwealth of Pennsylvania. The Act states:

No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Department of Banking [and Securities] nor shall any person engage in such business as an agent except as an agent of a person licensed or exempted under this act. 7 P.S. § 6102.

Some Companies are offering the services described without being licensed as money transmitters, and payment processors, with which some of the Companies have engaged, are also not licensed

money transmitters. The Companies, and the payment processors where applicable, must also carry the statutorily required \$1,000,000 bond for this activity. In addition, in order to engage in these activities, the Companies must meet the statutory minimum net worth requirement of \$500,000. The failure on the part of Companies to obtain a license, meet the net worth requirement, or secure a bond as required by 7 P.S. § 6102, means that contributions to non-profits, religious organizations, charities and political campaigns made by Donors using these Companies are at substantial risk.

The Department is aware that payment processors, sometimes known as Independent Sales Organizations (“ISOs”) in relation to the banking institutions with whom they contract, were not determined to be money transmitters for purposes of federal law. However, the purpose of state licensing as a money transmitter is to provide protection for the Donor’s funds through the net worth and bond requirements of the statute. This is in contrast to a money services business or money transmission under federal law. The purpose of the designation of a money transmission under federal law is to further compliance with the Bank Secrecy Act, and to prevent the use of the banking system in furtherance of an illegal or criminal activity. Therefore, the fact that the federal government may have determined that the activity engaged in by the Companies is not money transmission for purposes of federal law is irrelevant to a determination that one is acting as a money transmitter for purposes of state law and the need to comply with state law.

The Department, through this letter, encourages all Companies, payment processors/ISOs, and their respective banking institutions, to ensure that the process of collecting and receiving donations in which they are engaged is in compliance with the money transmission laws of the Commonwealth. For their protection, the Department further encourages all individual Donors and third-party recipients to deal only with properly licensed money transmitters or legitimate agents of a licensed money transmitter. A Donor or third-party recipient can determine the license status of a money transmitter by entering the company name in the search function located at <http://www.nmlsconsumeraccess.org/>. A Donor and third-party recipient can protect themselves by requiring that a Company provide proof that it is bonded to cover any loss of dollars that could occur through error or by intent, or that it is a legitimate agent of a properly licensed and bonded money transmitter.

Questions related to this matter can be addressed to the Non-Depository Compliance Office at (717) 772-3889 or by submitting an inquiry via the Department’s website at www.dobs.state.pa.us.

Sincerely,

Redacted

/s/

Robin L. Wiessmann
Secretary of Banking and Securities