

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Debt Adjustment and Credit Counseling

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

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

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

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

Proposal Number: PRN 2009-167

Submit comments by August 14, 2009 to:

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The agency proposal follows:

Summary

N.J.A.C. 3:25 implements the Debt Adjuster Act, N.J.S.A. 16:16G-1 et seq. (“the Act”), which regulates nonprofit social service or nonprofit consumer credit counseling agencies that provide debt adjustment and credit counseling. It also provides for the registration of high-cost home loan counselors. The Department of Banking and Insurance (Department) has reviewed the rules and has determined that several amendments are necessary.

The Department proposes to amend N.J.A.C. 3:25-2.3(a) to eliminate the requirement that a licensed debt adjuster or registered high-cost home loan counselor have a place of business

in New Jersey in order to conduct business in this State. The Department has determined that an in-State office requirement is not necessary because assistance may be provided over the Internet consistent with the Department's regulatory requirements. Therefore, the need for an office location in this State at which consumers would receive assistance in person has diminished.

The Department also proposes to amend N.J.A.C. 3:25-2.2(a)13 to delete the requirement that an application for a debt adjuster license include the address of all offices in New Jersey and replace it with a requirement that all offices, wherever located, that service New Jersey debtors be reported to the Department. Likewise, the Department proposes to amend N.J.A.C. 3:25-2.2(b) and (g) to delete the provisions that the Department will license or register only an entity's New Jersey location(s) and replace them with requirements that a license or registration will be issued for those offices that conduct debt adjusting and high-cost home loan credit counseling activity, respectively, with debtors residing in New Jersey. The requirement in N.J.A.C. 3:25-2.2(b) that the license be publicly displayed in each office conducting debt adjusting is proposed to be deleted, as Department staff will not be in a position to enforce this provision because licensees' offices may, with the amendment, be located across the nation. The Department also proposes to amend N.J.A.C. 3:25-2.3(a) to require that, if a licensee or registrant has more than one office, one of them be designated as its principal office. This will assure that the Department is able to communicate with the entity at the address of its principal office.

Further, the Department proposes to amend N.J.A.C. 3:25-4.1 and 4.4. Currently, the form for certification of a borrower's receipt of high-cost home loan credit counseling referenced in N.J.A.C. 3:25-4.1(b)2 and 4.4(e)2 requires the "place" of the consultation to be listed. With the prevalent use of the Internet, many of these consultations do not take place in-person in a single location, but over the Internet, so the reporting of the "place" of the consultation is no

longer relevant. Instead, the Department believes the reporting of the manner of consultation (such as in-person or by internet or on the telephone, for example) is more relevant, and providing such information is required by the proposed amendments to N.J.A.C. 3:25-4.1(b)2 and 4.4(e)2.

In addition, the Department has reviewed the bond requirements for debt adjuster licensees in light of the recent statutory amendments to N.J.S.A. 17:16G-5. Previously, the bond amount was set by the Commissioner of Banking and Insurance (Commissioner) in his or her discretion. Currently, the rules set the bond requirement at \$50,000 for the first office and \$25,000 each additional office. The amended statute continues to authorize the Commissioner to set the bond amount, but now requires consideration of the number of debtors serviced at each location and the amounts held in a licensee's trust account for debtors in setting the bond amount. The Department proposes to establish a scale for increasing the amount of the bond above the current amounts based on how many debtors above 250 are serviced per year at each location and on how much money is held in the licensee's trust account above an average of \$250,000 per month. These numbers and amounts will be reviewed annually by the Department based on information provided by licensees in their annual reports, and the required amount of the bond will be adjusted as needed. The Department proposes to amend N.J.A.C. 3:25-2.4 to add a subsection (b) to accomplish this, and to recodify existing subsections (b) to (d) as (c) to (e).

The Department also proposes to amend N.J.A.C. 3:25-1.1, Definitions, to add the term "registrant," and to amend N.J.A.C. 3:25-2.4(a) to delete the term "examination bills" and substitute the term "assessments." Such bills are no longer issued since the advent of dedicated

funding, the assessments for which constitute the current funding method for the Department's Division of Banking.

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 governing debt adjusters implement the Act's regulatory scheme which enables individuals who have incurred an unmanageable amount of secured or unsecured debt to receive assistance with their financial problems from licensees. These licensees have demonstrated to the Commissioner that they are qualified to provide debt adjustment services and are bonded. The current rules require bond amounts of \$50,000 for the first office and \$25,000 for each additional office. These bonds run in favor of the Department and consumers so that debtors who use licensees are protected. In accordance with N.J.S.A. 17:16G-5, the proposed amendments will require increased bond amounts based on the number of debtors serviced and the amount of money maintained by licensees in their trust accounts on behalf of debtors, which will result in bonds in larger amounts being available to consumers, in accordance with the size of the licensee's operation, in the event of a problem with a licensee. Therefore, these proposed amendments should have a beneficial social impact.

In addition, the proposed amendments delete the requirement that licensees and registrants maintain a New Jersey office, in recognition of Internet technology advances that enable licensees and registrants to offer effective services via computer anywhere and decreases the need for the maintenance of a local office for in-person consultation with a licensee or

registrant. The proposed amendments are expected to increase the availability of debt adjusting and credit counseling services to the public with appropriate consumer protections. Therefore, these proposed amendments should also have a positive social impact.

