

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Debt Adjustment and Credit Counseling  
High-Cost Home Loan Credit Counselors

Proposed Amendments: N.J.A.C. 3:25-1.1, 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, and 3.3.

Proposed New Rules: N.J.A.C. 3:25-4

Authorized By: Holly Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8, 8.1 and 15e, 17:9A-8.1 et seq. and 46:10B-22 et seq.

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

Proposal Number: PRN 2003-387

Submit comments by November 14, 2003 to:

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The agency proposal follows:

Summary

On May 1, 2003 P.L. 2003, c.64, the New Jersey Home Ownership Security Act of 2002, (the "Act") was signed into law. The Act, which was codified at N.J.S.A. 46:10B-22 et seq., mandates that the Commissioner of Banking and Insurance promulgate regulations that are necessary to implement certain provisions of that law. One such provision requires the issuance of a certification by a counselor approved by the Department affirming that borrowers on certain high-cost home loans have received counseling on the loan prior to the making of the loan. This

provision, which is effective November 27, 2003, impacts high-cost home loan lenders, third-party non-profit credit counselors and prospective borrowers of affected high-cost home loans.

Specifically, the Act provides that a lender may not make certain high-cost home loans unless it first receives a certification from a third-party nonprofit credit counselor that the borrower has received counseling on the loan transaction, or the borrower has completed another substantial requirement developed by the Department. This certification is necessary when the borrower finances points and fees in connection with the high-cost home loan as defined by the statute. The Act mandates that the certifying non-profit credit counselor be approved by the United States Department of Housing and Urban Development (HUD) and the Department of Banking and Insurance.

The Department has reviewed current rules and has determined that amendments to N.J.A.C. 3:25, Debt Adjustment and Credit Counseling, are necessary to establish the criteria for the approval of high-cost home loan credit counselors and to establish the rules, standards and procedures governing the issuance of certifications of such counseling. The Department has concluded that in order to identify and monitor approved high-cost home loan credit counselors, it is necessary to register agencies as such.

In addition to rules for the standards and procedures for the counseling and certification of actual prospective high-cost home loans, the Department has developed an alternative method of counseling based on the use of hypothetical loans. As the Act does not specify that alternatives must be in the nature of counseling, the Department will continue to study and possibly approve other alternative methods that it believes will aid prospective borrowers and lenders in complying with the Act.

New definitions are added to N.J.A.C. 3:25-1.1 for "affiliated," "covered home loan," "Debt Adjuster Act," "high-cost home loan," "high-cost home loan credit counseling," "home loan," "Home Ownership Security Act," "non-affiliated third party agency" and "points and fees." The definition of "Act" is amended to "Acts" to reflect references to the New Jersey Home Ownership Security Act of 2002 as well as the Debt Adjuster Act.

N.J.A.C. 3:25-2.1 is amended to add provisions for registration and to differentiate between the rules for the registration of high-cost home loan credit counselors and the rules for the licensure of debt adjusters and credit counselors pursuant to the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1, et seq.("Debt Adjuster Act").

A clarification is made to N.J.A.C. 3:25-2.1(a) stating that no person, other than a nonprofit social service agency or nonprofit credit counseling agency which is licensed in accordance with this chapter, shall act as a debt adjuster or provide credit counseling.

New N.J.A.C. 3:25-2.1(b) sets forth that licensure under the Debt Adjuster Act is not necessary in order to register as a high-cost home loan credit counselor. However, registration is required for all agencies seeking approval as high-cost home loan credit counselors, regardless of whether the agency is licensed under that Act.

N.J.A.C. 3:25-2.1(b) is recodified as (c) and is clarified to state that this requirement concerning the board of directors of an agency is applicable only to eligibility for licensure under the Debt Adjuster Act.

New N.J.A.C. 3:25-2.1(d) provides that a registrant as a high-cost home loan credit counselor shall be a non-affiliated third party nonprofit credit counseling agency approved by HUD.

N.J.A.C. 3:25-2.2(a) and (b) are amended to clarify that these rules pertain to applications for licensure under the Debt Adjusters Act and not to applicants for registrations as high-cost home loan credit counseling services.

N.J.A.C. 3:25-2.2(a)11 and 13 are amended to correct inaccurate citations to other provisions in the rules.

New N.J.A.C. 3:25-2.2(d) provides that applicants for registration as high-cost home loan credit counseling services shall not be affiliated with any lender of high cost home loans. Applicants are also required to furnish acceptable proof of approval as a House Counseling Agency by HUD.

