

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

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

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

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

Proposed: February 19, 2008 at 40 N.J.R. 837(a).

Adopted: June 18, 2008 by Steven M. Goldman, Commissioner, Department of Banking  
and Insurance.

Filed: June 23, 2008 as R.2008 d. 203, **with substantive changes** not requiring  
additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: June 23, 2008, Readoption;  
July 21, 2008, Amendments.

Expiration Date: June 23, 2013.

Summary of Public Comments and Agency Responses:

Comments were received from Robert E. Fisher, Esq., Chief Legal Counsel, Take Charge  
America, Inc. and Wesley K. Young, Legislative Director, The Association of Settlement  
Companies.

**COMMENT:** One commenter stated that it is a national association of debt settlement  
companies and that it understands that the Department is bound by current statutory constraints  
limiting debt adjusting activities to non-profit entities, but they wrote to provide information that  
may affect the application of current regulations or the promulgation of future regulations.

The commenter stated that under current New Jersey law, for-profit companies may provide credit counseling or education to a consumer with regard to his or her finances and debt. Only non-profit companies may provide debt adjusting activities. The commenter referenced the case of *Solutions Plus, Inc. v. Commissioner of Internal Revenue*, United States Tax Court, Tax Court Memorandum Opinion 2008-21, 2008 Tax Ct. Memo Lexis 21, 95 T.C.M. (CCH) 1097, filed February 5, 2008. The commenter concluded that, as a result of the tax exemption ruling in the *Solutions Plus* opinion, only an insignificant number of consumers who are counseled by a non-profit debt adjuster may receive debt adjustment services or assistance. The commenter stated that, with many consumers currently facing a severe credit crisis or struggling financially, New Jersey consumers will be underserved and will not have sufficient options to help them deal with debt under this regulation. The commenter believes that many of those consumers out of desperation will turn to unscrupulous companies who are willing to provide services despite the current legal restrictions and, as such, regulations allowing only non-profit companies to provide debt adjusting services will ultimately be harmful to consumers. The commenter concluded by indicating it is considering lobbying for legislation in New Jersey that would permit companies such as its members to do business in New Jersey.

**RESPONSE:** The Department thanks the commenter for these opinions. As the commenter noted, the issue raised is for determination by the Legislature, which he noted his group would be lobbying. As such, the comments raise issues beyond the scope of the Department's rulemaking authority.

**COMMENT:** One commenter noted that the proposed regulations permit qualified non-profit organizations to provide debt management services and regulate the organization and operations of those non-profit licensees. The commenter stated that the proposed regulations create confusion as to the difference between a non-profit entity and a tax-exempt entity. The commenter believed that the regulations need clarification to eliminate this confusion. The commenter stated that the Federal Pension Protection Act of 2006, P.L. 109-280, imposed new requirements for credit counseling organizations to meet in order to be tax-exempt pursuant to Section 501(c)(3) or (4) of the Internal Revenue Code. The commenter stated that these Federal provisions regulate the organization and operations of non-profit, tax-exempt credit counseling organizations. The commenter stated that this significant Federal legislative development occurred after the last time New Jersey regulations were amended and that they believe that the Federal Standards Analysis in the notice of the proposed regulations was inadequate and incorrect. The commenter gave an example that both the Federal Pension Protection Act provisions and the proposed New Jersey regulations create percentage-based limitations for the composition of a credit counseling organization's board of directors. (F1)

**RESPONSE:** The Department thanks the commenter for these thoughts. The Department understands the commenter's concern about confusion between a non-profit entity and a tax-exempt entity that is created by certain of the proposed amendments. The Department will readopt the rules with other proposed amendments, but will not move forward with adopting the amendments requiring proof of Federal tax-exempt status as a condition of licensure or

registration which were set forth in proposed amendments to N.J.A.C. 3:25-2.2(a)7 and (e)5 and 4.6(a)1. The Department may revisit this issue in the future.

In addition, the Department does not believe that the Federal Standards Analysis included in the proposal was inadequate as asserted by the commenter. This is because the Federal legislative development referred to by the commenter was not an analogous Federal counterpart. The Federal statutes deal with the issue of tax exempt status for Federal income tax purposes, whereas the rules proposed for readoption with amendments concern the licensing by the State of New Jersey of certain entities to provide debt adjustment services.

**COMMENT:** One commenter stated that the proposal would amend N.J.A.C. 3:25-2.1(a), 2.2(b) and 3.1(c) to remove references to credit counseling and that the stated goal is to avoid giving “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 commenter stated that the proposed amendments carry forward and increase confusion originally created by N.J.S.A. 17:16G-1(a) through (c). The commenter stated that under subsection (a) of that statute, the entity must be engaged in debt adjustment to even be defined as a “non-profit social service agency” or a “non-profit consumer credit counseling agency.” The commenter stated that, in contrast, the proposed regulations purport to define a non-profit credit counseling agency as one that does not provide debt adjustment services and that it becomes unclear whether a non-profit credit counseling agency which does not provide debt adjustment services is permitted to charge fees for credit counseling services without a license; and if so, whether it is subject to the proposed regulation’s fee limits on credit counseling services. The commenter stated that the

Department should clarify whether organizations are subject to the fee limits, even if they are exempted from the licensing requirements.

**RESPONSE:** The Department believes that the commenter misreads the statutory sections in N.J.S.A. 17:16G-1(a) through (c). The statute does not require that a “non-profit consumer credit counseling agency” be engaged in debt adjustment, but does require that, if such an agency is engaged in debt adjustment, it be licensed under the Debt Adjusters Act. By the same token, the proposed rules do not define a nonprofit consumer credit counseling agency as one that must provide debt adjustment services, but rather that in order to provide such services it must be licensed. Likewise, the Department believes it is clear that a nonprofit credit counseling agency which is not licensed to provide debt adjustment services may charge fees for credit counseling services. A nonprofit credit counseling agency that does not provide debt adjustment services would not need to be licensed under the Debt Adjusters Act and, if it was not so licensed, it would not fall within the purview of the statute and rules which regulate permitted fees for debt adjustment and credit counseling services by those licensed entities. The statute and rules make it clear that only those that are licensed or should be licensed under the Debt Adjusters Act are required to comply with the fee limits set in the statute and the rules.

**COMMENT:** One commenter stated that prior to these proposed amendments, New Jersey’s debt adjuster law and regulations required that a licensee be a non-profit organization, but did not require that a licensee be a tax-exempt organization. The commenter stated that the proposed new requirement that an entity seeking licensure as a debt adjuster provide a filed IRS Form 990

or an IRS letter confirming their receipt of an exemption from such filing creates confusion around this distinction between a non-profit organization and a tax-exempt organization. The commenter stated that to avoid such confusion, this section and the other related sections should be corrected to clarify that this IRS Form 990 filing requirement only applies if the non-profit organization is also a tax-exempt organization.

**RESPONSE:** As was stated in an earlier Response, the Department is not adopting the tax exemption provision in the proposed amendments at this time.

**COMMENT:** One commenter noted that in the New Jersey Register, 35 N.J.R. 607(b) published on February 3, 2003, the Department stated that it intended to add language to provide that persons who act as debt adjusters in New Jersey are subject to licensure requirements regardless of whether that person's office was located in New Jersey or in another state. The Department declined to do so because it perceived a conflict with the "office requirement" of N.J.A.C. 3:25-2.3(a). The commenter noted that, at that time, the Department recognized that this requirement needed more substantive consideration and stated in the Summary of Agency - Initiated Change: "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 locations of these licensees." The commenter noted that the statements were made five years ago and that it is time to address this requirement. The commenter stated that virtually every credit counseling and debt management organization provides their services via telephone or, increasingly, the

Internet. The commenter noted that it maintains an office in New Jersey in compliance with the regulatory requirement, but it goes largely unused and the commenter suspected that this is because if a New Jersey resident wants to receive counseling in person, as opposed to over the phone or the Internet, they would choose to receive services from an agency which has its home office in New Jersey not from an agency that merely has a satellite office in New Jersey. The commenter stated that consumers should have this choice and they will continue to have this choice with or without the office requirement and that a number of respected credit counseling organizations have their home offices in New Jersey. The commenter went on to note that the office requirement imposes a cost with little or no benefit to consumers. However, the cost must be passed on to the same consumers who show no interest in using these satellite offices. So the cost is either passed on directly by increasing fees or indirectly by cutting services. The commenter stated the office requirement is an unfair burden on credit counseling organizations which are not based in New Jersey, that their organization incurs the cost for complying with New Jersey's office requirement to provide services to New Jersey residents while New Jersey credit counseling organizations incur no such cost to provide credit counseling services to Arizona residents. The commenter concluded by suggesting that the office requirement is an unfair burden and should be eliminated.

