

# Comments of the Independent Regulatory Review Commission



## Department of Banking Regulation #3-50 (IRRC #2925)

### Debt Management Services Act Continuing Education Requirements

February 2, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the December 3, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of Banking (Department) to respond to all comments received from us or any other source.

**1. Whether the regulation is consistent with the intent of the General Assembly;  
Protection of the public health, safety and welfare.**

The Debt Management Services Act (Act) (63 P.S. §§ 2401, *et seq.*) became law on October 9, 2008. It requires entities engaged in the debt management services industry to be licensed. Section 17(4) of the Act provides the Department with general authority to promulgate regulations to ensure the proper administration of the Act and the proper conduct of licensees under the Act. 63 P.S. § 2417(4). Section 9(c) of the Act imposes a specific obligation on the Department as it pertains to the renewal of licenses and continuing education. It states the following:

In order to maintain its license, a licensee shall demonstrate to the satisfaction of the department that its credit counselors, supervisors and managers participate in continuing education as required by the department by regulation. The department shall delineate the requirements for such continuing education by regulation within three years after the effective date of this act.

Id. at § 2409(c).

Through this regulation, the Department has chosen to fulfill its obligation to “delineate the requirements for such continuing education” by allowing certifying organizations acceptable to the Department to establish continuing education requirements for credit counselors, supervisors and managers. A review of the continuing education requirements of the certifying organizations listed on the Department’s website reveals a regulatory environment that varies. For example, the two-year renewal cycle for one organization is based on calendar years (i.e., January 1, 2012, through December 31, 2013), while another organization’s renewal cycle is based on the date that an individual’s certification expires. In other words, if the certification period expired

July 31, 2012, then the two-year renewal cycle would begin July 31, 2012, and expire July 31, 2014.

We recognize that this regulatory approach to ensuring credit counselors, supervisors and managers meet continuing education requirements does not impose a cost to the Department. However, the purpose of a regulation is to establish a binding norm. The current continuing education requirements for credit counselors, supervisors and managers vary from certifying organization to certifying organization and can be changed without notice and without input from the affected parties, including the Department. We question whether the Department's approach to regulating continuing education for credit counselors, supervisors and managers is consistent with what the General Assembly intended. In the Preamble to the final-form regulation, we ask the Department to explain how this delegation of rulemaking authority from the Department to acceptable certifying organizations fulfills the Department's statutory mandate to promulgate regulations to delineate continuing education requirements.

In addition, we question whether the public health, safety and welfare of the citizens of the Commonwealth are adequately protected if the continuing education requirements of certifying organizations for credit counselors, supervisors and managers vary. We are particularly concerned about this aspect of the regulation because these certifying organizations do not have to be licensed or registered with the Department; they only have to be found "acceptable" to the Department. If the Department finds the continuing education requirements to be inadequate, what recourse does it have to mandate changes to the requirements?

## **2. Determining whether the regulation is in the public interest.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the Regulatory Analysis Form (RAF).

Some of the information contained in the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest. Specifically, the Department has failed to describe how the regulation compares to those of other states. Without this information, we cannot determine if this proposed regulation is in the public interest. In the RAF submitted with the final-form rulemaking, the Department should provide a description of how the regulation compares to those of other states.

## **3. Section 91.1. Definitions. – Protection of the public health, safety and welfare; Clarity.**

### *Certifying organization*

This term is defined as follows: "An independent certifying organization acceptable to the Department which certifies credit counselors, supervisors and managers as described in section 5(11) of the act (63 P.S. § 2405(11))." We have four concerns. First, we note that Section 1.7(e)

of the Pennsylvania Code and *Bulletin Style Manual* states that the term being defined should not be used as part of the definition.

Second, the phrase “acceptable to the Department” is vague. What criteria will the Department use to make this determination? We recommend that the criteria that will be used by the Department be included in the body of the regulation.

Third, what process will be used to determine if an independent certifying organization is acceptable? We recommend the final-form regulation be amended to include the steps an organization must take to be considered acceptable to the Department.

Finally, we are aware that the Department has a listing of “acceptable” organizations on its website. To assist the regulated community with compliance, we suggest that the list of acceptable organizations be added to the regulation. In the alternative, we suggest that the regulation specifically note that the list of acceptable organizations is available on the Department’s website and provide the website address.

#### *Consumer education program*

This term is defined, but it is not used in the body of the regulation. What is the need for defining it? We have a similar concern with the term “continuing education unit.”

#### *Continuing education unit*

This term is defined as, “The term as defined by the applicable certifying organization.” As noted in our first comment, this may be an inappropriate delegation of the rulemaking authority granted to a third party. If there is a need to define this term, we suggest that it be amended to include more specific information, such as whether a unit is 50 minutes or 60 minutes.

#### *Manager and Supervisor*

The definitions for both of these terms are identical. To improve clarity, we suggest that only one definition, such as “manager or supervisor,” be included in the rulemaking.

#### **4. Section 91.2. Continuing education requirements. – Fiscal impact; Protection of the public health, safety and welfare; Clarity.**

This section states the following:

To be eligible to renew a license under the act, a licensee shall demonstrate to the satisfaction of the Department that the certified credit counselors, supervisors and managers employed by the licensee have completed the continuing education requirements necessary to maintain certification.

We have two concerns. First, this provision is vague. What are the continuing education requirements? While we are aware that continuing education requirements are set by

independent certifying organizations acceptable to the Department, this is not stated anywhere in the regulation.

Second, as noted in the RAF, some licensees contend that their certifying organization does not certify individuals that do not counsel clients. If that statement is accurate, how has the Department been implementing the Act and the requirement that supervisors and managers meet continuing education requirements? How will this provision of the regulation be enforced?

#### **5. Section 91.3. Reporting, verification and recordkeeping. – Clarity.**

This section requires licensees seeking license renewal to keep certain records for four annual license renewal periods. We have two concerns. First, neither the Act nor this regulation specifies when a renewal period begins. We recommend that the final-form regulation identify when the annual renewal period begins to aid the regulated community in complying with the recordkeeping requirement.

Second, Paragraph (a) requires a licensee, when applying for license renewal, to include “a list of the credit counselors, supervisors and managers.” To improve the clarity of the regulation, we suggest that the Department add “employed by the licensee” to the end of this provision.