As the Act requires HUD approval for all high-cost home loan credit counselors, such a credit counselor must meet all HUD requirements in addition to all State requirements. The proposed amendments and new rules require a counselor to seek and receive HUD approval before registering with the Department. Further, all high-cost home loan credit counselors must retain their HUD approval in order to retain their status as registered high-cost home loan credit counselors in this State. Therefore, references are made to HUD in other sections such as N.J.A.C. 3:25-4.2(b), which requires that fee arrangements must conform to HUD's requirements. New N.J.A.C. 3:25-2.2(e) sets forth the requirement that a corporation must register with the Department prior to providing high-cost home loan credit counseling services. The registration application shall be on a form approved by the Department and must include or be accompanied by the following: a Certificate of Incorporation; copies of the filed registration(s) of any fictitious corporate name(s); information on any prior license revocation or suspension imposed upon any director, trustee or advisory committee member; an unqualified financial statement prepared by a certified public accountant; a copy of the annual report of the

nonprofit agency which has been filed with the Department of State; the applicant's balance sheet and profit and loss statement, if available; the registration fee; a copy of the current HUD Certificate of Approval of the agency as a Housing Counseling Agency and a certified statement affirming that, as of the date of the application, the agency's approval by HUD as a Housing Counseling Agency remains in full force and effect.

New N.J.A.C. 3:25-2.2(f) provides that the Commissioner may request additional information from a particular applicant for registration if the information is necessary to determine the applicant's eligibility for registration.

New N.J.A.C. 3:25-2.2(g) sets forth the requirement that, upon registering an agency as a high-cost credit counselor, the Commissioner shall register each location in this State from which the high-cost home loan credit counselor will operate, and provides that the registration will be deemed approved pursuant to N.J.S.A. 46:10B-26g.

New N.J.A.C. 3:25-2.2(h) sets forth the website address where the Department shall post the list of all the registered office locations of high-cost home loan credit counselors who are approved to counsel borrowers on high-cost home loans.

New N.J.A.C. 3:25-2.2(i) requires a registrant to advise the Department of a change of business address.

N.J.A.C. 3:25-2.3(a) is amended to require registrants as well as licensees to maintain a place of business in this State.

N.J.A.C. 3:25-2.4(a) is amended and clarified as to the differentiation between initial fees and biennial renewal fees.

New N.J.A.C. 3:25-2.4(b) is added to set forth the fees that high-cost home loan credit counselors shall pay for their initial registration and the additional fees for each office they will maintain in addition to the office listed on their initial registration.

New N.J.A.C. 3:25-2.4(c) is added to set forth the fees that high-cost home loan credit counselors shall pay for biennial renewals of the registration of their main office and for each office they maintain in addition to their main office. The rule further states that the registration renewal fee shall be due on January 1st of each even-numbered calendar year.

N.J.A.C. 3:25-2.4(d) is amended to allow, as is currently the case with licensees, agencies who initially register in the second year of the biennial period to pay an initial fee equal to one half the fee for registering in the first year.

N.J.A.C. 3:25-3.1(a) is amended to clarify that the section refers to violations of the Debt Adjusters Act.

N.J.A.C. 3:25-3.1(b) is recodified as (c) and amended to include penalties for violation(s) of the New Jersey Home Ownership Security Act of 2002 and to clarify which penalty provisions relate to that Act and which relate to the Debt Adjusters Act. The amended rule provides that any agency registered as a high-cost home loan credit counselor who violates the New Jersey 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).

New N.J.A.C. 3:25-3.1(b) sets forth the grounds upon which the Commissioner may revoke, suspend or refuse registration of a high-cost home loan credit counselor.

N.J.A.C. 3:25-3.1(c) is recodified as (d) and amended to exclude high-cost home loan credit counseling without a license as a violation of the Debt Adjusters Act.

N.J.A.C. 3:25-3.2 and 3.3 are amended to refer to either the Debt Adjusters Act or the New Jersey Home Ownership Security Act. N.J.A.C. 3:25-3.3 is also amended to clarify that costs of examinations of activities of an agency licensed under the Debt Adjusters Act are to be borne by licensee.

New N.J.A.C. 3:25-4 is added to prescribe additional requirements for high-cost home loan credit counselors. New N.J.A.C. 3:25-4.1(a) sets forth the requirement that registered high-cost home loan credit counselors certify that consumers have received counseling with respect to the high-cost home loan in accordance with the Home Ownership Security Act and the minimum standards established in N.J.A.C. 3:25-4.2.

New N.J.A.C. 3:25-4.1(b) sets forth what, at a minimum, shall be contained in the certification given by the counselor upon completion of the high-cost home loan credit counseling. The certification shall include: the name of the borrower and of the individual who provided the counseling; the time and place of the consultation; the length of time of the consultation; the name of the prospective lender; the amount, term, interest rate, annual percentage rate, and points and fees of the prospective loan; a statement that the advice given by the individual who provided the counseling meets or exceeds the standards required by this chapter; the topics discussed; the dated signatures of both that individual and the consumer; a statement that the counseling agency is not affiliated with any high-cost home loan lender and is a non-affiliated third party agency as defined in N.J.A.C. 3:21-1.1; and a disclosure of whether a fee has been paid to the high-cost home loan credit counselor for providing counseling to that particular borrower and, if so, the amount of the fee and the identity of the payor.

New N.J.A.C. 3:25-4.1(c) sets forth that counselors shall not issue a certification if the required counseling has not been provided.

New N.J.A.C. 3:25-4.2 sets forth the minimum standards for individuals providing high-cost home loan credit counseling. New N.J.A.C. 3:25-4.2(a) sets forth the requirement that high-cost home loan credit counselors and the individuals that they employ to counsel prospective high-cost home loan borrowers must: possess adequate expertise and ability to provide counseling on high-cost home loans in a reasonably competent manner; possess an adequate working knowledge of high-cost home loans, sub-prime loans and other types of basic loan; and have an adequate working knowledge of all pertinent New Jersey and Federal consumer credit and banking laws and regulations.

New N.J.A.C. 3:25-4.2(b) provides that high cost home loan credit counselors may make arrangements for funding or payment of fees for high-cost home loan credit counseling consistent with the requirements and restrictions imposed by HUD, which can be found in the HUD Housing Counseling Program Handbook 7610.1, the publication produced by HUD which contains the initial continuing requirements for agencies to be approved as HUD counselors. The Handbook can be found at [www.hudclips.org](http://www.hudclips.org).

New N.J.A.C. 3:25-4.2(c) provides that if a high-cost home loan credit counselor receives a fee for high-cost home loan credit counseling or high-cost home loan alternative credit counseling from the borrower, they may not receive any additional fee for that certification from another source. This shall not prevent a high-cost home loan credit counselor from receiving payments under contractual arrangements, or receiving funding in addition to their receipt of such fees.

New N.J.A.C. 3:25-4.2(d) provides that high-cost home loan credit counselors shall not employ individuals who have demonstrated unworthiness, incompetence, bad faith or dishonest in transacting business or otherwise.



New N.J.A.C. 3:25-4.3 sets forth the minimum standards for certifications of high-cost home loan credit counseling. N.J.A.C. 3:25-4.3(a) sets forth the information that must be discussed with the consumer as a prerequisite to the counselor issuing a certification of having provided the required counseling. These topics include: the estimated total monthly payments on the loan based upon the principal and interest and, if applicable, taxes, homeowner's insurance and any other costs to be included in the monthly payment; the equity currently existing in the borrower's home, to the extent known; the effect of the loan's terms including its actual interest rate, annual percentage rate, points, fees and prepayment penalties; the borrower's financial situation, both before and after the prospective loan, including the impact that the loan will have on the borrower's general financial condition and monthly finances, any personal benefits and the advantages and disadvantages of proceeding with the high-cost home loan transaction; the good faith estimate or other informational documentation supplied by the lender which provides the minimum information necessary for certification; opportunities for the borrower to seek other means of funding; the fact that the counselor is a non-affiliated third party agency and is not affiliated with any lender who offers high-cost home loans; and any other information necessary for the consumer to understand their obligations concerning the loan and the ramifications of default.

New N.J.A.C. 3:25-4.4(a) provides that a counselor may issue a certification of alternate counseling. If the borrower has a high-cost home loan application pending for which they have not received counseling, alternate counseling may only be given in addition to counseling on the actually pending loan.

New N.J.A.C. 3:25-4.4(b) provides that alternate counseling shall be based on three hypothetical loans.

New N.J.A.C 3:25-4.4(c) sets forth the minimum requirements for alternate counseling, including a comparison of three hypothetical loans (a high-cost home loan, a covered home loan other than a high-cost home loan and a home loan) along with the following: for each hypothetical loan, the estimated total monthly payment on the loan based upon principal and interest and, if applicable, taxes, homeowner's insurance and any other costs to be included in the monthly payment; the equity that currently exists in the borrower's home, to the extent it is known; the effect of each loan's terms including interest rate, annual percentage rate, points, fees and prepayment penalties, the borrower's financial situation both before and after each hypothetical loan, including the impact that the loan will have on the borrower's general financial condition and monthly finances, any personal benefits, and the advantages and disadvantages of proceeding with each hypothetical loan transaction; opportunities for the borrower to seek other means of funding; that the counselor is a non-affiliated third party agency and is not affiliated with any lender which offers high-cost home loans; other information necessary to ensure that the consumer understands their obligations with regard to the hypothetical loans and the ramifications of a default; and, if a fee has been paid to the high-cost home loan credit counselor, the amount of the fee and the identity of the payor. While the discussion of three loans as opposed to one may increase the time of a consultation, it is possible to provide group-counseling covering the topics of general applicability, supplemented by private individual counseling on the subjects specific to each borrower.

New N.J.A.C. 3:25-4.4(d) requires counselors to certify on a form approved by the Department that the borrower has received alternate counseling in accordance with N.J.A.C. 3:25-4.4(c).

New N.J.A.C. 3:25-4.4(e) sets forth the minimum requirements for the certification of alternate counseling. It requires the certification to include: the names of the borrower and of the individual who provided the counseling; the time and place of the consultation; the length of time of the consultation; the amount, term, interest rate, annual percentage rate, and the points and fees of the hypothetical loans; the topics discussed; a statement that the advice given by the counselor meets or exceeds the standards required by this; chapter; the dated signatures of both the individual who provided the counseling and the consumer; a statement that the counseling agency is not affiliated with any high-cost home loan lender; and information disclosing whether a fee has been paid to the high-cost home loan credit counselor for providing counseling to the particular borrower named on the certification and, if so, the amount of the fee and the identity of the payor.

New N.J.A.C. 3:25-4.4(f) states that a high-cost home loan credit counselor shall not issue a certification of alternate counseling unless all counseling requirements are met.

New N.J.A.C. 3:25-4.4(g) provides that a certificate of alternate counseling may be used by the borrower for 90 days after its issuance for one or more loan transactions in satisfaction of the certification requirement of N.J.S.A. 46:10B-26g.

New N.J.A.C. 3:25-4.5 sets forth the requirements regarding the books and records of high-cost home loan credit counselors. New N.J.A.C. 3:25-4.5(a) sets forth the requirement that all agencies registered as high-cost home loan credit counselors shall maintain a current and continuing list of all individuals employed by them to provide high-cost home loan credit counseling.

New N.J.A.C. 3:25-4.5(b) sets forth the requirement that as part of their annual report to the Department, and at any time the Department requests, high-cost home loan credit counselors

are to submit to the Department a certified list of individuals employed by them to provide high-cost home loan credit counseling and attest that those individuals are in compliance with the minimum requirements of N.J.A.C. 3:25-4.2 as set forth above.

New N.J.A.C. 3:25-4.5(c) sets forth the requirement that all high-cost home loan credit counselors maintain records, including copies of all certifications issued during the preceding three years; the names of all consumers who applied to the agency for high-cost home loan credit counseling whose applications did not result in the issuance of a certification, with an indication of the reason(s) for the non-issuance of the certification and the fees received for each certification issued by the counselor with the identity of the payor of the fee.

New N.J.A.C. 3:25-4.6 sets forth the continuing requirements for high-cost home loan credit counseling registrants. Specifically, new N.J.A.C. 3:25-4.6(a) requires an annual report to be submitted to the Department by April 1st of each year. The report shall contain: a copy of the last nonprofit corporation annual report filed with the New Jersey Secretary of State; a certified list of all individuals who provide high-cost home loan credit counseling on behalf of the agency attesting that those individuals are in compliance with the minimum requirements of N.J.A.C. 3:25-4.2; the numbers of loan-specific and alternate counseling certifications issued in the year being reported on; the lenders to whom the certifications were provided; the numbers of loan-specific and alternate counseling high-cost home loans reviewed ;the number of high-cost home loans reviewed on which certifications were not issued and a certified statement affirming their current status as a HUD-approved Housing Counseling Agency .

New N.J.A.C. 3:25-4.6(b) requires a counselor, upon loss of HUD approval, to inform the Department immediately and cease to engage in high-cost home loan credit counseling.

New N.J.A.C. 3:25-4.6(c) sets forth the address to which the notice of loss of HUD approval as a Housing Counseling Agency is to be sent.

A 60 day comment period is provided in this proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

Predatory lending is a social issue as well as an economic one. Unscrupulous lenders often prey on the most vulnerable members of our society. The elderly, the less informed or people in crisis are often targets for certain high-cost home loans that they can ill afford. Lack of understanding of the consequences of such a loan has caused numerous foreclosures and bankruptcies. There are many sub-prime lenders, however, that operate legitimately and who do not engage in predatory lending. Therefore, there is a need to protect the public while allowing legitimate business to continue. To that end, the Legislature passed the Home Ownership Security Act of 2002 – an act designed to end the practice of predatory lending. The Act requires the development of a third-party counseling system, in an attempt to ensure that borrowers are informed about the methods by which predatory creditors impose unconscionable and noncompetitive fees and charges, to protect the public from incurring those fees and charges and to encourage the informed and responsible use of credit.

By conditioning the making of certain high-cost home loans upon receipt by the lender of a certification that the borrower has been counseled by an independent third-party counselor regarding the particulars of the loan, the Act and the proposed new rules and amendments

provide a means to ensure that the borrower is aware of the ramifications of the loan. Armed with this knowledge the borrower may make a more informed choice.

The proposed new rules and amendments should also have a favorable impact on legitimate lenders of high-cost home loans. These honest lenders who do not engage in predatory lending will benefit from the “chilling effect” the rule’s requirements will have on the unscrupulous practices of those who victimize vulnerable borrowers through predatory lending. In addition, after receiving counsel from an unbiased third party, borrowers who are considering an ill-advised high-cost home loan may not be as willing to proceed with such a loan.

#### Economic Impact

These proposed new rules and amendments will have a positive economic impact on borrowers who, as better consumers, will be better able to understand the terms of a loan and make a more educated decision on whether to proceed with a particular high-cost home loan.

High-cost home loan lenders will be economically affected by the new rules and amendments. The rules mandate that certain high-cost home loans cannot be made unless the lender receives the certification that the borrower has been counseled by an independent third-party non-profit credit counseling agency. This adds another requirement to the process on certain high-cost home loans. There will be some costs associated with directing the borrower to registered counselors and the review of the certifications prior to making the loan. Also, there will be delays in completing the loan process due to the certification requirement. The Department believes these costs to lenders will be minimal. In addition, lenders may also incur additional costs if they make arrangements for funding or payments for fees with high-cost credit counseling services.

