

DEPARTMENT OF JUSTICE
DIVISION OF FRAUD AND CONSUMER PROTECTION
Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 **Del.C.**, §2432A(h))

FINAL

ORDER

Debt Management Services

A public hearing was held to receive comments related to the Delaware Uniform Debt Management Services Act authorized under 6 **Del.C.** §2432A(h). Notice was provided as required under the Administrative Proceedings Act in the *Register of Regulations* at 10 **DE Reg.** 804 (11/01/06) as well as in the *News Journal* and *Delaware State News* on October 26, 2006. 29 **Del.C.** §10115.

The Director of Consumer Protection was designated by the Attorney General to conduct the public hearing held at 10 a.m. on December 11, 2006 in the Carvel State Office Building, 6th floor, 820 N. French St., Wilmington, DE 19801.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Written Comment:

1. **Ralph S. Lewis**, Chief Operating Officer of Able Debt Settlement, Inc. submitted a letter dated December 5, 2006 on behalf of ARCUS/ADSI.

ARCUS/ADSI has requested a stay of enforcement of any adopted rules and regulations until June 1, 2007 pending formal interpretations. Generally the following problem areas were identified:

- Operation of the Act is dominated and controlled by the regulated industry.
- Operation of the Act provides no real benefit to the State.
- Operation of the Act interferes with unintended business activities
- Operation of the Act discriminates against consumers and small business.
- Operation of the Act is anti-competitive by increasing services providers expenses.
- Operation of the Act provides no greater protection for consumers and does not:
 - Prevent creditors from applying fraudulent scoring schemes used to artificially adjust financial arrangements with consumers without regulatory review.
 - Prevent creditors from alleging "universal default" or similar language to extort money or adjust financial arrangements with consumers without justification; and does not
 - Provide an automatic-stay against civil actions or harassment by creditors, debt-collectors or their collection attorneys while consumers are enrolled in and in compliance with a debt management-settlement program; and
- Operation of the Act further discriminates and is anti-competitive by allowing one party to a contract, such as a creditor, to solicit the services of a person no subject to the arduous process required under this Act while requiring another party to the same contract, such as a consumer, to find a services provider of essentially similar tasks willing and able to comply with the Act."

More specifically, comments were made to the following rules:

1.2.4 The commenter thought that a distinction should be made between debt management services and debt settlement services viz. a debt management company holds the clients funds used for payment of the debt and a debt settlement company does not control client funds other than service fees.

4.2.1 The commenter recommended that the audit must establish a net worth consistent with the licensing of similar business activities.

4.2.3 The commenter objects to state bonding requirements for companies with national insurance coverage.

4.2.4 The commenter objects to the approval requirements for the insurance as an unreasonable interference with business activities.

4.2.4.4 The commenter objects "to this rule subject to interpretation and compliance capabilities through their respective insurance carriers."

4.2.6 The commenter objects to this rule absent an inclusion of an industry standard and mentions four models for debt settlement services providers - qualified, objective, arrangement, and negotiated.

4.2.8 The commenter objects to "ordered educational programs."

4.2.12 The commenter objects to the license fee of \$2000 as excessive.

4.5 The commenter objects to the 10 days permitted to request a hearing and suggests 30 days.

5.3.8 The commenter objects to the renewal requirement that information is presented regarding the number of individuals who successfully complete a debt management plan without interpretation.

5.6 The commenter objects to the 10 days permitted to request a hearing and suggests 30 days.

6.2 The commenter objects to the requirement for a educational program.

7.2.3 The commenter objects to the 10 days permitted to request a hearing and suggests 30 days.

8.0 The commenter objects to the requirement that an artificial entity be represented by an attorney and suggest a "Certificate of Authority "

13.3 The commenter objects to the requirement that notice is provided to the Director of Consumer Protection when civil litigation is filed noting a potential for abuse.

13.4 The commenter objects to being required to notify the Director of Consumer Protection of changes except in the case major business activities that affect the ability of the licensee to perform under its agreements with consumers.

2. Caren Lock Hanson, Board member, The Association of Debt Settlement Companies (TASC) submitted a letter dated November 30, 2006. She offered five comments:

a. Postpone Enforcement: TASC has requested that enforcement begin September 1, 2007 so members would have sufficient time to comply with the new law.

b. Cost of Registration: TASC recommends that the license fee of \$2000 be reduced to \$500

c. Certified Counselor Program: TASC recommends expeditious processing for companies seeking approval of approved certification programs.

d. New Contracts: TASC understands that companies provided services prior to the effective date of January 17, 2007 are not required to be licensed if they enroll no new Delaware clients.

e. Insurance Requirement: TASC believes that the insurance requirement under the Delaware act should have been \$250,000.

3. Leslie Linfield, Esq. submitted comments from the Institute for Financial Literacy dated November 23, 2006. The Institute for Financial literacy is a non-profit organization whose mission is making financial literacy education available to adults. The Institute has established the Center for Financial Certification to provide professional development and training for individuals in the fields of financial counseling and education. A certification program for a Certified Personal Finance Counselor (CPFC) was submitted to the Attorney General in August, 2006 for approval under the Delaware Uniform Debt-Management Services Act and is pending. The following are comments to specific proposed rules:

4.2.7 The commenter proposes that documenting the approval of a 'certifying organization' should occur outside formal rulemaking by an authorized staff person for expediency.

4.2.7.1 The commenter notes that some certification such as by the Association of Financial Counseling and Planning Education mention in Rule 4.2.7.1 require two years of experience prior to certification. Thus an organization using that program could not produce proof of certification within 12 months. In addition, the inclusion of a named organization in the rules implies and endorsement of the organization by the Attorney General mitigating in favor of a mechanism for approval outside the formal rulemaking process.

4.2.7.2 The National Foundation for Credit Counseling requires membership to use its certification program and all members must be non-profit associations. The act includes providers who are "for profit." Including a organization by name implies endorsement by the Attorney General.

4.2.7.4 The commenter recommended a better defined criteria and time-line for re-approval. Training should include "money management, credit, debt management, basic investor education and risk

management tools such as insurance." Programs should also include communication, counseling and a code of ethics.

4. Mark Guimond, Executive Director, submitted comments on behalf of the American Association of Debt Management Organizations (AADMO) dated December 11, 2006. AADMO is a trade organization whose members include credit counseling agencies, debt management organization, credit counselors, personal finance educators, credit and debt information educators, consumer lawyers, etc. Their comments follow:

Definitions

The Act should use either "consumer" or "individual" and not both. The term "individual" is preferred. The term should be defined to refer to "consumer debts." AADMO recommends a change to the definition of "Debt-management services", viz. "services as an intermediary between an individual and 1 or more creditors of the individual for the purpose of obtaining concessions for debts for goods or services that are used primarily for personal, family, or household purposes."

Concessions

The definition in the Act for "concessions" does not recognize that following a judgment against a debtor, the concessions may be no better than the original contract but better than the judgment.

Accreditation

The terms used in the definition and rule regarding "accreditation," e.g. "prescribed", "standard," and "industry," are ambiguous. Moreover, there is no penalty for violating an accreditation standard. Presently, the standards are self-generated guidelines published by the trade organizations. There is no applicable business standard applicable to all groups in the industry. AADMO recommends that the state adopt specified criteria for organizations to meet. Accreditation providers should be required to make application for approval to substantiate their programs and provide the certification materials, qualification of the providers, and disclosure of financial arrangements with the trade organizations. Approval should not depend on the rule making process. They do not recognize the term "BYGI" in the Rule and object to including a standard - ISO9001:2000 - as an organization. AADMO support the certification of counselors but the Rule is unnecessarily restrictive. There is no definition of the term "proctor" and it is thus ambiguous.

Counselor Certification

AADMO finds the requirements for certification unnecessarily restrictive and objects to the requirement for a proctor which is not fully defined.

Applications

The bond requirement places the requirement on a corporate entity and not a "person" that is a broadly defined term under the act.

Report of successful debt management plan completions upon license renewal.

AADMO believes that Rule 5.3.8 is insufficient to address the various possible outcomes for clients in debt management plans and identify which outcomes are a "success." For example, a debtor may, during the course of a debt management plan, be able to leave the plan and resume the regular payments to a creditor.

Debt management service requirements

AADMO objects to the requirement for a written disclosure in Rule 6.2.2. A record of a disclosure rather than one "in writing" should be sufficient.

5. Jenna Keehnen, Executive Director, submitted comments for the United States Organizations for Bankruptcy Alternatives (USOBA) dated December 10, 2006.

