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# Understanding the Relationship between Money Transmitter Laws and Regulations and Debt Management Plans

Association of Independent Consumer Credit  
Counseling Agencies (AICCCA)  
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Monday, January 23, 2012***



## Agenda

- Introduction
- How we got here...
- Money Transmitter Law Basics
- Investigations and Enforcement
- Looking to the Horizon – What's next?
- Question and Answers



## Howe we got here...

- Under state **Money Services Business Acts**, whether a DMP falls under the scope of a statute generally hinges on the plain language of the statute and, if no exemption exists, a facts and circumstances analysis by the relevant state regulator.
  - Many state Money Services Business Acts will not apply to a DMP provider because of an express exemption under the law, interpretative ruling, or the relevant regulator otherwise exercising discretion to not regulate a DMP.
  - In at least 14 states and DC there Money Services Business Acts that apply according to the regulator.
    - Non-exhaustive list of jurisdictions that have said no automatic exemption/license generally required, include: AK, AR, DC, HI, ID, IL, KY, and several more (See state interpretative letters for exact viewpoint)
- Carefully assess activities and the states that you work in on a state-by-state basis and the relevant statutes.



## State Money Services Business Acts/Money Transmitters Laws Basics

- 48 States and District of Columbia Have Money Services Business Acts / Money Transmitter Laws
- State Money Services Business Acts are not uniform, but generally work in the same way.
  - usually under state banking or financial institutions department and hold that specified payment instruments
  - Prohibit transmitting funds unless a bank or other depository institution, a licensed money transmitter, and/or by such licensed money transmitter's authorized distributors



## Penalties for Noncompliance

- The penalties for violation of a state Money Services Business Act vary by state, but typically are significant.
- These state laws generally provide that a person who is required to obtain a license under the statute but fails to do so is guilty of a criminal offense (misdemeanor or felony) punishable by imprisonment and/or fine.



# Typical Licensing Requirements

- Good moral character
- Sufficient financial responsibility
- Business experience
- Command the confidence of the public
- Often must have a minimum net worth of (e.g., \$150,000.00)
- 3 years experience in money transmission or other related financial services



# License Applications: Frequent Requirements

- An application for a license is made under oath
- An application must contain:
  - the most recent financial statement of the applicant
  - a schedule of all permissible investments
  - a 3 year history of any litigation
- A resume
- References
- Name, address and telephone number of the business
- Name, address and telephone number of your resident agent
- Your home address and telephone number
- Your electronic mail address (email)
- The same of all executive officers, directors and all key shareholders and members
- A schedule of permissible investments
- Fees=\$\$





## State Supervision and Examination

- Frequency – Depends on the State (always may be upon demand)
- Typically based on previous exam ratings, date of licensure, complaints received and company events, etc.
- Typically will be at primary place of business
- Goal: to ensure consumer protection, compliance and safety and soundness



## Common Anatomy of an Exam

- A notification letter is mailed 30-45 days prior to the audit commencing
- Submission of a preaudit examination 2-3 weeks prior to formal audit
- Agent visits
- On-site Interview
- Conclusion of Audit
- Exit Meeting
- Report of Examination (ROE) within 3-6 weeks
- Respond to ROE within 30 days of receipt
- Follow-up visit if needed



## Compliance Tips

- Appoint central contact person
- Ask questions prior to the onsite visit
- Maintain formal risk assessment
- Have all information in an organized manner prior to audit
- Receive, review and properly store all documentation



# Investigations

- An investigation can begin in more than one manner:
  - Self-initiated
  - Tipsters
  - Federal Referrals
  - Licensees



## How are investigations conducted?

1. Conduct surveillance operations to validate all information
2. Identify all players involved in an investigation
3. Subpoena bank records
4. Conduct covert
5. Conduct search warrants
6. Confrontation



## Common Investigation Themes

- Focus on unlicensed activity
  
- The objectives of state investigations are:
  - Consumer Protection
  
  - Licensee Protection
  
- Concerns: drug trafficking, money laundering, human smuggling and terrorist financing.



# State Licensing Checklist

- Pre-filing Meeting (required in CA, OH, and NC).
- Pro forma financial statements for last three years of operation.
- Business plan / Description of Service and Funds Flow Diagram.
- Inter-company services agreement, if any.
- Parent guarantee (required by certain states if subsidiary is the applicant).
- Personal information regarding applicant's officers, directors and shareholders.
- Copies of sample documents (e.g., receipts, kiosk terms and conditions, Internet portal terms and conditions of use).
- Sender/buyer and recipient/seller customer agreements for the proposed services.
- Written policies and procedures for the following:
  - customer forms and receipts,
  - advertising and marketing text, etc.,
  - privacy policy,
  - information and data security policy,
  - recordkeeping policy,
  - audit policy, and
  - escheat policy.
- Agreement with depository institution that serves as the repository for customer balances.
- State background check.



# Federal Requirements

- Money Service Businesses” are required to register with the U.S. Treasury Financial Crimes Enforcement Network (“FinCEN”) under the Bank Secrecy Act (“BSA”). The BSA regulations define money services businesses to include money transmitters.
  - The definitions of the state law and the federal regulation essentially overlap, with some notable exceptions.





# FinCEN Registration

- FinCEN regulations define the term “money transmitter” as “a person who provides money transmission services.” The regulations define the term “money transmission services” as “the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.” 31 C.F.R. § 1010.100(ff)(5)(i)(A) and (B) (*formerly* 31 C.F.R. § 103.11(uu)(5)(i)(A) and (B)).
- The regulations also provide that the term “money transmitter” shall not include a person that only “[a]ccepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.” C.F.R. § 1010.100(ff)(5)(ii)(f) (*formerly* 31 C.F.R. § 103.11(uu)(5)(ii)(f)) (*emphasis added*).
- FinCEN determined in FinCEN Ruling 2004-4 “*Definition of Money Services Business (Debt Management Company)*” (Nov. 24, 2004) that a person is not a money transmitter when it transmits funds solely as part of the execution and settlement of debtors’ payment plans and/or debt adjustment agreements that the person has helped to negotiate. (See also additional guidance and regulations. Not applicable to states).



# Related (Independent) Federal Requirements

- OFAC Screening
- AML Compliance



# 18 U.S.C . § 1960

- 18 U.S.C. § 1960, which prohibits unlicensed money transmission, can be used to prosecute a money transmitter:
  1. When he operates without a State license, § 1960(b)(1)(A);
  2. When he operates in violation of the FinCEN regulations requiring all money service businesses to register with FinCEN; § 1960(b)(1)(B); and
  3. When he transfers money knowing that the funds being transmitted are derived from a criminal offense, or are intended to be used for an unlawful purpose; § 1960(b)(1)(C).
    - Under 18 U.S.C. Section 1960, “Whoever conducts, controls, manages, supervises, directs, or owns all or part of a business, knowing the business is an illegal money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years or both.” 18 U.S.C.
- The term “illegal money transmitting business” is defined at Section 1960(b)(1)(A) as “a money transmitting business which affects interstate or foreign commerce in any manner or degree and is intentionally operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law.”



## Federal Checklist

- FinCEN Registration (Certain DMP providers are exempt per FinCEN Regulations, but may be required by state statute/regulator; check with counsel)
- Description of procedures for how compliance with applicable federal laws and regulations regarding money transmission, including the Bank Secrecy Act (“Know Your Customer,” etc.), Anti-Money Laundering (“AML”) policy and Office of Foreign Asset Control (“OFAC”) regulations.
- National background check.



## What's on the Horizon?

- CFPB is considering exercising supervision and examination over both MSBs and debt relief service providers.
  - Considerations include state regulation and risk to consumers
- 2012 State Legislative Cycle – Opportunity to advocate for changes to law
- Carefully assess individual activities and compliance



## QUESTIONS AND DISCUSSION

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