High-cost home loan credit counselors will bear the costs of initial registration and biennial registration. Any costs associated with the production of certifications will also be borne by these counselors. Counselors will also bear any costs associated with maintaining the required books and records. It is not anticipated that the new rules and amendments will create a need on the part of lenders and counselors for any new professional services, or in their incurring significant costs related to such services. The only rule involving professional services, the requirement to submit an unqualified financial statement prepared by a certified public accountant (CPA) or a public accountant (PA) when applying for registration, requires submission of a document which in most cases should already be in the agency's possession.

The Department will bear the costs related to the registration and oversight of high-cost credit counselors. It is anticipated that the registration fees will offset these expenses.

#### Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules and amendments are not subject to any Federal requirements or standards.

#### Jobs Impact

The Department anticipates that the proposed new rules and amendments will have no effect on jobs with lenders involved in making high-cost loans. The mere addition of the counseling requirement should have little or no affect on the jobs of those working in the loan industry.

On the other hand, the new rules and amendments may create additional counseling jobs. However, as the increase in jobs is directly related to the volume of high-cost loans that will be

offered after the Act goes into effect, the Department is unable at this time to estimate the number of jobs involved. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rules 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 proposed new rules and amendments.

#### Regulatory Flexibility Analysis

Some entities providing high-cost home loan credit counseling may employ fewer than 100 full-time employees and, therefore, may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Should these entities wish to provide counseling and certifications as provided in the proposed new rules and amendments, they will be required to register with the Department and thereafter submit annual reports on high-cost home loan credit counseling and maintain records of certifications and employees, as detailed in the Summary above. Other than the services of a CPA or PA as discussed in the Economic Impact above, the Department does not believe that the counselors will need any professional services in order to comply with the rules.

Some entities providing high-cost home loans may employ fewer than 100 full time employees and, therefore, may also be small businesses as defined by the aforementioned statute. High-cost home loan lenders will be required to receive certifications in compliance with the Act



prior to closing on any high-cost home loan. It is anticipated that no professional services will be needed by lenders in order to comply with the Act and these new rules and amendments.

The intent of the new rules and amendments and the Act is to protect borrowers of certain high-cost home loans from predatory lending by ensuring that the borrowers are cognizant of the provisions and effects of such high-cost home loans, and are therefore able to make informed decisions concerning them. This intent does not allow for any differentiation in the rules based on business size.

#### Smart Growth Impact

The Department does not believe that the proposed new rules and amendments will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal 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.

["Act"] **"Acts"** means the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq. **and the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10-22 et seq.**

**"Affiliated" means a relationship in which the high-cost home loan credit counseling service is directly or indirectly controlled by, or under the common control of, the directors, principal officers and/or any shareholder of another company.**

. . .

**"Covered home loan" means a home loan in which the total points and fees payable in connection with the loan, excluding either a conventional prepayment penalty or not more than two bona fide discount points, exceed four percent of the total loan amount, or 4.5 percent of the total loan amount if the total loan amount is \$40,000 or less, and 4.5 percent of the total loan amount if the loan is insured by the Federal Housing Administration or guaranteed by the Federal Department of Veterans Affairs, or a home loan that is considered a high-cost home loan under the Home Ownership Security Act.**

. . .

**"Debt Adjuster Act" means the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq.**

. . .

**"High-cost home loan" means a home loan for which the principal amount of the loan does not exceed \$350,000 as of 2003, adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York-Northeastern New Jersey Region, and in which the terms of the loan meet or exceed one or more of the thresholds as defined in N.J.S.A. 46:10B-24. The annual adjustment in the**

principal amount of the loan shall be reflected through a notice of administrative change published in the New Jersey Register.

"High-cost home loan credit counseling" means the counseling of a borrower on a high-cost home loan transaction which includes the financing of points and fees in connection with the high-cost home loan.

"Home loan" means an extension of credit primarily for personal, family or household purposes, including an open-end credit plan, other than a reverse mortgage transaction, in which the loan is secured by a mortgage or deed of trust on real estate in this State upon which there is located or there is to be located a one to six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling; or a security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

"Home Ownership Security Act" means the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.

. . .

"Non-affiliated third party agency" means a non-profit 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 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 [Act] **Debt Adjuster and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq.**

**"Points and fees" shall have the meaning as defined in the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.**

## SUBCHAPTER 2. LICENSING **OR REGISTRATION** REQUIREMENTS

### 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) An unlicensed nonprofit social service agency or nonprofit credit counseling agency may provide high-cost home loan credit counseling if it is registered in accordance with this chapter. In order to provide high-cost home loan credit counseling, agencies licensed pursuant to the Debt Adjuster Act shall also be registered in accordance with this chapter.**

[(b)] (c) To be eligible for a license **under the Debt Adjuster Act**, a nonprofit social service agency or nonprofit consumer credit counseling agency shall establish a board of directors whose function shall be to establish the policies of the agency. No more than 40 percent

of the members of the board shall have as their principal employer any corporation, association or institution that offers credit to the general public.

**(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 credit counseling agency approved by the United States Department of Housing and Urban Development.**

3:25-2.2 Application for license **or registration**

(a) Prior to providing debt adjustment or credit counseling services, **other than high-cost home loan credit counseling**, a corporation 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. - 10 (No change)
11. Proof of the surety bond required by N.J.A.C. 3:25-[2.3] **2.5**;
12. (No change)
13. The license fee required by N.J.A.C. 3:25-[2.2] **2.4**; and
14. (No change)

(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 debt adjustment activities will take place. The license shall be prominently displayed in the public area of the office.

(c) (No change)

**(d) Applicants for registration as a high-cost home loan credit counseling service shall not be affiliated with any lender of high-cost home loans and shall furnish acceptable proof of approval by the United States Department of Housing and Urban Development as a Housing Counseling Agency.**

**(e) Prior to providing high-cost home loan credit counseling services, a non-profit social service or 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 dated filing stamp or, for foreign (out-of-State) corporations, a copy of the Certificate of Authority to do business in New Jersey bearing the New Jersey Secretary of State's dated filing stamp;**

**2. If the corporation uses a doing business as name, a copy of the registration of fictitious corporate name bearing the New Jersey Secretary of State's dated filing stamp;**

**3. Information on whether any director, trustee or member of an advisory or other similar committee has ever had a license, permit or other authorization, other**

than a driver's license, suspended or revoked by this or any other state or has been affiliated, directly or indirectly, with any organization that has had such a license suspended or revoked;

4. An unqualified financial statement prepared by a certified public accountant or a public accountant demonstrating the financial condition of the corporation;

5. A copy of the annual report of the nonprofit agency filed with the New Jersey Secretary of State pursuant to N.J.S.A. 15A-5, or an equivalent report for non-New Jersey corporations;

6. The applicant's balance sheet and profit and loss statement for the fiscal period preceding the filing of the application, if available;

7. The registration fee required by N.J.A.C. 3:25-2.4; and

8. A copy of the current HUD Certificate of Approval of the agency as a Housing Counseling Agency and a certified statement affirming that, as of the date of the application, the agency's approval by HUD as a Housing Counseling Agency remains in full force and effect.

(f) The Commissioner may request from a particular applicant any additional information that is necessary to determine an applicant's eligibility for registration.

(g) Upon determination that an applicant is qualified for registration as a high-cost home loan credit counselor, the Commissioner shall register each office location in this

State from which the high-cost home loan credit counselor shall operate. Such registration shall be deemed approval pursuant to N.J.S.A. 46:10B-26g.

(h) The Department shall post on the Department's website at <http://www.state.nj.us/dobi/>, a list of the office locations of all registered credit counseling agencies approved to counsel borrowers on high-cost home loans.

(i) A registrant shall advise the Department of a change of business address. No fee shall be required for such changes.

3:25-2.3 Office requirement

(a) A licensee or registrant shall have a place of business in this State.

(b) (No change)

3:25-2.4 License and registration fees

(a) Each licensee shall pay to the Department an initial, and thereafter a biennial, license fee of not more than \$500.00 for each office it maintains. The biennial license fee shall be due on January 1 of each even numbered calendar year.



**(b) Each registrant, other than agencies licensed under the Debt Adjusters Act, shall pay to the Department an initial registration fee of \$100.00 and an initial fee of \$25.00 for each additional office it will maintain.**

**(c) Each registrant shall pay to the Department a biennial registration fee of \$100.00 and a biennial fee of \$25.00 for each office it maintains in addition to its main office. With respect to agencies licensed under the Debt Adjusters Act who are also registered as high-cost home loan credit counselors, this biennial registration fee shall be in addition to the fees required by (a) above. The registration fee shall be due on January 1 of each even-numbered calendar year.**

**(d)** When the initial license or **registration** certificate is issued in the second year of the biennial period, the fee shall be an amount equal to one-half the **initial** fee for the biennial period.

### SUBCHAPTER 3. PENALTIES AND EXAMINATION

#### 3:25-3.1 Penalties

(a) The Commissioner may revoke, suspend or refuse to issue or renew a license, if after notice and hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Commissioner determines that the licensee or applicant:

1. Has violated any provision of the Debt Adjuster Act or any order rule or regulation issued pursuant to [the] that Act;

2. - 7 (No change)

(b) The Commissioner may revoke, suspend or refuse registration as a high-cost home loan credit counselor if, after notice and hearing as set forth in (a) above, the Commissioner determines that the registrant, applicant for registration or any officer, director or employee of either the registrant or applicant for registration has:

1. Issued a certification of counseling on a high-cost home loan or of alternate counseling on high-cost home loans without having fully provided the counseling as provided by the Home Ownership Security Act and this chapter;

2. Failed to pay any fee, penalty, or other lawful levy imposed by the Commissioner;

3. Withheld information or made a material misstatement in an application for registration or in any other submission to the Department;

4. Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him or her in a civil action upon grounds of fraud, misrepresentation or deceit;

5. Associated with any person who has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or who has had a final judgment entered against him or her in a civil action upon grounds of fraud, misrepresentation or deceit;

**6. Demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise;**

**7. Failed to retain its HUD approval as a Housing Counseling Agency; or**

**8. Violated any provision of the Home Ownership Security Act or any order, rule or regulation issued pursuant to that Act.**

[(b)] (c) In addition to the penalties in (a) above, any person who violates any provisions of the **Debt Adjuster** Act or [these] **the** rules **applicable to licensees** shall be subject to a penalty of \$500.00 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).**

[(c)] (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.