Ms. Keehnen raised concerns with specific rules and offered alternative language. She suggested that since debt settlement companies do not hold client funds, the Rule 4.2.1 should be modified as follows:

4.2.1 "In the event that an applicant company holds client funds in trust for the purpose of distribution to creditors, an audited review by a certified accountant of the applicant's financial statements for the two years preceding the application or the period of existence, whichever is less."

The balance of a trust account is not a reasonable measure for the bond in 4.2.3.1 since debt settlement companies do not hold or distribute client funds. She suggested instead,

4.2.3.1 "The amount of the bond may be required to be increased after consideration of the value of the applicant's business in Delaware and the balance of the trust account, in the event that the applicant does not hold or distribute client funds, a lowered bond amount may be approved with the consent of the Attorney General."

Since the debt settlement companies do not hold the clients' funds, she suggested that Rule 4.2.5 should state:

4.2.5 "Identification of trust accounts and an irrevocable consent permitting the Attorney General and/or the designee(s) of the Attorney General to review and examine accounts along with an overdraft notification agreement, if applicant does not hold client funds or distribute funds to creditors they are exempted from this requirement."

Generally, she recommended not including approved accrediting organizations or certification programs in the body of the rule but rather by informal listing on the web page as follows:

4.2.6 "Evidence of accreditation by an independent accrediting organization approved by the Director of the Consumer Protection Unit of the Attorney General's Office that assures compliance with industry standards. A list of organizations that have been approved can be found on the website provided in 3.1.2 or a request can be sent in writing to the address provided in 3.1.1."

4.2.7 "Documentation of counselor certifications or a statement that a counselor will become certified within 12 months of employment. Certification shall be by a bona fide third-party provider approved by the Director of the Consumer Protection Unit of the Attorney General's Office. A list of organizations that have been approved can be found on the website provided in 3.1.2 or a request can be sent in writing to the address provided in 3.1.1."

Because debt settlement companies do not hold and distribute funds, the following changes were recommended for proposed Rules 5.3.4., 12.1.1, and 12.1.2:

5.3.4 "In the event that applicant company holds client funds in trust for the purpose of distribution to creditors, an audited review by a certified accountant of the applicant's financial statements for the two years preceding the application or period of existence, whichever is less."

12.1.1 "A file for each consumer containing the preliminary financial analysis prepared for the consumer, the original agreement, the consumer's total income along with the debt balance, copies of the periodic statements provided to the consumer, and if applicable: the monthly payment due each creditor."

12.1.2 "A. If applicant enrolls clients into debt management plans (DMP) an activity record for each consumer including the account number, name, address, date of the agreement, total indebtedness, monthly receipts including the date of receipt, any fees charged, amounts disbursed to creditors including the payment date, and the estimated term of the agreement. The record shall also include any action taken to recover unpaid fees that may be owed by a consumer who has cancelled an agreement.

B. If applicant enrolls clients into a debt settlement program T-whereby applicant does not hold client funds and does not distribute funds to creditors, the applicant does not hold client funds and does not distribute funds to creditors, the applicant will provide an activity record for each consumer including the account number, name, address, date of the agreement, total indebtedness, any fees charged and the estimated term of the agreement. The record shall also include any action taken to recover unpaid fees that may be owed by a consumer who has cancelled an agreement."

6. **Ivan L. Hand, Jr.**, President and CEO of Money Management International (MMI) submitted comment in a letter dated December 8, 2006. MMI is the largest credit counseling organization in the country and maintains 135 in-person counseling offices in 22 states. It is accredited by the Council on Accreditation and taken leadership roles in the National Foundation for Credit Counseling and the Association of Independent Credit Counseling Agencies. The following changes are recommended for the reasons given:

A. Exemptions

2.1.1 ...receives no compensation from the individual receiving services ~~or a creditor of that individual.~~

Creditors are moving away from "fair share" contributions and instead offering grants. As long as the consumers are not paying a fee, the purpose of the act is served by exempting providers who are compensated by creditors.

2.3 "The Delaware Uniform Debt Management Services Act and these regulations do not apply to agreements entered into with Delaware residents prior to the effective date so long as residents have the option to terminate those agreement."

B. General Application and Renewal Requirements

4.1.13 [sic] "Identification of every state in which, during the five years immediately preceding the application, the applicant has provided debt management services to the states' residents."

Asking about where an applicant has done business will help a reviewer understand the business structure. Using the word 'state' is better understood than 'jurisdiction.'

4.1.14 [sic] "the names and addresses of all employers of each non-volunteer director during the 10 years immediately preceding the application."

The volunteer Board members should not be burdened with this requirement.

4.1.15 [sic] "the process(es) by which individuals and the applicant will inform each other within a reasonable period of time if they have knowledge that a creditor rejects or withdraws from an individual's plan."

Both the client and provider should have an obligation to communicate changes to each other.

4.2.6.3 Delete The correct organization may have been BVQi, Inc. Its process, ISO:9001 is listed.

4.2.12 ...in the amount of ~~\$2000~~ \$1000.

5.3.1 ..fee of ~~\$1000~~ \$500.

The current fees are excessive compared to other states and may discourage quality CCO's from assisting Delaware residents.

4.3.1 will make a preliminary decision on a completed application within ~~420~~ 90 days unless additional information is needed. In that case, the period is extended by ~~60~~ 45 days.

Three months is an adequate time to review an application.

5.3.6 A ~~statement~~ detailed accounting disclosing the total amount of money received on behalf of each individual debtor who resides in this State to pay creditors, ~~and including for each individual debtor~~ the amount distributed to each creditor in the 12 months immediately preceding the renewal application, if any.

5.3.7 ~~The gross amount of~~ A summary accounting of the.....

These changes clarify the requirement.

C. Criminal Records Checks

The finger printing requirement for the records check is burdensome and difficult. Rules 4.2.2, 4.2.2.1, and 4.2.2.4 should delete any reference to the fingerprint requirement.

D. Bonding and Insurance Requirements

4.2.3 ...~~\$50,000~~ \$25,000...

4.2.3.1 ...The amount of the bond may be ~~required to be increased~~ decreased...

4.2.4 ...~~\$500,000~~ \$50,000 ...

4.2.4.2 ...no greater than ~~\$5000~~ 5% of the applicant's net worth according to its audited financial statements for the previous year.

4.2.4.3 ...applicant without ~~the approval of~~ providing prior notification to...

5.3.5 Evidence of insurance in an amount equal to ~~the larger of \$250,000~~ \$50,000 ~~or the highest daily balance in the required trust account with terms consistent 6 Del.C. 2411A (b)(5).~~

The bond and insurance levels are excessive for a small state and may not be affordable for some CCO's. It may be difficult to obtain a policy with a \$5000 deductible provision.

A deductible no greater than twenty times the net worth of the CCO should protect against a company being unable to pay the deductible. Moreover, it may be difficult to obtain a policy that cannot be cancelled by the license without the approval of the Consumer Protection Unit.

E. Disclosures

Generally, the disclosure requirements are repetitive and may discourage consumers. The following language is offered:

4.2.13 "Evidence demonstrating when and how the applicant informs individuals about the benefits and potential negative consequences of the Plans."

Rule 6.1 should be revised to be specific to debt management services since many providers offer other unregulated services such as personal crisis counseling, bankruptcy counseling, etc.

6.1 "Before entering into an agreement for debt management services, a licensee must provide an itemized list of debt management goods and services in the debt management agreement for services, which will be executed prior to providing debt management services and which will disclose all applicable fees as required under 6 Del.C. §2417A."

Internet access will allow a client to easily review the financial analysis and plan and is enabled with the following change:

6.2.1 "given provided access to a copy of the financial analysis and plan."

A separate record of disclosures is burdensome. The purpose of the statute is served if the information is contained in the agreement. The following change is recommended.

6.2.4 "given the separate disclosures required under 6 Del.C. §2417A(d) in writing in the debt management agreement prior to the execution of such agreement."

New language is proposed for inclusion in Rule 6.3 since the providers are not always informed of creditor concessions and concessions may be lost if payments are missed.

6.3 "Agreements must include the following provisions required under 6 Del.C. §2419A: the services to be provided; the amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual; the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment; if a plan provides for regular periodic payments to creditors, each creditor of the individual to which payment will be made, and the amount owed to each creditor; that the individual may cancel the agreement; that the individual may contact the Director with any questions or complaints regarding the provider; and the address, telephone number, and Internet address or website of the Director."

