BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Debt Adjustment and Credit Counseling

Adopted Amendments: N.J.A.C. 3:25-1.1, 2.2, 2.3, 2.4, 4.1 and 4.4

Proposed: June 15, 2009 at 41 N.J.R. 2370(a).

Adopted: September 23, 2009 by Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Filed: September 24, 2009 as R.2009 d. 322, without change.

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

Effective Date: October 19, 2009.

Expiration Date: June 23, 2013.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance received written comments from Patrick F. Steva, Legal Compliance Coordinator, Family Credit Counseling Service, Inc. d/b/a Family Credit Management Services; Chris Vitale, President and CEO, Cambridge Credit Counseling Corp.; Kathryn Graham, General Counsel, Springboard Nonprofit Consumer Credit Management, Inc.; Paul L. Donohue, Jr., President, Debthelper.com Credit Card Management Services, Inc.; and Robert E. Fischer, Esq., Chief Legal Counsel, Take Charge America, Inc.

COMMENT: All commenters expressed support for the amendments that eliminate the New Jersey office location requirement.

RESPONSE: The Department appreciates the support from the commenters.

COMMENT: Several commenters stated that during the current economic downturn with the financial stress that many New Jersey debtors are experiencing, debt adjusters and credit counseling agencies can provide valuable services to help relieve financial stress through financial education, budgeting and credit counseling, and debt management services. The commenters stated that allowing legitimate debt adjusters and credit counselors, regardless of their office location, to serve the needs of New Jersey residents can bring much needed additional counseling and resources to assist debtors in dealing with pressing financial issues.

RESPONSE: The Department agrees and notes that this was one of the reasons underlying the proposed amendment to eliminate the in-State office location requirement.

COMMENT: Several commenters stated that using modern technology credit counseling can be provided effectively over the telephone or with a computer via the Internet and that it will benefit New Jersey consumers by permitting additional legally operating agencies to serve New Jersey residents because it will expand the number of legitimate agencies from which debtors can choose.

RESPONSE: The Department agrees and notes that this was one of the reasons underlying the proposed amendment to eliminate the in-State office location requirement.

COMMENT: Several commenters stated that advances in modern technology provide alternatives for consumers seeking services regardless of the agency's location and that in recent years face-to-face counseling is the least popular option, as it is not as convenient as modern technology methods.

RESPONSE: The Department agrees and notes that this was one of the reasons underlying the proposed amendment to eliminate the in-State office location requirement.

COMMENT: Several commenters stated that because of the recent economic difficulties there has been a dramatic increase in the number of consumers reaching out to credit counseling agencies in search of relief and that by eliminating the in-State location requirement it can be expected that several large nationally accredited agencies will be submitting applications for licensure in New Jersey, as the expense of securing, insuring and maintaining a New Jersey office location will no longer be a barrier to offering a full range of services in New Jersey.

RESPONSE: The Department agrees and notes that this was one of the underlying reasons the proposed amendment to eliminate the in-State office location requirement.

COMMENT: One commenter encouraged the Department to modify the proposed bonding requirement to have it be based on a true annual average balance of the trust account attributable to New Jersey residents, not the average of monthly highest balances. The commenter went on to note that most states base the bond amount on the average of the trust balance. The commenter then stated that, as proposed the requirement punishes the licensees for best serving the needs of New Jersey residents because the timing of the debt management plan payment is best if it aligns with the residents' pay dates, which are typically Fridays every two weeks or twice a month. The commenter stated that more New Jersey residents will want the dates of their debt management plan payments to align with these dates, which would mean that a New Jersey licensee will have peak trust balances near these two days of the month. The commenter stated that were a licensee to spread out New Jersey's residents' prospective payments throughout the month to avoid trust balance peak dates it would be a disservice to New Jersey residents. The commenter stated there is no evidence that using average balances as opposed to peak balances fails to provide an adequate level of bonding.

RESPONSE: The Department believes the bonding requirement included in the proposal to be reasonable and easy to understand. If it finds in the future that plan payments are being timed to keep balances low it may propose an amendment at that point. The Department declines to make the suggested change before it has had any opportunity to assess the efficacy of the new system to be established by these rules.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows: