



November 5, 2019

Conference of State Bank Supervisors  
ATTN: MSB Model Law  
1129 20th Street NW, 9th Floor  
Washington, D.C. 20036

(submitted via email to [modelepaymentslaw@csbs.org](mailto:modelepaymentslaw@csbs.org))

***Re: Draft Model Law Language for MSBs Request for Comment***

Dear Conference of State Bank Supervisors:

We, Consumer Reports<sup>1</sup> (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 its draft model law language for money services. As we expressed in our April comments, the core purpose of money transmission laws is consumer protection, and the fundamentals of consumer protection for money services businesses remain the same even as new products evolve. Consumer protection is a result of ensuring appropriate oversight, financial soundness, and duties to protect consumers for any business that accepts consumer value. Model language, done right, can establish a floor of consumer protection, and should be used to raise state protections. The model law should not create an alternative means of compliance.

**The model law language should include virtual currency in its activity definitions.** While virtual currencies raise questions of monetary policy and global financial stability that are outside the scope of what states alone can accomplish, states have an important role to play. While we are concerned about the absence of a federal legal framework for cryptocurrency, we

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<sup>1</sup> 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. Consumers 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.

support states in adopting the CSBS model virtual currency framework to provide basic consumer protections for consumers acquiring virtual currencies through exchanges.

**We object to the exemption of payroll businesses from oversight as money services businesses, and urge CSBS to use extreme caution in defining exemptions.** We agree with the CSBS that exemptions are only appropriate if an activity does not pose a risk to consumers.<sup>2</sup> In September, a payroll company absconded with \$35 million, leaving thousands of employees without their wages.<sup>3</sup> That is not the first time and will not be the last time that a payroll company, whether due to fraud or mismanagement, exposes employers and employees alike to risks of harm when it moves money. Exempting payroll companies, as is proposed in the model language, is inappropriate, as doing so would violate the basic standard for an exemption: no risk to consumers.

In addition, it is premature to exempt any industries for which the risks are as yet unknown. Specifically, we object to the exemption of distributed ledger companies. Distributed ledger is new within the last decade, and the businesses built on it are largely untested. These systems often have multiple purposes, including holding, storing and moving value.<sup>4</sup> It makes no sense to exempt them from oversight.

Similar to the uncharted territory of distributed ledger, there may yet be consumer risks stemming from rewards programs. Some types of loyalty programs are obviously not money transmission, such as grocery store sales incentives, including Walgreens Balance Rewards<sup>5</sup> and Safeway's Just for U program.<sup>6</sup> However, there are a number of emerging business models that may one day require a money transmitter license. There are a number of rapidly evolving efforts to turn loyalty rewards such as miles and points into monetary value.<sup>7</sup> Some of these efforts pose novel questions about what constitutes monetary value and money transmission. An example of a business that would likely be money transmission is the effort to tokenize rewards and make them tradeable.<sup>8</sup> While it is unclear where changes to rewards and loyalty programs will ultimately lead, it is too early to carve out a blanket exemption for such programs.

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<https://www.csbs.org/sites/default/files/2019-10/Executive%20Summary%20-%20Draft%20Model%20Law%20%28Sept%202019%29.pdf> at 3.

<sup>3</sup> <https://krebsonsecurity.com/2019/09/ny-payroll-company-vanishes-with-35-million/>

<sup>4</sup> “Regardless of whether a DLT arrangement is open or closed, participants (and therefore the nodes they maintain) may be differentiated by the roles they are permitted to play or functions they are permitted to perform.” These roles may include payment processing, issuing new assets, transferring assets or otherwise. *See* Federal Reserve Board, Distributed ledger technology in payments, clearing, and settlement, pp 12 - 16, *available at* <https://www.federalreserve.gov/econresdata/feds/2016/files/2016095pap.pdf>.

<sup>5</sup> <https://www.walgreens.com/balancerewards/balance-rewards.jsp>

<sup>6</sup> <https://www.safeway.com/justforu-guest.html>

<sup>7</sup> For example, Hilton Honors points are assigned a cash value and can be redeemed on Amazon for merchandise: <https://techcrunch.com/2017/09/19/amazon-now-lets-hilton-honors-members-shop-with-points/>

<sup>8</sup> <https://tokend.io/loyalty/>

**Conclusion**

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  
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