The format of the 'Right to Cancel' notification should allow for flexibility by revising Rule 6.3.1.

6.3.1 "Agreements must be accompanied by the 'Notice of Right to Cancel' in bold-face type surrounded by a bold black line as required under 6 Del.C. §2420A or other prominent disclosure explaining the client's right to cancel the agreement."

Providers should be permitted to charge a fee for plan enrollment since creditor 'fair share' payments are decreasing. A new Rule 6.4 could provide:

6.4 "Applicants may charge a fee not exceeding \$100 for consultation, obtaining a credit report, setting up an account, or the like."

F. Complaints

The CCO's want assurance that they will be notified as soon as possible when a consumer complaint is received by the Consumer Protection Unit and propose the following revisions to Rules 7.2.1 and 7.2.2.

7.2.1 "If, after review and/or investigation, including seeking input from the licensee who is the subject of the complaint, there is insufficient evidence to support a finding the licensee is in violation of the Debt Managements Services Act or the lawful rules promulgated under the Act, the Director may ~~sua sponte~~ dismiss the complaint on his or her accord."

7.2.2 "If, after review and/or investigation, including seeking input from the licensee who is the subject of the complaint, there is sufficient evidence to support a finding the license is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may:"

G. Hearings and examinations

The following change is recommended to Rule 8.2 so that organizations will not be discouraged from obtaining licenses because of the legal costs associated with hearings.

8.2 "An individual may represent himself or herself in a hearing. ~~An artificial entity~~ A person who is not an individual may be represent by an officer of the person or shall be represented by an attorney authorize to practice law in Delaware."

It is recommended that examinations under Rule 12.1 be allowed "off-site." Rule 12.1.1 should be modified to allow for "evidence" of periodic statements rather than copies. The requirement that a list be "alphabetical" should be deleted from Rule 12.1.1.

H. Trust account

The predominant practice when a plan is terminated is to disburse the remainder in the trust account to creditors because it is operationally difficult to cancel the disbursement. The practice should be permitted since the money is owed to the creditor. Rule 11.4 could be revised to include the qualifier "if requested to do so." New provisions were suggested that permit clients to request that a payment date be changed by the creditor to correspond to the date payment is made on the plan so that there is one due date for all creditor payments.

11.8 "Trust account disbursements should coordinate with the due dates established by each creditor."

11.8.1 Providers may require their clients to have their creditor due dates changed to

correspond with the due date for their debt management services payments in order to comply with 6 Del.C. §2422A(c)(2)(B).

11.8.2 Once a provider has received verified funds for disbursement from a client, the funds should be disbursed before the next scheduled creditor due date.

I. Referrals

The regulations should permit referrals and permit fees related to the referral. Permitted referrals would not include "lead generators" of diverting consumers from one type of service provider to another for a fee. Locater services should be allowed so that servicing organizations in the credit counseling industry can connect consumers with credit counseling agencies. The recommended Rule follows.

13.5 "Payments made by or to licensees that do no more than cover the cost of informing consumers of meaningful alternatives for resolving their financial problems do not violate the Delaware Uniform Debt Management Act."

J. Advertising

A rule was proposed relating to the advertising.

13.6 "A provider, when exclusively advertising debt-management services, shall disclose in an easily comprehensible manner the information specified in §2417A(d)(3) and (4) of the Delaware Debt Management Services Act in all television, radio, and Internet advertisements."

K. Penalties, Liabilities, Defense

The exposure for liability may discourage providers from offering services in Delaware and limit options to residents. The following rules are proposed to limit exposure while providing an appropriate remedy for the consumer:

13.7 "A provider may be fined up to one thousand dollars for each violation of the Delaware Debt Management Services Act."

13.8 If an individual voids an agreement pursuant to §2425A(a), the individual may recover in a civil action the total amount of the fees, charges, money, and payments made by the individual to the provider plus interest in the amount of ten percent (10%) per year, in addition to the recovery.

13.8.1 Subject to subsection (d) §2435A(d), an individual aggrieved by a provider's intentional violation of the Delaware Debt Management Services Act may recover in a civil action from the provider and any person that caused the violation: compensatory damages for injury-cause by the violation; and reasonable attorney fees and costs.

13.8.2 If, in connection with a violation, the provider has received more money than authorized by an agreement or by this law, the defense of good faith error is not available unless the provider refunds the excess within five business days of learning of the violation."

L. Language requirements

Translating documents may be cost prohibitive for some providers especially when only a few clients use that language. The following rule is proposed:

13.9 "The disclosures and documents required by the Delaware Debt Management Services Act must be in English. If a provider communicates with an individual primarily in any language other than English, and the provider communicates with more than 25% of its new debt management clients in any given year in the other language, the provider must furnish a written translation in the other language of the disclosures and documents required by the Act."

7. **Robert E. Fisher, Esq.** submitted comment in a letter on December 11, 2006 at the public hearing. Mr. Fisher is senior legal counsel for Take Charge America, Inc., (TCA) a non-profit credit counseling organization incorporated in Arizona. TCA serves clients who reside in Delaware.

Like the NCCUSL model act the Uniform Delaware Debt Management Services Act is a "lengthy and complex piece of legislation" that is a "well-intentioned but profoundly misguided law" that cannot be fixed by rules. Comments to specific rules are summarized as follows:

1.1 The reference to the statutory definitions omitted "State."

1.2.4 A definition for Debt Management Services exists in the Act and should not be expanded in the rules. Debt management services does not include debt settlement and to equate them is an inherent flaw in the model law.

1.2.5 The rule contains a typo and the word "Services" should be added.

4.2.2.1 Obtaining fingerprints from a local law enforcement agency is burdensome and should

permit fingerprints from other providers of fingerprint services but permitting the Attorney General to reject unsatisfactory fingerprint cards.

4.2.2.1 The amount of the mandatory minimum bond is not rational and unduly burdens interstate commerce. This is a departure from the model act from NCCUSL that permits a bond to go down. The factors to be considered in the bond such as the business or trust balance should be tailored to the Delaware clients.

4.2.4 The amount of insurance is unduly burdensome and is unrelated to important factors such as size or number of Delaware clients. The mandatory minimum is not rational and unduly burdens interstate commerce. No agency can meet this requirement in 50 states.

4.2.5 The overdraft notification agreement that is modeled after the requirement for Delaware lawyers. It is unlikely that non-Delaware banks will enter into these agreements with their depositors.

4.2.6 The ISO 9001:2000 is standard and not an organization. There is a typo in 4.2.6.3 which probably should have said Bureau Veritas Quality International (BVQI) which is now known as Bureau Veritas Certification (BVC).

4.2.7 The National Foundation for Credit Counseling (NFCC) is not a "third party provider" of counselor certification. It is an association of credit counseling organizations. Documentation should be permitted by a single document identifying the type of certification and the names of the certified counselors and not copies of all the certificates of the counselors.

4.2.3.4 is a typo that should read "4.2.7.4."

5.3.5 The insurance required on renewal has the same defects as the insurance required for initial licensure. The rule should make it clear that the amount is based on balances for Delaware clients.

5.3.6 The rules should take into consideration the privacy interests of its residents.

11.6 The overdraft notification issue was raised in 4.2.5.

12.1.1 The requirement for a "written agreement" should be clarified to include electronic agreements. Electronic and scanned documents should be permitted as the required file.

12.2 The provision allowing the examination of "[a]ny person who is connected with or associated with the licensee" is vague and overbroad. It permits the questioning un-limited non-Delaware residents.

Verbal Comment:

1. **Robert L. Byrd** of Wood-Byrd and Associates on behalf of TASC had two primary comments to supplement the written comment from TASC. He described some of the history of the bill and recommended changes. Specifically, he stated that there was an omission and the bill should have been amended to provide for \$250,000 in initial insurance coverage and not \$500,000. The renewal level is \$250,000. He further stated that the \$2000 application fee was negotiated with the Bank Commissioner when it was thought that he would administer the bill. Mr. Byrd thinks that number should be renegotiated to a lower level.