Economic Impact

The proposed amendments will require some licensees to increase their bond amount, which in turn may cause an increase in the cost to purchase and maintain the bond. At a future time, if the business volume of a licensee should decline, the amount of the bond and its resultant cost may drop. The bond runs to the State, pro rata, for its benefit and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the licensee. The costs of such bonds, which are obtained from third party surety companies, are based, in general, on the amount of the bond. Therefore, the amount of the bond and the corresponding cost of the bond will vary based upon how much business the debt adjuster transacts.

The proposed amendments deleting the requirement that a licensees and registrants maintain an office in New Jersey will have positive economic impact on some entities. Currently, with the extensive use of the Internet, some of the required New Jersey offices are rarely used. By being able to eliminate the costs for these offices, some licensees or registrants will reduce their operating expenses. Elimination of the in-State office requirement may also facilitate the entry of new licensees and registrants into the fields of debt adjustment and credit counseling in New Jersey, which would assist in meeting the growing demand for such services which has resulted from current economic conditions.

Federal Standards Statement

A Federal standards analysis is not required because the proposed 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 proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed 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 proposed amendments.

Regulatory Flexibility Analysis

The proposed amendments impose 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 full-time employees, is independently owned and operated and is not dominant in its field. Many of the entities affected by the proposed amendments are small businesses. The Department believes that the bond requirements in the proposed amendments are necessary to conform to the recent statutory amendments and to

heighten consumer protections accordingly. The Department further believes that removing the in-State office requirement is an appropriate recognition of the effective use of modern technology and relieves licensees and registrants of what, in some cases, had been a burdensome regulatory requirement. Compliance costs are discussed in the Economic Impact above. No professional services will be needed to comply with the proposed amendment. Due to the potential for entities offering debt adjustment services to subject debtors to economic risks and because protecting debtors using such services is necessary regardless of the size of the licensee, no differing requirements based on business size can be made.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan

Housing Affordability Impact

The proposed amendments may have an indirect impact on affordable housing in New Jersey by enhancing the availability of services that can assist homeowners at risk of delinquency and foreclosure. There is, however, little likelihood that the amendments would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the amendments would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and

Redevelopment Plan in New Jersey because the proposed amendments concern the activities of debt adjustment, credit counseling and high cost home loan credit counseling.

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

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.

. . .

“Registrant” means an entity registered by the Department for the purposes of providing high-cost home loan credit counseling.

. . .

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

(a) Prior to acting as a debt adjuster, a 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. – 12. (No change.)

13. The address of all offices [to be located in this State] **conducting debt adjustment activities on behalf of debtors residing in New Jersey;**

14. – 15. (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 the licensee may conduct debt adjustment activities **on behalf of debtors residing in New Jersey.** [The license shall be prominently displayed in the public area of the office.]

(c) - (f) (No change.)

(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] **provides credit counseling to debtors residing in New Jersey.** Such registration shall be deemed approval pursuant to N.J.S.A. 46:10B-26g.

(h) – (i) (No change.)

3:25-2.3 Office requirement

(a) A licensee or registrant [shall] **is not required to** have a place of business in this State **in order to conduct business in this State. A licensee or registrant with more than one office shall designate one office as its principal office, at which it shall receive official notices from the Department.**

3:25-2.4 Bond

(a) A licensee shall maintain a bond in an amount not less than \$50,000 for the first office and \$25,000 for each additional office from a surety company authorized to do business in this State. The bond shall run to the State, pro rata, for its benefit and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the

licensee in the course of activity as a debt adjuster or credit counselor and for the benefit of the Department for unpaid [examination bills] **assessments**, unpaid penalties and any other obligation of the licensee to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges or fees. The bond shall not be payable for claims made by business creditors. No bond shall comply with this section unless it contains a provision that it shall not be cancelled for any reason unless notice of intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect.

(b) The amount of the bond required by (a) above shall be considered as attributable to the first 250 debtors serviced at any office and the first \$250,000 in funds held in the trust account of the licensee. The amount of the bond required by (a) above shall be increased based on information regarding the number of New Jersey debtors serviced by and the balance held in the trust accounts of licensees as set forth below:

1. The amount of the bond shall be increased by \$25,000 for each additional set of 250 New Jersey debtors or portion thereof serviced at each office as reported in the most recent annual report;

2. The amount of the bond shall be increased by \$25,000 for each set of \$250,000 or portion thereof in additional funds held in the trust account of the licensee based on the average of the highest daily balance each month as reported in the most recent annual report.

For example, if a licensee had three offices and serviced 800 debtors at the first office, 300 at the second and 180 at the third and had an average trust account balance of \$400,000, the bond would be increased by \$125,000, comprised of \$75,000 for the first

office, \$25,000 for the second office and zero additional for the third office, and by \$25,000 for the increased trust account balance.

Recodify existing (b) - (d) as (c) - (e) (No change in text.)

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

(a) (No change.)

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

1. (No change.)

2. The time and [place] **manner** of the consultation, **indicating whether the**

consultation occurred in person, by telephone, on the Internet, or by other identified means;

3.-10. (No change.)

(c) (No change.)

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

(a)-(d) (No change.)

(e) The certification of alternate counseling shall include:

1. (No change.)

2. The time and [place] **manner** of the consultation, **indicating whether the**

consultation occurred in person, by telephone, on the Internet, or by other identified means;

3. - 9. (No change.)

(f) and (g) (No change.)

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