

## MEMORANDUM

TO: All Debt Adjuster and Money Transmission Applicants and Licensees

FROM: Carmine Costa, Director, Consumer Credit Division

RE: Debt Adjustment and Money Transmission

DATE: January 6, 2016

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This memorandum communicates dual licensure requirements for certain activities constituting money transmission and debt adjustment in Connecticut.

For over 25 years, this department has recognized that certain activities in this state engaged in on behalf of a debtor, such as transmitting bi-weekly mortgage payments to a mortgagee or transmitting unsecured consumer debt payments to a creditor, constitute “debt adjustment”. Such debt adjustment activities may also come within the meaning of “money transmission” as defined in Section 36a-596(6) of the Connecticut General Statutes, as amended by Public Act 15-53.

Although this department has not enforced a requirement of dual licensure for such activities, effective March 1, 2016, persons engaged in activities that meet the definition of both “debt adjustment” and “money transmission” will be required to obtain both licenses in Connecticut<sup>1</sup> unless exempt from licensure. Such position is consistent with federal interpretations of “money transmission” and necessary to protect the interests of Connecticut consumers.

As background, Section 36a-655 of the Connecticut General Statutes defines “debt adjustment” as “for or with the expectation of a fee, commission or other valuable consideration, receiving, as agent of a debtor, money or evidences thereof for the purpose of distributing such money or evidences thereof among creditors in full or partial payment of obligations of the debtor”. The Financial Crimes Enforcement Network (“FinCEN”) has distinguished certain debt adjustment activities as constituting money transmission. For example, applied to a company that facilitated the payment of monthly expenses for its customers by depositing money into the company’s account and then paying each customer’s expenses by company check, FinCEN held that such service constitutes money transmission under FinCEN’s regulations. “[T]he Company’s services . . . primarily consist of accepting funds from customers and transmitting those funds to the customer’s creditors, activity defined as money transmission under FinCEN’s regulations.” *See* FinCEN Ruling 2012-R004 (Application of Money Services Business Regulations to Daily Money Management Services) (May 25, 2012).

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<sup>1</sup>This Department will not require debt adjuster licensure of third party payment processors licensed as money transmitters in Connecticut that transmit funds solely in support of other entities duly licensed to provide debt adjustment or debt negotiation services in Connecticut or exempt from such licensure requirements.

Likewise, Connecticut law considers persons receiving funds from consumers for future transmission to creditors to be engaged in the business of money transmission. Section 36a-596(6), as amended, defines “money transmission”, in pertinent part, as “receiving money or monetary value for current or future transmission or the business of transmitting money or monetary value within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer”.

Nonetheless, the risks and business practices of companies providing services consisting of transmission of consumer payments to mortgagees or creditors as part of a program are often best regulated under the debt adjustment scheme. Many of these programs purport consumer savings as a result of enrollment, and laws in Connecticut governing money transmission do not have several of the consumer protections applicable to such programs that are present in the debt adjustment scheme, such as requiring written disclosure of fees and prohibiting false and misleading statements to consumers concerning the services to be performed.

Recent enforcement actions taken by the Consumer Financial Protection Bureau (“CFPB”) highlight the need for greater consumer protection in the industry. In May, the CFPB filed a lawsuit against a company that transmitted funds from consumers to their mortgage servicers, alleging that consumers were misled about program fees and were falsely promised savings without increasing their mortgage payments. In July, the CFPB took action concerning another mortgage payment program finding that the advertised interest savings had no factual basis and consumers were misled into believing that mortgage payments would be made to mortgagees on a biweekly basis, when in fact, the company held onto consumers’ payments and only remitted them monthly. Deceptive practices such as these will be deterred as a result of the requirements placed upon debt adjuster licensees in Connecticut.

For these reasons, this department is requiring that persons considered to be money transmitters by FinCEN, who receive, on behalf of a debtor, money or evidences thereof for the purposes of distributing such money or evidences thereof among creditors as payment of the debtor’s obligations, become licensed as both debt adjusters and money transmitters, unless exempt, and adhere to the requirements of both regulatory schemes effective March 1, 2016.

If you have any questions, please contact Anne Cappelli at [anne.cappelli@ct.gov](mailto:anne.cappelli@ct.gov) or (860) 240-8206.

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