

### 13-42-102 Definitions.

In this chapter:

- (1) "Administrator" means the Division of Consumer Protection.
- (2) "Affiliate":
  - (a) with respect to an individual, means:
    - (i) the spouse of the individual;
    - (ii) a sibling of the individual or the spouse of a sibling;
    - (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;
    - (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or
    - (v) any other individual occupying the residence of the individual; and
  - (b) with respect to an entity, means:
    - (i) a person that directly or indirectly controls, is controlled by, or is under common control with the entity;
    - (ii) an officer of, or an individual performing similar functions with respect to, the entity;
    - (iii) a director of, or an individual performing similar functions with respect to, the entity;
    - (iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a person that receives or received more than \$25,000 from the entity for debt management services in either the current year or the preceding year or a person that owns more than 10% of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity for debt management services in either the current year or the preceding year;
    - (v) an officer or director of, or an individual performing similar functions with respect to, a person described in Subsection (2)(b)(i);
    - (vi) the spouse of, or an individual occupying the residence of, an individual described in Subsections (2)(b)(i) through (v); or
    - (vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).
- (3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.
- (4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.
- (5) "Business address" means the physical location of a business, including the name and number of a street.
- (6) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services.
- (7) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.
- (8) "Day" means calendar day.
- (9) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

- (a) legal services provided in an attorney-client relationship if:
  - (i) the services are provided by an attorney who:
    - (A) is licensed or otherwise authorized to practice law in this state; and
    - (B) provides legal services in representing the individual in the individual's relationship with a creditor; and
  - (ii) there is no intermediary between the individual and the creditor other than the attorney or an individual under the direct supervision of the attorney;
- (b) accounting services provided in an accountant-client relationship if:
  - (i) the services are provided by a certified public accountant who:
    - (A) is licensed to provide accounting services in this state; and
    - (B) provides accounting services in representing the individual in the individual's relationship with a creditor; and
  - (ii) there is no intermediary between the individual and the creditor other than the accountant or an individual under the direct supervision of the accountant; or
- (c) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession if:
  - (i) the administrator, by rule, determines that members are:
    - (A) licensed by this state;
    - (B) subject to a disciplinary mechanism;
    - (C) subject to a code of professional responsibility; and
    - (D) subject to a continuing education requirement; and
  - (ii) there is no intermediary between the individual and the creditor other than the financial planner or an individual under the direct supervision of the financial planner.
- (10) "Entity" means a person other than an individual.
- (11) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.
- (12) "Lead generator" means a person who, in the regular course of business, supplies a provider with the name of a potential customer, directs a communication of an individual to a provider, or otherwise refers a customer to a provider.
- (13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.
- (14) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.
- (15) "Principal amount of the debt" means the amount of a debt at the time of an agreement.
- (16) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.
- (17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (18) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.
- (19) "Sign" means, with present intent to authenticate or adopt a record:
  - (a) to execute or adopt a tangible symbol; or
  - (b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Trust account" means an account held by a provider that is:

- (a) established in a bank in which deposit accounts are insured;
- (b) separate from other accounts of the provider or its designee;
- (c) designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and
- (d) used to hold money of one or more individuals for disbursement to creditors of the individuals.

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