2. **Robert E. Fisher, Esq.** spoke on behalf of Take Charge America, Inc. His client is based in Phoenix, AZ and has approximately thirty state licenses. He pointed out that the credit counseling business model is very different than debt settlement and the industries should not be regulated by the same law. The drafters at NCCUSL were not familiar with credit counseling and this Act will require providers to rework business models. The statute that was passed micromanages licensees resulting in a substantial exposure for non-compliance. He saw problems in the broad definitions of "affiliates" and the restrictions on the composition of the Board of the non-profits. He noted that in the disclosures, the licensee is required to make a false statement because participation in a debt management plan has no impact on a client's credit score. The automatic termination of a power of attorney at the time an agreement is terminated prevents the licensee from communicating important information, such as the reason for the termination of the plan, to the creditor when it is important. Finally, the private enforcement could lead to opportunistic class action litigation. He noted that only one of 40,000 clients of Take Charge, America filed a lawsuit in the last three years and lost in a summary judgment proceeding.

Mr. Fisher referred to the written comments that were submitted to address proposed regulations. The trust, insurance requirements, overdraft notification, etc. are problematic for national companies licensed in many states. It is not possible to obtain \$500,000 in insurance in each state where a provider is licensed. The Act should permit a single trust account, not one in each state and requirements should be based on trust balances. He noted that only 183 Delaware residents are in plans with Take Charge America, Inc. These are issues that could be clarified by regulation.

RECOMMENDED FINDINGS OF FACT BASED ON THE EVIDENCE AND INFORMATION SUBMITTED

Many of those submitting comments recommended changes that are outside the scope of the authority for rulemaking. Rules must implement the law and not change it. Only the General Assembly can amend the law.

Because the law becomes effective on January 17, 2007, it is important to enact rules that will at least provide an administrative hearing procedure for challenges to licensing decisions. The Attorney General is empowered to enact rules on January 17, 2007. Any substantive changes to the proposed rules will require re-publication as provide under 29 **Del.C.** §10118(c). In order to avoid any delay in implementation, it is recommended that only non-substantive changes to the proposed rules be considered at this time. Substantive changes and/or changes based on any legislative revisions should be revisited after June, 2007 with a new proposal that can address issues such a differentiating between debt management and debt settlement companies in the trust provisions and the documentation produced for examinations.

The following are findings based on the specific comments received.

1. Findings based on the comments of **Ralph S. Lewis for ARCUS/ADSI:**

With regard to the request for a stay of enforcement, implementation and enforcement of the law is determined by the General Assembly and it was established at six months after the law was enacted. Any change must be made by legislation and not rulemaking. The general problems described by the operation of the act are policy matters that are not within the scope of rulemaking.

With respect to the specific rules enumerated, many essentially repeat a statutory requirement and can be changed only if the enabling statute is changed by the General Assembly. See, for example, Rules 4.2.3, 4.2.4, 4.2.4.4, 4.2.8, 4.2.12, 6.2, 13.3 and 13.4.

The request made regarding Rule 8 is beyond the scope of rulemaking or legislation. The Delaware Supreme Court regulates the practice of law including advocates appearing in administrative hearings.

Several rules speak to a 10 day period to request a hearing, viz. 4.5, 5.6, and 7.2.3. Increasing the time to request a hearing to 20 days in these rules is consistent with administrative efficiency while providing more time for applicants or licensees to make decisions requesting administrative proceedings. Increasing the time to 20 days in the named Rules is recommended.

With respect to the remaining rules, the commenter is requesting a more explicit definition of "Debt Management Services" in 1.2.4. That is a term defined in the Act and was expanded minimally for clarification in the Rules. No further explanation in the Rules to describe business practices in the industry is necessary. The detail requested in Rule 4.2.1 to establish a minimum net worth for a company is a qualification for doing business that should be established by the General Assembly if appropriate. Under the statutory scheme, it is the bond and insurance that provides protection to the consumer. Defining particular industry standards in Rule 4.2.6 may be too constraining and an applicant ought to have the flexibility to argue industry standards if there is a dispute over qualifying accreditation. Finally, under 5.3.8, the number of clients completing a program is relevant to an evaluation of a licensee. A licensee can always include an explanation if it believes the completion numbers do not offer an accurate measure of the quality of its service.

2. Findings based on the comments of **Caren Lock Hanson on behalf of TASC:**

a. The implementation and enforcement of the law is determined by the General Assembly and it was established at six months after the law was enacted. Any change must be made by legislation and not rulemaking.

b. The fee was set in the law and can only be changed by the General Assembly. The rules for approving counselors permit flexibility. Programs will be reviewed in the order that they are received.

c. Any entity that is lawfully providing debt management services under contracts entered prior to the implementation date of January 17, 2007 can complete the contracts without becoming licensed as provided in the transitional provisions of the Act which are found in Section 3 to HB 430.

d. The insurance requirement is part of the Act and cannot be changed by rule. It appears that the insurance and bond amounts were doubled in the Delaware Act as first introduced when compared to the Uniform Act as drafted by The National Conference of Commissioners on Uniform State Laws. House Amendment 4 to House Bill 430 of the 143rd General Assembly reduced all insurance and bond amounts with the exception of the insurance required for initial licensing to the level recommended by NCCUSL.

3. Findings based on the comments by **Leslie Linfield, Esq. for the Institute for Financial Literacy:**

The commenter makes a good point that the approval of 'certifying organizations' should be made without the constraints of rule-making. The specificity in Rule 4.2.7 presently is a reflection of the practice in sister

states who have experience licensing debt management providers. The fact that some programs are available to only non-profit members (comment to Rule 4.2.7.2) does not preclude their approval. Other programs are available for the 'for-profits.'

The documentation of certification within twelve months of employment is a statutory mandate. The fact that two years experience is necessary for certification in some programs is not necessarily a bar to using that certification program. (comment to Rule 4.2.7.1). An individual could have acquired experience in counseling before there was a requirement for certification and present proof of certification after one year of employment for a licensed services provider. It would not be possible for a person with no experience to begin employment with a licensed debt management services provider and be certified by the Association of Financial Counseling and Planning Education at the end of twelve months.

The criteria described in the comment to Rule 4.2.7.4 may become part of the evolution of the process as we become more experienced reviewing programs that are available. Deciding what criteria are fair and appropriate will require more experience with the industry and these suggestions present a good beginning.

Finally, it is not the intention of the Attorney General to endorse programs. However, the mandate of the General Assembly requires a process of approval by the Attorney General. That process may involve a periodic review of programs. Approved programs will be published on the web site of the Attorney General on the Fraud and Consumer Protection Division page just as the names of the licensees will be published.

4. Findings based on the comments of Mark Guimond, Executive Director of AADMO:

Many of the comments can only be implemented with statutory changes. For example, the use of the terms "individual" and "consumer" or the definition of "concessions." In fact, these are suggestions that should also be presented to NCCUSL if they are to become part of the uniform law that is being introduced in multiple states. Comment 1 to Section 4 of the model act from NCCUSL notes that "The Act uses the term "individual" rather than "consumer." The purpose of this usage is to enlarge the usual meaning of "consumer" (viz., one who acquires goods or services for personal, family, or household purposes) to encompass individuals who have incurred personal debt for business purposes or in connection with farming operations."

Implementing the statutory requirement for accreditation is difficult in an industry that has different business models of debt management services; it has fallen to trade organizations especially in the debt settlement model to draft standards. It must be noted that the accreditation that is approved by the Attorney General merely recognizes that an applicant has been audited by an independent party to some stated standards which may be different with different business models. Meeting those standards does not insure licensure when the standards for licensure set in the statute are higher. The Attorney General has no mandate under the law to create standards of accreditation for the industry. The penalties under the law are for violations of the statute or rules. Losing accreditation could be grounds for non-renewal. §2434A(b)(1). The approved counselor certification programs probably ought to be documented in a document separate from the rules for efficiency. Even though the rule was drafted to permit continuous approvals, there may be a perception that a provider named in the rules has a different status than a provider who is named on a web page.

The corporate surety bond provisions are in the statute in §2413A and apply to all licensees regardless of how they may be organized.

The requirement for an agency to report the numbers of "successfully completed debt management plans" (DMPs) is self-explanatory. A provider can, but is not required to, supplement a report with information about plans that were not completed because of improved circumstances of client. The proportion of successfully completed DMPs is based on the number of individuals entering into a plan and not the individuals who for example, were referred to a bankruptcy attorney when counseling determines that they cannot benefit from a DMP.

Finally, the recommended change to Rule 6.2.2 from "writing" to "record" is a non-substantive change that can be made to the rule.

5. Findings based on the comments of Jenna Keehnen, Executive Director of USOBA:

The suggested change that would excuse the debt settlement companies who do not hold clients funds from the required audit upon application or renewal is not in the best interest of consumers. The financial condition of the company, not just the trust account, is an important element in evaluating a license application. The change to the bond requirement for debt settlement companies would require a change to the statute in 6 Del.C. 2413A.

