Casey Elliott

From: comments
Sent: Friday, March 11, 2011 1:02 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA Comment 13
Attachments: NCCUSL UDMSA.doc

From: Dave's Email [mailto:dcjones@cfl.rr.com]
Sent: Thursday, March 10, 2011 4:56 PM
To: comments
Subject: Comments on the Draft Changes to the UDMSA

Dear Mr. Kerr:

The attached comments are provided by the Association of Independent Consumer Credit Counseling Agencies (AICCCA). Thank you for allowing us to provide these comments on behalf of our member agencies. We were present and actively participated as Observers in the long process that produced this important legislative draft. Please do not hesitate to contact us if there are any questions about the comments provided.

Sincerely,

David C. Jones, Ph.D.
President
AICCCA

The Association of Independent Consumer Credit Counseling Agencies (AICCCA) has had prior involvement with NCCUSL's process in developing and creating the Uniform Debt-Management Services Act (UDMSA). We appreciate the opportunity to continue to work with the commission on the 2011 recommendations for amendment to the act. We would like to address the specific sections of this act as presented in red at the end of each section addressed.

SECTION 5. APPLICATION FOR REGISTRATION: FORM, FEE, AND ACCOMPANYING DOCUMENTS.

(6) if the applicant is organized as a not-for-profit entity or is exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501 [, as amended], evidence of not-for-profit status, tax-exempt status, or both, as applicable.

Legislative Note: *If the state wishes to permit only tax-exempt entities to provide debt-management services, the first bracketed language in paragraph (6) should be deleted so that paragraph (6) states:*

(6) evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501 [, as amended].

This subsection should be eliminated as the distinction between not for-profit and for-profit has been removed. For the same reason, the legislative note for subsection 6 should also be eliminated.

SECTION 9. CERTIFICATE OF REGISTRATION: ISSUANCE OR DENIAL.

(d) The administrator shall deny registration if with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501 [, as amended], the applicant's board of directors is not independent of the applicant's employees and agents.

(e) Subject to adjustment of the dollar amount pursuant to Section 32(f), a board of directors is not independent for purposes of subsection (d) if more than one-forth of its members:

These subsections should be eliminated. They present undue burden on tax-exempt organizations. The States should not be forced to duplicate the responsibilities of the IRS.

SECTION 11. RENEWAL OF REGISTRATION.

(5) supply evidence of insurance in an amount equal to the larger of $250,000 or the highest daily balance in each trust account during the six-month period immediately preceding the application:

This subsection requires insurance equal to the highest daily balance in each trust account. We recommend that the language be changed to "the average daily balance held in all trust accounts for clients who reside in this State." Our primary concern is that this subsection will require an agency to obtain insurance that is out of proportion to the State's exposure.

SECTION 22. TRUST ACCOUNT.

(c) A trust account must be at an insured bank and, unless the individual owns the account, must:

(ii) be administered by an entity that is not

(A) the provider or

(B) an affiliate of the provider; and

(iii) provide that any interest accruing on the individual's funds in the account is credited to the individual.

The management of client's funds is a primary function of the entity that manages the debt repayment plan. To require that these funds be administered by a 3rd party administrator would add substantial, if not prohibitive, costs for the provider. Additionally it should be understood that these funds are held for an extremely short period of time (10 days or less), and no interest is paid on these accounts in debt management. In fact, these accounts are charged substantial sums of money to deposit and disburse the funds from the trust account. A 3rd party fund manager is unnecessary and provides no consumer benefit. We feel both of these subsections should be eliminated.

SECTION 23. FEES AND OTHER CHARGES.

(d) Subject to adjustment of dollar amounts pursuant to Section 32(f), the following rules apply:

(1) Subject to paragraph (2), if an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, delinquency, the provider may charge a fee not exceeding $50 for consultation, obtaining a credit report, setting up an account, and the like.

It is obvious that debt management and debt settlement are very different businesses. Debt management begins its efforts of establishing concessions from creditors upon an individual assenting to a plan. Debt settlement does not begin efforts on the client's behalf for years in most cases. This section should permit the fee for "consultation, obtaining a credit report, setting up an account, and the like" upon the setup of a Debt Management account. We feel this can be rectified by eliminating the wording "subject to paragraph (2)" from this section.