



REGULATORY GUIDANCE

April 19, 2021

The Acting Director of FID has determined that third-party service providersⁱ (TSPs) are not required to be licensed under the Uniform Money Service Act (MSA), NMSA 1978, Sections 58-32-1 – 1004 (2017 as amended through 2019). FID has carefully reviewed FinCEN Ruling 2003-8 – Definition of Money Transmitter, New Mexico law, and Federal law to come to its conclusion.

FID determined that TSPs are engaging in “money services” as defined by New Mexico law. § 58-32-102(P) (“[M]oney services” means money transmission, check cashing or currency exchange). In addition, according to MSA, money transmission includes receiving money for transmission. *Id.* (Q). Further, FID determined that TSPs do not meet any of the exclusionary provisions in the MSA. *See generally*, NMSA 1978, § 58-32-103 (2017). Therefore, based on the strict reading of the MSA, TSPs would be required to obtain a license in order to “engage in the business of money transmission [...]”. § 58-32-201 (2017). However, FID’s review of Federal law provided additional context, which produced a more reasonable resolution to TSPs’ exemption.

Like New Mexico’s MSA, the Code of Federal Regulations defines a “money transmitter” broadly. The regulations define “money transmitter” as, “[a] person that provides money transmission services” 31 C.F.R. § 1010.100(ff)(5)(i)(A). However, the definition of a “money transmitter” specifically excludes any person who, “[a]cts 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.” Therefore, according to Federal law, TSPs are not money transmitters. FID has determined the Federal law’s exclusion of TSPs is a more balanced approach than the strict application of MSA. Therefore, pursuant to Section 58-32-103(M), the Acting Director rules that requiring TSPs to be licensed is not necessary “to achieve the purposes of the Uniform Money Services Act.”

Rebecca S. Moore
Acting Director

ⁱ Definition of third-party service provider for the purposes of this guidance: any person who “[a]cts 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.”

