

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Debt Adjustment and Credit Counseling

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

Proposed: August 5, 2002 at 34 N.J.R. 2552

Adopted January 7, 2003 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed January 7, 2003, as R. 2003 d.59, **with a substantive change** not requiring
additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-5e and 17:16G-4, 5 and 6.

Effective Date: January 7, 2003, Readoption;
February 3, 2003, Amendments

Expiration Date: January 7, 2008

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received written comments from Debt Rescue, LLC; Association of Debt Management Organizations; Consumer Credit and Budget Counseling, Inc; and Children and Family Services, Inc.

COMMENT: One commenter believes the definition of credit counseling appears vague and overly broad and calls for a clarification of the definition of “credit counseling” vis-à-vis “debt settlement.” The commenter believes that the current statutory definition of debt adjuster found at N.J.S.A. 17:16G-1c(1) appears to prohibit the practices of certain “debt settlement” organizations. The commenter supports a definition that distinguishes “debt settlement” services, where the provider does not take possession of the money of the debtor, from “debt

adjusting” services. The commenter supports a definition that would permit the offering of “debt settlement” services that meet the provisions of subsection c(1)(a) but do not meet the provisions of subsection c(1)(b).

RESPONSE: The definition of credit counseling contained in N.J.A.C. 3:25-1.1 tracks the statutory definition of that term contained in N.J.S.A. 17:16G-1. A change in definition cannot be accomplished through a regulatory amendment but would require a statutory change.

COMMENT: One commenter suggests that the definition of “debtor” should be confined to a single natural person or, in the alternative, two persons lawfully joined in marriage.

RESPONSE: The current definition of “debtor” in N.J.A.C. 3:25-1.1 reiterates the definition of that term contained in N.J.S.A. 17:16G-1. A change in that definition cannot be accomplished through a regulatory amendment.

COMMENT: This commenter is also of the view that the definition of “credit counseling” as including an “educational program” is overly broad and could include books, instructional programs, or similar bonafide methods of education without the use of credit counseling. According to the commenter, the use of this definition could have the unintended consequence of expanding the pool of licensees to include colleges and universities who provide debt management education to certain students as a condition of their receiving Federal financial assistance and student loans.

RESPONSE: The Department does not believe that this definition is overly broad because it specifically provides that “credit counseling” means any guidance or educational program or advice offered by a non-profit social service agency or non-profit consumer credit counseling agency for the purpose of fostering the responsible use of credit and debt management. Thus, the definition is limited to educational programs offered by such nonprofit agencies.

COMMENT: Another issue raised by this commenter relates to the maximum \$60.00 per month fee that may be charged to debtors as provided for in the readoption. This commenter suggested that the \$60.00 “cap” on fees should be replaced with a more open-ended allowance to provide for “fair and reasonable fees.” The commenter also suggested that the Department clarify the differences between monthly account “maintenance” fees and initial “set up” fees. Finally, the commenter suggested that if the cap of \$60.00 per month is retained in the rules, then the Department should consider the implementation of an automatic adjustment mechanism based on changes to the Consumer Price Index (CPI) every six months.

RESPONSE: The Department believes that the \$60.00 per month cap on fees for credit counseling services is reasonable and there is no need for clarification between monthly “maintenance fees” and initial “set up” fees, as the regulation encompasses both. Nor does the Department see the need for the implementation of an automatic adjustment every six months, particularly in light of low inflation rates experienced in recent years.

COMMENT: This commenter also suggested that the licensing requirement should be made applicable only to organizations physically operating within the boundaries of New Jersey. Also, the commenter questions the utility of requiring the auditor to certify that the “salaries and expenses paid by the licensee are reasonable compared to those incurred by comparable organizations providing similar services.”

