

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

May 2, 2016

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter to the Department of Business Oversight (“Department”) dated March 4, 2016. _____ has requested an order of exemption pursuant to Section 2011 of the Money Transmission Act (Fin. Code, § 2000 et seq.).

BACKGROUND

_____ is a 501(c)(3) nonprofit community service organization that provides consumers with debt management credit counseling services. _____’s services include debt management, bankruptcy counseling and education, certified housing counseling, financial coaching, and financial education. _____ is a member of the National Foundation of Credit Counseling, as well as certified by the Council on Accreditation, a certifying organization for nonprofits.

_____ assists consumers with establishing a debt management plan which is a debt repayment program approved by a consumer’s creditors, in which the consumer may receive reduced or waived finance charges, interest rates, and collection calls. The debt management plan allows consumers to make one monthly payment to _____ that is then disbursed to creditors. _____ deposits monthly payments from consumers in non-interest bearing trust accounts maintained by a national bank. Consumers are not charged fees for counseling sessions but when establishing a debt management plan, may be charged a monthly maintenance fee not exceeding eight percent of the money disbursed monthly, or \$35 per month, whichever is less.

_____ also claims that it is exempt from the licensing requirements under the Check Sellers, Bill Payers and Proraters Law (Fin. Code, § 12000 et seq.). Financial Code section 12104 provides that nonprofit community service organizations are exempt from requirements imposed on proraters if the organization meets certain criteria. Among other things, Section 12104 requires a nonprofit community service organization that is seeking an exemption from licensing to submit certain forms and financial statements to the

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Department on an annual basis. _____ has submitted the information to the Department required by Section 12104.

MONEY TRANSMISSION ACT

Financial Code section 2003, subdivision (q)(3) defines “money transmission” to include receiving money for transmission. Financial Code section 2003, subdivision (u) defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure. Financial Code section 2011 authorizes the Commissioner to exempt from the Money Transmission Act any person, if the Commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary.

Because _____ receives money from consumers to disburse to a consumer’s creditors as part of a Program, _____’s activities fall under the definition of money transmission unless it is exempt.

In October 2015, the Department adopted a regulation that specifies exemptions from the Money Transmission Act. (Cal. Code Regs., tit. 10, § 80.3002.) Section 80.3002(a) of the regulations provide, in relevant part:

The Commissioner finds that exempting the persons and transactions specified in subdivision (a) of this Section from the Money Transmission Act is in the public interest and that the regulation of such persons and transactions is not necessary for the purposes of the Money Transmission Act. Accordingly, in addition to the persons exempt pursuant to Financial Code Section 2010, the Commissioner exempts from the Money Transmission Act:

(2) A public benefit nonprofit which has received recognition of tax exemption under Internal Revenue Code Section 501(c)(3);

***, and

(4) a nonprofit community service organization that meets all of the criteria in Financial Code Section 12104 of the Check Sellers, Bill Payers and Proraters Law.

Because _____ is an Internal Revenue Code Section 501(c)(3) nonprofit organization and because _____ has filed the annual reports and meets the requirements for an exemption under the Check Sellers, Bill Payers and Proraters Law, the Commissioner finds that _____ is exempt from the Money Transmission Act pursuant to subdivisions (a)(2) and (a)(4) of section 80.3002 of Title 10 of the California Code of Regulations.

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which _____ provides products or services is altered in the future.

If you have any questions, please feel free to contact me at (415) 263-8514.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

Pamela Nakagawa
Counsel

PN:acp

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco