



## Financial Crimes Enforcement Network Department of the Treasury

### **FinCEN Ruling 2004-4 – Definition of Money Services Business (Debt Management Company)**

November 24, 2004

Dear [ ]:

This letter responds to your letter dated June 16, 2004, requesting a determination as to whether your client, [the business], is a money services business (“MSB”) for purposes of regulations promulgated by the Financial Crimes Enforcement Network (“FinCEN”), under the Bank Secrecy Act (“BSA”). In response to our subsequent request, you provided additional information about [the business] by letter dated October 12, 2004. Pursuant to 31 CFR § 103.85 governing FinCEN’s authority to issue administrative rulings, FinCEN has determined, based on the representations in your letters, that [the business] is not an MSB as defined in 31 C.F.R. § 103.11(uu).

You have represented that [the business] proposes to enter into business as a debt management company. In general, a debt management company holds itself out as providing services to debtors in the management of their debts. Debt management companies contract with a debtor for a fee to (i) effect the adjustment, compromise, or discharge of debts, and (ii) receive funds from debtors, and to remit such funds to creditors on a debtor’s behalf.<sup>1</sup> Creditors that accept payments from debt management companies grant benefits to their client debtors, such as interest rate reductions, waiver of late charges, and reduction in monthly payment amounts. [The business] would make monthly payments to creditors on behalf of its client debtors. [The business] also provides debtors with access to educational resources to assist in budget planning, such as newsletters, online educational content, and financial counseling support.

A debtor client of [the business] would make a monthly payment consisting of the payment to be made to creditors on the debtor’s behalf by [the business], and a fee for [the business]. Debtors’ funds would be transmitted to [the business] either via ACH debits to debtors’ checking accounts by [the business]’s financial institution, or money order made payable to [the business]. [The business] would deposit the funds into one or more trust accounts established by [the business] at a national banking association. [The business] would distribute the funds to creditors either via Mastercard’s Remote Payment and Presentment Service, or by paper check drawn on [the business]’s account. While the majority of creditors that accept payments by [the business] on behalf of debtors are

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<sup>1</sup> See, e.g., S.D. Codified Laws § 22-47-1 (2004).

credit card companies, a small number of medical services providers and utility companies also participate. [The business] requests a determination whether FinCEN would deem it an MSB by virtue of the debt management service it would provide.

Money services businesses, a category of financial institution for purposes of regulations implementing the BSA, are defined at 31 CFR § 103.11(uu) and include currency dealers and exchangers, check cashers, issuers, sellers, and redeemers of traveler's checks, money orders, or stored value, money transmitters, and the United States Postal Service. MSBs must comply with various reporting and record-keeping requirements, and must implement anti-money laundering programs. In addition, certain MSBs are subject to the requirement to register with FinCEN. The only MSB category into which [the business]'s business would possibly fall is money transmitter. The definition of money transmitter for purposes of BSA regulations found at 31 CFR 103.11(uu)(5) includes:

(A) [a]ny person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) [a]ny other person engaged as a business in the transfer of funds.

Whether a person is a money transmitter for BSA purposes is a matter of facts and circumstances. Based on the information contained in your letters, we conclude that [the business]'s debt management service does not constitute money transmission. As set forth in 103.11(uu)(5)(ii), FinCEN will generally not treat as a money transmitter a person engaged in the acceptance and transmission of funds "as an integral part of the execution and settlement of a transaction other than the funds transmission itself..." The general service that [the business] provides is to help debtors create a plan for payment and/or adjustment of their debts, and to obtain the agreement of creditors to accept payment under that plan. FinCEN views the money transmission that [the business] conducts as ancillary to the debt management service that [the business] provides, and incidental to a debtor's primary purpose in using the services of [the business]. To the extent that the money transmission conducted by [the business] is limited to submitting payments to creditors on behalf of debtors in conjunction with a debt management plan, FinCEN would not deem [the business] a money transmitter for purposes of 31 CFR 103.11(uu)(5).

In arriving at our decision, FinCEN relied upon the accuracy and completeness of the representations made in your letters and submissions. Nothing precludes FinCEN from seeking further action should any of this information prove inaccurate or incomplete. FinCEN reserves the right to publish this letter as guidance to financial institutions with information redacted in accordance with your request under 31 CFR §

103.81(a)(5), and as indicated in your June 16, 2004 letter. You will have 14 days after the date of this letter to identify any other information you believe should be redacted and the legal basis for the redaction. Should you have any questions, please telephone Anna Fotias, Senior Regulatory Compliance Specialist, at 202-354-6413.

Sincerely,

//signed//

William D. Langford, Jr.,  
Associate Director  
Regulatory Policy and Programs Division