

# RULES AND REGULATIONS

## Title 10—BANKING AND SECURITIES

### DEPARTMENT OF BANKING AND SECURITIES

[ 10 PA. CODE CH. 57 ]

#### Debt Management Services Continuing Education

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 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.

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 (relating to criteria) is appropriate and how it satisfies the statutory mandate to establish continuing education requirements through regulation. IRRC 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 final-form 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(11) of the act (63 P. S. § 2405(11)) specifically states that credit counselors and supervisors requiring certification will obtain that certification through "an independent certifying organization acceptable to the department." The final-form 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 reduces confusion because the final-form 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 this Commonwealth, would need to track which continuing education credits counted for certification and

which counted toward a separate continuing education structure specifically for this Commonwealth.

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 this Commonwealth. 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, this added cost is burdensome because many of the licensees are nonprofits.

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 this Commonwealth, such as the continuing education requirements for attorneys.

IRRC 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. IRRC 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(11) of the act requires credit counselors to be certified and section 9(c) of the act requires continuing education. In accordance with section 5(11) of the act, credit counselors obtain certification through "an independent certifying organization acceptable to the department." 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 his certification, it is permitted by the act and not addressed in 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, a grace period does not exist.

*Comment:* IRRC suggested the Department make changes to the definition of "certifying organization" in § 57.1 (relating to definitions) to reflect that certifying organizations offer continuing education courses to both counselors and supervisors.

*Response:* The Department added "credit counselors and" to the definition as suggested by IRRC.

*Comment:* IRRC suggested the Department make changes to the definition of "supervisor" to replace "for example" with "including" to better reflect the requirements of the act.

*Response:* The Department deleted "for example" from the definition and added "including" as suggested by IRRC.

*Comment:* IRRC recommended the Department amend § 57.11(1) and (2) (relating to continuing education requirements) to state that credit counselors and supervi-

sors shall complete a minimum of 16 continuing education units every 2 years through a registered certifying organization.

*Response:* The Department revised § 57.11 to address IRRC's concern. The continuing education requirements for credit counselors and supervisors are now together to reduce confusion. For further clarity, the Department deleted 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:* Regarding § 57.13 (relating to former registered certifying organizations), IRRC asked 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 (63 P. S. § 2417). To clarify this term, the Department added "administrative" between "take" and "action." The Department also cited sections 10(2), 16 and 17 of the act (63 P. S. §§ 2410(2), 2416 and 2417) which, when a violation of the act occurs, grant the Department the specific authority to: (1) deny, suspend, revoke or refuse to renew a license; (2) impose a civil penalty up to \$10,000 for each violation; (3) issue orders to ensure the proper conduct of licensees, including cease and desist orders; (4) prohibit a person or licensee from working in any capacity related to activities regulated by the Department; (5) order restitution paid for actual damages to consumers; and (6) order refunds for fees collected.

*Comment:* Regarding § 57.13, IRRC asked how will credit counselors and supervisors know if the Department plans to take action against the certifying organizations.

*Response:* The final-form 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 final-form rulemaking, so notification to the credit counselors and supervisors is not necessary.

*Comment:* Regarding § 57.13, IRRC asked if the Department will maintain a list of these certifying organizations on the Department's web site with an indication of whether action will be taken.

*Response:* As indicated in response to the previous question, the Department will not take administrative action against a certifying organization. Unless the act is amended 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 the Department's web site.

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 the Department's web site under section 18(c)(2) of the act (63 P. S. § 2418(c)(2)).

*Comment:* IRRC recommended the Department delete "at least" from § 57.22 (relating to recordkeeping) because it did not provide an exact time frame for which records shall be kept.

*Response:* The Department deleted "at least" from § 57.22 in the final-form rulemaking as recommended by IRRC.

*Comment:* IRRC requested that the Department replace "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 IRRC'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 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.

*Effectiveness and Sunset Dates*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 24, 2014, the Department submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 2751, to IRRC and the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 12, 2014, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 20, 2014, 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 at 44 Pa.B. 2751.

(4) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the act.

#### Order

The Department, acting under section 9(c) of the act, orders that:

(a) The regulations of the Department, 10 Pa. Code, are amended by adding §§ 57.1, 57.11—57.13, 57.21—57.24 and 57.31—57.33 to read as set forth in Annex A.

(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*.

GLENN E. MOYER,  
Secretary

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 7622 (December 6, 2014).)*

**Fiscal Note:** Fiscal Note 3-52 remains valid for the final adoption of the subject regulations.

#### 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

#### 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, 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.

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 the 16 continuing education units must relate to ethics.

(3) The continuing education units which do not relate to ethics must 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 under § 57.31(b) (relating to registration) 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 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 web site.

(b) The Department will maintain a list of registered certifying organizations on its web site at [www.dobs.pa.gov](http://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 one 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 (63 P. S. § 2402).
- (3) Offers credit counselor certification that is valid for no longer than 24 months.
- (4) Permits supervisors to attend continuing education courses.

(i) A minimum of one 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 (63 P. S. § 2402).

(3) Offers credit counselor certification that is valid for no longer than 24 months.

**§ 57.33. Verification.**

The Department will request that the registered certifying organization resubmit the registration form to the Department every 24 months as verification that the certifying organization continues to meet the criteria listed in § 57.32 (relating to criteria).

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