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Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation

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Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation

Money transmission is an age-old practice. What started as a way of sending money to a person across the country via telegraph networks has evolved into a complex world of electronic payments on a global scale among several types of institutions. Some prominent companies, such as Western Union, MoneyGram, and PayPal, are well-known examples of money transmitters, but thousands of smaller money transmitters in the United States operate in the background of many financial services transactions Americans use every day. For example, Americans use money transmitters to pay bills, purchase items online, or send funds to family members and friends domestically and abroad. A number of social and financial issues attracting congressional interest, such as immigration, payroll processing, prison reform, campaign finance, and anti-money laundering (AML), have at least one thing in common: a money transmitter.

Money transmitters are regulated and licensed at the state level. Although specific federal laws and regulations apply to money transmitters—particularly the Bank Secrecy Act (BSA; P.L. 91-508) and the Consumer Financial Protection Bureau (CFPB) rulemakings on remittances—49 unique state regulatory frameworks determine the general oversight and regulation of money transmitters. State laws are not identical, and certain business practices, depending on the state’s licensing and registration requirements, can go by different names in different states, making it difficult to understand how these institutions interact with the financial system. In the absence of a federal regulatory framework, numerous efforts have taken aim at harmonizing these laws so that nonbank financial institutions such as money transmitters, which likely operate across state borders, can do so with more clarity. Further, Congress may consider how expanded federal oversight of money transmitters could impact certain social and financial issues. For example, money transmitters play a vital role in cross-border transactions and remittances, and these markets are critical areas of concern for federal agencies responsible for implementing AML policies.

The 116th Congress has made several legislative efforts to address issues relevant to money transmitters, but relatively few of those efforts were directly targeted toward these institutions. For instance, H.R. 2514 would reform BSA and AML laws and would require Treasury to undertake a study and review of the effects of financial institutions closing accounts (a practice called “de-risking”) held by companies such as money transmitters. S. 1764 and H.R. 6389 would require the Federal Communications Commission (FCC) to regulate the rates and fees that inmate payphone services (which are provided by the same companies that provide money transmission services to inmates and their families) can charge. H.R. 528 would create a safe harbor from federal and state money transmitter licensing and registration requirements for certain blockchain developers underpinning virtual currencies.

Recently, the Office of the Comptroller of the Currency (OCC) proposed a type of national money transmitter license. Although the OCC’s authority to issue this type of license may be subject to legal challenges—as the OCC’s Special Purpose National Bank Charters for Fintech Companies has been—Congress could consider ways to extend federal oversight of the money transfer market to address blind spots in the payment system’s federal regulation or to simplify the licensing process for multistate operations of firms participating in this market.

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What Is a Money Transmitter?

Anyone who has sent or received money through a mobile app, received a paycheck, exchanged foreign currency, used a digital currency, or used a prepaid card has most likely used a *money services business* (MSB).¹ This term refers to a range of nonbank financial institutions that provide, among other things, money transmission services, prepaid and other payment instruments, currency exchanges, and check cashing. One of the more common types of MSBs is called a money transmitter. Americans use money transmitters to pay bills, purchase items online, or send funds to family members and friends domestically and abroad.

Although some prominent companies, such as Western Union, MoneyGram, and PayPal, belong to this group of financial institutions, thousands of money transmitters in the United States operate in the background of financial services. Congress has shown interest in a range of social and financial issues, such as immigration, payroll processing, prison reform, campaign finance, and anti-money laundering (AML), which all have at least one thing in common: a money transmitter. This report provides an overview of money transmitters, explaining how they operate and the way they interact with consumer financial markets. The second half of the report highlights some of the ways money transmitters affect numerous congressional policy issues.

Overview of Money Transmitters

MSBs comprise about \$1.4 trillion in assets and engage in the following types of financial activities:²

- transferring money (money transmission);
- selling payment instruments (e.g., money orders, traveler’s checks);
- providing prepaid or other stored value products, such as digital wallets; and
- administering currency exchange (foreign and digital).

Put another way, MSBs have three general functions: (1) receiving and sending money on behalf of consumers; (2) providing products that receive, store, or send money for consumers; and (3) providing an exchange for currencies.³ Money transmitters are a part of this sector of nonbank financial companies. Unlike traditional banks or financial institutions, money transmitters do not accept deposits or make loans but provide alternative mechanisms for people to make payments or obtain money.

¹ Money transmitters are regulated and licensed at the state level. Many of these states use the term *money services business* (MSB) to describe the umbrella of nonbank financial institutions that provide money transmission services. In this light, the terms *money transmitter* and MSB are effectively synonymous. This report will use money transmitter unless referring to specific statutory language.

² In some states, check cashers are included in the money transmission regulatory framework. These institutions have a vastly different business model from more typical money transmission businesses. As opposed to money transmission, which involves the MSB taking customer funds and transmitting them elsewhere, check cashers give the funds to the customer. An overview of MSBs can be found at Conference of State Bank Supervisors (CSBS), “Chapter Four: Overview of Money Services Business,” *Reengineering Nonbank Supervision*, October 2019, at <https://www.csbs.org/system/files/2020-05/Chapter%204%20-%20MSB%20Final%20FINAL.pdf> (hereinafter CSBS, “Chapter Four: Overview of Money Services Business,” 2019).

³ Banks and credit unions also provide these services; the main distinction is that money transmitters do not accept deposits and are not regulated by federal banking agencies.

Although all states except Montana have passed money transmitter laws, these laws vary in numerous ways. For example, certain business practices can go by different names in different states, depending on the state’s licensing and registration requirements, meaning that a money transmitter in one jurisdiction can provide a range of overlapping and cross-cutting products that it might be unable to provide in another state.⁴ (This is discussed in “State Regulation,” below.)

From Telegraphs to Steamships to Virtual Currency

Money transmitters began operating in the late 19th century, with the telegram used to move money from sender to recipient. In 1871, Western Union introduced the first commercial money transfer service in an effort to expand its telegraph business. Consumers could pay money to a telegraph office, and the operator would transmit a message to “wire” funds to another office. The intended recipient could pick up the transfer at the destination by using a password to release the funds.

Since then, money transmission has taken on several forms. For example, informal financial institutions grew out of local businesses, such as grocery stores and butcher shops, to facilitate ticket sales for immigrants entering the United States via steamship. These institutions, informally referred to as “immigrant banks” in the early 20th century, acted as agents for families, providing access to financial services and helping them to arrange travel from Europe.

Today, “fintech” (financial technology) is a popular buzzword. Most people own a smartphone, and money transmission is as simple as downloading an app and clicking a few buttons. Many Americans use their phones to store money on digital wallets and use apps to send and receive money from family and friends. Some fintech businesses are registered as money transmitters. Cryptocurrencies and digital currencies are part of consumers’ payment options, and policymakers are increasingly grappling with their interaction in the market for payments and real currency.

Sources: Western Union, “6 fascinating things about Western Union’s history,” October 8, 2019, at <https://www.westernunion.com/blog/6-fascinating-things-about-western-unions-history/>; and Temple University, “Philadelphia’s steamship agents,” at <https://digital.library.temple.edu/digital/custom/steamshipagents>.

Notes: For more information on fintech, see CRS Report R46332, *Fintech: Overview of Innovative Financial Technology and Selected Policy Issues*, coordinated by David W. Perkins.

Regulatory Framework

Money transmitters are regulated and licensed at the state level. Although federal laws and regulations apply to money transmitters—notably the Bank Secrecy Act (BSA; P.L. 91-508) and the Consumer Financial Protection Bureau’s (CFPB’s) rulemakings on remittances made pursuant to the agency’s authority to implement provisions of the Electronic Fund Transfer Act (EFTA; P.L. 95-630)—49 unique state regulatory frameworks determine the general oversight and regulation of money transmitters.⁵ The sections below will highlight some of the general themes among various state frameworks and the efforts to harmonize these regulations across state borders.

