

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Department of Banking and Securities

(2) Agency Number: 3

Identification Number: 52

IRRC Number: 3056

(3) PA Code Cite:

10 Pa. Code Chapter 57

(4) Short Title:

Debt Management Services Continuing Education

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Sarah E. Sedlak, Assistant Counsel, (717) 787-1471, ssedlak@pa.gov

Secondary Contact: Begene A. Bahl, Senior Deputy Chief Counsel, (717) 787-1471, bbahl@pa.gov

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department of Banking and Securities (Department) adds Chapter 57 (relating to debt management services continuing education) under the authority of section 9(c) of the Debt Management Services Act (act) (63 P.S. § 2409(c)). This final-form rulemaking implements continuing education requirements for credit counselors and supervisors employed by a debt management services licensee. The final-form rulemaking satisfies the Department's obligation under section 9(c) of the act to promulgate regulations delineating the continuing education requirements for credit counselors and supervisors employed by debt management services licensees.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 9(c) and 17(4) of the DMSA, 63 P.S. §§ 2409(c) and 2417(4).

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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes. The DMSA required the Department to promulgate the regulation within three years of the enactment of the DMSA. *See* 63 P.S. § 2409(c).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The final-form rulemaking is necessary because the DMSA requires the Department to promulgate a regulation delineating the continuing education requirements for credit counselors and supervisors employed by debt management services licensees.

It is in the public interest that credit counselors and supervisors employed by debt management services licensees participate in continuing education because those employees counsel Pennsylvania consumers about personal finance issues. Debt management services licensees include both for profit and nonprofit organizations. Licensees offer counseling to consumers on topics including credit card debt, budget techniques, debt prioritization, housing debt and bankruptcy.

It is not possible to quantify the benefits of the regulation or approximate the number of people who will benefit. The final-form rulemaking ensures that credit counselors and supervisors keep up-to-date on topics related to the debt management services industry, which should benefit the Pennsylvania consumers who use debt management services.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions of the final-form rulemaking that are more stringent than federal standards because there are no federal requirements for continuing education related to the debt management services industry.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Not every state regulates the debt management services industry. Of those states that regulate the debt management industry, some consider the providers to be "debt adjusters" or "credit/debt counselors" therefore the applicable laws vary significantly from the DMSA. This regulation is in the minority of other states that regulate the debt management industry because the majority does not require continuing education.

The final-form rulemaking will not affect Pennsylvania's ability to compete with other states because it is a relatively small industry that offers services to consumers nationally. As an example, of the Department's 45 debt management services licensees, only 6 are headquartered in Pennsylvania. The other 39 are licensed so that the Department can oversee the services provided to Pennsylvania consumers even though the licensees are not physically located in Pennsylvania. In addition, of those 6 licensees headquartered in Pennsylvania, all 6 are nonprofit organizations.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final-form rulemaking will not affect any other regulations of the Department or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Per Executive Order 1996-1, the Department sought input on the proposed regulation from the regulated community and trade associations. Specifically, 46 for-profit and nonprofit entities and trade associations related to debt management services were sent a previous draft of the regulation in order to provide comments.

The Department received no comments from the trade associations. The Department received six comments from the regulated community. The prior draft regulation included, as part of the list of information that a licensee must maintain in its records, the social security numbers and dates of birth for its credit counselors and supervisors. All six commentators requested that this information be removed for security reasons. In the proposed regulation, the Department complied with the request and removed the social security numbers and dates of birth from the list of information required to be maintained by licensees.

In addition, the Department drafted and submitted an earlier version of this final-form rulemaking to the Independent Regulatory Review Commission (Commission). Both the regulated community and the Commission commented on the prior draft. The Department largely incorporated the comments of the regulated community and the Commission into the final-form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The final-form rulemaking does not affect any individual persons or organizations.

