

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Debt Adjustment and Credit Counseling by Nonprofit Social Service or Nonprofit Consumer Credit Counseling Agencies

Proposed Readoption with Amendments: N.J.A.C. 3:25

Proposed New Rule: N.J.A.C. 3:25-2.6

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:16G-1 et seq. and 46:10B-22 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-30

Submit comments by April 19, 2008 to:

Robert J. Melillo, Chief
Office of Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:25, which expires on July 5, 2008 pursuant to N.J.S.A. 52:14B-5.1c.

N.J.A.C. 3:25-1 sets limits on debt adjustment and credit counseling fees that may be charged by nonprofit social service or nonprofit consumer credit counseling agencies. The

definition of “state” is proposed to be added in N.J.A.C. 3:25-1.1. The heading of N.J.A.C. 3:25-1.2 is proposed to be changed to more clearly describe who may charge the fees discussed in the subchapter.

N.J.A.C. 3:25-2 sets out licensing requirements for debt adjusters and registration requirements for high-cost home loan credit counselors. A new section headed “Duties of debt adjusters” is proposed at N.J.A.C. 3:25-2.6. This proposed new section sets out requirements as to how debt adjusters handle the funds of consumers that go into their accounts and create and maintain records of such transactions. These requirements are mandated by a recent amendment to N.J.S.A. 17:16G-9, the “Debt Adjusters Act” (Act).

N.J.A.C. 3:25-2.2(a) is proposed to be amended to add a new paragraph (a)7. New paragraph (a)7 would require applicants to submit their last corporate annual report and Internal Revenue Service (IRS) form to confirm their nonprofit status. Existing paragraph (a)7 will become (a)8 and the remaining paragraphs will be recodified accordingly. N.J.A.C. 3:25-2.2(e)5 and 4.6(a)1 are also proposed to be amended to require production of the most recently filed IRS forms. The production of the IRS form confirming nonprofit status is currently required as a part of the license application process. Including this requirement in the rules will highlight it for prospective applicants who review the requirements for licensure and assist them to efficiently assemble the necessary paperwork to complete an application. In addition, the Department is reviewing the bonding requirements in N.J.A.C. 3:25-2.4 in light of the recent amendments to N.J.S.A. 17:16G-5 on this issue and will be proposing amendments in the near future. Lastly, the heading of Subchapter 2 is proposed to be changed to fully note the areas covered in it.

N.J.A.C. 3:25-3 sets out examination powers of the Department and penalties it may impose on licensees. N.J.A.C. 3:25-3.1(c) is proposed to be amended to increase the penalty for

violating the Act or the rules, from \$500.00 to, for the first offense, \$1,000, and not more than \$5,000 for the second and each subsequent offense. This change is needed to conform the rules to the recent amendment to N.J.S.A. 17:16G-8, by P.L. 2005, c.287.

N.J.A.C. 3:25-4 sets out the specific requirements for those who provide high-cost home loan credit counseling.

The Department proposes amendments to N.J.A.C. 3:25-2.2(e)5 and 4.6(d)1 to correct the statutory cite to N.J.S.A. 15A:4-5. The Department is also proposing to make certain grammatical and punctuation amendments as a matter of form to update the rules and to amend the terms to recognize the transfer of corporate recording functions from the Secretary of State to the Division of Revenue. Lastly, references to “fictitious” corporate names are proposed to be amended to use the updated term “alternate” corporate names and names of Department sections and addresses referenced in the rules are being updated.