The suggestion that the list of approved programs or organizations that certify credit counselors be included on the website is good and will be recommended. Similarly, the accreditation approval could be

transferred to the website for expediency.
(Rules 4.2.6 and 4.2.7).

The comments that make a distinction for debt settlement companies in the Rules are more substantive and will be deferred until after June, 2007. There is language in §2422A(l) that demonstrates the criteria for finding that an account is a trust account.

6. Findings based on the comments of Ivan L. Hand, Jr., President and CEO of MMI:

A. Exemptions

The suggested deletion to proposed Rule 2.1.1 would require a statutory change to §2403A(b)(2). The requested addition designated Rule 2.3 excluding agreements entered into before the effective date of the statute is unnecessary. Although not codified, HB 430 contains transitional provisions in Section 3 that provide that "Transactions entered into before this Act takes effect and the rights, duties, and interests resulting from them may be completed, terminated or enforced as required or permitted by a law amended, repealed, or modified by this Act as though the amendment, repeal, or modification had not occurred."

B. General Application and Renewal Requirements

The changes requested as 4.1.13, 4.1.14, 4.2.12, and 5.3.1 require statutory changes to §§2406A(6)(16), 2405A(b)(1), and 2411A(b)(2) and not rule revisions.

The rules relating to accreditation will be transferred as information on the website. The clerical error to BVQi will be corrected.

The time permitted by law to review decisions as provide will remain. Of course, reviews may be completed sooner than the 120 days allowed.

Changes were suggested to Rules 5.3.6 and 5.3.7 that are applicable upon renewal. These Rules may be clarified after June, 2007 and before renewal. However, it may be useful in the interim to provide the comment related to Section 11 of the Act drafted by NCCUSL that was the model for §§2411A(b)(6)(7) of the Delaware Act.

"Comment 4. Paragraph (6) requires disclosure of two items. The first is the total amount received from its customers by a provider (or its designee). This requirement does not apply to a provider that directs its customers to accumulate money on their own. The second item is the total amount distributed to creditors, and this requirement applies to all providers, whether or not they (or their designees) take possession of their customers' funds.

Comment 5. Paragraph (7) supplements paragraph (6) by requiring a provider that does not take possession of its customers' funds to disclose the gross amount its customer have accumulated. "Gross amount" means total amount accumulated without adjustment for any debits, withdrawals, or payments for fees or for satisfaction of creditors' claims. A provider that does not take possession of its customer' money may monitor the customer' accounts, either by direct access to the accounts or by requiring the customers to provide periodic copies of bank statements. If the provider does not do either of these, and therefore has no knowledge of the amounts accumulated, it need make no disclosure under paragraph (7)."

C. Criminal Records Checks

The requirements for fingerprints are statutory. Applicants for other professional licenses in Delaware are required to provide fingerprints so that an FBI criminal history is available.

D. Bonding and Insurance Requirements

The suggestions made in the comments relate to statutory requirements that cannot be changed in the rules.

E. Disclosures

The addition of proposed Rule 3.2.13 is unnecessary. The law requires a provider to have a separate record of disclosures in §2417A(d) which can be part of any examination.

The changes suggested to Rule 6.1 are unnecessary and confusing. The Rules only apply to debt management services as defined in the Act. The suggested change in wording from "given" to "provided access to" in proposed Rule 6.2.1 is not consistent with the statutory mandate in §2417A(c)(1) - "provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record...."

The requirement for separate disclosures is statutory and therefore, we cannot consider the contrary recommendation to include disclosures in an agreement by way of revising Rule 6.2.4.

The suggested change to Rule 6.3 may cause providers to rely on the Rule and not read the comprehensive provisions in §2419A. All providers should be guided by the terms of the statute when offering an agreement to an individual. The provisions in §2419A will be enforced.

The suggestion that the format of the "Notice of Right to Cancel" should be flexible and the

suggestion that a set-up fee of up to \$100 should be permitted are not within the scope of the rulemaking authority and must be addressed to the General Assembly.

F. Complaints

Generally, when a complaint is received, the input of the respondent [licensee] is the first step in an investigation. However, flexibility is important and there may be reasons in the public interest that the process should move forward even if the licensee cannot be reached. The suggestion the term "*sua sponte*" should be replaced with "on his or her accord" in Rule 7.2.1 is appropriate to make the Rules more readable.

G. Hearings and Examinations

Requiring an entity to be represented by counsel or some other representative at an administrative hearing is not within the scope of authority of the Attorney General or the General Assembly. The Delaware Supreme Court governs the practice of law in Delaware. The Rule 8.2 is informational and not an exercise of rule making authority.

The inclusion of the modifier "on-site" does not exclude "off site" examinations. It is intended to implement §2432A(b)(1) that speaks to access to the place of business.

A revision to Rule 12.1.1 was suggested that would permit a provider to preserve evidence of having provided periodic statements and not copies of the statements. The evidence of having provided periodic statements is not sufficient for the Attorney General to determine compliance with the statute. The content of the statements is important. Similarly, the alphabetical list of names required under Rule 12.1.1 may be necessary to facilitate an examination to determine compliance with the statute.

H. Trust Account

The change requested to Rule 11.4 would require a change to §2422A(h). The recommended addition of Rule 11.8 is unnecessary since §2422A(c)(2)(B) provides that disbursement must comply with the due dates of the creditor. The recommended requirement that clients change due dates with creditors may impose a condition that is out of the control of the client and will not be included as a rule. Finally, the scheduling of a disbursement is governed by §2422A(c)(2)(B) to "comply with the due dates established by each creditor." If a payment by the individual is not yet final, the provider may delay payment under §2422A(c)(2)(A). The proposed addition of Rule 11.8.2 is unnecessary.

I. Referrals

The comment provides useful information into industry practices. The definition and regulation of "referrals" may be an important addition to the rules. The recommendation is a substantive change that will be considered at the next opportunity after June, 2007.

J. Advertising

The comment to the act developed by NCCUSL will provide enforcement guidance. It may be appropriate to incorporate the provisions in the NCCUSL comment into the rules when they are reviewed for substantive change after June, 2007. Comment 1 to Section 30 states:

"1. This section applies to advertising in any medium, be it print, broadcast, telecast, electronic, or other. But a mere listing in a directory, such as the Yellow Pages, is not an advertisement if the entry consists solely of the name, address, and phone number of a provider. If it goes beyond this, however, the entry is an advertisement that must comply with this section."

K. Penalties, Liabilities, Defense

The recommended changes are inconsistent with the Delaware Uniform Debt Management Services Act and any amendments must be to the law by the General Assembly.

L. Language Requirements

The change requested in the comment is within the scope of the authority of the Attorney General by the terms of the Act. It is a substantive change that will be considered after June, 2007.

7. Findings based on the comments of Robert Fisher, Esq. for Take Charge America, Inc.:

The overarching concerns with the scope and depth of regulation in the Act that regulates both credit counseling and debt settlement cannot be addressed through regulation. It is a matter for the General Assembly. Findings with respect to specific rules follow:

1.1 "State" should have been included and the rule will be corrected.

1.2.4 Ordinarily, the definitions in the statute are sufficient to speak to the use of the terminology as used in the Act. The additional language in the rule definition was not intended to equate debt management and debt settlement but rather clarify that both are included in the definition of Debt Management Services and

therefore regulated under the Act.

1.2.5 The typo will be corrected.

4.2.2.1 Obtaining fingerprints from law enforcement agencies insures confidence in the fingerprints that we provide to the FBI. The Attorney General is not willing to give up that measure of quality control by accepting fingerprints from unknown providers in other jurisdictions.

4.2.3.1 The parameters used to set the bond in §2413A(a)(1)(2) are for consideration by the Attorney General and the rule can state that the Attorney General will consider only the trust accounts attributable to Delaware residents. The floor remains statutory at \$50,000 for the bond or the alternative irrevocable letter of credit in §2414A.

4.2.4 The rules cannot change the insurance requirement provided in the statute.

4.2.5 The rules cannot change the statutory requirement for an overdraft notification agreement that is in the Delaware Act and not the NCCUSL model. In order to mitigate the impediment that has been reported by applicants, an agreement form is being provided on the web page that may be acceptable to the banks.

4.2.6 There was a typo in the proposal. Based on all of the comment, the accrediting organizations will not be part of the rules. The accreditation of each applicant will be evaluated until more information becomes available on the web page.