The final-form rulemaking affects all 45 debt management services licensees. Section 3 of the Regulatory Review Act, Act 76 of 2012, defines a small business "in accordance with the size standards described by the Small Business Administration's small business size regulations under 13 CFR CH. 1 Part 121." See 71 P.S. § 745.3. The Small Business Administration's regulations reference the small business size standards established by the NAICS Industry Classification System ("System").

The System does not specifically name debt management services providers as a classification. However, debt management services providers could fit into two classifications, "All Other Non-Depository Credit Intermediation" or "Other Activities Related to Credit Intermediation." See 13 CFR § 121.201, NAICS Nos. 522298 & 522390. Both classifications define an entity as a small business concern if the entity has less than \$7 million in assets. Applying either classification to the 45 debt management services licensees, 28 have less than \$7 million in assets. However, the System also defines a "small business concern" as "...a business concern eligible for assistance from SBA as a small business is a business entity *organized for profit*, with a place of business located in the United States..." See 13 CFR § 121.105 (*emphasis added*). Of the 28 debt management services licensees with less than \$7 million in assets, 16 are nonprofits and do not fit into the definition of "small businesses." Therefore, of the 45 debt management services licensees affected by the final-

form rulemaking, 12 are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012).

Because the final-form rulemaking requires only the minimum of continuing education standards already set by the industry itself, there is no adverse effect on the debt management services licensees that are considered small businesses.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Debt management services licensees are required to comply with the final-form rulemaking. Currently, there are 45 debt management services licensees, 12 of which are small businesses.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no financial impact anticipated on individuals, small businesses, business and labor communities and other public and private organizations as a result of this regulation.

There is no economic impact anticipated on individuals, small businesses, business and labor communities and other public and private organizations as a result of this regulation.

There is no social impact anticipated on individuals, small businesses, business and labor communities and other public and private organizations as a result of this regulation.

The Department does not expect any benefits as a result of this regulation to either the Department or the regulated community. There is a benefit to the Pennsylvania consumers who use the debt management services because the licensees will need to demonstrate compliance with continuing education requirements.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no adverse effects of this regulation.

Any costs to the regulated community or the state government will be minimal. The minimal increase in costs is outweighed by the benefit of ensuring that the credit counselors and supervisors who interact with Pennsylvania consumers complete continuing education courses to stay current with issues in the debt management services industry.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This final-form rulemaking requires only minimal additional costs to the regulated community associated with compliance. The DMSA provides that a debt management services license applicant must ensure that all credit counselors, plus any supervisors and managers with direct supervisory duties of credit counselors performing the consumer education program, are certified within six months of the issuance of a license. *See* 63 P.S. § 2405(11). Those individuals obtain certification from an independent certifying organization. To maintain that certification, the independent certifying organizations typically require the credit counselors, managers and

supervisors to take continuing education courses. The regulation does not require any more continuing education credits than what is minimally required to obtain and maintain credit counselor certification. Therefore, most licensees should already be incurring expenses related to obtaining continuing education.

The Department does not anticipate that the regulated community will incur any legal, accounting or consulting costs. However, in order to comply with the regulation, licensees are to maintain certain continuing education documentary verification longer than they would independent of the regulation.

There are no specific anticipated savings for the regulated community associated with compliance with the regulation.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not affect local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated costs or savings to the state government associated with the implementation of this regulation. The Department currently regulates those debt management service licensees and employees covered under the DMSA. Any additional cost to the Department will be associated with monitoring whether the licensed debt management service licensees and employees meet the continuing education requirements during the scope of an investigation or examination. The Department anticipates that cost will be de minimus.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork will be required for the implementation of the regulation because the Department already licenses debt management services providers and performs examinations and investigations when applicable.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

This chart is not applicable because the regulation does not result in any fiscal savings or costs associated with implementation and compliance for the regulated community, local government and state government in the current year or in five subsequent years.

	Current FY Year (12-13)	FY +1 Year (13 -14)	FY +2 Year (14 -15)	FY +3 Year (15 -16)	FY +4 Year (16 -17)	FY +5 Year (17 -18)
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

This chart is not applicable because the regulation does not affect a program of the Department.

