



## Department of the Treasury Financial Crimes Enforcement Network

### Ruling

**FIN-2008-R010**

**Issued: December 11, 2008**

**Subject: Whether a Company that Engages in Certain Operations as an Authorized Agent for Collection of Social Security and Veteran Benefits is a Money Services Business**

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Dear []:

This responds to your initial letter of December 11, 2006 to the Internal Revenue Service Detroit Computing Center, which was forwarded to the Financial Crimes Enforcement Network (FinCEN), and your revised letter to FinCEN, dated June 7, 2007. In your revised letter, you request an administrative ruling as to whether [ ] (the "Company") would be required to register as a money services business pursuant to 31 C.F.R. § 103.41, based on its business activities.

According to the representations in your letters and from information you have provided by telephone, the Company is a holding company based in [city, state]. The Company has wholly-owned subsidiaries operating in [a number of] locations in [several states] whose primary business activity is consumer lending.

The Company also is an authorized payment agent for the Social Security Administration (SSA) and the Veterans Administration (VA) for those of its customers that have chosen to have their SSA and VA benefit payments deposited directly into an FDIC-insured bank (the "Bank"). Subsequent to the deposit of their benefit funds into the Bank, the Company disburses these funds to its customers at its offices. Under an agreement with the Bank, and at the request of its customer, the Company will provide the Bank with the appropriate documentation to establish a bank account for the requesting customer and the appropriate authorization either with the SSA or VA directing that the customer's SSA or VA benefit funds be deposited directly into this account. The customer is the accountholder and not the Company. For each account that is established for a Company customer, the Company pays the Bank a nominal monthly fee.

As you further have represented, once a bank account has been established for the customer and the appropriate authorization has been obtained, the SSA or VA has the authority and capability to deposit directly the benefit funds that are due the customer. The direct deposit of the benefit funds into the customer's account is accomplished

through the Automated Clearing House (ACH) system, by way of an ACH transaction, in which the SSA or VA, depending on which funds are to be deposited, is the initiator of the transaction. When SSA/VA makes the payment into the customer's account, the Bank notifies the Company. At any time thereafter, the Company can disburse the funds in the account to the customer. The Company may not disburse these funds to anyone other than the customer, and the Company may not transfer the funds to any other account.

Finally, you have represented that the Company disburses these funds to the customer via money order. When a Company customer visits a Company office and requests his or her benefit payment, the Company will print a money order made payable to the customer for the amount of the funds that are available in the customer's account and provide this money order to the customer. The Company uses money orders as a means of disbursement for recordkeeping and internal control purposes. Once the customer has received the money order, the Company notifies the Bank. Upon notification, the Bank debits the account of the customer for the amount that was disbursed and credits the account of the Company for the same amount.

When receiving the disbursement in the form of a money order, the customer may take the money order that he or she has been provided and endorse it over to the Company, at which point the Company will provide the customer with cash in an amount equal to the value of the money order. Alternatively, the customer may take the money order that he or she has been provided and endorse it over to a party other than the Company. Most often, the customer chooses to endorse the money order over to the Company. The dollar amounts of the money orders involved in these transactions typically range from \$500 to \$1,000. Occasionally, transactions are conducted for a money order that exceeds \$1,000.

With respect to its consumer lending activities, the Company also disburses a customer's loan proceeds via money order. Specifically, when the Company makes a loan to a customer, the Company prints a money order made payable to the customer for the amount of the loan and provides this money order to the customer. The customer may take the money order that he or she has been provided and endorse it over to the Company, at which point the Company will provide the customer with cash in an amount equal to the value of the money order. Alternatively, the customer may take the money order and endorse it over to a party other than the Company. In most of the Company's consumer loan transactions, the customer chooses to endorse the money order over to a party other than the Company. The dollar amounts of the money orders involved in these transactions typically range from \$70 to \$5,000. Most of these transactions involve a money order for an amount less than \$1,000.

The issuer of the money orders that the Company provides to its customers is [ ] ("Issuer"), a FinCEN-registered money services business. The Company acts as an agent of Issuer in providing these money orders to its customers. The Company does not provide money orders other than in the capacity as agent for Issuer and the Company will

only exchange cash against money orders that it has used to conduct lending transactions or disburse benefits.

The Company pays Issuer a nominal fee for the machine and paper stock that are needed to print Issuer money orders and a nominal fee for each money order that the Company provides. Issuer does not obligate the Company to charge fees for the subject money order services. Presently, the business policy and practice of the Company is not to charge fees for these services. The Company also does not charge a fee when it accepts the money order from the customer in exchange for cash.

#### Status as a Seller or Redeemer of Money Orders

Our regulations provide that each agent, agency, branch, or office within the United States of any person “doing business, whether or not on a regular basis or as an organized business concern” in the capacity of a seller or redeemer of money orders is a “money services business.”<sup>1</sup> A “seller or redeemer of money orders” includes any seller or redeemer of money orders “other than a person who does not sell [money orders] in an amount greater than \$1,000 in currency or monetary or other instruments to or redeem [money orders] for an amount greater than \$1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions.”<sup>2</sup>

As you have described, the Company provides money orders to its customers in two circumstances: (1) when it has obligated itself to provide an SSA/VA benefit payment to the customer under the terms of the agreements among SSA/VA, the Company, the Bank, and the customer; and (2) when it has obligated itself to provide loan proceeds to the customer under the terms of a loan agreement with the customer. The customer does not initiate a transaction with the Company in which the customer provides funds to the Company for the purpose of obtaining a money order in either circumstance. Rather, in both cases, the Company chooses to discharge its own pre-existing obligation by means of a money order rather than another payment mechanism. To the extent that the Company uses money orders only to discharge its own pre-existing obligations, and does not sell money orders to any customer outside these circumstances, the Company is not considered to be doing business as a seller of money orders as that term is defined in our regulations.

