

## DEPARTMENT OF FINANCIAL INSTITUTIONS

TEVEIA R. BARNES, Commissioner of Financial Institutions  
www.dfi.ca.gov



### Opinion – “Repayment Provider – Is Subject to Money Transmission Act”

April 9, 2012

Re: Opinion Request

Dear \_\_\_\_:

This responds to your e-mail dated March 27, 2012. You requested a determination as to whether the proposed activities of an accelerated car loan repayment provider (Repayment Provider) would require a money transmission license under the Money Transmission Act (CA Financial Code § 2000 et seq.), a license under the Check Sellers, Bill Payers & Proraters Law (CA Financial Code § 12000 et seq.), or any other license/registration, in order to operate in California.

Our opinion is limited only to an analysis of the licensing requirements under the Money Transmission Act. We cannot opine as to the requirements under the Check Sellers, Bill Payers & Proraters Law because that law is administered by the California Department of Corporations. Similarly, we cannot opine as to any other licensing or registration requirements over which the Department does not have jurisdiction.

#### FACTUAL BACKGROUND.

You describe the facts as follows. Under the proposed program to be offered by the Repayment Provider, a consumer, with an outstanding retail installment contract or lease, would authorize the Repayment Provider to automatically deduct from the consumer's designated deposit account one-half of the scheduled monthly payment on the installment sales contract or lease every other week. Those funds would be deposited into one or more federally-insured deposit accounts maintained by the Repayment Provider and held in a fiduciary capacity on behalf of the consumer. Once a month, the Repayment Provider would transmit the applicable monthly payment on the note or lease to the holder or servicer on behalf of the consumer. Additionally, every six months, the Repayment Provider would transmit an amount equal to one-half of the monthly payment to the holder of the note or lease, resulting in the equivalent of 13 monthly payments each year. The consumer would benefit from the accelerated principal reductions. The consumer would pay the Repayment Provider a non-refundable application fee to enroll in the program and the Repayment Provider would charge the consumer an electronic debiting fee for each transaction. The Repayment Provider would not lend funds to the consumer and payments are not made unless sufficient funds are available in the account(s) to make payments. Funds would not be transmitted outside the United States.

## CALIFORNIA MONEY TRANSMISSION ACT.

California Financial Code (FC) § 2030(a) states: “A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this chapter . . . .”

FC § 2003(o)(3), in relevant part, defines “money transmission” as “receiving money for transmission.”

FC § 2003(s) defines “receiving money for transmission” as “receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.”

## APPLICATION OF MONEY TRANSMISSION ACT TO THE REPAYMENT PROVIDER'S PROPOSED ACTIVITIES.

Based on your description of the proposed activities, the Repayment Provider would need a money transmission license under the Money Transmission Act in order to operate in California. Under the proposed program, the Repayment Provider would receive funds via an automatic deduction from the consumer's deposit account. Those funds would be deposited into one or more federally-insured deposit accounts maintained by the Repayment Provider and held in a fiduciary capacity on behalf of the consumer. Thereafter, the Repayment Provider would transmit the funds to the holder or servicer on behalf of the consumer.

Thus, the Repayment Provider is “receiving money for transmission” and would need a money transmission license under the Money Transmission Act in order to offer its proposed program in California.

Sincerely,

/s/ Jennifer L.W. Rumberger

JENNIFER L.W. RUMBERGER  
Senior Counsel

JLWR:lca

cc: Robert Venchiarutti, Department of Financial Institutions, San Francisco