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Division of Publications**

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Sequence Number: 07-06-10
Notice ID(s): 1282
File Date: 07/13/2010

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission: Department of Commerce and Insurance
Division: Consumer Affairs Division
Contact Person: Aaron Rochelle
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact: Don Coleman
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1: Davy Crockett Tower
Conference Room 160, 1st Floor
Address 2:
City: Nashville
Zip: 37243
Hearing Date: 08/31/10
Hearing Time: 10:00 a.m. CST EST

Additional Hearing Information:

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number **Chapter Title**

0780-08-01	Rules and Regulations for Debt Management Services	
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0780-08-01-.14	Severability	

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

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Chapter 0780-8-01
Rules and Regulations for Debt Management Services

New Rules

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0780-08-01-.01 Purpose of Rules

The purpose of these rules is to institute the registration and regulation of providers of debt-management services and to protect the interests of consumers as required by the Uniform Debt-Management Services Act.

Authority: T.C.A. § 47-18-5501 Administrative History: Original rule filed.

0780-08-01-.02 Short Title

These rules may be cited as the Tennessee Debt-Management Services Rules.

Authority: T.C.A. § 47-18-5501 Administrative History: Original rule filed.

0780-08-01-.03 Retained Powers

It is the express intent of these rules that such powers as are herein delegated by the Administrator are also retained and may be exercised by the Administrator at the Administrator's election.

Authority: T.C.A. §47-18-5501 and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.04 Definitions

- (1) When used in these rules and in the Uniform Debt-Management Services Act, as amended, unless the context otherwise requires:
 - (a) "Act" shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt-Management Services Act, as amended, and its codification in Tennessee Code Annotated.
 - (b) "Director" shall mean the Director of the Consumer Affairs Division for the Department of Commerce and Insurance of the State of Tennessee, or any successor person authorized to exercise similar functions.
 - (c) "Division" shall mean the Director, staff, employees, and agents of the Consumer Affairs

Division of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act or any successor statute.

- (d) "UAPA: shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated thereunder to the extent such rules are not inconsistent with the Act or these rules.
 - (e) "Branch office" means any office of a provider within this state other than its principal place of business within this state.
- (2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.

Authority: T.C.A. §§ 47-18-5502 and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.05 Administration of the Act

(1) General

- (a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:
 - 1. To issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5433 (a)(1),(2),(3) and (b), or 47-18-5534 (b) and (c) in any contested case, as such term is defined in the UAPA and
 - 2. To adopt any rule as such term is defined in the UAPA;
- (b) Without limiting the foregoing delegation, the Director is expressly empowered to:
 - 1. Conduct examinations and investigations as provided by § T.C.A. 47-18-5532(b)
 - 2. Issue registrations; and
 - 3. Accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.
 - 4. Nothing herein limits the Director's authority, duties, or responsibilities set forth elsewhere in state law, regulation or rule.
- (c) Unless expressly required or requested, only the original executed copy of each form is required.
- (d) Filing Requirements.
 - 1. Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8 ½ by 11 or 8 ½ by 14 in size.
 - 2. All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.
 - 3. Exhibits may be attached or filed separately, properly marked or identified.
 - 4. Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages which are not securely bound together.
 - 5. All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and/or other information required or requested pursuant to the Act or the Debt-Management Services Rules may be

submitted to the Division in the paper format prescribed in this subpart (d) or through electronic data gathering, access, retrieval, and storage methods acceptable to the Division.

- (e) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 et seq., the Division shall assess reasonable charges for the copying and associated labor.

Authority: T.C.A. §§ 47-18-5501, 47-18-5532, and 47-18-5534 Administrative History: Original rule filed.