State Regulation

As mentioned above, 49 states have legal frameworks for MSBs. Companies operating in multiple states are required to have a license in each state. Each state’s regulatory framework is unique, but there are often similarities in the types of requirements the money transmitters must meet to operate. Typically, states have some combination of the following requirements for money transmitters:

⁴ CSBS, “Chapter Four: Overview of Money Services Business,” 2019.

⁵ According to the CSBS, Montana is the sole state without an MSB legal framework. For more, see CSBS, “Chapter Four: Overview of Money Services Business,” 2019, p. 4.

- **Initial Application for Licensure and License Renewal.** Typically, this application includes the names and locations of a company’s proprietors, partners, and officers. Initial applications also might ask for background information about company personnel and operations across state lines. Annually, or every other year, money transmitters are required to renew their licenses.
- **Minimum Net Worth.** State minimums vary widely, but a money transmitter generally is required to have a net worth exceeding a certain minimum level to maintain its license.⁶
- **Reciprocity.** Some states allow money transmitters with licenses to operate in different states that have similar legal frameworks.
- **Security.** Most states require a corporate surety bond, line of credit, or a deposit of investments to back the company’s financial position.
- **Examinations.** Many of the state financial regulators maintain regulatory and examination requirements for money transmitters. These can include investigations at the time of licensure to verify the information on the license application and routine examinations to review financial conditions.

State financial regulators oversee a wide range of financial institutions. For instance, as of March 2020, state banking regulators supervised approximately 3,683 state-chartered banks, which represents 83% of U.S. banks.⁷ In addition to regulating and supervising banks, most state banking regulators regulate and supervise a variety of nonbank financial services providers, including money transmitters, for safety, soundness, and compliance with consumer protection and AML laws.⁸

Although state agencies have various frequency cycles for conducting examinations, most licensed money transmitters are examined annually by either multistate teams or individual states.⁹ State supervisors review a money transmitter’s operations, financial condition, management, compliance function, and compliance with AML laws. Between exams, state regulators monitor their licensees on an ongoing basis by reviewing the information submitted pursuant to reporting requirements. Additionally, money transmitters must meet financial statement reporting requirements, permissible investments adequacy, branch and agent listings, and transmission volume activity.

⁶ For example, in Alabama, minimum net worth is set at \$5,000. In Arizona, it is \$100,000 for the principal business location and an additional \$50,000 for other locations. “High volume” transmitters—those who process more than \$500,000 in a year—are sometimes subject to higher standards. Thomas Brown, a lecturer at UC Berkeley Law School and partner at Paul Hastings LLP, compiled summary information on state regulations for money transmitters. The results of his work, which includes statutory citations, can be found at [https://abnk.assembly.ca.gov/sites/abnk.assembly.ca.gov/files/50%20State%20Survey%20-%20MTL%20Licensing%20Requirements\(72986803_4\).pdf](https://abnk.assembly.ca.gov/sites/abnk.assembly.ca.gov/files/50%20State%20Survey%20-%20MTL%20Licensing%20Requirements(72986803_4).pdf).

⁷ Federal Deposit Insurance Corporation, *Quarterly Banking Profile*, First Quarter 2020, p. 25, at <https://www.fdic.gov/bank/analytical/qbp/2020mar/qbp.pdf#page=25>.

⁸ Specifically, state financial supervisors license and regulate five types of institutions: (1) currency dealers or exchangers; (2) check cashers; (3) issuers of traveler’s checks, money orders, prepaid access, and/or stored value; (4) sellers or redeemers of traveler’s checks, money orders, prepaid access, and/or stored value; and (5) money transmitters. More on state regulation and supervision of these institutions can be found at CSBS and Money Transmitter Regulators Association (MTRA), *The State of State Money Services Businesses Regulation & Supervision*, May 2016, p. 4, at <https://www.csbs.org/sites/default/files/2017-11/State%20of%20State%20MSB%20Regulation%20and%20Supervision%202.pdf> (hereinafter CSBS and MTRA, *The State of State Money Services Businesses Regulation & Supervision*, 2016).

⁹ CSBS and MTRA, *The State of State Money Services Businesses Regulation and Supervision*, 2016, p. 9.

Efforts to Harmonize Money Transmitter Supervision

As mentioned, 49 states have unique regulatory frameworks for money transmitters in their jurisdictions. Generally, these laws are broad and pertain to numerous MSBs, but the laws often contain language specific to money transmitters. In the absence of a federal regulatory framework, numerous efforts have taken aim at harmonizing these laws so that nonbank financial institutions such as money transmitters, which likely operate across state borders, can do so with clarity. The following section covers some of the major efforts to tie together state money transmitter laws, which may serve as background for related policy issues that Congress may pursue or a potential model for Congress were it to pursue some form of federal regulation.

Uniform Law Commission

State regulation of money transmission varies greatly across jurisdictions, and only a few states have statutory frameworks that tie together the various types of MSBs from a safety and soundness standpoint. Given the varied state regulatory frameworks, some state lawmakers have attempted to harmonize their frameworks through what is known as the Uniform Money Services Act (USMA), as adopted by the Uniform Law Commission.¹⁰ The USMA creates a safety and soundness framework, which connects all types of MSBs and sets forth clearly the relationship between a licensee and its sales outlets. The goal of this endeavor is to have several states adopt it, thereby creating uniformity with respect to the entry of MSBs into various states. Additionally, uniform licensing and reporting requirements theoretically facilitate compliance with multiple state laws.¹¹ As of today, the USMA has been adopted by 12 states and territories,¹² which interpret the law differently.

Conference of State Bank Supervisors Money Services Business Model Law

In 2017, the Conference of State Bank Supervisors (CSBS) introduced “Vision 2020,” a series of initiatives to modernize state regulation of nonbank financial institutions. Vision 2020 spans a range of industries and policy issues, including financial technology (fintech) and money transmitter supervision topics. In 2019, the CSBS drafted a model law based on the USMA to address areas in need of standardization and alignment across jurisdictions.¹³ The draft model law focused on three areas: (1) protecting consumers, (2) enabling barriers to entry for bad actors, and (3) facilitating coordination among state agencies. As mentioned earlier, various state legal frameworks define money transmitters differently. MSB is sometimes used as an umbrella term, which could include or exclude a range of institutions, such as money transmitters, payment instrument sellers, stored value providers, or virtual currency exchanges. The model law would

¹⁰ The Uniform Law Commission (ULC or National Conference of Commissioners of Uniform State Laws) is a nonprofit association comprising commissioners from each state and several territories. The members are lawyers appointed by their state governments. The commission’s purpose is to promote enactment of uniform legal frameworks across state lines. See ULC, “Overview,” at <https://www.uniformlaws.org/aboutulc/overview>. The Uniform Money Services Act, as adopted by the ULC, can be found at ULC, “Prefatory Note,” *Uniform Money-Services Business Act*, July 28, 2000, at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4ddb7fd0-891f-7140-4ce4-680c84bde71d&forceDialog=0> (hereinafter ULC, “Prefatory Note,” 2000).

¹¹ See ULC, “Prefatory Note,” 2000.

¹² The 12 states and territories are Vermont (2001), Iowa (2003), Washington (2003), U.S. Virgin Islands (2004), Texas (2005), Hawaii (2006), Alaska (2007), Arkansas (2007), Puerto Rico (2011), South Carolina (2016), North Carolina (2016), and New Mexico (2016). The ULC tracks state legislative developments, and the tracker for this act can be found at ULC, “Money Services Act,” at <https://www.uniformlaws.org/committees/community-home?communitykey=cf8b649a-114c-4bc9-8937-c4ee17148a1b&tab=groupdetails>.