4.2.7 Information on counselor certification will be maintain on the web page rather than in the rules. Documentation is permitted by a log of counselors and certifications.

4.2.3.5 will be changed to read "4.2.7.4."

5.3.5 The rule will be clarified so that the balance of the trust account means the funds attributable to Delaware residents. The insurance levels are statutory -- the larger of \$250,000 or the trust balance. The trust balance is established with reference to §2422A and by implication means accounts established for individuals protected under the Uniform Delaware Debt Management Services Act and not the laws of other state.

5.3.6 The financial information specific to a client that is elicited in the renewal process is not considered public information under the Freedom of Information Act in 29 **Del.C.** Chapter 100.

11.6 See 4.2.5 above.

12.1.1 Electronic communication and agreements are permitted in 6 **Del.C.** §2418A. The rules do not change the statutory provisions.

12.2 The investigation and examination of licensees necessarily involves non-residents since providers of debt-management services are usually based in another state. The terms "connected or associated with the licensee" are not too vague and suggest some nexus with the licensee authorized to provide services in Delaware.

8. Findings based on the comments of Robert L. Byrd of Wood-Byrd & Associates, on behalf of TASC.

The comments regarding the license fee and the insurance requirement both speak to changes that require legislative action and cannot be change by rule. There have been other comments directed to the amount of the fee. It should be noted that although some states may have a lower fee for licenses under their debt management acts, other states may have higher fees. For example, the licensure fee in Montana is \$5000.

RECOMMENDED ACTION

After considering the provisions in the Delaware Uniform Debt Management Services Act and the comments received, it is the recommendation of the Director of Consumer Protection that the Attorney General make the proposed findings and adopt the proposed rules as published pursuant to his authority in 6 **Del.C.** §2432(h) with the following non-substantive changes:

1.1 Insert the term **["State"]** after the term "Sign" and before the term "Trust account."

1.2.5 "Delaware Uniform Debt Management **[Services]** Act or "Act" means the provisions in Chapter 24A of Title of the **Delaware Code**.

4.2.6 Evidence of accreditation by an independent accrediting organization approved by the Director of the Consumer Protection Unit of the Attorney General's Office that assures compliance with industry standards. A list of organizations that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit. The following organizations have been approved (6 **Del.C.** §2406A(9)):

4.2.6.1 ISO 9001:2000

~~4.2.6.2 BSI Management~~

~~4.2.6.3 BYGI~~

~~4.2.6.4 Council on Accreditation for Children and Families.~~

4.2.7 Documentation of counselor certifications or a statement that a counselor will become certified within 12 months of employment. Certification shall be by a bona fide third-party provider approved by the Director of the Consumer Protection Unit of the Attorney General's Office. Documentation can be in a log or other record of counselors, their certifications, and dates of certification. A list of organizations or programs that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit.

such as:-

~~4.2.7.1 the Association for Financial Counseling and Planning Education~~

~~4.2.7.2 the National Foundation for Credit Counseling~~

~~4.2.7.3 a college accredited by one of the six regional accreditation services. The requirement for certification is satisfied with a course worth at least 3 semester credits, or its equivalent, covering credit counseling or debt management.~~

~~4.2.3.4 a provider offering a training program that is approved after the curriculum is submitted to the Director of Consumer Protection for review. The program will, at a minimum, include a final examination that is administered by a proctor who verifies the identification of the person taking the test. 6 Del.C. §2406A(10).~~

4.5 An applicant may request a hearing within 40 twenty (20) days after receipt of the preliminary decision to deny the application.

5.3.5 Evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the required trust account with terms consistent with 6 **Del.C.** §2411A(b)(5), [See Rule 3.2.3.1 through 4.2.4.4]. The balance refers to the balance attributable to clients in Delaware whose money is deposited in the trust account.

5.6 An applicant may make a request for a hearing within 40 twenty (20) days after receipt of a preliminary decision to deny the renewal application pursuant to Subchapter IV of the Administrative Procedures Act. If no hearing is requested, the preliminary decision is final.

6.2.2 inform in ~~writing~~ a record of the availability, at the consumer's option, of assistance by toll-free communication or in person to discuss the financial analysis.

7.2.1 If, after review and/or investigation, there is insufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under Act, the Director may ~~sua sponte~~ on his or her own accord dismiss the complaint.

7.2.3 A licensee has 40 twenty (20) days from the receipt of a preliminary order in which to request a hearing before a hearing officer.

Because many recommendations for change received as public comment require statutory amendment, I suggest sending a copy of this order to the sponsors of the Act for their information. It may also be appropriate to review these Rules after June, 2007 to incorporate substantive changes in a new proposal after acquiring some experience in the implementation and especially if there are amendments to the statute.

DEPARTMENT OF JUSTICE

Barbara J. Gadbois, Director of Consumer Protection

ORDER AND EFFECTIVE DATE

After review of the law and comment as well as the recommendation of the Director of Consumer Protection, I hereby adopt the recommended findings of facts and the Rules as proposed in 10 DE Reg. 804 (11/01/06) and amended herein to be effective 10 days after publication of this final order in the *Register of Regulations*. The text incorporating the revisions to Rules 1.1, 1.2.5, 4.2.6, 4.2.7, 4.5, 5.3.5, 5.6, 6.2.2, 7.2.1, and 7.2.3 which are non-substantive, is attached as Exhibit A.

DEPARTMENT OF JUSTICE

Joseph R. Biden III, Attorney General

Dated: January 17, 2007

Debt Management Services

1.0 Definitions

1.1 The following terms are defined in 6 Del.C. §2402A and have the same meaning when used in these rules.

"affiliate"
"agreement"
"bank"
"business address"
"certified counselor"
"Attorney General"
"Concessions"
"Day"
"Debt-management services"
"Entity"
"Good faith"
"Person"
"Plan"
"Principal amount of debt"
"Provider"
"Record"
"Settlement fee"
"Sign"
["State"]
"Trust account"

1.2 The following terms used herein mean:

1.2.1 "Accreditation" means certified as meeting a prescribed standard.

1.2.2 "Administrative Procedures Act" or "APA" means 29 Del.C. Chapter 101.

1.2.3 "Consumer Protection Unit" or "Consumer Protection Division" means the section of the Department of Justice established under 29 Del.C. §2517.

1.2.4 "Debt Management Services" as defined in 6 Del.C. §2402(9) include, but are not limited to, debt negotiation and settlement.

1.2.5 "Delaware Uniform Debt Management [Services] Act" or "Act" means the provisions in Chapter 24A of Title 6 of the Delaware Code.

1.2.6 "Director" means the Deputy Attorney General assigned as head of the Consumer Protection Unit.

1.2.7 "Hearing Officer" means an attorney assigned to conduct an administrative hearing.

2.0 Applicability

2.1 A provider of debt management services is not required to be licensed under the Delaware Uniform Debt Management Services Act if the provider:

2.1.1 has no reason to know the individual receiving services by agreement resides in Delaware; or

2.1.2 receives no compensation from the individual receiving services or a creditor of that individual.

2.2 Debt management services do not include:

2.2.1 legal services provided by an attorney authorized to practice law in Delaware and in an attorney-client relationship or

2.2.2 accounting services provided by a certified public accountant licensed to provide accounting services in Delaware and in an accountant-client relationship.

2.2.3 services provided within the scope of the business or profession by

2.2.3.1 a judicial officer; or person acting under court or administrative order;

2.2.3.2 an assignee for the benefit of creditors;

2.2.3.3 a bank or government regulated bank affiliate;

2.2.3.4 a title insurer, an escrow company, or a person providing bill paying services if the provision of debt-management services is incidental to the bill-paying services.

3.0 Administration

3.1 The Consumer Protection Unit of the Fraud and Consumer Protection Division is designated by the Attorney General to administer the Delaware Uniform Debt-Management Services Act in Chapter 24A of Title 6 of the Delaware Code.

3.1.1 The address of the Consumer Protection Unit is 820 N. French St., Fifth Floor, Wilmington, DE 19801. The phone number is (302) 577-8600 or (800) 220-5454 (in Delaware).

3.1.2 The address for the Attorney General on the internet is <http://www.state.de.us/attgen>

3.1.3 Business hours are 8:30 to 5:00 p.m. Mondays through Fridays excluding legal State holidays as defined in 1 Del.C. §501.

