

# State Law Compliance for Credit Counseling Agencies: Getting and Staying Compliant

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Jeffrey S. Tenenbaum, Esq., *Partner*  
Jonathan L. Pompan, Esq., *Attorney*  
Venable LLP, Washington, D.C.

# Introduction

- The Laws that Apply to Credit Counseling Agencies
- Historical Perspective
- Debt Adjusting Statutes
- Uniform Debt-Management Services Act
- Recently Enacted/Amended State Debt Adjusting Statutes
- Nine of the Most Important Things a CCA Needs to Know about State Debt Adjusting Statutory Requirements
- Questions and Discussion

# The Laws that Apply to Credit Counseling Agencies

- State Debt Adjusting Statutes
- Credit Services Organization Acts
- Check Seller/Bill Payer Laws
- Home Sales Solicitation Statutes
- FTC Act and State Unfair and Deceptive Acts/Practices Laws
- Nonprofit Corporate Statutes
- State Charitable Solicitation Statutes
- Internal Revenue Code and State Tax Codes
- Others

# Historical Perspective

- **1950s** – About half of the states prohibited “debt adjusting” (e.g., prorating, debt pooling, debt management, etc.); approximately one third of the states regulated debt adjusting (imposing a variety of requirements); many state laws exempted tax-exempt 501(c)(3)s.
- **Today** – Nearly *all* of the states regulate debt adjusting; few exempt tax-exempt 501(c)(3)s; only two states prohibit “debt adjusting” for compensation; only 2 states and DC do not regulate debt adjusting. Additionally, there are *a number of other state laws* CCAs must navigate (e.g., qualification to do business as foreign corporation, mini-FTC Acts, mini-Credit Repair Organization Acts, check seller/bill payer laws, and state charitable solicitation statutes).

# Comprehensive Federal and State Efforts to Regulate Credit Counseling Agencies

- FTC and State Enforcement to Address Abuses of the late '90s and early '00s
- Ongoing IRS “Credit Counseling Compliance Project”
- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (enforced primarily by EOUST)
- NCCUSL - Uniform Debt-Management Services Act


# Result of Importance and Growth of Credit Counseling Industry and Consumer Debt



48 States



Debt  
Adjusting  
Laws



Virtually all of  
these laws apply  
based on the  
state of  
residence of the  
client.