As you have described, the Company provides cash to its customers in exchange for money orders only when a customer exchanges for currency a money order for SSA/VA benefits or loan proceeds that the customer has just received from the Company. In such circumstances, the money order in effect only has been provisionally issued, and the exchange for currency amounts to rescission of the issuance, not redemption, of the

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<sup>1</sup> 31 C.F.R. § 103.11(uu).

<sup>2</sup> 31 C.F.R. § 103.11(uu)(4).

money order. In consequence, the Company is not doing business as a redeemer of money orders as that term is defined in our regulations.

#### Status as a Check Casher

Our regulations define the term “check casher” as a person who is “engaged in the business of a check casher,” other than a person who does not cash checks “in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions.”<sup>3</sup> This definition applies to a person who engages in the business of cashing checks in exchange for currency or monetary or other instruments. FinCEN has consistently distinguished between checks and money orders.<sup>4</sup> To the extent that the Company is engaged in activities solely involving money orders, as described above, the Company is not a check casher as that term is defined in our regulations.

#### Status as a Money Transmitter

Whether a person is a money transmitter is a matter of facts and circumstances. Our regulations define the term “money transmitter” to include “[a]ny person... 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... or... [a]ny other person engaged as a business in the transfer of funds.”<sup>5</sup> The regulations also provide that “the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction *other than the funds transmission itself*... will not cause a person to be a money transmitter.”<sup>6</sup>

As you have described, with respect to the disbursement of SSA and VA benefits, the Company accepts funds on behalf of the intended recipient of those benefits (the customer) and then makes those funds available to the intended recipient. The Company is thereby effectively functioning as a payment processor on behalf of the payee, providing the intended recipient of funds with a portal to a financial institution that has access to the ACH system through which the intended recipient’s benefits are paid. Provided that the role of the Company in these transactions is limited to submitting the intended recipient’s authorizations to the Bank for ACH processing, and disbursing the funds received through the ACH process to the intended recipient, the Company is not considered to be a money transmitter as that term is defined in our regulations.<sup>7</sup>

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<sup>3</sup> 31 C.F.R. § 103.11(uu)(2).

<sup>4</sup> See 31 C.F.R. § 103.11(u)(1)(iii), (iv) (separately listing “personal checks,” “business checks,” and “money orders,” among other forms of monetary instruments).

<sup>5</sup> 31 C.F.R. § 103.11(uu)(5)(i)(A).

<sup>6</sup> 31 C.F.R. § 103.11(uu)(5)(ii) (emphasis added).

<sup>7</sup> See *Definition of Money Transmitter (Merchant Payment Processor)*, FinCEN Ruling 2003-8 (Nov. 19, 2003) (“to the extent that [one’s role] is limited to submitting payment instructions obtained from a

## Registration

Our regulations provide that certain money services businesses, whether or not they are licensed as a money services business by any State, must register with FinCEN.<sup>8</sup> The term “money services business” includes “each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern” in one or more of the following capacities: (1) a seller of money orders, (2) a redeemer of money orders, (3) a check casher, or (4) a money transmitter.<sup>9</sup> As the Company does not conduct business in any of these capacities, either as a principal or as an agent, according to the provisions of our regulations, the Company is not required to register as a money services business.

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This ruling is provided in accordance with the procedures set forth at 31 C.F.R. § 103.81. In arriving at the conclusions in this administrative ruling, we have relied upon the accuracy and completeness of the representations you made in your communications with us. Nothing precludes FinCEN from arriving at a different conclusion or from taking other action should circumstances change or should any of the information you have provided prove inaccurate or incomplete. We reserve the right, after redacting your name and address and the Company’s name, to publish this letter as guidance to financial institutions in accordance with our regulations for requesting an administrative ruling.<sup>10</sup> You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

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merchant to a bank for ACH processing, and remitting funds received through the ACH process to the merchant... [one would not be] a money transmitter for the purposes of 31 CFR 103.11(uu)(5)”).

<sup>8</sup> The United States Postal Service, any state or federal agency, and issuers, sellers and redeemers of stored value are not required to register. 31 C.F.R. § 103.41(a)(1). In addition, “[a] person that is a money services business solely because it is an agent of another money services business... is not required to register.” 31 C.F.R. § 103.41(a)(2).

<sup>9</sup> 31 C.F.R. § 103.11(uu).

<sup>10</sup> 31 C.F.R. §§ 103.81-87.

If you have questions about this ruling, please contact [FinCEN's regulatory helpline at (800) 949-2732].

Sincerely,

// signed //

Jamal El-Hindi  
Associate Director  
Regulatory Policy and Programs Division