0780-08-01-.06 Applicability

- (1) The person forming an agreement to provide debt management services and any person to whom the account is then transferred are providers subject to the provisions of the Uniform Debt-Management Services Act, as codified at Tenn. Code Ann. §§ 47-18-5501, et seq.
- (2) After October 1, 2010 any person conducting business in this state as a debt-management services provider must apply to the Division to become registered.
- (3) Debt-management services do not include:
 - (a) legal services provided by an attorney authorized to practice law in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship; or
 - (b) accounting services provided by a certified public accountant licensed to provide accounting services in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship; or
 - (c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider in good standing or registered as an investment adviser representative in good standing in this state and currently holds one of the following professional designations during the entire time services are provided:
 - 1. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
 - 2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;
 - 3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
 - 4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
 - 5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
 - (d) services provided within the scope of the business or profession by:
 - 1. A judicial officer; or person acting under court order or administrative order;
 - 2. An assignee for the benefit of creditors;
 - 3. A bank or government regulated bank affiliate;
 - 4. A title insurer, an escrow company, or a person providing bill paying services if the provision of debt-management services is incidental to the bill-paying services.

Authority: T.C.A. §§ 47-18-5503 and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.07 Registration Application

- (1) After October 1, 20010, applications for registration shall be submitted on forms approved by the Director.
- (2) Any application submitted which lacks required information or reflects a failure to meet any requirement for registration will be held by the program office with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration sent to the applicant. The application will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed one hundred-eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification within the time-frame established by the written notification, the application will be closed.
 - (a) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.
- (3) Any application submitted may be withdrawn, provided however, that the application fee shall not be refunded.
- (4) Applications must be complete before they are submitted for consideration. After October 1, 2010, applications shall at a minimum include:
 - (a) A complete and properly executed application form signed under penalty of perjury and before a notary by the person applying; and
 - (b) Non-refundable application fee; and
 - (c) A surety bond as required by § T.C.A. 47-18-5513, or an acceptable surety alternative that complies with the provisions of § T.C.A. 47-18-5514; and
 - (d) Evidence of insurance as required by § T.C.A. 47-18-5504(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).
 1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy.
 2. The written notice of termination or reduction of the policy shall be sent by certified U.S. mail to the Division.
 3. The insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy; and
 - (e) Articles of incorporation and by-laws of the applicant; and
 - (f) A description of any ownership interest of at least ten percent (10%) by a director, owner, or employee of the applicant in:
 1. Any affiliate of the applicant; or
 2. Any entity that provides products or services to the applicant or any individual related to the applicant's debt-management services; and
 - (g) Name and address of each corporate person that owns an interest or is otherwise

affiliated with or controls, directs, or influences the operations of the applicant; and

- (h) Name and address of each corporate person in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant; and
- (i) The names and addresses of all employers of each of the applicant's directors during the immediately preceding ten (10) years; and
- (j) The names, addresses, and amounts of compensation for the five (5) most highly compensated employees for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in § T.C.A. 47-18-5506(17); and
- (k) The identity of each director who is an affiliate as defined by § T.C.A. 47-18-5502(2); and
- (l) Evidence of tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501, if applicant is a not-for-profit corporation and exempt from taxation; and
- (m) Consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee; and
- (n) Disclosure of and identification information for all trust accounts; and
- (o) Irrevocable consent to authority of Administrator to review and examine all trust accounts; and
- (p) Applicant's financial statements prepared in accordance with the provisions of § T.C.A. 47-18-5506(7); and
- (q) Evidence of the applicant's accreditation by an independent accrediting organization approved by the Director; and
- (r) Evidence of certification by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant; and
- (s) Detailed descriptions of the three most common education programs provided for Tennessee consumers and copies of all materials associated with the education programs; and
- (t) A description of the financial analysis and initial budget plan, including any form or electronic model used to evaluate the financial conditions of Tennessee consumers; and
- (u) Copies of each agreement form used with Tennessee consumers and any other documents or information required to be signed or provided to a Tennessee consumer; and
- (v) A schedule of all fees and charges, including any recommended donations, used with Tennessee consumers; and
- (w) Sworn criminal-history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of doing debt-management services provider business, for every officer of the applicant and every employee or agent who is authorized to have access to the trust account(s). The sworn criminal-history records check must be submitted directly from the criminal-history records check provider to the Division.
 - 1. Applicants that have had these sworn criminal history records checks performed for the purpose of doing debt-management services provider business in another state within twelve (12) months prior to submitting the registration application

may have the results of those sworn criminal-history records submitted directly from the other state to the Division as certified business records of the other state; and

- (x) Disclosure of any debt-management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and
 - (y) Any other information required to determine whether the application should be approved or denied.
- (5) An applicant shall notify the Division within ten (10) days after a change in any information originally reported in the initial registration application occurs.

Authority: T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.08 Renewal of Registrations

- (1) Registrations shall expire on the last day of the twelfth (12th) month following their issuance or renewal, and shall become invalid on such date unless renewed prior to its expiration date.
- (2) Renewal applications must be received by the Division not less than thirty (30) days nor more than sixty (60) days prior to the expiration of a registration.
- (3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration, and shall surrender the registration certificate to the Division immediately upon its expiration.
- (4) Applications for the renewal of registrations shall be made on forms provided by the Director.
- (5) Applications for renewals will not be considered filed until the applicable fee prescribed in these rules and all other information required pursuant to the Act and the Debt-Management Services Rules are received.
- (6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.
- (7) After October 1, 2010, an application for renewal of a debt-management services provider registration shall include at a minimum:
 - (a) A complete and properly executed renewal application form signed under penalty of perjury and before a notary by the person applying; and
 - (b) Non-refundable renewal application fee; and
 - (c) A surety bond as required by § T.C.A. 47-18-5513, or an acceptable surety alternative that complies with the provisions of § T.C.A. 47-18-5514; and
 - (d) Evidence of insurance as required by § T.C.A. 47-18-5504(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).
 - 1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy.
 - 2. The written notice of termination or reduction of the policy shall be sent by certified U.S. mail to the Division.
 - 3. The insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination

or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy; and

- (e) Disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable; and
 - (f) Applicant's financial statements prepared in accordance with the provisions of § T.C.A. 47-18-5506(7); and
 - (g) Evidence of the applicant's accreditation by an independent accrediting organization approved by the Director; and
 - (h) Evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant; and
 - (i) Sworn criminal-history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of doing debt-management services provider business, for every officer of the applicant and every employee or agent who is authorized to have access to the trust account(s). The criminal-history records check must be submitted directly from the criminal-history check provider to the Division.
 - 1. Applicants that have had these criminal-records checks performed for the purpose of doing debt-management services provider business in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as certified business records of the other state; and
 - (j) Disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt-management services agreements and plans during the preceding twelve (12) month period, and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period; and
 - (k) Disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt-management services plans by or on behalf of Tennessee consumers with whom the applicant has debt-management services agreements; and
 - (l) Any other information required to determine whether the application should be approved or denied.
- (8) An applicant shall notify the Division within ten (10) days after a change in any of the information originally reported in the renewal application occurs.

Authority: T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532
Administrative History: Original rule filed.

0780-08-01-.09 Fees

- (1) Nonrefundable debt-management services registration.....\$2,000.00
- (2) Renewal fee for debt-management services registration.....\$2,000.00

Authority: T.C.A. §§ 47-18-5505 and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.10 Submission of Information

- (1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure within thirty (30) days before the change occurs. Debt-management services provider registrations are non-transferable.

- (2) An applicant or registrant shall inform the Division in writing within ten (10) days of receipt of notice and provide a copy of:
 - (a) Any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent of the applicant or registrant or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt-management by services business.
 - (b) Any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt-management services business; and
 - (c) Any complaint or order filed by a federal or state regulatory agency or the United States Post Office naming the applicant or registrant, any affiliate, partner, officer, director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt-management services business.
- (3) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (a) through (c) above.
- (4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order or sanction that is made, entered or imposed with respect to any proceedings described in subparts (a) through (c) above.
- (5) Nothing in paragraphs (2),(3), or (4) is intended to relieve the applicant or registrant from any duty the applicant or registrant has to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.
- (6) Trust Accounts
 - (a) An applicant or registrant shall file with the Division a notice of relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.
 - (b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers from the new bank.
 - (c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft from the trust account.

