

Virtual Currency and Money Transmission Laws

Washington is among a growing number of states that have sought specific legislation, adopted rules, or provided guidance on the regulation of virtual currency. As part of a nationwide task force, DFI worked with various payment system providers to create sound regulatory standards and practices within existing law. These efforts have provided needed clarification to industry and have helped quell confusion about the legal requirements governing the use of this exciting technology in the financial sector. DFI strives to protect businesses and consumers while not unnecessarily impeding the development of new technologies that might improve existing payments systems or create alternative payment systems.

Definitions under the Washington Uniform Money Services Act

In Washington, money transmitters are regulated under the Uniform Money Services Act (UMSA), chapters [19.230 RCW](#) and [208-690 WAC](#).

“Money Transmission” means receiving money or its equivalent value (equivalent value includes virtual currency) to transmit, deliver, or instruct to be delivered to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. “Money transmission” does not include the provision solely of connection services to the internet, telecommunications services, or network access. “Money transmission” includes selling, issuing, or acting as an intermediary for open loop stored value and payment instruments, but not closed loop stored value.¹

“Virtual currency” means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. “Virtual currency” does not include the software or protocols governing the transfer of the digital representation of value or other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.²

Licensure under UMSA

Receiving and transmitting money or its equivalent value from one location to another location is money transmission. Thus, persons engaged in the business of buying or selling virtual currency as a business generally fall under the definition of money transmission in the Act and must hold a money transmitter license when providing services to Washington residents.

For example, the following are persons who must obtain a license under UMSA:

(1) Persons operating kiosks or virtual currency “ATMs” – a person who operates a virtual currency ATM or kiosk to facilitate the exchange of virtual currency for real

¹ Definition of Money Transmission, Uniform Money Services Act, RCW 19.230.010(18).

² Definition of Virtual Currency, Uniform Money Services Act, RCW 19.230.010(30).

currency or another type of virtual currency is a money transmitter. It does not matter if the owner of the kiosk is drawing upon its own virtual currency in its possession or if it is connecting to a virtual currency exchanger to effectuate the transaction.

(2) Persons operating an exchange platform who facilitate the transfer of fiat or virtual currencies - a person that facilitates transfers of one type of virtual currency to a different type of virtual currency, or virtual currency for real money (or vice versa) are money transmitters. If, however, the person operates a platform that allows buyers and sellers of virtual currency to post their bids and offers is not a money transmitter as long as the parties themselves settle the matched transactions through an outside venue. If the platform operator assists in settling the transaction on the platform, however, the person is a money transmitter.

(3) Persons providing virtual currency storage via a hosted wallet – a person that acts as an intermediary or provides an account to receive, store, and transmit virtual currency on behalf of another is a money transmitter. If the person interacts with the payment system on behalf of the owner of the virtual currency or has total independent control over the value of the virtual currency, the person is a money transmitter. A person that facilitates the creation of a wallet (by creating software) but doesn't interact with the payment system or have independent control over the value is generally not a money transmitter (see [WAC 208-690-015\(4\)](#)). Similarly, a person that creates a wallet that requires more than one private key for the wallet owner(s) to effect transactions (multiple-signature wallets) and restricts its role to maintaining possession of one key for additional validation is generally not a money transmitter.

(4) Persons providing payment processing services involving virtual currency – A person that acts as an intermediary to enable merchants to accept virtual currency from customers in exchange for goods and services are money transmitters. Although UMSA has an exclusion from the act for traditional payment processors (at [RCW 19.230.020\(9\)\(c\)](#)), payment processors that transmit virtual currency do not satisfy the exclusion as they do not operate entirely through clearing and settlement systems that only admit BSA-regulated financial institutions as members (see [WAC 208-690-018\(3\)\(a\)](#)).

UMSA has a number of exclusions at [RCW 19.230.020](#). For example, governments, banks, and credit unions are generally not subject to the Act. Also excluded are designated contract market boards of trade and registered futures commission merchants under the federal Commodity Exchange Act, among others. The burden of proving the applicability of an exclusion is upon the person claiming the exclusion.

DFI's Framework for Analyzing Whether a License is Required

When DFI receives an inquiry about licensing or a license application, or when the agency comes in contact with a company as the result of a complaint, we analyze the business model, seek additional information when necessary, and otherwise ensure our knowledge of the company's activities. While we do our best to fully examine a business model, if a company is not forthcoming or is not itself familiar with the law, potential exclusions may be overlooked. It is the company's burden to identify and bring to our attention any potential reason for application of an exclusion. We cannot provide legal or business advice to companies – they must know or seek advice on how the law and potentially its exclusions apply to their business model. However, we are happy to discuss a proposed business plan with a company to discuss whether a license may be required.

Compliance with UMSA

In addition to complying with all provisions of the Act, a virtual currency business must also comply with the following additional requirements:

- (1) Hold virtual currency of the same type and value as that held by the licensee but which is obligated to consumers (see [RCW 19.230.200\(1\)\(b\)](#) or see WAC 208-690-085(4) for an example).
- (2) Provide additional disclosures as specified in [RCW 19.230.370](#) and [WAC 208-690-205](#).
- (3) If hosting a virtual currency wallet:
 - (a) The minimum tangible net worth required at license application is \$100,000. See [WAC 208-690-060\(2\)](#).
 - (b) You must submit a third party information security audit report of all electronic information and data systems that is acceptable to the director. The audit must demonstrate that all virtual currency is secure while controlled by the company. See [RCW 19.230.040\(5\)](#) and [WAC 208-690-030\(7\)](#).

Federal Guidance

The Financial Crimes Enforcement Network (FinCEN) is the federal agency that regulates money service businesses (MSBs). FinCEN has issued several guidance documents related to its approach to regulating virtual currency. On May 9, 2019, FinCEN issued [FIN-2019-G001](#), to consolidate current FinCEN regulations, and related administrative rulings and guidance issued since 2011. The guidance made clear that persons accepting and transmitting convertible virtual currency are required (like any money transmitter) to register with FinCEN as an MSB and comply with AML program, recordkeeping, monitoring, and reporting requirements (including the filing of SARs and CTRs). The guidance also set forth examples of how FinCEN's money transmission regulations apply to several common virtual currency business models.