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As stated above (under 15), the regulation does not adversely impact small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012).

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Department did not develop any special provisions because the affected debt management services licensees which qualify as small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) do not have any particular needs different than those applicable to all of the debt management services licensees. The regulation does not affect any other group.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department attempted to draft a non-burdensome regulation. However, the Department did receive comments on a prior draft from four entities in the regulated community. The comments requested that the requirement that supervisors and managers attend continuing education classes be removed. The commentators requested this because: (1) the certifying organization used by the debt management services company did not allow for individuals who do not counsel clients to be certified; and (2) some trade associations do not allow supervisors and managers to be members.

The Department considered the comments, but did not make the requested changes. The DMSA specifically requires credit counselors, supervisors and managers to attend the continuing education courses so that condition cannot be removed whether or not it is burdensome. Neither the DMSA nor the regulation requires trade association membership.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable. Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The date by which the agency must receive public comments: | <u>May 5, 2014</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>No public meetings are anticipated at this time.</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>November 2014</u> |
| D. The expected effective date of the final-form regulation: | <u>Immediately upon publication in the <i>Pennsylvania Bulletin</i>.</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Compliance with the regulation will not be required until the 2015 license renewal period.</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department shall review the final-form rulemaking on an ongoing basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Banking and Securities</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>3-52</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>[Signature]</u></p> <p>TITLE: <u>Secretary of Banking and Securities</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>[Signature]</u></p> <p><u>OCT 16 2014</u> DATE OF APPROVAL Executive Deputy General Counsel (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL RULEMAKING

DEPARTMENT OF BANKING AND SECURITIES

10 Pa. Code Chapter 57 § 57.1 – 57.33

DEBT MANAGEMENT SERVICES CONTINUING EDUCATION

**FINAL-FORM RULEMAKING
DEPARTMENT OF BANKING AND SECURITIES
[10 PA. CODE CH. 57]**

Preamble

The Department of Banking and Securities (Department) adds Chapter 57 (relating to debt management services continuing education) under the authority of section 9(c) of the Debt Management Services Act (act) (63 P.S. § 2409(c)).

Purpose

This final-form rulemaking implements continuing education requirements for credit counselors and supervisors employed by a debt management services licensee. The final-form rulemaking satisfies the Department's obligation under section 9(c) of the act to promulgate regulations delineating the continuing education requirements for credit counselors and supervisors employed by debt management services licensees.

Comments and Responses

Notice of the proposed rulemaking was published at 44 Pa.B. 2751 (May 10, 2014) with a 30-day public comment period. The Department did not receive comments during the public comment period.

Comments from the Independent Regulatory Review Commission

The Department received six comments from the Independent Regulatory Review Commission (IRRC).

Comment: IRRC requested that the Department explain why the approach taken by the Department in § 57.32 is appropriate and how it satisfies the statutory mandate to establish continuing education requirements through regulation. Included in the question, the Commission commented that it believed § 57.32 created a confusing regulatory environment for the regulated community and would be difficult for the Department to implement in a consistent manner.

Response: The rulemaking satisfies the statutory mandate because the language of the act contemplates that the Department will utilize the already existing certifying organization structure. Section 5 of the act specifically states that credit counselors and supervisors requiring certification will obtain that certification through "an independent certifying organization acceptable to the department." 63 P.S. § 2405(11). The rulemaking incorporates the continuing education requirement of the certifying organizations because the General Assembly permitted the Department to approve independent organizations for certification of credit counselors and supervisors employed by licensees and the certification process requires continuing education.

Using the current certifying organization structure actually reduces confusion because the rulemaking permits credit counselors and supervisors to obtain certification and meet the

continuing education requirements at the same time. A separate structure would create a confusing regulatory environment because credit counselors and supervisors, the majority of whom are located outside of the Commonwealth, would need to track which continuing education credits counted for certification and which counted toward a separate continuing education structure specifically for Pennsylvania.

In addition, for the Department to develop an entirely separate structure for continuing education would be burdensome on the Department and the regulated community. The costs to the Department to develop a program and implement it on a nationwide basis would be unmanageable because of the Department's 45 licensees, only 6 are located in Pennsylvania. A separate structure would require the regulated community to pay for certification and also pay for continuing education classes. Unless licensees require employees to pay for their own continuing education, then this added cost is burdensome because many of the licensees are non-profits.

To further clarify the requirements on licensees, the Department included two additional criteria. The Department will verify whether the certifying organizations offer the required continuing education courses every 24 months. If the courses offered are not acceptable to the Department, the certifying organization will be removed from the list of acceptable providers. This structure is analogous to other regulatory structures in the Commonwealth, such as the continuing education requirements for attorneys. *See* 82 Pa. Code Subchapter B. Section 3.

The Commission pointed out that one certifying organization permits a 45-day grace period to obtain the continuing education credits required for credit counselor certification through that certifying organization. The Commission asked how that 45-day grace period will affect the requirement of § 57.32(3) to obtain all 16 continuing education credits within a 24 month period. Section 5 of the act requires credit counselors to be certified and section 9 of the act requires continuing education. 63 P.S. §§ 2405(11), 2409(c). In accordance with section 5 of the act, credit counselors obtain certification through "an independent certifying organization acceptable to the department." *Id.* Although continuing education is a part of the credit counselor certification, continuing education and certification are two distinct requirements of the act. If a credit counselor chooses to utilize the 45-day grace period for purposes of their certification; that is permitted by the act and not addressed in any regulation. However, that grace period applies only to credit counselor certification. The regulation is clear that as to the Department's continuing education requirements, 16 continuing education credits must be completed every 24 months, therefore no grace period exists.

Comment: IRRC suggested the Department make changes to the definitions of "certifying organization" and "supervisor."

Response: The Department revised the definitions of certifying organization and supervisor in the final-form rulemaking in the following manner.

(a) **Certifying organizations.** The Commission suggested that this definition needed to reflect that certifying organizations offer continuing education courses to both counselors and supervisors. The Department inserted "credit counselors and" into the certifying organization definition as suggested by the Commission.

(b) **Supervisor.** The Commission suggested the Department replace the phrase “for example” with “including” to better reflect the requirements of the act. The Department removed “for example” from the definition of supervisor and inserted “including” as suggested by the Commission.

Comment: The Commission recommended the Department amend paragraphs (1) and (2) of proposed § 57.11 to state that credit counselors and supervisors must complete a minimum of 16 continuing education units every two years through a registered certifying organization.

Response: The Department revised § 57.11 to address the concern of the Commission. The continuing education requirements for credit counselors and supervisors are now set forth together to reduce confusion. For further clarity, the Department removed the reference to certification because the requirement that credit counselors maintain valid certification is already addressed in section 5 of the act. The Department also further clarified what topics the continuing education units should address.

Comment: The Commission posed questions to the Department regarding § 57.13 of the rulemaking.

(a) What is meant by “take action?”

Response: Take action refers to the administrative remedies available to the Department under the act to regulate the actions of a licensee. The phrase “or take other actions” is used after listing the power and duties of the Department in section 17 of the act. To clarify this term, the Department inserted the word “administrative” between “take” and “action.” The Department also cited the sections of the act which, when a violation of the act occurs, grant the Department the specific authority to:

- (i) deny, suspend, revoke or refuse to renew a license;
- (ii) impose a civil penalty up to \$10,000 for each violation;
- (iii) issue orders to ensure the proper conduct of licensees, including cease and desist orders;
- (iv) prohibit a person or licensee from working in any capacity related to activities regulated by the department;
- (v) order restitution paid for actual damages to consumers; and
- (vi) order refunds for fees collected.

63 P.S. §§ 2410(2), 2416 and 2417.

(b) How will credit counselors and supervisors know if the Department plans to take action against the certifying organizations?

Response: The rulemaking indicates the Department would consider taking action against the licensee, not a certifying organization. Whether the Department plans to take action against a

licensee will not affect the ability of a credit counselor or supervisor to comply with the rulemaking, so no notification to the credit counselors and supervisors is necessary.

(c) Will the Department maintain a list of these certifying organizations on its website with an indication of whether action will be taken?

Response: As indicated in (b), the Department will not take administrative action against a certifying organization. Unless the act is changed to state otherwise, the Department will never take action against a certifying organization because it does not regulate those entities. As indicated in § 57.32, the Department will maintain a list of acceptable certifying organizations on its website.

If the Department takes administrative action against a licensee which results in a final adjudication, those final orders are public documents which the Department posts on its website pursuant to Section 18(c)(2) of the act.

Comment: The Commission recommended the Department remove “at least” from § 57.22 because it did not provide an exact time frame for which records must be kept.

Response: The Department removed “at least” from § 57.22 in the final-form rulemaking as recommended by the Commission.

Comment: The Commission requested that the Department replace the phrase, “periodically” in § 57.32 with more specific language because periodically is vague and does not establish a binding norm.

Response: The Department replaced “periodically” with “every 24 months” to address the Commission’s concern regarding the lack of a binding norm.

Fiscal Impact

State Government

The final-form rulemaking has a de minimus impact on the Department. The Department already regulates the debt management services providers. The final-form rulemaking only adds another item that the Department will review in its investigations and examinations. The final-form rulemaking does not have an impact on the Commonwealth and its political subdivisions.

Regulated Community

The final-form rulemaking has a de minimus impact on the regulated community. Credit counselors employed by debt management services licensees already complete continuing education to obtain and maintain credit counselor certification. The final-form rulemaking only adds the cost of attendance of continuing education for supervisors if the supervisors are not also certified as credit counselors.

Paperwork

The final-form rulemaking requires the regulated community to maintain documentation to verify that the credit counselors and supervisors in its employ completed the continuing education requirements.

Effective Date / Sunset Date

Chapter 57 will be effective upon final-form publication in the *Pennsylvania Bulletin*. The regulation does not have a sunset date because the Department will periodically review the effectiveness of the regulation.

Regulatory Review

On April 24, 2014, the Department submitted a copy of the notice of proposed rulemaking and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance Committee pursuant to Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Legislative Reference Bureau published the notice of proposed rulemaking at 44 Pa.B. 2751 on May 10, 2014.

The Department received no comments during the public comment period. In preparing the final-form rulemaking, the Department considered all comments from IRRC as required by Section 5a.(a) of the Regulatory Review Act (71 P.S. § 745a.(a)).

Under Section 5a.(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was deemed approved by the House and Senate Committees. Under Section 5.a(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Findings

The Department finds that:

- (1) Public notice of the proposed rulemaking was given under section 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments received during the public comment period were considered.
- (3) The regulation does not enlarge the purpose of the proposed rulemaking published in the Pennsylvania Bulletin on May 10, 2014.
- (4) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the Debt Management Services Act.

Order

The Department, acting under 63 P.S. § 2409(c) orders that:

- (a) The regulation of the Department, 10 Pa. Code Chapter 57, is adopted.
- (b) The Secretary of Banking and Securities shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.
- (c) The Secretary of Banking and Securities shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BY:

GLENN E. MOYER
Secretary of Banking and Securities

Annex A.

TITLE 10. BANKING AND SECURITIES
PART IV. BUREAU OF CONSUMER CREDIT AGENCIES
CHAPTER 57. DEBT MANAGEMENT SERVICES CONTINUING EDUCATION

Subchap.

- A. GENERAL PROVISIONS
- B. CREDIT COUNSELORS AND SUPERVISORS
- C. LICENSEES
- D. CERTIFYING ORGANIZATIONS

Authority

The provisions of this Chapter 57 are issued under sections 9(c) and 17(4) of the Debt Management Services Act (63 P.S. §§ 2409(c) and 2417(4)), unless otherwise noted.