Authority: T.C.A. §§ 47-18-5507, 47-18-5522, and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.11 Standards of Practice

- (1) Code of Conduct
 - (a) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, such party shall, within ten (10) business days, file a written answer to the request for additional information or to the complaint with the Director.
 - (b) A provider shall immediately determine the state of residence of a potential customer during the first contact with the potential customer. If the potential customer is a resident of the state of Tennessee, the provider shall notify the potential customer of its current

registration status in the state of Tennessee in writing.

- (c) A provider shall notify the Director in writing of the opening of a branch office as well as the name of the person responsible for the branch office, as well as the certified counselor(s) and certified debt specialist(s) working in the branch office no later than thirty (30) days prior to the opening of the branch office.
 - (d) A provider shall comply with all applicable federal and state laws and rules in providing debt-management services and otherwise comply with all federal and state laws and rules applicable to it.
 - (e) A provider shall keep a consumer reasonably informed about the status of the debt-management services being performed for the consumer and shall promptly comply with the consumer's reasonable requests for information.
- (2) A provider shall not use improper or questionable methods of soliciting consumers, including but not limited to misleading or deceiving consumers or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in these improper methods.
 - (3) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts with consumers.
 - (4) Unless responding to a request for information, subpoena or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any consumer information obtained relative to a debt-management services agreement or plan performed to someone other than the consumer unless the disclosure is expressly authorized in writing by the consumer.
 - (5) A provider shall not misrepresent its debt-management services, the features of any service, or make unwarranted claims about the merits of a service that the provider offers.
 - (6) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the consumer in connection with work for which the provider is responsible.
 - (7) Before the execution of an agreement for debt-management services, a provider shall clearly and conspicuously disclose to the consumer any interest in a business that may affect the consumer. No provider shall allow its interest in any business to affect the quality or results of the debt-management services that the provider may be called upon to perform.
 - (8) A provider shall fully comply with all Federal Trade Commission rules, regulations and guidelines including but not limited to the Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR Part 255.
 - (9) A provider shall not engage in false or misleading advertising.
 - (10) A provider shall not perform or recommend any debt-management services that would violate applicable federal or state laws.
 - (11) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:
 - (a) proposing or communicating any alteration of a material term of a debt-management services agreement or plan to a consumer or a consumer's creditor without first receiving explicit written instructions from a consumer directing the provider to make a specific alteration; or
 - (b) expressly or impliedly representing that any of its goods or services are "free" if the consumer will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the consumer's creditors. A provider may represent that a consultation or other initial contact is "free" if the

consultation or contact is provided with no obligation by the consumer to make any payment in connection with the consultation or contact; or