¹³ CSBS, “MSB Model Law Executive Summary,” September 2019, at <https://www.csbs.org/sites/default/files/2019-10/Executive%20Summary%20-%20Draft%20Model%20Law%20%28Sept%202019%29.pdf>.

provide a standard definition for key terms (e.g., *money*, *money transmission*, *stored value/prepaid access*, *sale of payment instruments*, and *virtual currency* are all defined in the model law).

The draft model law seeks to standardize the exceptions to products that would be covered by the law. Where consumer protections are not at risk, the CSBS recommended allowing certain exemptions. For instance, the CSBS chose to exempt agents of payees and insured prepaid cards because the consumer liabilities are mitigated. Similarly, because payment processors act as agents for payees, and the funds transacted are held in accounts managed by regulated institutions (e.g., banks), the CSBS recommended exemptions for those institutions. The same goes for agents and service providers of banks, where deposits are insured by federal agencies. Alternatively, the CSBS decided not to exempt services that pay business taxes and those that provide business-to-business payments. The rationale for not exempting these services is that if exempt businesses do not pay taxes, public confidence can erode; further, payments between businesses are important to state economies, so those transactions merit supervision. Crucially, the draft model law would exclude payroll services. (This issue is discussed more in the “Payment Facilitators” section, below.) The draft model law would also provide standards for ensuring sound financial conditions, including guidelines for net worth, permissible investments, and surety bonds, and it would provide alternatives for ensuring ample market liquidity and capital.

The CSBS accepted public comments until March 11, 2020. Twelve public comments were received from industry associations, law firms, private companies, and consumer groups. A broad number of the concerns related to definitions and exceptions to covered activities.

Nationwide Multistate Licensing System

In 2008, the CSBS created the Nationwide Multistate Licensing System (NMLS) to be a “system of record for non-depository financial services licensing or registration” for participating jurisdictions.¹⁴ The NMLS was originally developed as a voluntary system for state licensing; the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Title V of the Housing and Economic Recovery Act; P.L. 110-289) made the system mandatory for mortgage originators but not for money transmitters. Although the NMLS does not grant or deny licenses, it allows state-licensed, nondepository companies to apply for, amend, update, or renew a license online for all participating state agencies using a single set of uniform applications in one system. The NMLS does not harmonize statutory requirements, but it serves to centralize the licensing process for firms with multistate operations. In 2012, the NMLS was expanded to include MSBs.¹⁵ As of 2019, 46 state agencies manage through the NMLS over 7,800 MSB licenses from more than 2,400 companies.¹⁶

¹⁴ The CSBS created the Nationwide Multistate Licensing System (NMLS), but it is owned and operated by the CSBS’s subsidiary, the State Regulatory Registry LLC (SRR). For more on the SRR and the NMLS, see CSBS, “Nationwide Multistate Licensing System,” at <https://www.csbs.org/nationwide-multistate-licensing-system>.

¹⁵ CSBS and MTRA, *The State of State Money Services Businesses Regulation and Supervision*, 2016, p. 18.

¹⁶ SRR, *Building a Foundation for the Future: 2019 Annual Report*, at <https://nationwidelicencingsystem.org/NMLS%20Document%20Library/2019%20SRR%20Annual%20Report.pdf>. See also NMLS, “Money Services Businesses Fact Sheet,” December 31, 2019, at <https://www.csbs.org/sites/default/files/2020-05/2019Q4%20MSB%20Fact%20Sheet.pdf>.

Money Transmitter Regulators Association Multistate Agreements

The Money Transmitter Regulators Association (MTRA) is a nonprofit corporation comprising money transmitter regulators from 51 states and territories.¹⁷ The MTRA is similar to the CSBS in that its mission is oriented around advancing uniform practices and standards for examinations and reports of money transmitters. (The difference being that the CSBS works on state issues covering a broad range of other topics.) In 2012, the MTRA put in place a framework called the Nationwide Agreement for MSB Supervision to facilitate its goal of cooperation and coordination across jurisdictions.¹⁸ The agreement establishes a multistate MSB examination task force to lead the coordination and examination of multistate MSBs, comprising 10 members—5 appointed by the CSBS and 5 appointed by the MTRA. As of October 2018, all but two member states had signed onto the agreement.¹⁹

Federal Regulation

Money transmitter regulation at the federal level primarily focuses on AML and combating the financing of terrorism; however, some consumer protection laws also apply to money transmitters. The federal agencies responsible for implementing regulations for money transmitters are the U.S. Department of the Treasury's (Treasury's) Financial Crimes Enforcement Network (FinCEN) and the CFPB. FinCEN is responsible for implementing the Bank Secrecy Act (BSA; P.L. 91-508). One of the ways the FinCEN does this is by requiring MSBs to register with it.²⁰

The CFPB has a limited federal role in the regulation of money transmitters. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203), the CFPB is responsible for Regulation E, which implements the EFTA. In addition, the CFPB recently issued rules pertaining to remittance providers, and money transmitters operate a significant amount of the remittance market.

Anti-Money Laundering Regulation and the Bank Secrecy Act²¹

The BSA is the primary U.S. AML law.²² In the United States, financial institutions (both banks and MSBs) are required to identify, assess, and take steps to design and implement controls in compliance with their obligations under the BSA. The BSA, which was enacted in 1970, has been amended numerous times, most notably by Title III of the USA PATRIOT Act (Patriot Act; P.L.

¹⁷ The full membership list can be found at MTRA, "Members," at <https://www.mtraweb.org/about/members/>.

¹⁸ MTRA, "Nationwide Cooperative Agreement for MSB Supervision," January 2012, at <https://www.mtraweb.org/wp-content/uploads/2012/10/Nationwide-Cooperative-Agreement-for-MSB-Supervision-2012.pdf>.

¹⁹ Maine and Rhode Island were the only two states not to sign the agreement. Montana, which has no jurisdiction for MSBs, also did not sign the agreement but was not counted. See CSBS, "CSBS/MTRA Nationwide Cooperative Agreement & Protocol for MSB Supervision," October 2018, at https://www.csbs.org/sites/default/files/msb_map.pdf.

²⁰ Exceptions to the registration requirement include MSBs that act solely as an agent for other MSBs and state or federal agencies, including the U.S. Postal Service. See Financial Crimes Enforcement Network (FinCEN), "MSB Exceptions," at <https://www.fincen.gov/msb-exceptions>.

²¹ For more on anti-money laundering (AML), see CRS In Focus IF11064, *Introduction to Financial Services: Anti-Money Laundering Regulation*, by Rena S. Miller and Liana W. Rosen; and CRS Report R44776, *Anti-Money Laundering: An Overview for Congress*, by Rena S. Miller and Liana W. Rosen.

²² Office of the Comptroller of the Currency (OCC), "Bank Secrecy Act (BSA) & Related Regulations," at <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/bsa-related-regulations/index-bsa-and-related-regulations.html>.

107-56) in 2001, which expanded the BSA framework beyond AML to include fighting terrorist financing. The BSA's main purpose is to require financial institutions to maintain appropriate records and file reports, which can be used in criminal, tax, or regulatory investigations or proceedings.

As mentioned, money transmitters can take on numerous different business models and activities. FinCEN uses MSB in its regulatory language as an umbrella term, which includes this range of activities. Money transmitters are required to register with FinCEN within 180 days of being established, and these registrations are supposed to be renewed every two years.²³ A person who does more than \$1,000 in business in a day with one person in one or more money transmission transactions is also required to register with FinCEN.

FinCEN administers the BSA.²⁴ With limited exceptions, MSBs are subject to the full range of BSA regulatory controls:

- Remittance providers must maintain financial records and conduct customer identification procedures for certain transactions.
- All MSBs must obtain and verify customer identity and record beneficiary information for transfers of more than \$3,000.
- MSBs must file currency transaction reports for customer transactions of \$10,000 or more in a day. They must also file suspicious activities reports (SARs) for dubious transactions of generally more than \$2,000, which the remittance provider “knows, suspects, or has reason to suspect involves funds from illegal activity or is designed to conceal their origin, is designed to evade BSA obligations, or has no apparent business or law purpose.”²⁵
- Remittances to certain foreign countries may also be subject to sanctions under various federal statutes administered by Treasury’s Office of Foreign Assets Control (OFAC). The U.S. government restricts remittances only on countries, individuals, or companies that are subject to U.S. sanctions and embargoes. Treasury does not have the authority to direct any financial institution to open or maintain a particular account or relationship. Each financial institution makes the decision to maintain any financial relationship, in compliance with U.S. laws.

Suspicious Activity Reports

Money transmitters are subject to suspicious activity reporting requirements from FinCEN. A SAR must be filed with FinCEN anytime a transaction conducted at, by, or through a money transmitter is both suspicious and \$2,000 or more.²⁶ *Suspicious* is defined as an instance where a money transmitter

²³ Several other types of MSBs are also required to register with FinCEN. A complete list of the products that meet the requirement can be found at 31 C.F.R. §1010.100.

²⁴ For more on FinCEN, see FinCEN, “FinCen’s Mandate From Congress,” at <https://www.fincen.gov/resources/statutes-regulations/fincens-mandate-congress>.

²⁵ U.S. Department of the Treasury, *Report to Congress in Accordance with Section 359 of the USA PATRIOT Act*, November 2002, p. 8, at <https://www.fincen.gov/sites/default/files/shared/hawalarptfinal11222002.pdf>.

²⁶ FinCEN, “Money Service Business (MSB) Suspicious Activity Reporting,” at <https://www.fincen.gov/money-services-business-msb-suspicious-activity-reporting> (hereinafter FinCEN, “MSB Suspicious Activity Reporting”).

knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or is

Designed to evade the requirements of the Bank Secrecy Act, whether through structuring or other means, or

Serves no business or apparent lawful purpose, and the reporting business knows of no reasonable explanation for the transaction after examining all available facts.²⁷

Money transmitters are prohibited from disclosing to an individual involved with a transaction that a SAR has been filed. Further, the money transmitter and its employees are shielded from civil liability for any SAR filed.²⁸

Patriot Act Section 314(b) Voluntary Information Sharing

Section 314(b) of the Patriot Act provides financial institutions with the ability to share information with one another under a safe harbor,²⁹ which offers protections from liability in order to better identify and report potential money laundering or terrorist activities. This is a voluntary program, but FinCEN strongly encourages financial institutions to participate. MSBs, which are defined to include money transmitters, are eligible to participate in the program.³⁰

Money Remittances Improvement Act of 2014

As mentioned in the “State Regulation” section, state financial regulators carry out examinations of state-chartered and licensed financial institutions for safety and soundness and for compliance with various laws. Federal regulators carry out examinations of banks and other financial institutions in a separate process. Sometimes, state exams can serve to meet federal requirements; this is the case with BSA/AML exams.³¹ In August 2014, Congress passed the Money Remittances Improvement Act of 2014 (MRIA; P.L. 113-156), which allows FinCEN to rely on state BSA/AML examinations for depository and nondepository financial institutions. On its face, the MRIA streamlines the regulation of money transfer operators by allowing FinCEN to use data gathered from some state-level examinations. This law has served as a form of regulatory relief for remittance services companies, which were previously subject to state and federal examination requirements.³²

²⁷ FinCEN, “MSB Suspicious Activity Reporting.”

²⁸ More on suspicious activity reporting for MSBs can be found at FinCEN, “The Campaign Against Financial Crimes,” at https://www.fincen.gov/sites/default/files/shared/sar_qa_final.pdf.

²⁹ FinCEN issued guidance in 2009 clarifying that if participants suspect that transactions may involve the proceeds of specified unlawful activities under money laundering statutes, information related to such transactions can be shared under protection of the Section 314(b) “Safe Harbor” of the USA PATRIOT Act (Patriot Act; P.L. 107-56). See FinCEN, “Guidance on the Scope of Permissible Information Sharing Covered by Section 314(b) Safe Harbor of the USA PATRIOT Act,” June 16, 2009, at <https://www.fincen.gov/resources/advisories/fincen-guidance-fin-2009-g002>.

³⁰ 31 C.F.R. §1022.540.

³¹ CSBS and MTRA, *The State of State Money Services Businesses Regulation and Supervision*, 2016, p. 14.

³² One of the ways federal financial regulators coordinate their supervisory practices is through the Federal Financial Institutions Examination Council (FFIEC). The FFIEC is an interagency group that prescribes uniform examination and reporting standards among federal financial institution supervisors. The FFIEC comprises federal banking and credit union agencies and the Consumer Financial Protection Bureau (CFPB), as well as a representative body for state supervisors. Through the State Liaison Committee (SLC) to the FFIEC, states collaborate with the council on the U.S. Bank Secrecy Act (BSA; P.L. 91-508)/AML Examination Manual. The SLC also is a voting member of the FFIEC’s

Consumer Financial Protection Bureau Remittance Rule

Money transmitters are prevalent in the remittance market.³³ Remittance regulation, at the federal level, is largely a consumer protection matter. It is focused on defining which institutions and what activities count as remittances and providing requirements for disclosures and error resolution procedures for covered transactions. For example, Section 1073 of the Dodd-Frank Act amended the EFTA to create a consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses abroad.

In 2012 and 2013, the CFPB implemented Section 1073 provisions through its Remittance Transfer Rule.³⁴ The rule requires companies offering remittances to provide the consistent, reliable disclosure of a transfer's price; the amount of currency to be delivered to the recipient; and the date of availability prior to the consumer making any payment. The rule also requires remittance providers to investigate disputes and remedy errors related to the transaction and provide disclosures that explain the impact fees and taxes are expected to have on the transfer amount.

In 2019, the CFPB issued a notice of proposed rulemaking to amend the Remittance Transfer Rule.³⁵ The proposed rule would revise the 2013 rulemaking by increasing the threshold for covered companies from 100 to 500 annual transfers.³⁶ This means that companies making fewer than 500 transfers in a year would generally not be covered by the rule. The rule also proposes two new exceptions that would permit certain financial institutions to estimate some fees and rates in their disclosures.³⁷

Policy Issues Concerning Money Transmitters

Money transmitters are mostly small financial institutions regulated at the state level, working in the background of prominent financial markets. Limited federal oversight has contributed to a situation in which federal policymakers may not be aware of the roles money transmitters play in financial markets or in social issues, such as immigration and prison reform. This section will

BSA/AML Working Group, which is charged with ensuring consistent agency approaches and collaboration on emerging issues. The FFIEC is focused on banks, but this working group covers issues pertinent to money transmitters, specifically related to the BSA/AML regulatory framework under which they operate. More on the FFIEC can be found at <http://www.ffiec.gov>. For more on the FFIEC's BSA/AML Working Group, see CSBS and MTRA, *The State of State Money Services Businesses Regulation and Supervision*, 2016, p. 15.

³³ This is evidenced by the news that in June 2020, Western Union made a bid to take over MoneyGram. An article in *Forbes* provides some analysis of the details of the proposed merger, calling Western Union “the leading remittance provider worldwide” and MoneyGram “one of its largest competitors.” According to the article, the two companies comprise roughly \$110 billion in remittances, or just under 20% of the market. For more on these two companies, see Daniel Webber, “What Could Stop Remittance Giant Western Union Acquiring MoneyGram And Changing The Money Transfer Sector Forever,” *Forbes*, June 18, 2020, at <https://www.forbes.com/sites/danielwebber/2020/06/18/what-could-stop-remittance-giant-western-union-acquiring-moneygram-and-changing-the-money-transfer-sector-forever/#486285054696>. For more on the money transmitter market in the United States, see CRS Report R43217, *Remittances: Background and Issues for Congress*, by Martin A. Weiss.

³⁴ CFPB, “Electronic Fund Transfers (Regulation E),” 78 *Federal Register* 30661, May 22, 2013.

