

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 **Del.C.**, §2432A(h))

FINAL

ORDER

102 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 11 DE Reg. 640 (11/01/07) as well as in the News Journal and Delaware State News on November 8, 2007. 29 **Del.C.** §10115.

The Director of Consumer Protection conducted the public hearing held at 9 a.m. on December 10, 2007 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. Wesley K. Young, Esq. submitted a letter dated December 4, 2007 on behalf of The Association of Settlement Companies (TASC). The comments related to proposed changes to **Rule 5.3** and **6.3**. The letter was admitted as Exhibit 1 for the record.

Debt settlement companies do not hold the funds of clients' in trust. Therefore, the accounting for monies in the renewal application should not apply to debt settlement companies and the second sentence in proposed **Rule 5.3.6** should be deleted.

The language in **Rule 6.3.2** can be a problem for debt settlement companies who do not know the concessions a creditor might make. In determining whether a debt settlement is suitable for the individual as required under 6 *Del.C.* 2417A(b)(3), debt settlement companies consider total debt, each individual debt, income and job stability, debt outside of the plan, nature of the debt, age of debt, payment history, assets, creditors involved and their collection practices, and other debt management options available to the debtor. **Rule 6.3.2** should not require the companies to consider concessions that may not be known to them but should rather state "... that the individual does not have the ability to satisfy creditors out of current income in a reasonable time unless the creditor reduces the principle of the debt."

2. Mark Guimond, Executive Director of the American Association of Debt Management Organizations (AADMO) submitted comments dated December 10, 2007. The comments are marked as Exhibit 2. AADMO does not take a position, or does not object to, most of the proposed changes. The exceptions are proposed **Rules 4.2.11.1, 6.4.4, 6.6, and 6.7.1.**

The monthly services fee in **Rule 4.2.11.1** should be based on accounts and not creditors since some individuals have multiple accounts with a single creditor. In addition, it is burdensome to calculate the fee each month and the calculation should be based on the number of accounts when the plan is established.

Proposed **Rule 6.4.4** requires the incorporation of concessions into an agreement with an individual when only the creditor knows the concessions. Many are based on the data from the credit report and controlled by an algorithm evaluating risk, need, account history, and ability to service.

AADMO does not support proposed **Rule 6.6**. Consumers should not pay any third party to solicit or qualify individuals for referral to debt management service providers.

Proposed **Rule 6.7.1** is vague when it speaks to "average eyesight." The expense, especially to the non-profit industry, in prolonging television ads is not justifiable.

Verbal Comment:

1. Kimberly B. Gomes, Vice President of WolfBlock, Public Strategies, Delaware, LLC, appeared on behalf of TASC. She previously delivered the written comment from Wesley K. Young, Esq. and attended to answer any questions the Director might have.

Recommended Findings of Fact Based on the Evidence and Information Submitted

The following are findings based on the specific comments received.

1. Wesley K. Young, Esq. for TASC.

The provision in the proposed **Rule 5.3.6** clarifies 6 *Del.C.* §2411A(6)(7). The second sentence in the proposed rule relates to paragraph (7). The explanation is found in the comments to the Uniform Act from the National Conference of Commissioners on Uniform State Laws (NCCUSL). Comment 4 of Section 11 states in part:

“Paragraph (7) supplements paragraph (6) by requiring a provider that does not take possession of its customers’ funds to disclose the gross amount its customers have accumulated....A provider that does not take possession of its customers’ money may monitor the customers’ 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).”

The exception for providers of debt settlement services with no knowledge is found in proposed **Rule 5.3.7**.

Proposed **Rule 6.3.2** derives its clarification of the statute from Comment 4 to Section 17 of the uniform act from NCCUSL, viz.,

“...For providers that assist an individual to settle debts for less than full payment, the suitability requirement means at a minimum that the individual does not have the ability to satisfy creditors out of current income within a reasonable time even if the creditors were to reduce finance charges and fees for late payment, default and delinquency. Section 15, which requires providers to act in good faith is especially important in connection with this paragraph. The administrator may adopt rules articulating specific standards for suitability.”