- (c) expressly or impliedly representing that any payments made by consumers in connection with providers are voluntary contributions, or are payments to support a non-profit organization, unless at least 51% of the payment is paid to or for the benefit of the non-profit organization for purposes other than to pay provider for services rendered to a non-profit organization; or
- (d) expressly or impliedly misrepresenting the effects of a debt-management plan on a consumer's ability to obtain credit; or
- (e) enrolling a consumer into a debt-management plan unless, prior to enrollment, the consumer has received credit counseling that includes access to a credit counselor who has sufficient experience and training to counsel consumers in financial literacy, money management, budgeting and responsible use of credit and is advised of the various options available to the consumer for addressing the consumer's financial problems; or
- (f) enrolling a consumer into a debt-management plan if the consumer's estimated monthly living expenses and estimated monthly provider payments exceed their income. A consumer in this situation may be enrolled in a debt-management plan if the consumer is specifically advised not to enroll into a debt-management plan because the consumer cannot afford the debt-management plan payment and the consumer independently states that the consumer believes that the consumer can afford the debt-management plan payment by reducing expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt management plan affordable; or
- (g) disclosing or using any consumer's private financial and personal information that the providers receive in connection with providing debt-management services except in accordance with and as permitted by applicable law, but not limited to, the Gramm Leach Bliley Act, 15 U.S.C.A. § 6801, et seq.; or
- (h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll consumers into a debt-management plan; or
- (i) entering into any agreement with any person that sets any minimum enrollment rate, or other standard mandating the number of consumers who must be enrolled into debt-management plans or an amount that the person must collect from consumers; or
- (j) entering into any agreement with any person that sets any minimum revenues, or other standards mandating the amount of revenue that must be generated through a debt-management plan; or
- (k) using the name or mark of a person other than the provider when communicating with consumers or creditors in connection with the performance of debt-management services; or
- (l) entering into any agreement with a third-party that limits the use of any data reflecting either the provider's or the third-party's performance of any debt-management services, including data reflecting the payments that either the provider or the third-party has processed or is processing in connection with a debt-management plan; or
- (m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by consumers; or
- (n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services; or

- (o) debiting, cashing, depositing or otherwise collecting or attempting to collect monies from a consumer after a consumer has asserted a violation of state law, regulation or rule in the debt-management plan services process; or
- (p) using logos, symbols, business names or the like that might represent or imply to a consumer an affiliation or association with any government entity; or
- (q) failing to have full and complete substantiation for any and all claims and representations made to consumers and in any advertising or promotional materials upon request to the Division; or
- (r) submitting any false, misleading or deceptive information to the Division relating to a registration application or renewal application; or
- (s) failing to comply with all of the prerequisites for providing debt-management services outlined in § T.C.A. 47-18-5417 and/or any applicable federal laws, regulations or rules.

Authority: T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5528, and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.12 Examinations, Records, and Reports

(1) Recordkeeping Requirements

- (a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis or debt-management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.
- (b) Every debt-management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum.
 1. Ledgers reflecting all assets and liabilities, income and expense and capital accounts.
 2. A record or ledger reflecting separately for each consumer the clearance dates all money received from each consumer and all payments made on behalf of each consumer, and in all cases the name of the consumer in which the money has been received or paid.
 3. Copies of all communications, correspondence, and other records relating to debt-management services agreements and plans with, about or on behalf of consumers.
 4. A separate file containing all written complaints made or submitted by consumers to the debt-management services provider or counselors or debt specialists relating directly or indirectly to debt-management services, and any records received or produced in the course of investigating and resolving the consumer complaints.
 5. The personnel or contractor records for any employee, agent or contractor of the debt-management services provider about whom the debt-management services provider's business has received complaints from consumers regarding any conduct relative to the debt-management services provider's business.
 6. A consumer information form for each consumer. If recommendations are to be made to the consumer, the form shall include such information as is necessary to determine suitability.
 7. A record of the proof of money balances of all trust accounts. Such balances

shall be prepared currently at least once a month.

- 8. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books of the debt-management services provider.
 - 9. A separate file containing copies of all advertising circulated by the debt-management services provider in the conduct of its debt-management services provider business.
- (2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.
- (a) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of consumers or the Act.
 - (b) The cost of such examination shall be borne by the person examined in the same manner as is then provided for insurance companies; provided that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

Authority: T.C.A. §§ 47-18-5506, 47-18-5512, and 47-18-5532 Administrative History: Original rule filed.

0780-08-01-.13 Severability

If any Rule, term or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term or provision of the Chapter, and the remaining Rules, terms and provisions shall be and remain in full force and effect.

Authority: T.C.A. §§ 47-18-5541 Administrative History: Original rule filed.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

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Date: 7-13-10

Signature: Aaron Rochelle

Name of Officer: Aaron Rochelle

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 7/13/10

Notary Public Signature: Kristina D. Rust

My commission expires on: 3/10/12



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Filed with the Department of State on: 7/13/10

Tre Hargett

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