**RESPONSE:** The Department agrees that in the last readoption of these rules in 2003 the Department stated it intended to address the issue of the location of offices of debt adjuster licensees in a comprehensive manner and would do so through a separate Notice of Proposal. The Department is in the process of conducting such review. The Department thanks the

commenter for these comments on the office requirement and will take them into consideration as part of the comprehensive review that is underway.

**COMMENT:** One commenter addressed the proposal in N.J.A.C. 3:25-2.6(a)1 that funds of debtors be disbursed to creditors within 10 days of receipt by licensees. They stated that their organization disburses client funds on a daily basis. The commenter went on to state that the best day for a client to remit funds does not always align perfectly with all of the client's creditors' payment dates. The commenter stated that some creditors are less flexible than others in moving these dates. In addition, clients sometimes send their payments in irregularly and that a quality credit counselor will recognize that making too many payments in one billing cycle and no payment in the next billing cycle can cause the client to lose credit or concessions achieved earlier from creditors. The commenter also stated that some clients choose to split their monthly payments into two parts, which often means that some residual amount may remain from the first part until the second part arrives and creates a sufficient sum to disburse to particular creditors. The commenter noted that at all times a quality counselor must seek to disburse funds as quickly as possible but without compromising the client's benefits under a debt management plan. The commenter stated that an inflexible rule requiring disbursement within ten days of the debt adjuster's receipt of funds ignores all of these realities and will harm clients. The commenter suggested that this section should be amended to state that funds must be disbursed within 10 days of receipt of those funds "unless a later disbursement of funds is required to maintain the debtor's arrangements with the debtor's creditors."



**RESPONSE:** The 10-day disbursement requirement was imposed by the Legislature in its most recent amendment to the statute as set forth in P.L. 2005, c. 287, which was effective April 9, 2006, and is codified at N.J.S.A. 17:16G-9a. The Department's rules must implement this clear statutory mandate.

**COMMENT:** One commenter addressed the proposal in N.J.A.C. 3:25-2.6(a)3 regarding trust account ledgering. The commenter stated that cash basis accounting and accrual basis accounting are both generally accepted methods of accounting and that using the accrual method can become problematic for a credit counseling organization which provides services to financially distressed consumers and receives various forms of voluntary financial support at various times from creditors. The proposed regulation's reference to generally accepted accounting principles, however, will mean that only the accrual method of accounting would be accepted. The commenter stated that this section should be amended to state that the "ledger book and records shall be maintained in accordance with generally accepted accounting principles, or other generally accepted methods of accounting which accurately report trust account activity, for not less than six years following the close of each debtor's account."

**RESPONSE:** The Department believes that the commenter is assuming that the proposed amendment regarding trust account ledgering and the reference therein to generally accepted accounting principles, taken from the statutory amendment to N.J.S.A. 17:16G-9c, was intended to incorporate the concept known as Generally Accepted Accounting Principles (GAAP) issued by the American Association of Certified Public Accountants. The Department believes if the

Legislature had specifically intended GAAP to apply, it would have expressly so provided. It did not.

In addition, since GAAP would not extend to maintenance of ledger books for trust accounts the Department believes the use of the term “generally accepted accounting principles” means that the trust account books and records should be maintained in a standard, logical form that is understandable to regulators. Further, the Department believes those terms do not dictate that an entity must use accrual basis accounting.

#### Federal Standards Statement

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

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

Full text of the adopted amendments and new rule follows (deletions from proposal indicated in brackets with asterisks \*[thus]\*):

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. – 6. (No change from proposal.)

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]\*;

8. – 15. (No change from proposal.)

(b) - (d) (No change from proposal.)

(e) Prior to providing high-cost home loan credit counseling services, a 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. – 4. (No change from proposal.)

5. 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]\*;

6. – 8. (No change.)

(f) - (i) (No change.)

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 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 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) – (c) (No change.)