Source

The provisions of this Chapter 57 adopted _____, effective _____, ___ Pa.B. ___, unless otherwise noted.

Subchapter A. General Provisions

Sec.

57.1. Definitions.

§ 57.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act – Debt Management Services Act (63 P.S. §§ 2401-2449).

Certifying organization – An independent third-party offering debt management services certification for credit counselors and continuing education courses for credit counselors and supervisors.

Continuing education unit – An hour of continuing education.

Credit counselor – An individual who interacts, corresponds or otherwise communicates with a consumer on behalf of a licensee to discuss, develop, implement or maintain a consumer education program for the consumer regarding debt management services.

Licensee – A debt management service provider licensed by the Department under the act.

Supervisor— An individual with direct responsibility for the actions of one or more credit counselors, [for example,] including a manager.

Subchapter B. CREDIT COUNSELORS AND SUPERVISORS

Sec.

57.11. Continuing education requirements.

57.12. Course format.

57.13. Former registered certifying organizations.

§ 57.11. Continuing education requirements.

[The following continuing education requirements shall be met:

(1) A credit counselor shall maintain valid certification through a registered certifying organization by completing a minimum of 16 continuing education units every 2 years through a registered certifying organization.

(2) A supervisor shall complete a minimum of 16 continuing education units every 2 years through a registered certifying organization.]

Credit counselors and supervisors shall complete a minimum of 16 continuing education units every 2 years which meet the following criteria:

(1) The continuing education units shall be earned through a registered certifying organization.

(2) A minimum of 1 of those 16 continuing education units shall relate to ethics.

(3) The continuing education units which do not relate to ethics shall address topics associated with consumer education programs as defined in section 2 of the act (63 P.S. § 2402).

§ 57.12. Course format.

A credit counselor or supervisor may complete continuing education units through a course format offered by a registered certifying organization including live instruction, web and teleconference formats.

§ 57.13. Former registered certifying organizations.

(a) The Department will remove a certifying organization from the acceptable provider list posted on the Department's web site pursuant to § 57.31(b) if the certifying organization does not meet the requirements of this chapter.

(b) If a credit counselor or supervisor completes courses with a certifying organization that the Department removes from the provider list, the Department will consider the continuing education units:

(1) Valid if the credit counselor or supervisor completed the units before the Department removed the certifying organization from the list and the Department will not take administrative action against the licensee for failing to comply with a regulation issued by the Department as permitted under sections 10(2), 16 and 17 of the act (63 P.S. §§ 2410(2), 2416 and 2417).

(2) Invalid if the credit counselor or supervisor completed the units after the Department removed the certifying organization from the list and the Department will consider taking administrative action against the licensee for failing to comply with a regulation issued by the Department as permitted under sections 10(2), 16 and 17 of the act.

Subchapter C. LICENSEES

Sec.

- 57.21. Reporting.
- 57.22. Recordkeeping.
- 57.23. Compliance.
- 57.24. Enforcement.

§ 57.21. Reporting.

(a) The licensee shall prepare a statement verifying that the credit counselors and supervisors employed by the licensee meet the continuing education requirements.

(b) The statement must include a list for each credit counselor that contains the credit counselor's:

- (1) Name.
- (2) Job title.
- (3) Work address.
- (4) Certification number.
- (5) Hire date.
- (6) Certification effective date.
- (7) Certification expiration date.

(8) Certifying organization.

(c) The statement must include a list for each supervisor that contains the supervisor's:

(1) Name.

(2) Job title.

(3) Work address.

(4) Completed continuing education units within the past 24 months.

(5) Hire date.

(6) Certifying organization.

(d) The licensee shall submit the statement to the Department as part of each debt management license renewal application.

§ 57.22. Recordkeeping.

The licensee shall keep records regarding completion of the continuing education requirements for [at least] four license renewal periods.