Providers of debt settlement services are not expected to know all of the concessions that a creditor might make. However, in obtaining the facts needed to support a consideration of “other debt management options available to the debtor,” the company is necessarily considering whether the debtor might qualify for a debt management plan that pays the principal debt with reduced interest and fees – even though the company might not know the exact concessions. The only requirement is one of good faith. With an estimated reduction in interest and elimination of some late charges, could the principal debt be satisfied in a reasonable period, e.g. five years? It is a question a qualified credit counselor can answer after reviewing the financial information provided by the debtor.

2. Mark Guimond, Executive Director, for AADMO.

Proposed **Rule 3.2.11.1** incorporates the statutory language of “\$10 times the number of creditors remaining in a plan at the time the fee is assessed...”6 *Del.C.* §2423A (d)(1)(B). The modifications suggested by AADMO would require an amendment to the statute.

Proposed **Rule 6.4.4** is based on the statutory language in 6 *Del.C.* §2419A(a)(6)(D) that requires in the agreement to include “any concessions the provider reasonably believes each creditor will offer...” “Concessions” are defined in 6 *Del.C.* §2502A(7) as repayment of a debt on terms more favorable than the contract with the creditor. It has been a problem for the reasons stated in the comment. However, the rule cannot change the statutory requirement. Providers have the experience to represent, in good faith, what they reasonably believe will be offered, even if it is only a reduction in interest. The reasonable expectation must be included in the agreement.

Proposed **Rule 6.6** is a clarification of fees derived from the Comment 1 to Section 23 of the uniform act from NCCUSL and intended to protect the individual. The comment states in part:

“...For example, a provider might use the services of a third person to solicit individuals, determine whether they are qualified for debt-management services, and refer them to the provider. This person might be paid by the provider or by the individual. If paid by the individual, this tactic shifts some to the

provider's cost of doing business to the individual and amounts to an attempt to evade the limits of this section. Amounts paid to a third person for determining that an individual qualifies for debt management services or for referring an individual to a provider, even if paid by the individual, should be viewed as part of the charge by the provider that this section limits. Hence, subsection (a) prohibits imposition of fees directly or indirectly except as permitted by this section."

The proposed Rule insures that if an individual is solicited by a third party to which the individual pays a fee, that fee is attributed to the provider and included when insuring that the total fees to the provider are within the parameters of 6 *Del.C.* §2423A.

Proposed **Rule 6.7.1** clarifies 6 *Del.C.* §2430A that governs advertising. The term "easily comprehensible manner" is explained using the language in comment 2 of Section 30 of the uniform act from NCCUSL. Providers who consider the ordinary meaning of terms used such as "average eyesight" will be able to comply. Public awareness is important and, to be effective, the information must be presented in a way that can be perceived by the public. If the information is in a format that cannot be processed by an individual, then it is not disclosure.

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) as published.

DEPARTMENT OF JUSTICE

Tim Mullaney, Sr., Director of Consumer Protection

Date: January 4, 2008

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 11 DE Reg. 640 (11/01/07)

DEPARTMENT OF JUSTICE

Joseph R. Biden III, Attorney General

Date: January 22, 2008

102 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

2.2.1.1 The exclusion for legal services applies only when there is an attorney-client relationship. If an out of State firm is providing legal services in association with a licensed Delaware attorney, the Delaware attorney must be identified in the debt management agreement which shall include the Delaware attorney's address and phone number.

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.

2.3 The person forming an agreement to provide debt management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.

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> <http://attorneygeneral.delaware.gov>

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.

4.2.2.5 The criminal records check of an individual obtained for licensure in Delaware will be provided to another State regulator only with the express written consent of the individual.

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~~ \$250,000. 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. The Attorney General shall be named as an interested party to receive timely notice of cancellation.~~

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.

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.

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).

