

MIKE BEEBE
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A. HEATH ABSHURE
COMMISSIONER



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ARKANSAS SECURITIES DEPARTMENT

July 11, 2011

Mark Guimond, President
National Policy Group
1220 L Street, NW
Suite 100-505
Washington, DC 20005

RE: National Policy Group
Legal Opinion Letter No. 11-NA-0004

Dear Mr. Guimond:

The Staff of the Arkansas Securities Department ("Staff") is in receipt of your letter dated July 1, 2011, requesting that the Staff issue a legal opinion letter concerning the applicability of the Arkansas Money Services Act, codified at Ark. Code Ann. §§ 23-55-101 through 23-55-1005, to credit counseling agencies. A copy of your request letter is attached for your reference.

Based on the specific facts contained in your request letter, at the present time, the Staff is of the opinion that credit counseling agencies that receive and retain bill payments from Arkansas consumers and transmit the bill payments to creditors need to obtain a money services license from the Arkansas Securities Department. Pursuant Money Service Rule 102(10)(A) these credit counseling agencies are engaging in money transmission. Therefore, pursuant to Ark. Code Ann. § 23-55-201, credit counseling agencies that engage in the activities detailed in your letter need to obtain a money services license from the Arkansas Securities Department, before providing money services in the State of Arkansas.

If you have any questions or concerns about this matter, don't hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Scott Freydl".

Scott Freydl
Attorney Specialist

Enclosure



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ARKANSAS SECURITIES DEPT.

July 1, 2011

Arkansas Securities Department
ATTN: Karen Hicks
201 E Markham
Heritage West Bldg.
Suite 300
Little Rock, AR 72201

Dear Ms. Hicks:

I am writing on behalf of members of the credit counseling industry who are seeking a written determination or opinion letter regarding the application of your state's "Uniform Money Services Act" (23-55-101) to credit counseling agencies.

As you know, the credit counseling industry serves financially distressed consumers with the repayment of their debts to creditors through negotiated concessions (approved by the creditors) such as lowered interest rates and the elimination of late fees or penalties. In this service, the consumer pays a single monthly payment to the credit counseling agency which, in turn, disburses the appropriate payment as due to each creditor.

In the course of serving these consumers the credit counseling agencies are, in fact, receiving money from the consumers, retaining it in trust account and then transmitting it to creditors for the purpose of paying the consumers' bills, invoices, or accounts.

This process of money transmission and bill paying by credit counseling agencies closely mirrors the definition and definitional activities of organizations regulated under your state's "Uniform Money Services Act".

Specifically, your state's law (5-63-301) defines the activities of a credit counseling agency as:

Debt adjusting - means the entering into or making of a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall, for a consideration, agree to distribute, or distribute, the money among certain specified creditors in accordance with a plan agreed upon. (emphasis added)

Further, your state's law defines the activities of a "money transmission" as:

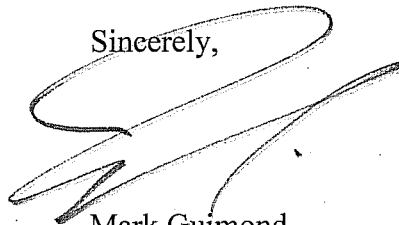
"...selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission."

Based on the above referenced facts we are seeking written determination or opinion letter that addresses the following question:

- 1) Is a credit counseling that receives money from a consumer and transmits those funds to a creditor for the purpose of paying the consumers' bills, invoices, or accounts required to be licensed as a money transmitter?

We believe that the issuance of a determination or opinion letter on this matter of policy would be in the public interest by establishing or rejecting any obligation of these agencies to become licensed as a money transmitter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Guimond', with a large, sweeping flourish extending upwards and to the right.

Mark Guimond
President