³⁵ CFPB, “Remittance Transfer Rule,” at <https://www.consumerfinance.gov/policy-compliance/guidance/remittance-transfer-rule/>.

³⁶ CFPB, “Summary of Proposed Rulemaking: the 2019 Proposal to Amend the Remittance Transfer Rule,” December 3, 2019, at https://files.consumerfinance.gov/f/documents/cfpb_nprm_remittance-rule-summary_2019-12.pdf.

³⁷ CFPB, “Summary of Proposed Rulemaking: the 2019 Proposal to Amend the Remittance Transfer Rule,” December 3, 2019.

examine some of the unique ways money transmitters are involved in a range of issues of congressional interest.

There has been relatively limited legislative activity in many of these areas specific to money transmitters. However, some bills that have been introduced provide salient examples of the concepts discussed in this section. To the extent a particular bill, whether introduced in the current or previous Congress, is highlighted below, it is because the bill helps describe a way Congress could address the policy issues in this report. This section generally highlights bills that received some sort of action (e.g., passed a chamber), but there are some instances where an introduced piece of legislation is narrowly and specifically constructed such that it merits inclusion.

Money Transmitters, Cross-Border Payments, and Immigration

Money transmitters play a significant role in providing financial services to immigrant communities in the United States. For example, dating back to the early 20th century, immigrants would go through informal financial institutions associated with neighborhood establishments (e.g., grocery stores) to take out loans and transfer money in order to arrange travel from Europe via steamship.³⁸ Today, remittances, a prominent type of cross-border money transfer, are a major source of income for families of immigrants.³⁹

A remittance transaction typically involves a sender, a recipient, financial intermediaries in both countries, and a payment system used by the intermediaries. The financial institutions involved in the \$700 billion remittances market can be banks or credit unions,⁴⁰ but they are often money transmitters, such as MoneyGram, Western Union, or PayPal.

Congress has explored policy related to how unbanked people access financial services in the United States.⁴¹ According to research by the Federal Reserve Bank of St. Louis, immigrants are

³⁸ Eventually, states restricted these practices. The U.S. Senate Immigration Commission investigated and reported on the matter in 1911. According to U.S. Congress, Senate, *Reports of the Immigration Commission*, 61st Cong., 3rd sess., December 1911, S.Doc. 753 (Washington, DC: GPO, 1911), p. 318:

Delaware, Nebraska, Nevada, North Dakota, Oklahoma, Rhode Island and Wisconsin considered transmission by steamship to be illegal private banking. In a letter dated Sept. 24, 1909, the Rhode Island commissioner of banks relayed the following to the Senate's Immigration Commissioner: "Immigrant steamship agencies and others doing a banking business come under the head of unauthorized banking, and the business is prohibited..."

The reports also reference several states where such "banking business" was likely a violation of existing state law: California, Colorado, Florida, Idaho, Indiana, Kansas, Missouri, New Hampshire, Oregon, South Dakota, West Virginia, and Wyoming. Colorado was referenced as providing regulation and supervision, whereas the "immigrant institutions" in Indiana and Missouri existed as "full fledged banking concerns without apparent control or regulation, and seemingly in open violation of law."

³⁹ For more information on remittances and cross-border payments, see CRS Report R43217, *Remittances: Background and Issues for Congress*, by Martin A. Weiss.

⁴⁰ According to the World Bank, in October 2019, global remittances were expected to reach \$700 billion by the end of 2019. See World Bank, "Data release: Remittances to low- and middle-income countries on track to reach \$551 billion in 2019 and \$597 billion by 2021," October 16, 2019, at <https://blogs.worldbank.org/peoplemove/data-release-remittances-low-and-middle-income-countries-track-reach-551-billion-2019>.

⁴¹ For example, on June 11, 2020, the House Financial Services Committee's Task Force on Financial Technology held a hearing on the use of digital payments, and on January 30, 2020, the task force held a hearing on the use of mobile payments; both hearings considered the impacts of these types of payments on unbanked populations. See U.S. Congress, House Committee on Financial Services, Task Force on Financial Technology, *Inclusive Banking During a Pandemic: Using FedAccounts and Digital Tools to Improve Delivery of Stimulus Payments*, virtual hearing, 116th Cong., 2nd sess., June 11, 2020, at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406617>; and U.S. Congress, House Committee on Financial Services, Task Force on Financial Technology, *Is Cash Still King?*

among the most common groups of people without bank accounts.⁴² This is in part due to socioeconomic issues, as well as language barriers. Among banked immigrant populations, nonbank financial services institutions, such as money transmitters, still play an important role. Immigrant families are likely to use money transmitters, instead of banks, to send money because families abroad are sometimes likely to be unbanked, especially in countries where the banking sector is less developed. As an official from the Consumer Affairs branch of the Federal Reserve Bank of Kansas City stated, “Many Latinos withdraw money from their banking institutions to walk across the street and remit money via money services businesses on a monthly basis. Even documented, banked Hispanics tend to remit money through money services businesses rather than banks.”⁴³ Although remittances can be expensive, research shows that a primary consideration for families is the familiarity of the financial institution and the availability of locations in the country of the sender and of the receiver.⁴⁴

Other issues related to money transmission and immigrants may fall more closely under the umbrella of money laundering or illegal immigration concerns, such as the multibillion dollar industry for “migrant-smuggling.”⁴⁵ In general, migrant smugglers offer a service to bring people across borders for a fee. Families looking to make payments for safe arrival of someone who was brought into the United States may use money transmitters.⁴⁶ To the extent Congress may be concerned with the way immigrants interact with the payments system, money transmitters could be a place to start.

De-risking and Access to the Financial System

In 2018, the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, held a hearing entitled, “Examining De-Risking and Its Effect on Access to Financial Services.”⁴⁷ *De-risking* is a process by which financial institutions terminate or restrict

Reviewing the Rise of Mobile Payments, hearing, 116th Cong., 2nd sess., January 30, 2020, at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406024>.

⁴² Martha Perine Beard, *In-Depth: Reaching the Unbanked and Underbanked*, Federal Reserve Bank of St. Louis, January 1, 2010, at <https://www.stlouisfed.org/publications/central-banker/winter-2010/reaching-the-unbanked-and-underbanked>.

⁴³ Anna Paulson et al., *Financial Access for Immigrants: Lessons from Diverse Perspectives*, Federal Reserve Bank of Chicago and The Brookings Institute, May 2006, p. 24, at https://www.brookings.edu/wp-content/uploads/2016/06/20060504_financialaccess.pdf (hereinafter Paulson et al., *Financial Access for Immigrants*, 2006).

⁴⁴ Paulson et al., *Financial Access for Immigrants*, 2006, p. 24.

⁴⁵ According to a U.N. report in 2018, 2.5 million migrants were smuggled across the globe in 2016 for an economic profit of around \$5.5-7 billion. See U.N. Office on Drugs and Crime, *Global Study on Smuggling of Migrants*, 2018, p. 5, at https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf.

⁴⁶ From 2003 to 2005, the Western Union payouts at eight Arizona locations totaled \$176,735,000 in wires of \$500 or more sent to the location from 1 of the 29 states that were the most frequent destinations for persons being smuggled from Mexico into the United States through Arizona. These amounts included both legal and illegal transactions. Beginning in 2006, Western Union limited money transfer transactions into Arizona to a maximum of \$450. Smuggling into the United States through Arizona continued, and smugglers had their payments wired to places outside the United States. From 2005 to 2007, Western Union payouts at eight locations outside the United States totaled \$142,446,000 in wires of \$500 or more sent to the locations from 1 of the 29 states that were the most frequent destinations for persons being smuggled into the United States through Arizona. In 2010, Western Union entered a settlement of \$21 million to the State of Arizona for violating AML laws. The settlement agreement can be found at https://www.azag.gov/sites/default/files/docs/criminal/border-security/swbamla/State_of_Arizona_v_Western_Union_Settlement_Agreement.pdf.

⁴⁷ The hearing and associated testimony can be found at U.S. Congress, House Committee on Financial Services, Subcommittee on Consumer Protection and Financial Institutions, *Examining De-risking and its Effect on Access to Financial Services*, hearing, 115th Cong., 2nd sess., February 15, 2018 (Washington, DC: GPO 2018), at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=401187>.

business relationships to avoid, rather than manage, the risk associated with an account. De-risking can be an expensive endeavor, and banks may eventually choose to close an account rather than manage the risks of the business relationship.

Money transmitters and other types of MSBs themselves often hold funds in bank accounts. Evidence suggests that banks have closed accounts held by money transmitters and blocked the agents used to access money transmission services from opening or maintaining a bank account.⁴⁸ These practices by banks are detrimental to money transmitters and can affect the provision of money transfer services if they cause an MSB to close or relocate. (As mentioned, location and availability of services are often major factors in a consumer's choice to use a financial institution.)

While de-risking is not a new concept for banks, it has increased over the past five years.⁴⁹ In December 2019, the Government Accountability Office (GAO) reported to Congress on BSA examinations and how compliance controls impact money transmitter accounts.⁵⁰ This report found that from 2014 to 2015, almost 40 of 86 financial institutions surveyed by GAO had money transmitter accounts and had terminated at least one account for money-laundering concerns. In 2014, FinCEN issued a statement concerning banks' practice of "indiscriminately terminating the accounts of all MSBs, or refusing to open accounts for any MSBs" and urging banks to maintain relationships with MSBs with due diligence.⁵¹

De-risking is a way that banks can reduce their own risks across the board; however, it can constrain nonbank financial institutions from providing services such as money transmission to consumers. In the 110th Congress, Representative Carolyn Maloney introduced H.R. 4049, which generally aimed to reduce the regulatory requirements facing insured depository institutions and MSBs to enhance the availability of transaction accounts for MSBs. This bill passed the House in July 2008. In the 116th Congress, Representative Emanuel Cleaver introduced H.R. 2514, which passed the House in October 2019. The bill primarily would make reforms to the BSA and AML laws and would require Treasury to undertake a study and review of the effects of de-risking on a number of financial institutions, including MSBs.⁵² To the extent Congress may be concerned with bank risk and access to financial institutions, money transmitters would be the type of institutions at the center of this debate.

⁴⁸ Testimony of Secretary of Illinois Department of Financial and Professional Regulation, Division of Banking, Bryan A. Schneider, in U.S. Congress, House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, *Examining De-risking and its Effect on Access to Financial Services*, hearing, 115th Cong., 2nd sess., February 15, 2018 (Washington, DC: GPO 2018), p. 3, at https://www.csbs.org/sites/default/files/2018-02/De-Risking%20Hill%20Testimony%20Feb_15_FINAL.2.pdf.

⁴⁹ De-risking has been a bank practice dating back to a large fine imposed on Riggs Bank for AML violations. See Kristin Pullar, *Blanket De-Risking of Money Service Businesses*, Association of Certified Anti-Money Laundering Specialists, 2016, p. 7, at <http://files.acams.org/pdfs/2016/Blanket-De-Risking-of-Money-Service.pdf>.

⁵⁰ U.S. Government Accountability Office, *Bank Secrecy Act: Examiners Need More Information on How to Assess Banks' Compliance Controls for Money Transmitter Accounts*, GAO-20-46, December 2019, at <https://www.gao.gov/assets/710/702959.pdf>.

⁵¹ FinCEN, "FinCEN Statement on Providing Banking Services to Money Services Businesses," November 10, 2014, at <https://www.fincen.gov/news/news-releases/statement>.

⁵² In the 114th Congress, Rep. Stephen Lynch introduced H.R. 5602. Title I of the bill would aim to enhance certain antiterrorism policy tools for the Department of Treasury, which included a requirement that Treasury report on the potential efficacy of requiring banking regulators to establish a pilot program that would provide technical assistance to depository institutions and credit unions that wish to provide account services to MSBs serving individuals in Somalia. The bill passed the House on July 11, 2016, and passed the Senate on December 10, 2016, but did not become law.

Inmate Payment Systems

Families have limited options to provide funds to members in prisons and other correctional facilities. Typically, inmates manage money through commissary accounts, which allow them to receive and draw down funds. Commissary accounts in federal correctional facilities are managed by the Federal Bureau of Prisons, an agency within the Department of Justice; accounts in state correctional facilities are governed according to state law. Much of the money spent in commissaries is provided by friends and families through money transmitters.

Historically, families would send money orders to incarcerated relatives. More recently, nonbank financial institutions have played a much larger role in the prison payments system.⁵³ Companies such as Securus Technologies Company (JPay), GTL (ConnectNetwork), Keefe Group Company (ICSolutions/Access Corrections), and Western Union dominate the payment landscape within the state and federal correctional system. Often, a correctional facility allows one or a few of these institutions to act as vendors for money transfers to its population. For instance, JPay is registered as a money transmitter in 47 states and the District of Columbia and offers payment options to incarcerated populations in hundreds of county jails, state prisons, and federal prisons across 35 states.⁵⁴ Additionally, these companies often provide payment services for parolees and those on probation to make payments for supervision fees and restitution; in many cases, they also provide the payment infrastructure for inmate use of the internet and phone time.

The prices of these services have come under scrutiny by prisoner advocates and the media.⁵⁵ Potential federal policy response around the pricing of prison payment systems could be built around the Federal Communications Commission's (FCC's) interstate regulatory authority—because many of these companies are owned or operated by telecom companies or provide communication services in addition to their money businesses—or the CFPB. In the 115th Congress, Senator Tammy Duckworth introduced S. 1614, which would have authorized the FCC to regulate video visitation and inmate calling services. The bill was read twice and referred to the Senate Committee on the Judiciary and received no further action. In the 116th Congress, Senator Duckworth, with Senator Rob Portman as a cosponsor, introduced S. 1764, which would require the FCC to ensure that charges for inmate payphone services are reasonable and just. The bill is currently referred to the Senate Committee on Commerce, Science, and Transportation. Similarly, in the 116th Congress, Representative Bobby Rush introduced H.R. 6389, which would require the FCC to establish maximum rates and charges that providers of confinement facility communications services can charge. This bill has been referred to the House Committee on Energy and Commerce. Amidst the Coronavirus Disease 2019 (COVID-19) pandemic, the House passed H.R. 6800 on May 15, 2020, Division M, Title VII of which contains language nearly identical to H.R. 6389.⁵⁶

⁵³ According to research published by the Prison Policy Initiative (PPI) in 2017, nearly \$1 billion is estimated to have been sent via money transfer to the state prison system. PPI, “The multi-million dollar market of sending money to an incarcerated loved one,” January 18, 2017, at <https://www.prisonpolicy.org/blog/2017/01/18/money-transfer/>.

⁵⁴ See JPay's service locations at JPay, “Availability and Pricing,” at <https://www.jpayers.com/PAvail.aspx>.

⁵⁵ For instance, see PPI, “Victoria Law on *Marketplace*: How email services in prison exploit incarcerated people,” August 8, 2018, at <https://www.prisonpolicy.org/blog/2018/08/08/marketplace/>; Courtney E. Martin, “I Served My Prison Time. Why Do I Still Have to Pay?,” *New York Times*, April 30, 2019, at <https://www.nytimes.com/2019/04/30/opinion/i-served-my-prison-time-why-do-i-still-have-to-pay.html>; and PPI, “How to spot the hidden costs in a ‘no-cost’ tablet contract,” July 24, 2018, at <https://www.prisonpolicy.org/blog/2018/07/24/no-cost-contract/>.