3.2 Copies of the law and rules are available by contacting the office above or from the web site.

3.3 Applicants are required to read and comply with the law and the rules. The rules are intended to be explanatory and do not contain all of the details found in the law.

4.0 Applications

4.1 Applications for licensure shall be submitted on forms approved by the Director of the Consumer Protection Unit. Application forms will be mailed to an applicant upon request and are also available in person or through the web site at the addresses provided in Rule 3.1.

4.2 Applications must be complete before they are submitted for consideration. Incomplete applications may be denied or returned to the applicant. Applications shall include:

4.2.1 An audited review by a certified accountant of the applicant's financial statements for the two years preceding the application or the period of existence, whichever is less. 6 Del.C. §2406A (8).

4.2.2 At the applicant's expense, the results of a criminal history record check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. §534) and 28 C.F.R. §50.12., conducted within the last 12 months for every officer of the applicant and every employee with access to the trust account.

4.2.2.1 The applicant may request sufficient fingerprint cards and authorization forms from the Consumer Protection Unit of the Delaware Attorney General's Office for the individuals needing criminal records checks. The cards can then be taken to a local law enforcement agency for fingerprinting. The completed cards and authorizations shall be returned to the Consumer Protection Unit for further processing by the Delaware Bureau of Identification.

4.2.2.2 The Delaware Bureau of Identification shall be the intermediary and the Office of the Attorney General of Delaware - Consumer Protection Unit shall be the screening point for the receipt of the federal criminal history records.

4.2.2.3 A license will not be denied based on the information contained in an FBI identification record until a person has a reasonable time to correct or complete the record, or has declined to do so. Procedures for obtaining a change, correction or updating an FBI identification record are set forth in 28 C.F.R. §50.12.

4.2.2.4 A criminal records check obtained for the purpose of doing business in any state, that was issued within the last 12 months and based on the fingerprints of the officer or person with access to the trust account, satisfies this requirement if the criminal records check is provided by the licensing state and received by that state from a central repository.

4.2.3 A corporate surety bond on the form provided in an amount of at least \$50,000 from a surety company authorized to do business in Delaware (or an irrevocable letter of credit with the consent of the Attorney General) as provided in 6 Del.C. §§2405A(b)(2), 2413A, and 2414A.

4.2.3.1 The amount of the bond may be required to be increased after consideration of the value of the applicant's business in Delaware and the balance of the trust account.

4.2.3.2 The term of the bond is continuous.

4.2.3.3 The bond shall run to the State for the benefit of the Attorney General and consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the applicant.

4.2.3.4 If the bond is amended, the licensee shall provide an amended copy of the original security bond to the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.3.5 No cancellation of a bond by the surety shall be effective unless written notice of an intent to cancel is filed with the Director of the Consumer Protection Unit of the Attorney General's Office at least 30 days before the effective date of cancellation.

4.2.3.6 A surety company that receives a claim against the bond shall immediately notify the Director of the Consumer Protection Unit of the Attorney General's Office. No payment shall be made without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.4 Evidence of insurance against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant in the amount of \$500,000. 6 Del.C. §2405A(b)(4).

4.2.4.1 Insurer must be authorized to do business in the State of Delaware and be rated at least A by a nationally recognized rating organization.

4.2.4.2 The deductible shall be no greater than \$5,000.

4.2.4.3 The policy shall not be subject to cancellation by the applicant without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.4.4 The policy shall be payable to the Applicant, the individuals having agreements with the Applicant, and the State of Delaware, as their interests may appear.

4.2.5 Identification of trust accounts and an irrevocable consent permitting the Attorney General and/or the designee(s) of the Attorney General to review and examine accounts along with an overdraft notification agreement. 6 Del.C. §§2405A(b)(3) and 2422A.

4.2.6 Evidence of accreditation by an independent accrediting organization approved by the Director of the Consumer Protection Unit of the Attorney General's Office that assures compliance with industry standards. [A list of organizations that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit. ~~The following organizations have been approved (6 Del.C. §2406A(9)):~~

~~4.2.6.1 ISO 9001:2000~~

~~4.2.6.2 BSI Management~~

~~4.2.6.3 BYGI~~

~~4.2.6.4 Council on Accreditation for Children and Families.]~~

4.2.7 Documentation of counselor certifications or a statement that a counselor will become certified within 12 months of employment. Certification shall be by a bona fide third-party provider approved by the Director of the Consumer Protection Unit of the Attorney General's Office. [Documentation can be in a log or other record of counselors, their certifications, and dates of certification. A list of organizations or programs that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit.]

[such as:

~~4.2.7.1 the Association for Financial Counseling and Planning Education~~

~~4.2.7.2 the National Foundation for Credit Counseling~~

~~4.2.7.3 a college accredited by one of the six regional accreditation services. The requirement for certification is satisfied with a course worth at least 3 semester credits, or its equivalent, covering credit counseling or debt management.~~

~~4.2.3.4 a provider offering a training program that is approved after the curriculum is submitted to the Director of Consumer Protection for review. The program will, at a minimum, include a final examination that is administered by a proctor who verifies the identification of the person taking the test. 6 Del.C. §2406A(10);]~~

4.2.8 A description of the three most common educational programs provided for Delaware residents and a copy of the materials. 6 Del.C. §2406A(11).

4.2.9 A description of the financial analysis and initial budget plan including any form or electronic model used to evaluate the financial conditions of individuals. 6 Del.C. §2406A(2).

4.2.10 A copy of each form of agreement used with Delaware residents. 6 Del.C. §2406A(13).

4.2.11 A schedule of all fees, including any recommended donations, used with Delaware residents. 6 Del.C. §2406A(14).

4.2.12 The application fee in the amount of \$2000. 6 Del.C. §2405A(b)(1).

4.3 The Director of the Consumer Protection Unit:

4.3.1 will make a preliminary decision on a completed application within 120 days unless additional information is needed. In that case, the period is extended by 60 days.

4.3.2 may deny a license application for any of the reasons in 6 Del.C. §2409A(b) including:

4.3.2.1 the application contains information that is materially erroneous or incomplete;

4.3.2.2 an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

4.3.2.3 the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

4.3.2.4 the Attorney General, or designee, finds that the financial responsibility experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

4.3.3 shall deny a license as provided in 6 Del.C. §2409A(c) if no fee accompanies the application or if the Board of Directors of a not-for-profit or tax exempt applicant is not independent of the applicant's employees and agents.

4.4 An applicant must be notified in writing of a preliminary decision to deny the application within 7 days of the decision along with the reasons for the intended action. The notification must advise the applicant of the right to a hearing.

4.5 An applicant may request a hearing within ~~[10]~~ **twenty (20)** days after receipt of the preliminary decision to deny the application.

4.5.1 If an applicant does not timely request a hearing, the preliminary decision is final.

4.5.2 A hearing will be scheduled upon timely request by the applicant as provided in Subchapter IV of the Administrative Procedures Act.

4.5.3 The Director, or an attorney designated by the Director, will serve as hearing officer after a preliminary decision to deny a license is made.

5.0 Renewals

5.1 Licenses shall expire one year following the date of issuance unless it is renewed as provided in 6 Del.C. §2411A.

5.2 Licensees are responsible for annual renewal whether or not a notice of renewal is received from the Consumer Protection Unit.

5.3 Renewal applications shall be on forms approved by the Director of the Consumer Protection Unit. The following shall be included with the completed renewal application form as described in the section of the Act indicated:

5.3.1 A non refundable fee of \$1000.00. 6 Del.C. 2411A §(b)(2).

5.3.2 Evidence of accreditation by an independent accrediting organization. 6 Del.C. 2411A §(b)(3).

5.3.3 Evidence of certification by applicants' counselors. 6 Del.C. 2411A §(b)(3).

5.3.4 A financial statement, audited by an accountant licensed to conduct audits, for the fiscal year immediately preceding the renewal application. 6 Del.C. §2411A(b)(3).

5.3.5 Evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the required trust account with terms consistent 6 Del.C. §2411A (b)(5). [See Rule 4.2.4.1 through 4.2.4.4]. **[The balance refers to the balance attributable to clients in Delaware whose money is deposited in the trust account.]**

5.3.6 A statement disclosing the total amount of money received on behalf of each debtor who resides in this State to pay creditors, and the amount distributed to each creditor in the 12 months immediately preceding the renewal application, if any. 6 Del.C. §2411(a)(6).

5.3.7 The gross amount of money accumulated in the 12 months immediately preceding the renewal application pursuant to plans by or on behalf of individuals who reside in this State who are parties to agreements with the licensee. 6 Del.C. §2411A(a)(7).

5.3.8 A statement indicating the number of individuals who enrolled in debt management plans and the number of individuals who successfully completed debt management plans in the year preceding the renewal application.

5.4 Applications for renewal must be filed with the Director of the Consumer Protection Unit no fewer than 30 days or more than 60 days before the expiration.

5.5 If a timely and complete application for renewal is filed, a license remains in effect until the licensee is advised of a preliminary decision to deny the application along with the reasons.

5.6 An applicant may make a request for a hearing within ~~10~~ **twenty (20)** days after receipt of a preliminary decision to deny the renewal application pursuant to Subchapter IV of the Administrative Procedures Act. If no hearing is requested, the preliminary decision is final.

5.7 If a timely and complete application for renewal is not received in the Consumer Protection Unit by the expiration date of the license, the license is expired and the former licensee is prohibited from conducting business which requires a license for Debt Management Services in this State. The applicant may apply for a new license.

6.0 Debt Management Services

6.1 Before entering into an agreement for debt management services, a licensee must provide an itemized list of goods and services and disclose all fees as required under 6 Del.C. §2417A.

6.1.1 The list must be clear and conspicuous.

6.1.2 The list must be provided in a record the consumer may retain regardless of whether an agreement is reached for services.

6.2 No debt management services may be furnished until a certified counselor conducts the education and financial analysis required, and prepare a suitable plan if appropriate, as provided in 2417A(a) and the consumer is

6.2.1 given a copy of the financial analysis and plan.

6.2.2 informed in **[writing a record]** of the availability, at the consumer's option, of assistance by toll-free communication or in person to discuss the financial analysis.

6.2.3 informed that some creditors may be unwilling to negotiate with the provider.

6.2.4 given the separate disclosures required under 6 Del.C. §2417A(d).

6.3 Agreements must include the provisions required under 6 Del.C. §2419A.

6.3.1 Agreements must be accompanied by the "Notice of Right to Cancel" in bold-face type surrounded by bold black line as required under 6 Del.C. §2420A.

6.3.2 Any agreement that does not comply with the law or rules is voidable.

6.3.3 Agreements may be terminated as provided in 6 Del.C. §2426A.

7.0 Complaints

7.1 Any person, including employees in the Consumer Protection Unit, may file a complaint against a licensee in writing on a form provided by the Consumer Protection Unit.

7.2 The Director may refer a completed and signed complaint to the Special Investigation Unit for investigation.

7.2.1 If, after review and/or investigation, there is insufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may **[sua sponte on his or her own accord]** dismiss the complaint.

7.2.2 If, after review and/or investigation, there is sufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may

7.2.2.1 enter a preliminary order directed to a licensee to cease and desist from any violation, to correct a violation including providing restitution, and/or to pay a civil penalty as provided in 6 Del.C. §2433A;

7.2.2.2 enter a preliminary order suspending or revoking the license of licensee as provided in 6 Del.C. §2434A;

7.2.2.3 without entering a preliminary order, assign the matter to a Deputy Attorney General for preparation and prosecution of a formal complaint before a hearing officer;

7.2.2.4 impose civil penalties and/or recover costs of enforcement; or

7.2.2.5 proceed in any other manner permitted under the Act.

7.2.3 A licensee has ~~10~~ **twenty (20)** days from receipt of a preliminary order in which to request a hearing before a hearing officer.

7.2.3.1 If no hearing is requested, the preliminary order becomes final.

7.2.3.2 If a hearing is requested, the matter will be assigned to a Deputy Attorney General as provided in 7.2.2.3.

7.2.4 When a hearing is requested following issuance of a preliminary order by the Director, enforcement is stayed pending a final determination by a hearing officer except in the case of an order issued with reference to 6 Del.C. §2433A(g)(2) or 2434A(c).

7.2.5 Any requested hearing will proceed as provided under the Administrative Procedures Act.

8.0 Hearings

8.1 All hearings are open to the public.

8.2 An individual may represent himself or herself in a hearing. An artificial entity shall be represented by an attorney authorized to practice law in Delaware.

8.2.1 Delaware Supreme Court Rule 72 is applicable to the admission of attorneys, who are not licensed in Delaware, pro hac vice before administrative agencies.

8.3 Testimony shall be under oath or affirmation.

8.4 The hearing officer shall preserve the record of the hearing including the pleadings and documentary evidence.

8.5 The hearing shall be recorded verbatim by a court reporter. The expense of preparing any transcript for any purpose, including an appeal, shall be borne by the person requesting it.

8.6 The Delaware Uniform Rules of Evidence will provide a reference for the hearing officer. However, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs and give probative effect that evidence. Evidence may not be excluded solely on the ground that it is hearsay, but a decision may not be based solely on hearsay.

9.0 Summary suspension.

9.1 The Director of Consumer Protection, by designation of the Attorney General, may order a summary suspension of a license effective the date specified in the order as provided in 6 Del.C. §2434A (c).

10.0 Appeals

10.1 Judicial review of regulations is authorized under 29 Del.C. §10141.

10.2 Judicial review of case decisions is authorized under 29 Del.C. §10142.

10.3 There is no automatic stay of enforcement of a decision when an appeal is filed from the final order of the Director or hearing officer. The requirements for a stay of enforcement are provided in 29 Del.C. §10144.

11.0 Trust Account

11.1 All money provided to a licensee pursuant to a plan for distribution to creditors shall be deposited in a trust account within two (2) business days after receipt.

11.2 The licensee shall maintain separate records for each individual.

11.3 Each trust account shall be reconciled at least once each month. The balance must at all time equal the sum of the balances of each individual's account.

11.4 If the agreement is terminated or the plan fails, the licensee shall return the funds remaining in the trust account, less fees permitted under the Act, to the individual client.

11.5 A licensee shall notify the Director of the Consumer Protection Unit of the Attorney General's Office before a trust account is moved and shall provide the name, address, and telephone number of the new bank along with the new account number.

11.6 A licensee must enter an overdraft notification agreement that requires the financial institution to notify the Director of the Consumer Protection Unit of the Attorney General's Office in the event that an instrument is presented for payment and the trust account contains insufficient funds, regardless of whether the instrument is honored.

11.7 A licensee shall comply with all provisions related to the trust account required by 6 Del.C. §2422A.

12.0 Examinations

12.1 An on-site examination of assets, securities, books, accounts, papers, and records of a licensee or

affiliate can be conducted by an examiner designated by the Director with or without notice during regular business hours. The records shall document the information in 6 Del.C. §2427A including at least the following:

12.1.1 A file for each consumer containing the preliminary financial analysis prepared for the consumer, the original agreement, the consumer's total income along with the debt balance, the monthly payment due each creditor, and copies of the periodic statements provided to the consumer.

12.1.2 An activity record for each consumer including the account number, name, address, date of the agreement, total indebtedness, monthly receipts including the date of receipt, any fees charged, amounts disbursed to creditors including the payment date, and the estimated term of the agreement. The record shall also include any action taken to recover unpaid fees that may be owed by a consumer who has cancelled an agreement.

12.1.3 In the case of a settlement with a creditor for less than the principal amount due, the record shall include the terms of the settlement, the amount owed at the time of an agreement, the amount of the settlement, and the calculation of a settlement fee.

12.1.4 An alphabetical index of names, addresses, account numbers, date of agreement, and total indebtedness.

12.2 Any person who is connected or associated with the licensee may be examined, under oath, as to the facts and circumstances of any matter under examination.

12.3 A licensee shall pay all reasonably incurred fees, costs, and expenses directly related to an examination including travel expenses, lodging expenses, and a per diem for examiners. Payment shall be made within 10 days after receipt of a statement from the Director.

12.4 The Director may accept the report of a responsible supervisory agency from another state in lieu of an on-site examination.

13.0 Miscellaneous

13.1 Computation of time. In computing any period of time prescribed in or allowed by these Rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.

13.2 A list of licensees is available upon request to the Consumer Protection Unit or online at the address in Rule 3.0.

13.3 A licensee shall notify the Director of the Consumer Protection Unit within 30 days of receipt of a notice of civil litigation filed by or on behalf of an individual who was residing in Delaware at the time an agreement for services was signed or at the time the notice was served.

13.4 A licensee shall notify the Director of the Consumer Protection Unit within 10 days after a change of information specified in 6 Del.C. §§2405A or 2406A.

10 DE Reg. 1308 (02/01/07) (Final)