# Debt Adjusting Statutes

**48 States**

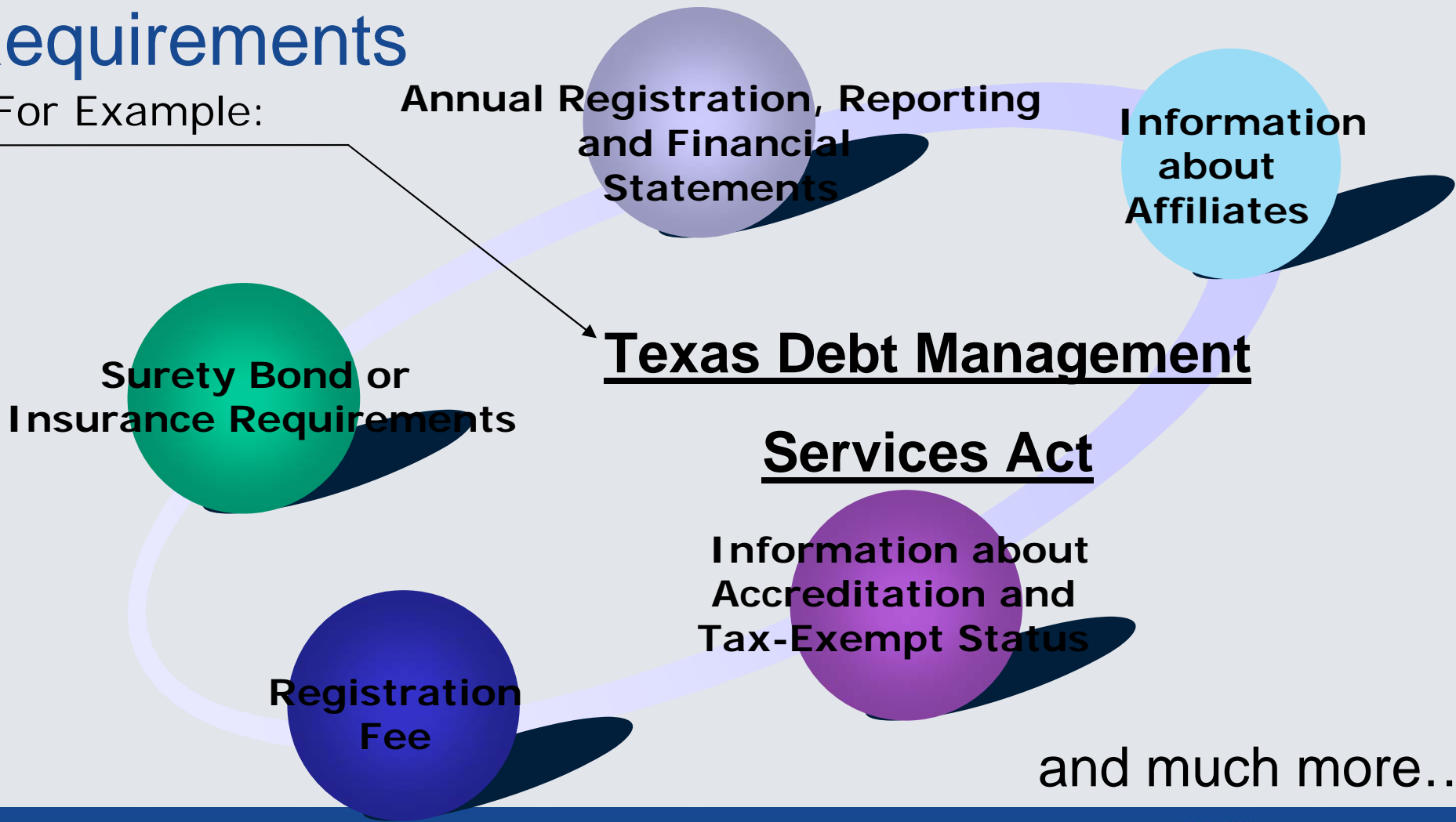
**Exemptions  
and Exclusions**

A CCA that services clients nationally in the U.S. must typically register and/or obtain licensure in 30 different states before it starts to provide DMP services to clients in these states.

Vary from  
state to state.

# Typical State Debt Adjusting Registration Requirements

For Example:



and much more...



# Violations of State Debt Adjusting Statutes

- Common failures to adhere to specific statutory requirements include:
  1. Licensure/Registration, if applicable
  2. Fee Caps
  3. Disclosures to consumers
  4. Deposit/Disbursement time
  5. Prohibited acts and practices (e.g., other business, compensated referrals, etc.)
- Using unfair or deceptive acts or practices or engaging in fraudulent conduct that creates a likelihood of confusion or misunderstanding.

## State Debt Adjusting Statutes Fines and Penalties

### Example - Texas

The law authorizes the imposition of restitution and penalties of up to \$1,000 per violation. In addition, the law authorizes private remedies against CCAs not registered under the Act (e.g., actual and punitive damages and attorneys fees).

# Uniform Debt-Management Services Act

- Regulates debt-management companies by requiring them to register with the state.
- To obtain a certificate of registration, a provider must supply information about itself, obtain insurance against employee dishonesty, and post a surety bond to safeguard any money that it receives from individuals for payment to creditors.

# Uniform Debt-Management Services Act

- Regulates interaction with consumers, including steps to be taken before entering into an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements.
- Includes broad prohibitions applicable to CCAs.
- Enforcement both by a state agency and by private individuals, including rule-making authority on the part of the administrator and recovery of minimum, actual and, in appropriate cases, punitive damages in private enforcement actions (e.g., class actions).

## Uniform Debt-Management Services Act

- Effective July 1, 2007 in Utah (amends provisions of UT CSOA); Effective March 31, 2007 in Rhode Island
- In 2006, introduced and progressing through the legislative process in Delaware, Colorado, Illinois, Missouri, and Nebraska.
- Study Committee in Wisconsin
- Roadmap for other states to either adopt/amend and/or interpret existing debt adjusting statute

## Recently Enacted/Amended State Debt Adjusting Statutes

- Florida
- Iowa
- Mississippi
- Montana
- North Carolina
- Oregon
- South Carolina
- Texas
- Utah
- Others

## **Nine of the Most Important Things a CCA Needs to Know about State Debt Adjusting Statutory Requirements**

- 1. Unless excluded or exempt, a CCA needs to comply with the law of the state of residence of its clients.**
- 2. Once licensed/registered, a CCA needs to renew its registration annually and make any of the required ongoing filings and notifications to the state.**
- 3. CCAs should not ignore correspondence and/or Subpoenas from state regulatory agencies or AG offices.**

## **Nine of the Most Important Things a CCA Needs to Know about State Debt Adjusting Statutory Requirements (*cont'd*)**

**4. CCAs should have a written client agreement with all prescribed disclosures, as well as fees that are set in accordance with applicable state fee restrictions.**

**5. A CCA must keep true and accurate financial records that clearly and accurately reflect all the money it collected and how and when the money has been disbursed.**

**6. Registration/license materials must be accurate, complete and free of material falsifications, misrepresentations and omissions.**



## Nine of the Most Important Things a CCA Needs to Know about State Debt Adjusting Statutory Requirements (*cont'd*)

7. A CCA must include any *statutorily required* disclosure statements (including on all solicitations, contracts, marketing materials, and invoices/payment notices it issues).
8. A CCA must ensure that its counselors are trained and certified as *statutorily required* and that they give *truthful* and *complete* answers about the effect of enrolling in a DMP on a consumer's credit report and score.
9. A CCA and its directors, officers and employees should not engage in any prohibited conduct detailed in the various state debt adjusting statutes.

# Questions and Discussion

**Jeffrey S. Tenenbaum**

**[jstenenbaum@venable.com](mailto:jstenenbaum@venable.com)**

**Jonathan L. Pompan**

**[jlpompan@venable.com](mailto:jlpompan@venable.com)**

**Venable LLP  
575 7<sup>th</sup> St., N.W.  
Washington, D.C. 20004  
(202) 344-4000**