⁵⁶ While the CARES Act (P.L. 116-136) directs the Federal Bureau of Prisons to promulgate rules regarding the ability of inmates to conduct visitation through video teleconferencing and telephonically, free of charge to inmates, during the covered emergency period, this law does not cover anyone incarcerated in state or local prisons or jails.

Other potential policy options include the CFPB's authority to prevent Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) for activities under its jurisdiction, granted to the agency by Congress through Section 1036 of the Dodd-Frank Act. The Dodd-Frank Act provides the CFPB with rulemaking authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service or the offering of a consumer financial product or service; the CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.⁵⁷ As codified in 12 U.S.C. §5531(a),

The Bureau may take any action authorized ... to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

According to 12 U.S.C. §5481, which sets out the statutory definitions for the CFPB, a "consumer financial product" includes a range of financial products or services, including money transmission, so long as it is used for personal, family, or household purposes.⁵⁸ However, while the CFPB has produced financial literacy programs⁵⁹ for people transitioning from incarceration, it has not determined that activities associated with prison payment providers merit UDAAP intervention. To the extent Congress is concerned with this issue, Congress could direct the CFPB to use its rulemaking or supervisory authority to address this market.

Payment Facilitators

Many companies outsource the administration of employee payroll and direct deposit to third-party payment companies known as payroll processors. Payroll processing has a relatively straightforward business model: companies hire a payroll processor to manage the administration of paychecks. Each pay period, the processor receives money from clients and sends the funds to the account of each of the client's employees. The processor may use an intermediary to receive and send the funds.

Payroll companies operate in the background, facilitating transactions from employers to employees without significant oversight from federal financial regulators. Payroll fraud is a type of bank fraud that garnered significant attention in 2019. That year, thousands of individuals were impacted because the CEO of a payroll processor—MyPayrollHR, the payroll processor for over 1,000 companies—allegedly used the company to direct payments to false accounts. In September 2019, MyPayrollHR ceased operations after the fraud detection system at one of the CEO's banks flagged the CEO for potential fraud. A few weeks later, the CEO was arrested for committing bank and wire fraud, allegedly using the payroll company and a network of fake companies to redirect funds to fraudulent accounts.⁶⁰

⁵⁷ CFPB, "Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs) examination procedures," October 1, 2012, at <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/>.

⁵⁸ 12 U.S.C. §5481(15)(A)(iv).

⁵⁹ Mary Griffin, "Financial information and tools available to help people transitioning from incarceration," CFPB, April 29, 2019, at <https://www.consumerfinance.gov/about-us/blog/financial-information-tools-help-people-transitioning-from-incarceration/>.

⁶⁰ Several media outlets covered the fraud. For instance, see Aaron Randle, "\$26 Million in Missing Paychecks, One Mysterious Swindler Charged," *New York Times*, November 21, 2019, at <https://www.nytimes.com/2019/11/21/>

Payroll processors are subject to varying degrees of state regulations. For example, in New York, where MyPayrollHR was based, the state banking laws require companies to be licensed by the Department of Financial Services only if they “engage in the business of selling or issuing checks, or engage in the business of receiving money for transmission.”⁶¹ This means that processors that never touch the money do not have to be licensed by the state. In other words, processors that hire an intermediary to receive and send funds are not considered money transmitters, and MyPayrollHR was not registered as a money transmitter with the State of New York.

There is significant debate as to whether payment processors should be considered money transmitters or at least included in the regulatory framework for MSBs. After the MyPayrollHR incident, New York lawmakers announced plans to increase regulation of payroll companies.⁶² As mentioned in the “Conference of State Bank Supervisors Money Services Business Model Law” section, the CSBS chose to exempt agents of payees from its model MSB law because it considers the consumer liabilities to be extinguished (because payment processors act as agents for payees, and the funds transacted are held in accounts managed by regulated institutions, such as banks). In this light, so long as payment processors do not handle the funds, they are effectively payment facilitators, responsible for sending information and instructions for one institution to send funds to another.⁶³ If Congress were to take some sort of action with respect to the current federal regulatory framework for money transmitters as payment processors, it might be done through FinCEN, which requires registration of several types of MSBs. In 2003, FinCEN offered an interpretation of its definition of money transmitter,⁶⁴ and it determined that for various reasons, payment processors do not meet the threshold for money transmitters.⁶⁵

Virtual Currency Exchanges and Digital Payments

Congress and federal policymakers have long expressed interest in electronic payments. Dating back to the Truth in Lending Act of 1968,⁶⁶ Congress began legislating disclosures, consumer protections, and regulations associated with electronic payments in the form of credit cards. A decade later, Congress passed the EFTA, which laid out consumer protections for electronic debit card payments. Over the past five decades, financial regulators have used their authorities under

nyregion/mypayrollhr-michael-mann.html.

⁶¹ Jimmy Vielkind, “New York Subpoenas Payroll Firms After MyParollHR Collapses,” *The Wall Street Journal*, October 2, 2019, at <https://www.wsj.com/articles/new-york-subpoenas-payroll-firms-after-mypayrollhr-collapses-11570053236>.

⁶² For instance, see Michael Williams, “MyPayrollHR debacle: N.Y. Senate Dems introduce legislative fixes to payroll industry,” *Times Union*, January 27, 2020, at <https://www.timesunion.com/business/article/MyPayrollHR-debacle-Senate-Dems-introduce-15008325.php>.

⁶³ For example, see Ellen Traupman Berge et al., “Money Transmission in the Payment Facilitator Model,” Venable LLP, June 27, 2018, at <https://www.venable.com/insights/publications/2018/06/money-transmission-in-the-payment-facilitator-mode>.

⁶⁴ 31 C.F.R. §103.11(uu)(5).

⁶⁵ FinCEN, “Definition of Money Transmitter (Merchant Payment Processor),” November 19, 2003, at <https://www.fincen.gov/resources/statutes-regulations/administrative-rulings/definition-money-transmitter-merchant-payment>.

⁶⁶ 15 U.S.C. §§1601-1667f.

the EFTA to create rulemakings about debit card overdrafts,⁶⁷ remittances,⁶⁸ and prepaid cards.⁶⁹ Recently, Congress has shown significant interest in other digital payments options, such as cryptocurrencies and central bank digital currencies,⁷⁰ and regulators have begun making rules and enforcement actions in these virtual currency markets.⁷¹

One particular concern is how the exchanges that manage the trade of these assets are regulated, and one of the biggest issues with respect to money transmitters and virtual currencies is the concept of money. The delineation between a money transmitter and a different kind of business (perhaps one that does not need to be licensed) often is whether or not the entity handles money. Since virtual currency exchanges handle virtual currency, there is debate over whether these entities are indeed handling money, and therefore would be subject to money transmitter regulations. This debate has implications for money laundering and fraud issues because when an institution is not registered or licensed, it is subject to fewer standards, especially with respect to AML laws. In 2013, FinCEN issued interpretative guidance for virtual currency exchanges, stating that an “administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a money transmitter under FinCEN’s regulation.”⁷²

Some observers also question whether and which agencies have responsibilities and authorities to regulate cryptocurrency markets. For instance, money transmitters that facilitate virtual currency transmission are subject to a variety of state regulations and licensing rules; however, virtual currencies are also being used as investment vehicles, so there is the question of whether they also could become subject to federal-level commodities or securities regulation. As Securities and Exchange Commission (SEC) Chairman Jay Clayton stated in testimony before the Senate Committee on Banking, Housing, and Urban Affairs (Senate Banking Committee):

It appears that many of the U.S.-based cryptocurrency trading platforms have elected to be regulated as money-transmission services. Traditionally, from an oversight perspective, these predominantly state-regulated payment services have not been subject to direct oversight by the SEC or the CFTC. Traditionally, from a function perspective, these money transfer services have not quoted prices or offered other services akin to securities, commodities and currency exchanges. In short, the currently applicable regulatory framework for cryptocurrency trading was not designed with trading of the type we are witnessing in mind. As Chairman Giancarlo and I stated recently, we are open to exploring with Congress, as well as with our federal and state colleagues, whether increased federal

⁶⁷ Federal Reserve System, “Electronic Fund Transfers,” 74 *Federal Register* 59033-59056, November 17, 2009.

⁶⁸ For example, see CFPB, “Electronic Fund Transfers (Regulation E),” 78 *Federal Register* 30661-30721, May 22, 2013; and CFPB, “Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E),” 84 *Federal Register* 67132-67167, December 6, 2019.

⁶⁹ CFPB, “Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z),” 83 *Federal Register* 6364-6449, February 13, 2018.

⁷⁰ For example, see U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs (Senate Banking Committee), *The Digitization of Money and Payments*, full committee hearing, 116th Cong., 2nd sess., June 30, 2020, at <https://www.banking.senate.gov/hearings/the-digitization-of-money-and-payments>. More on central bank digital currencies can be found at CRS In Focus IF11471, *Financial Innovation: Central Bank Digital Currencies*, by Marc Labonte, Rebecca M. Nelson, and David W. Perkins.

⁷¹ For example, see FinCEN, “FinCEN Penalizes Peer-to-Peer Virtual Currency Exchanger for Violations of Anti-Money Laundering Laws,” April 18, 2019, at <https://www.fincen.gov/index.php/news/news-releases/fincen-penalizes-peer-peer-virtual-currency-exchanger-violations-anti-money>.

⁷² FinCEN, “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” March 18, 2013, at <https://www.fincen.gov/resources/statutes-regulations/guidance/application-fincens-regulations-persons-administering>.

regulation of cryptocurrency trading platforms is necessary or appropriate. We also are supportive of regulatory and policy efforts to bring clarity and fairness to this space.⁷³

The SEC regulates securities transactions and firms participating in securities markets. It does not have direct oversight over transactions in currencies or commodities, including currency trading platforms, which is in the regulatory scope of the Commodity Futures Trading Commission (CFTC). In 2018, then-CFTC Chairman J. Christopher Giancarlo testified at the same hearing before the Senate Banking Committee on virtual currencies.⁷⁴ His statement suggested that there may be insufficient regulatory oversight of virtual currency exchanges, particularly with respect to data reporting, capital requirements, cybersecurity, fraud, price manipulation, and AML.

Other policymakers have argued that virtual currency developers should not be subject to money transmitter requirements. In the 116th Congress, Representative Tom Emmer introduced H.R. 528, which would create a safe harbor from federal and state money transmitter licensing and registration requirements for developers of “blockchain,” a technology that underpins virtual currencies, so long as the developer did not have control over a user’s digital currency during the course of regular business.⁷⁵ If Congress were to consider further action with respect to virtual currency exchanges, it could consider the CFTC’s role over commodities exchanges and how the CFTC and FinCEN can cooperate on money transmitter regulation at the federal level.

National Money Transmitter License

One policy question is whether money transmitters merit a more robust regulatory framework. Many money transmitters are small and operate in niche markets or limited geographic areas, but some are quite large with an international presence. Moreover, although money transmission does not serve as a substitute for banking services, it is one way that Americans transfer money to other accounts. To this end, regulators may perceive and wish to address regulatory blind spots but cannot, as these institutions do not fall under their jurisdictions. Federal Reserve Governor Lael Brainard stated in a recent discussion about the payments system: “The United States requires registration of a money transmitter at the federal level for purposes of Bank Secrecy Act/Anti-Money-Laundering compliance, but it does not require broader federal oversight of payment system operators.”⁷⁶

Recently, federal regulators have attempted to bring nonbank financial institutions into the bank regulatory system by offering special charters, allowing them to be licensed at the federal level (discussed in more detail below). The authority to do this is being debated in the courts, but

⁷³ Testimony of Securities and Exchange Commission (SEC) Chairman Jay Clayton, in U.S. Congress, Senate Banking Committee, *Chairman’s Testimony on Virtual Currencies: The Roles of the SEC and CFTC*, hearing, 115th Cong., 2nd sess., February 6, 2018 (Washington, DC: GPO 2018), at <https://www.sec.gov/news/testimony/testimony-virtual-currencies-oversight-role-us-securities-and-exchange-commission>.

⁷⁴ Testimony of Commodity Futures Trading Commission Chairman J. Christopher Giancarlo, in U.S. Congress, Senate Banking Committee, *Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission*, hearing, 115th Cong., 2nd sess., February 6, 2018 (Washington, DC: GPO, 2018), at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37>.

⁷⁵ For more on this bill and other related virtual currency legislative issues, see CRS Report R45664, *Virtual Currencies and Money Laundering: Legal Background, Enforcement Actions, and Legislative Proposals*, by Jay B. Sykes and Nicole Vanatko.

⁷⁶ Lael Brainard, “The Digitalization of Payments and Currency: Some Issues for Consideration,” speech presented at the Symposium on the Future of Payments, Stanford, CA, February 5, 2020, at <https://www.federalreserve.gov/newsevents/speech/brainard20200205a.htm>.

Congress could consider making this authority explicit if it were to decide to create a federal licensing scheme and expand federal regulatory authority to these types of financial institutions.

Many nonbank financial companies, such as money transmitters, are licensed at the state level. Perennial debates occur over whether this regulatory framework for a particular industry is unnecessarily burdensome or appropriately safeguards against risks. Recently, lenders and payment processors—the latter of which includes money transmitters—that use fintech have been at the center of this debate. One proposal to address these questions, which has been controversial, is to create a mechanism for federal bank regulators to regulate institutions not traditionally covered by banking regulations. By doing this, the institution would become covered by the regulatory framework that applies to other depository institutions, and the regulator could apply a similar supervisory framework to the new institution’s operations.

The Office of the Comptroller of the Currency (OCC) has recently taken measures to create a charter option for certain nonbank companies that are fintech firms. These firms can have a variety of business models, including money transmitter services. In response to concerns about this complexity, the OCC requested public comments in 2016 on a proposal to offer national bank charters to fintech companies.⁷⁷ In 2018, it announced that it would begin offering charters to fintech companies.⁷⁸ The OCC’s charter initiative has been challenged. State regulators and consumer advocates have argued that granting such charters would inappropriately allow federal preemption of important state-level consumer protections, and that the OCC does not have the authority to grant bank charters to these types of companies. State regulators have filed lawsuits, and the matter is the subject of ongoing legal proceedings.⁷⁹

In June 2020, the acting head of the OCC Brian Brooks announced that he plans to create an additional national banking charter for payments companies, which he states would amount to a “national version of a state money transmitter license.”⁸⁰ The framework for this charter would be based on the OCC’s charter for fintech firms. Given that this plan met significant legal challenges, Congress may want to examine the potential benefits and costs of a national money transmitter regime and might consider whether it would make sense to expand the OCC’s authorities (or that of another agency) to explicitly allow it to grant such a charter.

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⁷⁷ OCC, *Exploring Special Purpose National Bank Charters for Fintech Companies*, December 2016, at <https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-special-purpose-nat-bank-charters-fintech.pdf>.

⁷⁸ OCC, “OCC Begins Accepting National Bank Charter Applications From Financial Technology Companies,” press release, July 31, 2018, at <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html>.

⁷⁹ See CRS Legal Sidebar LSB10381, *Court Battle for Fintech Bank Charters to Continue*, by M. Maureen Murphy.

⁸⁰ Before working at the OCC, Brian Brooks worked as general counsel for Coinbase, a virtual currency exchange. Acting Comptroller Brooks unveiled the plan in a podcast with the American Bankers Association (ABA). See ABA, “Podcast: OCC’s Brooks Plans to Unveil ‘Payments Charter 1.0’ This Fall,” June 25, 2020, at <https://bankingjournal.aba.com/2020/06/podcast-occs-brooks-plans-to-unveil-payments-charter-1-0-this-fall/>.

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