Finally, the Department engaged in a complete review of the chapter to ensure that its focus is on the licensing of debt adjustment activity and not on credit counseling, in which a debt adjuster licensee may also engage under the Act. With the recent turmoil in the credit market, particularly with regard to subprime loans, the importance of credit counseling services has grown. The Department is proposing amendments in several areas to clarify the scope of the rules. The intent of the debt adjuster rules is to implement the statutory requirement that debt adjusters be licensed, not to regulate credit counselors per se, in accordance with both N.J.S.A. 17:16G-1 et seq. and 2C:21-19. In fact, the Act provides that the only types of entities that will qualify for licensure as a debt adjuster are nonprofit social service agencies and nonprofit consumer credit counseling agencies. The Act envisioned that existing consumer credit counseling agencies might continue to provide credit counseling services should they also

become licensed debt adjusters. In addition, there are also numerous credit counselors who are not nonprofit consumer credit counseling agencies and others who are HUD certified home loan counselors. These groups provide a valuable service to consumers and the Department is seeking to clarify that they do not need to be licensed as debt adjusters under the Act or these rules to provide their credit counseling services in New Jersey. Thus, the Department proposes to amend N.J.A.C. 3:25-2.1(a), 2.2(a) and 3.1(c) to remove the references therein to credit counseling. The inclusion of that term in these sections of the rules may give the erroneous impression that an entity would need to be licensed under the Debt Adjusters Act to provide credit counseling, which is not the case. The Department also proposes to amend N.J.A.C. 3:25-2.2(b) and 2.3(b) to remove references to the locations where credit counseling per se may take place. By doing so, the Department intends to clarify that it licenses debt adjusters and regulates the locations where debt adjustment services are provided, but not locations where only credit counseling is provided.

The Department has reviewed these rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated and is, therefore, proposing to readopt the rules with the amendments noted above.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments permit individuals who have incurred an unmanageable amount of debt to receive assistance with their financial problems

from licensees that have demonstrated to the Commissioner that they are qualified to provide debt adjustment services. In this period of increasing personal debt, these licensees provide an important service which, in many cases, can provide significant relief to debtors and is the only means by which creditors may realize some portion of the money owed them. Also beneficial to society are the increased penalties for those who violate the Act or these rules. Therefore, the rules proposed for readoption with amendments have a beneficial social impact.

Economic Impact

The rules proposed for readoption have an economic impact on licensees who are required to pay application fees as well as be bonded, be subject to annual financial examinations, and file annual reports with the Department. The bonding and financial examinations ensure that the licensees have the financial resources to provide debt adjustment services. No changes in the application fees or bond amounts are being proposed.

Licensees can charge fees for their services with the maximum amount of fees set out in the rule. No increase in the maximum fees permitted to be charged to consumers is being proposed. The Department notes that the maximum fees are very reasonable.

Federal Standards Analysis

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be lost or generated as a result of the rules proposed for readoption with amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose reporting, recordkeeping and other compliance requirements on “small business.” The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 employees, is independently owned and operated and is not dominant in its field. Many of the entities affected by the rules proposed for readoption with amendments are small businesses. The Department believes that the reporting, recordkeeping and compliance requirements in the rules proposed for readoption with amendments as described in the Summary above are necessary for the Commissioner to determine that licensees are qualified, possess the necessary financial resources to sustain operation and operate properly. Compliance costs are discussed in the Economic Impact above; no professional services need be employed in order to

comply. Because of the potential for entities offering debt adjustment services to take advantage of consumers, no differing requirements based on business size can be made.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:25.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. DEBT ADJUSTMENT AND CREDIT COUNSELING FEES

3:25-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

“Debt adjustment” means either acting or offering to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or, to that end, receiving money or other property from a debtor, or on behalf of the debtor, for payment to, or distribution

among the creditors of the debtor, [, but] **Debt adjustment** shall not include the activities of [an]:

1. An attorney-at-law of this State who is not principally engaged as a debt adjuster[,a];

2. A person who is a regular full-time employee of a debtor and who acts as an adjuster of his or her employer's debts[,a] ;

3. A person acting pursuant [by] **to** any order or judgment of **a** court, or pursuant to authority conferred **upon that person** by any law of this State or the United States[,a] ;

4. A person [which] **who** is a creditor of the debtor or an agent of one or more creditors of the debtor and whose services in adjusting the debtor's debts are rendered without cost to the debtor[,a] ; **or**

5. A person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debt in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting those debts.

. . .