### 3:25-3.2 Injunctions

If the Commissioner has reason to believe that any person or licensee has engaged or is engaging in any practice or transaction prohibited by **either of** the Acts, the Commissioner may, in addition to any other remedies available, bring a summary action in the name of and on behalf of the State against the person or licensee and any other person concerned in or in any way

participating or about to participate in those practices or transactions, to enjoin the person from continuing those practices or engaging in or doing any act in furtherance of those practices or in violation of the Acts.

### 3:25-3.3 Right of investigation and examination

The Commissioner may make such investigations and examinations of any licensee or other person as he or she deems necessary to determine compliance with **either of** the Acts, these rules or orders issued by the Commissioner. For such purposes, he or she may examine, or compel by subpoena, the production of all relevant books, records, and other documents and materials relative to an examination or investigation. The costs of examination **of the activities of an agency licensed under the Debt Adjuster Act** shall be borne by the licensee at the rates set forth in N.J.A.C. 3:1-6.6(b).

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

### **3:25-4.1 Certification of receipt of high-cost home loan counseling**

**(a) Registered high-cost home loan credit counselors shall certify on a form approved by the Department that the consumer has received counseling on a high-cost home loan provided in accordance with the Home Ownership Security Act and the minimum standards set forth in N.J.A.C. 3:25-4.2.**

**(b) The certification shall include, but not be limited to:**

**1. The names of the borrower and of the individual who provided the counseling;**

**2. The time and place of the consultation;**

**3. The length of time of the consultation;**

**4. The name of the prospective lender;**

**5. The amount, term, interest rate, annual percentage rate ("APR"), points and fees of the prospective loan;**

**6. A statement that the advice given by the counselor meets or exceeds the standards required by this chapter;**

**7. The topics discussed;**

**8. The dated signatures of both the individual who provided the counseling and the consumer;**

**9. A statement that the high-cost home loan credit counselor is not affiliated with any high-cost home loan lender and is a non-affiliated third party agency as defined in N.J.A.C. 3:25-1.1; and**

**10. Information disclosing whether a fee has been paid to the high-cost home loan credit counselor for providing counseling to the particular borrower named on the certification and, if so, the amount of the fee and the identity of the payor.**

**(c) A high-cost home loan credit counselor shall not issue a certification if all counseling required by N.J.S.A. 46:10B-26 and this subchapter has not been provided.**

3:25-4.2 Minimum standards for individuals providing high-cost home loan credit counseling

(a) High-cost home loan credit counselors, and the individuals they employ to counsel prospective high-cost home loan borrowers, shall:

1. Possess sufficient expertise and ability to provide counseling on high-cost home loans to consumers as prescribed in N.J.A.C. 3:25-4.3 in a reasonably competent manner;

2. Possess an adequate working knowledge of high-cost home loans, sub-prime loans and other basic loan forms; and

3. Have an adequate working knowledge of all pertinent New Jersey and Federal consumer credit and banking laws and regulations.

(b) High-cost home loan credit counselors may make arrangements for funding or the payment of fees for high-cost home loan credit counseling consistent with the restrictions specified in the HUD Housing Counseling Program Handbook 7610.1 as amended and supplemented, which is incorporated herein by reference and which is available at [www.hudclips.org](http://www.hudclips.org).

(c) If a high-cost home loan credit counselors receives a fee for high-cost home loan credit counseling or high-cost home loan alternative credit counseling from the borrower, they may not receive an additional fee for that particular certification from another source. This prohibition shall not, however, preclude a high-cost home loan credit counselor from

receiving payments under contractual arrangements with, or receiving funding from lenders or other parties in addition to the receipt of such fees from borrowers.

(d) High-cost home loan credit counselors shall not employ individuals who have demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise.

3:25-4.3 Minimum standards for certifications of high-cost home loan credit counseling

(a) Prior to providing a certification in compliance with N.J.S.A. 46:10B-26(g), persons providing high-cost home loan credit counseling shall discuss with the consumer the following:

1. The estimated total monthly payment on the loan based upon principal and interest and, if applicable, taxes, homeowner's insurance and any other costs to be included in the monthly payment;
2. The equity that currently exists in the borrower's home, to the extent it is known;
3. The effect of the loan's terms, including its actual interest rate, annual percentage rate, points, fees and prepayment penalties;
4. The borrower's financial situation both before and after the prospective loan, including the impact that the loan will have on the borrower's general financial condition and monthly finances, any personal

benefits, and the advantages and disadvantages of proceeding with the high-cost home loan transaction;

5. The good faith estimate or other informational documentation supplied by the lender which provides the minimum information concerning the prospective high-cost home loan necessary for certification;

6. Opportunities for the borrower to seek other means of funding;

7. That the counselor is a non-affiliated third party agency and is not affiliated with any lender who offers high-cost home loans; and

8. Other information necessary to ensure that the consumer understands their obligations with regard to the prospective high-cost home loan and the ramifications of default.