§ 57.23. Compliance.

The Department will verify compliance with this chapter through the methods statutorily available to the Department under the act, including examination. If the Department conducts an examination, the Department will assess examination costs on the licensee consistent with section 17(1) of the act (63 P.S. § 2417(1)).

§ 57.24. Enforcement.

(a) A violation of this chapter is a violation of the act.

(b) If the licensee violates this chapter, the Department will use the enforcement options statutorily available to it under the act, including revocation of the license, suspension of the license or assessment of a penalty.

Subchapter D. CERTIFYING ORGANIZATIONS

Sec.

57.31. Registration.

57.32. Criteria.

57.33. Verification.

§ 57.31. Registration.

(a) The certifying organization shall submit a completed registration form to the Department to be considered an acceptable certifying organization. The Department will provide the form on the Department's website.

(b) The Department will maintain a list of registered certifying organizations on its web site at [www.dobs.state.pa.us] www.dobs.pa.gov.

§ 57.32. Criteria.

The Department will consider the certifying organization to be an acceptable continuing education provider if the certifying organization:

- (1) Submits the registration form to the Department.
- (2) Requires at least 16 continuing education units for credit counselor certification of which:
 - (i) A minimum of 1 continuing education unit is related to ethics.
 - (ii) The continuing education units not related to ethics address topics associated with consumer education programs as defined in section 2 of the act.
- (3) Offers credit counselor certification that is valid for no longer than 24 months.
- (4) Permits supervisors to attend continuing education courses.

§ 57.33. Verification.

[(a)] The Department will [periodically] request that the registered certifying organization resubmit the registration form [provided by] to the Department every 24 months [to verify] as verification that the certifying organization continues to meet the criteria listed in § 57.32.

[(b) If a registered certifying organization fails to meet the requirements of this chapter, the Department will remove that certifying organization's name from the Department's web site as an acceptable provider.]

**Department of Banking and Securities
Commentator Address List
Regulation 3-52**

The Department is not providing notice of the submission of the final-form regulation to anyone because it did not receive any public comments.



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Ph 717.787.2112 Ex 717.214.0808 W www.dobs.state.pa.us

Date: October 17, 2014

To: Independent Regulatory Review Commission

From: Paul H. Wentzel, Jr.
Senior Legislative and Policy Liaison

Subject: Final-Form Regulation #3-52 (IRRC #: 3056); Debt Management Services
Continuing Education

Attached please find the Final-Form Regulation Packet for the Department of Banking and Securities' Debt Management Services Continuing Education Regulation, which is being submitted to IRRC today.

The Final-Form Regulation Packet includes the:

1. Legislative Reference Bureau Face Sheet
2. Preamble
3. Annex A – Final-Form Regulation
4. Regulatory Analysis Form

Secretary Moyer is available to discuss this final-form regulation with you and your staff at your convenience.

Attachments

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 3-52

SUBJECT: DEBT MANAGEMENT SERVICES CONTINUING EDUCATION

AGENCY: DEPARTMENT OF BANKING AND SECURITIES

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation (Resubmitted with Revisions)
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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**RECEIVED
IRRC**

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON COMMERCE</i>		
10/17/14	<u>Chris Beatty</u>	MAJORITY CHAIR <u>Honorable Chris Ross</u>
10/17/14	<u>Ruth Hanon-Beatty</u>	MINORITY CHAIR <u>Honorable W. Curtis Thomas</u>
<i>SENATE COMMITTEE ON BANKING & INSURANCE</i>		
10/17/14	<u>Colleen Kennedy</u>	MAJORITY CHAIR <u>Honorable Donald C. White</u>
10/17/14	<u>Cheryl Schiel</u>	MINORITY CHAIR <u>Honorable Michael J. Stack</u>
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
N/A	N/A	<i>ATTORNEY GENERAL (for Final Omitted only)</i>
N/A	N/A	<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>

October 17, 2014