“Non-affiliated third party agency” means a [non-profit] **nonprofit** social service or credit counseling agency which is not under the influence, control, or direction of any outside party such as a landowner, real estate broker, lender, or consultant seeking to derive a profit or gain from the counseling services.

“[Non-profit] **Nonprofit** social service agency” or “nonprofit credit counseling agency” means any corporation duly organized under Title 15 or 15A of the New Jersey Statutes, and no part of the assets, income or profit of which is distributable to, or enures to the benefit of, its

members, directors or officers, except to the extent permitted under the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq.

. . .

“State” means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

3:25-1.2 Fees charged by [licensees] **licensed nonprofit social service and nonprofit consumer credit counseling agencies**

(a) – (b) (No change.)

SUBCHAPTER 2. LICENSING OR REGISTRATION REQUIREMENTS, **BONDING,**
AUDITS AND DUTIES OF A DEBT ADJUSTER

3:25-2.1 Eligibility for license or registration

(a) No person other than a nonprofit social service agency or a nonprofit credit counseling agency duly licensed in accordance with the Debt Adjuster Act and this chapter shall act as a debt adjuster [or provide credit counseling].

(b) - (c) (No change.)

(d) To be eligible for registration as a high-cost home loan credit counselor, an agency, including an agency licensed pursuant to the Debt Adjuster Act, shall be a non-affiliated third party [non-profit] **nonprofit** credit counseling agency approved by the United States Department of Housing and Urban Development.

3:25-2.2 Application for license **as a debt adjuster** or registration **as a high-cost home loan credit counselor**

(a) Prior to [providing] **acting as a** debt [adjustment or credit counseling services, other than high-cost home loan credit counseling] **adjuster**, a [corporation] **nonprofit social services or nonprofit consumer counseling agency** shall obtain a license from the Department. The license application shall be on a form approved by the Commissioner and shall include the following information:

1. A Certificate of Incorporation bearing the New Jersey [Secretary of State's] **Division of Revenue's** dated filing stamp or **its equivalent**. [for foreign (out-of-State)] **For non-New Jersey state nonprofit** corporations, a copy of the Certificate of Authority to do business in New Jersey bearing the New Jersey [Secretary of State's] **Division of Revenue's** dated filing stamp **or its equivalent**;

2. If the corporation uses a doing business as name, a copy of the registration of [fictitious] **alternate** corporate name bearing the New Jersey [Secretary of State's] **Division of Revenue's** dated filing stamp **or its equivalent**;

3. – 6. (No change.)

7. A copy of the annual report of the nonprofit agency most recently filed with the New Jersey Division of Revenue pursuant to N.J.S.A. 15A:4-5, or an equivalent report for non-New Jersey state nonprofit corporations, together with a copy of the most recently filed Internal Revenue Service (IRS) form 990 or copy of the IRS letter confirming exception from such filing;

Recodify existing 7. – 14. as **8. – 15** (No change in text,.)

(b) Upon determination that an applicant is qualified for licensure under the Debt Adjuster Act, the Commissioner shall issue a license for each location in this State where [credit counseling and] **the licensee may conduct** debt adjustment activities [will take place]. The license shall be prominently displayed in the public area of the office.

(c) A licensee shall advise the Department of a change of any legal name, business name or a change of the address that appears on the license by noting the change on the current original license and returning it to the Department for cancellation and reissuance of a new license containing updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the [Secretary of State, County Clerk] **Division of Revenue** or other authority evidencing that the change has been properly recorded.

(d) (No change.)

(e) Prior to providing high-cost home loan credit counseling services, a [non-profit] **nonprofit** social service or **nonprofit** credit counseling agency shall be registered by the Department. The registration application shall be on a form approved by the Commissioner and shall include the following information:

1. A Certificate of Incorporation bearing the New Jersey [Secretary of State's] **Division of Revenue's** dated filing stamp **or its equivalent** or, for [foreign (out-of-State)] **non-New Jersey state** corporations, a copy of the Certificate of Authority to do business in New Jersey bearing the New Jersey [Secretary of State's] **Division of Revenue's** dated filing stamp **or its equivalent**;

2. If the corporation uses a doing business as name, a copy of the registration of [fictitious] **alternate** corporate name bearing the New Jersey [Secretary of State's] **Division of Revenue's** dated filing stamp **or its equivalent**;

3. – 4. (No change.)

