



April 12, 2019

Conference of State Bank Supervisors
Attn: Emerging Payments Task Force
1129 20th Street NW, 9th Floor
Washington, D.C. 20036

(submitted via email to modelepaymentslaw@csbs.org)

Re: State Model Payments Law Request for Information

Dear Emerging Payments Task Force members:

We, Consumer Reports¹ (CR) and the National Consumer Law Center (NCLC) (on behalf of its low income clients), appreciate the opportunity to provide feedback to the Conference of State Bank Supervisors (CSBS) on the Emerging Payments Task Force Payments Subgroup State Model Payments Law. We thank CSBS for its leadership in addressing emerging issues in financial services.

The Request for Information states that the working group of state regulators that will be brought together to “fashion coordinated solutions” for the items recommended by the Task Force will rely on three policy standards, the first of which is that: “Regulation must sufficiently protect consumers from harm, including all forms of loss.” We urge the CSBS to keep this focus on consumer protection at front of mind as it considers the recommendations of the Task Force.

While we understand the Task Force’s interest in reducing “unnecessary burden on industry,” through regulatory harmonization, the focus for your Task Force and the CSBS must always be

¹ Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports works for pro-consumer policies in the areas of financial services and marketplace practices, antitrust and competition policy, privacy and data security, food and product safety, telecommunications and technology, travel, and other consumer issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world’s largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

on protecting consumers.² The core purpose of money transmission laws is consumer protection.³ While the way money moves is different across platforms and is changing with technology, the fundamentals of consumer protection for money services businesses remain the same. Consumer funds must be safe, money services businesses must be strong, and if something goes wrong, consumers must quickly be made whole. Even in innovative areas, such as virtual currency exchanges, the consumer risks are well defined.⁴ States should not lose focus on this fact in an effort to achieve uniformity,⁵ and any effort to harmonize certain state law definitions and exemptions⁶ must have the purpose and result to harmonize to high standards of consumer protection.⁷

History has shown that many so-called innovations in financial services end up harming consumers and the economy before their abuses are curtailed.⁸ States should be worried more about opening the gates to harmful products that sneak in under the guise of innovation than reducing regulations. The financial marketplace is innovating at a rapid pace, a fact which undermines the complaints from industry that the variety in money transmission laws is inhibiting innovation.⁹ Instead of working to achieve uniformity as the overarching goal in and of itself, we urge states to focus primarily on the policies needed to ensure that the marketplace works for consumers everywhere and, to the extent uniformity is a goal, to harmonize protections at a high level.

We strongly urge a continued focus on establishing clear rules rather than relying on a principles-based approach. Well-intentioned but vague principles leave the door open to lax oversight and consumer harm. To prevent harm to individuals and the financial system, there must be mandatory, enforceable standards for both safety and soundness as well as consumer protection. Consumer protection should not be left to the chance of weak implementation of vague principles.

We further urge that if state financial regulators are not already regularly meeting with consumers or consumer groups, they establish modes for doing so. In New York State, a

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<https://www.csbs.org/sites/default/files/2019-02/Fintech%20Industry%20Advisory%20Panel%20-%20Payments%20Subgroup%20-%20January%202019%20Recommendations%20%28Final%29.pdf> at 1.

³ See for example, CA Fin Code § 2001(d) (2017).

⁴ https://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf

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<https://www.csbs.org/sites/default/files/2019-02/Fintech%20Industry%20Advisory%20Panel%20-%20Payments%20Subgroup%20-%20January%202019%20Recommendations%20%28Final%29.pdf> at 1.

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<https://www.csbs.org/sites/default/files/2019-02/Fintech%20Industry%20Advisory%20Panel%20-%20Payments%20Subgroup%20-%20January%202019%20Recommendations%20%28Final%29.pdf> at 4 and 5.

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<https://advocacy.consumerreports.org/research/before-the-grand-rethinking-five-things-to-do-today-with-payments-law-and-ten-principles-to-guide-new-payments-products-and-new-payments-law/>

⁸ <https://georgetownlawjournal.org/articles/298/fintech-and-the-innovation-trilemma/pdf> at pp 249 - 262.

⁹ <https://coincenter.org/files/2018-01/federalalternativev1-1.pdf>

statewide coalition of consumer and community groups (New Yorkers For Responsible Lending) meets six or more times a year with the Department of Financial Services Superintendent to exchange information and discuss issues related to market conduct, regulation, policy and enforcement.

Conclusion

As the organization composed of the states' top financial regulators, CSBS can ensure that companies put consumer protection first, as legislators intended state money transmitter laws to do. Thank you for the opportunity to comment. We look forward to working with CSBS on these important issues.

Sincerely,

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Consumer Reports

Lauren Saunders
Associate Director
National Consumer Law Center