4.2.11.1 If a plan contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge an initial fee of up to \$50 and a monthly service fee not to exceed \$10 times the number of creditors in the plan when the fee is assessed, but not more than \$50 in any month.

4.2.11.2 If a plan or program contemplates settling a debt for less than the principal amount of the debt, the provider may charge a non-refundable initial fee that represents the value of obtaining a credit report and consultation.

4.2.11.2.1 Each plan or program payment may include a reasonable monthly service fee and must include an amount designated for the settlement fund to pay the creditors following a negotiated settlement.

4.2.11.2.2 The settlement fee, which represents the compensation for services in connection with settling a debt, paid to the provider cannot exceed 18% of the principal amount of the debt including the initial fee and monthly service fees.

4.2.11.2.3 The settlement fee may be collected in installments over the expected length of the program but in no event shall the final installment be due before the conclusion of the program either by termination or by settlement of all debts included in the program.

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 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~~ An accounting of the total amount of money received by a licensee or its designee on behalf of each debtor individuals 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. The distributions to creditors must be disclosed by licensees regardless of whether they receive payments or direct individuals to accumulate an account for debt settlement. 6 Del.C. §2411(a)(6).

5.3.7 If known to the licensee, the gross amount of money accumulated for settlements in the 12 months immediately preceding the renewal application pursuant to ~~plans~~ programs 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 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 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 of the creditors, identified by the individual or known by the provider to be creditors of the individuals, may be unwilling to negotiate with the provider.

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

6.3 A plan or program is suitable under 6 Del.C. §2417A(b)(3)(B) when, at a minimum, the provider determines:

6.3.1 for a plan that provides for payment of principal in full, that the individual has the ability to repay the debt but only after there are concessions by creditors.

6.3.2 for a program that contemplates settling the debts of an individual for less than the principal amount owed, that the individual does not have the ability to satisfy creditors out of current income in a reasonable time even if the creditors made concessions other than reduction of principal.

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

6.3.4.1 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.

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

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

6.4.4 In a plan that provides for regular payments to creditors, the concessions that the provider believes may be offered by each creditor must be identified in the agreement. The concessions may include reduction in finance charge or interest, reduction or waiver of charges for late payment, default or delinquency. Concessions may also include more favorable terms on a judgment.

6.4.5 An agreement may not:

6.4.5.1 provide for the application of the law of a jurisdiction other than the United States and Delaware or

6.4.5.2 limit or release the liability of any person for not performing the agreement or violating the law or

6.4.5.3 indemnify any person for liability arising under the agreement or the law.

6.5 If an individual residing in Delaware is referred by a licensee to another provider of debt management services, e.g. a referral by a credit counseling company to a debt settlement company, then it is the responsibility of the referring licensee to insure that such referral is made to a provider who is licensed or exempt from licensure in Delaware. If referrals are made through links on a licensee's web page, then the page must disclose if the referral is to a provider that is not authorized to provide services in Delaware.

6.6 If a provider uses a third party to solicit or qualify individuals for debt management services, any fee paid by the individual to the third party is an indirect charge attributed to the provider in calculating the fees or charges permitted by the provider under the Act.

6.7 Advertising must comply with the provisions is 6 Del.C. §2430A and applies to any medium, e.g. print, broadcast, telecast, electronic, internet, or other.

6.7.1 "Easily comprehensible" as used in the §2430A means that type must be large enough,

and a video ad must be on the screen long enough, to be read by an individual of average eyesight. An audio ad must be spoken slowly enough to be understood by a person of average hearing.

6.7.2 A mere listing of the name, address, and phone number of a provider in a directory is not advertising under this section.

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 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 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 and distributed to creditors within eight (8) days.

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. A provider may not co-mingle funds of others with those being held in trust for participants of debt management plans. Interest payable on the account must be credited to the individual depositors and not to the provider except that such interest may be used to pay the fees of the financial institution related to the trust account.~~

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. 1309 (02/01/07)

11 DE Reg. 1062 (02/01/08) (Final)