5. A copy of the annual report of the nonprofit agency most recently filed with the New Jersey [Secretary of State] **Division of Revenue** pursuant to N.J.S.A. [15A:5] **15A:4-5**, or an equivalent report for non-New Jersey **state nonprofit** corporations, **together with a copy of the most recently filed Internal Revenue Service (IRS) form 990 or copy of the IRS letter confirming exception from such filing**;

6. – 8. (No change.)

(f) - (i) (No change)

3:25-2.3 Office requirement

(a) (No change.)

(b) Prior to conducting debt adjusting [or credit counseling] at any new location, the licensee shall file with the Commissioner the address of the office and the license **application** fee required by N.J.A.C. 3:25-2.2.

3:25-2.6 [(Reserved)] **Duties of debt adjusters**

(a) Every licensee acting as a debt adjuster shall:

1. Disburse to the appropriate creditors all funds received from a debtor, less any fees permitted by N.J.A.C. 3:25-1.2, within 10 days of receipt of those funds;

2. Maintain a separate trust account in a qualified bank as defined in N.J.S.A. 17:9A-1, in the name of the debt adjuster for the benefit of the debtors serviced by the debt adjuster; and

3. Maintain an appropriate ledger book for the trust account required by (a)2 above, having at least one single page for each debtor, with appropriate entries of all deposits into and disbursements from each debtor's account, including copies of all records showing disbursements to creditors and receipts from debtors, which ledger book and records shall be maintained in accordance with generally accepted accounting principles for not less than six years following the close of each debtor's account.

SUBCHAPTER 3. PENALTIES AND EXAMINATION

3:25-3.1 Penalties

(a) - (b) (No change.)

(c) In addition to the penalties in (a) above, any person who violates any provisions of the Debt Adjuster Act or the rules applicable to licensees shall be subject to a penalty of [\$500.00] **\$1,000 for the first offense and not more than \$5,000 for the second and each subsequent offense** to be collected in a summary procedure under the “penalty enforcement law,” N.J.S.A. 2A:58-1 et seq. and any agency registered as a high-cost home loan credit counselor who violates any provision of the Home Ownership Security Act or the rules applicable to such registrants shall be subject to penalties pursuant to N.J.S.A. 46:10B-28(d).

(d) Any person who knowingly and willfully engages in the business of debt adjustment [and credit counseling other than high-cost home loan credit counseling] without a

license in violation of the Debt Adjuster Act shall be guilty of a crime of the fourth degree pursuant to N.J.S.A. 2C:21-19f.

SUBCHAPTER 4. ADDITIONAL REQUIREMENTS FOR HIGH-COST HOME LOAN
CREDIT COUNSELING

3:25-4.6 Continuing requirements for high-cost home loan credit counseling registrants

(a) By April 1st of each year, agencies registered as high-cost home loan credit counselors shall submit an annual report which shall contain:

1. A copy of their annual report [last] **most recently** filed with the New Jersey [Secretary of State] **Division of Revenue** pursuant to N.J.S.A. [15A:5-1 et seq.] **15A:4-5** or an equivalent report for non-New Jersey **state nonprofit** corporations with documentation attesting to their continuing status as a nonprofit corporation, **together with a copy of the most recently filed Internal Revenue Service (IRS) form 990 or copy of the IRS letter confirming exception from such filing;**

2. - 4. (No change.)

(b) (No change.)

(c) Notice of the loss of HUD approval as a Housing Counseling Agency shall be provided to the Department in writing and directed to:

New Jersey Department of Banking and Insurance

[Department of Banking]

Office of Administration and Finance

Licensing [Unit] **Services Bureau**

PO Box [327] **473**

Trenton, New Jersey 08625-[0327] **0473**