RESPONSE: The proposed addition of new subsection (d) to N.J.A.C 3:25-2.2 reflected the Department’s construction of N.J.S.A. 17:16G-2 as requiring all providers of debt adjusting services to residents of this State to be licensed, so as to ensure that only properly qualified entities engage in the business of debt adjustment. However, for the reasons recited in the Summary of the Agency-Initiated Change below, the Department has decided not to adopt

proposed N.J.A.C. 3:25-2.2(d) as part of this readoption. The requirement that the annual audit certify the reasonableness of salaries and expenses paid by the licensee in comparison to other comparable organization is a statutory requirement imposed by N.J.S.A. 17:16G-5 and cannot be altered by regulation.

COMMENT: One commenter commended the Department for requiring out-of-State debt adjusters to be licensed because it levels the playing field, and will prevent unlicensed credit counselors from harming the industry and New Jersey residents. This commenter also suggested that the fees charged language be modified to eliminate the cap on fees, and allow the Department to set the maximum fees administratively. The capping of fees may leave debt adjusters without the funds to finance their operations.

RESPONSE: The Department notes and appreciates the support for the readoption. Under N.J.S.A. 17:16G-2 and these rules as readopted, the Department will continue to require out-of-State persons who act as debt adjusters in New Jersey to be licensed. As is noted in the Summary of Agency-Initiated Change below, the Department will address the requirement that such out-of-State persons must maintain an office in New Jersey through comprehensive amendments specifically relating to that issue to be proposed in the near future.

On the issue of the capping of fees, the Department believes the fee cap is appropriate and reasonable. The Department is, through the adoption of the amendment to N.J.A.C. 3:25-1.2, setting the maximum fee administratively in accordance with the Administrative Procedure Act. However, the Department will consider revising the cap on fees in the future.

COMMENT: One commenter commended the Department for the amendment requiring the licensure of credit counselors and debt adjusters. However, this commenter suggested that the Department increase to \$35.00 the cap on the monthly fees charged for debt adjusting services

contending that the present cap of \$25.00 was last reviewed in 1987. This increase would offset the increased costs of providing quality debt adjustment services because revenues from creditors have decreased.

RESPONSE: The Department feels that the commenter's suggestion regarding the fee cap for debt adjustment services may have merit and will consider revising the cap amount in the future

Summary of Agency-Initiated Change.

In the notice of the proposed readoption of this chapter, new subsection (d) was proposed to be added to N.J.A.C. 3:25-2.2. The intent of the new subsection was to indicate that persons who act as debt adjusters in New Jersey are subject to the licensure requirement imposed by N.J.S.A. 17:16G-1 et seq., regardless of whether the office of the person providing the services is located within New Jersey or in another jurisdiction. Thus, by implication, if adopted, this new subsection would provide that licensees could operate from non-New Jersey offices when providing debt adjustment services to New Jersey residents.

Upon further review of this issue, the Department has noted the explicit requirement imposed by N.J.A.C. 3:25-2.3(a) that debt adjuster licensees "shall have a place of business in this State."

In order to avoid the inconsistency in the rules which would result if proposed new subsection (d) of N.J.A.C. 3:25-2.2 was adopted and N.J.A.C. 3:25-2.3(a) was readopted in its current form, the Department has determined to readopt the chapter but not adopt proposed new N.J.A.C. 3:25-2.2(d). In the near future, the Department intends to address the issue of the location of the offices of debt adjuster licensees in a comprehensive manner, through the publication of a separate notice of proposal encompassing all of the rules which refer to the office location of these licensees.

Federal Standards Statement

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

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

Full text of the adopted amendments follows: (additions to proposal indicated in boldface with asterisks

* **thus***; deletions from proposal indicated in brackets with asterisks*[thus]*):

3:25-2.2 Application for license

(a) – (c) (No change.)

[(d) A person who provides debt adjusting and credit counseling services to a New Jersey resident shall be licensed by the Department as a debt adjuster and credit counselor, irrespective of whether the person providing such debt adjustment and credit counseling service is located in this State.]

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