

Comments of the Independent Regulatory Review Commission



Department of Banking and Securities Regulation #3-52 (IRRC #3056)

Debt Management Services Continuing Education

July 9, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the May 10, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Banking and Securities (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; Implementation procedures.

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).

The Department has chosen to fulfill its obligation to “delineate the requirements for such continuing education” by allowing certifying organizations that are registered with the Department to provide continuing education to credit counselors, supervisors and managers. Section 57.32 of the proposal requires potential certifying organizations to meet four criteria before the Department would consider them to be acceptable continuing education providers. Those criteria are: submit a registration form to the Department; require at least 16 continuing education units for credit counselor certification; offer credit counselor certification that is valid for no longer than 24 months; and permit supervisors to attend continuing education courses.

A review of the continuing education requirements of the six certifying organizations listed on the Department’s website reveals a regulatory environment that varies. For example, one certifying organization requires one continuing education unit to be in ethics, but others do not. In addition, one certifying organization allows a 45-day grace period to obtain the required 16 credits of continuing education within the two-year renewal cycle, but others do not.

While § 57.32 establishes the basic framework for certifying organizations that the Department would deem acceptable, we are concerned that each certifying organization has varying requirements for its continuing education programs. We believe this creates a confusing regulatory environment for the regulated community and would be difficult for the Department to implement in a consistent manner. For example, the grace period noted above conflicts with § 57.32(3), which requires credit counselor certification to be valid for only 24 months. The varying requirements conflicts with the purpose of a regulation, which is to establish a binding norm. In the Preamble to the final-form rulemaking, we ask the Department to explain why this approach is appropriate and how it satisfies the statutory mandate to establish continuing education requirements through regulation.

2. Section 57.1. Definitions. – Whether the regulation is consistent with the intent of the General Assembly; Clarity.

Certifying organization

This term is defined as “An independent third-party offering debt management services certification for credit counselors and continuing education courses for supervisors.” It is our understanding that certifying organizations offer continuing education courses to both counselors and supervisors. We suggest that the final-form regulation be amended to reflect that understanding.

Supervisor

The proposed definition for this term is “An individual with direct responsibility for the actions of one or more credit counselors, for example, a manager.” Since Section (9)(c) of the Act requires continuing education for both supervisors and managers, we suggest that the definition be amended by replacing the phrase “for example” with “including.” We believe this change better reflects the requirements of the Act.

3. Section 57.11. Continuing education requirements. – Clarity.

Paragraph (1) of this section states that credit counselors shall maintain valid certification through a registered certifying organization, but it does not specify the continuing education requirements. To find those requirements, one must look to § 57.32, pertaining to criteria for certifying organizations. Paragraph (2) of this section states that supervisors must complete a minimum of 16 continuing education units every two years through a registered certifying organization. To improve the clarity of the rulemaking, we recommend that the Department amend both paragraphs to state that credit counselors and supervisors must complete a minimum of 16 continuing education units every two years through a registered certifying organization.

4. Section 57.13. Former registered certifying organizations. – Implementation procedures; Clarity.

This section of the rulemaking addresses situations in which a certifying organization is removed from the Department’s website as an acceptable continuing education provider and the resulting impact on the validity of courses taken by credit counselors and supervisors. Under Paragraphs (1) and (2), the validity of the courses taken is contingent on when the credit counselor or supervisor completed the units and whether the Department will take action against the certifying organization. We question how credit counselors and supervisors will know if the Department plans to take action against these organizations. Will the Department maintain a list of these certifying organizations on its website with an indication of whether action will be taken? In addition, what is meant by “take action?” These matters should be clarified in the final-form regulation.

5. Section 57.22. Recordkeeping. – Clarity.

Licensees are required to keep records regarding the completion of continuing education requirements “for at least four license renewal periods” under this section of the rulemaking. This provision lacks clarity because it does not provide an exact time frame for which records must be kept. We recommend that the phrase “at least” be deleted from the final-form rulemaking.

6. Section 57.33. Verification. – Clarity.

Subsection (a) states that the Department will “periodically” request registered certifying organizations to resubmit registration forms to verify that the organizations continue to meet the criteria set forth in § 57.32. The term “periodically” is vague and does not establish a binding norm. We recommend that the term be replaced with more specific language.