#### 3:25-4.4 Certification of alternate high-cost home loan credit counseling

(a) A high-cost home loan credit counselor may provide alternate counseling as set forth in this section and thereafter issue a certificate confirming its having done so. If the borrower, at the time of counseling, has an application pending for a high-cost home loan on which the borrower has not previously received high-cost home loan credit counseling, alternate counseling may only be given in addition to the counseling on the actual pending loan transaction required by N.J.A.C. 3:25-4.3.

(b) The alternate counseling shall be based upon three hypothetical loans as set forth in (c) below.



(c) Prior to providing a certification of alternate counseling, an individual providing high-cost home loan credit counseling shall discuss with the consumer the following:

1. A comparison of the following three types of hypothetical loans:

i. A high-cost home loan;

ii. A home loan other than a high-cost home loan; and

iii. A home loan;

2. For each hypothetical loan, the estimated total monthly payment on the loan based upon principal and interest and, if applicable, taxes, homeowner's insurance and any other costs to be included in the monthly payment;

3. The equity that currently exists in the borrower's home, to the extent it is known;

4. The effect of each loan's terms including interest rate, annual percentage rate, points, fees and prepayment penalties;

5. The borrower's financial situation both before and after each hypothetical loan, including the impact that the loan will have on the borrower's general financial condition and monthly finances, any personal benefits, and the advantages and disadvantages of proceeding with each hypothetical loan transaction;

6. Opportunities for the borrower to seek other means of funding;

7. That the counselor is a non-affiliated third party agency and is not affiliated with any lender which offers high-cost home loans; and

8. Other information necessary to ensure that the consumer understands their obligations with regard to the hypothetical loans and the ramifications of a default.

(d) High-cost home loan credit counselors shall certify on a form approved by the Department that the consumer has received alternate counseling on the high-cost home loans in accordance with this subchapter.

(e) The certification of alternate counseling shall include:

1. The names of the borrowers and of the individual who provided the counseling;

2. The time and place of the consultation;

3. The length of time of the consultation;

4. The amount, term, interest rates, annual percentage rates (APRs), points and fees of the hypothetical loans;

5. The topics discussed;

6. A statement that the advice given by the counselor meets or exceeds the standards required by this chapter;

7. The dated signatures of both the individual who provided the counseling and the consumer;

8. A statement that the high-cost home loan credit counselor is not affiliated with any high-cost home loan lender and is a non-affiliated third party agency as defined in N.J.A.C. 3:25-1.1; and

9. Information disclosing whether a fee has been paid to the high-cost home loan credit counselor for providing counseling to the particular borrower named on the certification and, if so, the amount of the fee and the identity of the pavor.

(f) A high-cost home loan credit counselor shall not issue a certification of alternate counseling unless all counseling required by N.J.S.A. 46:10B-26 and this subchapter has been provided with regard to the hypothetical loans.

(g) For a period of 90 days subsequent to its being issued as provided in this section, a certification of alternate counseling issued by a registered high-cost home loan credit counselor may be used by the borrower for one or more loan transactions in satisfaction of the certification requirements of N.J.S.A. 46:10B-26g.

3:25-4.5 Books and records

(a) All agencies registered as high-cost home loan credit counselors shall maintain a current and continuing list of all individuals employed by them to provide high-cost home loan credit counseling.

(b) As part of its annual report to the Department, and at any time the Department requests, a high-cost home loan credit counselor shall submit to the Department a certified

list of all individuals employed by it who provided such counseling and attest that those individuals are in compliance with the minimum requirements of N.J.S.A. 3:25-4.2.

(c) The high-cost home loan credit counselor shall maintain the following business records:

1. Copies of all certifications issued by it in the preceding three years;
2. The names of all consumers who applied to the agency for high-cost home loan credit counseling, which application did not result in the issuance of a certification, with an indication of the reason(s) for the non-issuance of the certification; and
3. The fees received for each certification issued by the counselor and the identity of the payor of the fee.

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 filed with the New Jersey Secretary of State pursuant to N.J.S.A. 15A:5-1 et seq. or an equivalent report for non-New Jersey corporations with documentation attesting to their continuing status as a nonprofit corporation;
2. A certified list of the individuals who provide high cost home loan counseling on behalf of the agency attesting that those individuals are in compliance with the minimum requirements of N.J.S.A. 3:25-4.2;

**3. A report, on a form approved by the Department, containing:**

**i. The numbers of loan-specific and alternate counseling certifications issued during the year being reported on;**

**ii. The lenders to whom those certifications were provided;**

**iii. The number of high-cost home loans reviewed; and**

**iv. The number of high-cost home loans reviewed on which certifications were not issued; and**

**4. A certified statement affirming their current status as a HUD-approved Housing Counseling Agency.**

**(b) If a high-cost home loan credit counselor loses the approval of the Department of Housing and Urban Development (HUD) as a Housing Counseling Agency, the counselor must inform the Department immediately and cease to engage in high-cost home loan credit counseling, including the issuance of any certifications with respect to high-cost home loans.**

**(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**

**Licensing Unit**

**P.O. Box 327 \_\_\_\_\_**

**Trenton, New Jersey 08625-0327 \_\_\_\_\_**