



NEW YORK  
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT OPPOSING PROPOSAL TO ALLOW ALL TYPES OF NONPROFITS TO  
BECOME LICENSED BUDGET PLANNERS**

**CONSUMER AFFAIRS COMMITTEE AND CIVIL COURT COMMITTEE**

This year, the Governor's Economic Development Budget proposed amending the Banking Law to permit all types of nonprofit corporations to become licensed budget planners. Although the proposal was not enacted, the Civil Court and Consumer Affairs Committees submit these comments in opposition to such any such proposal that the Governor's office or the Legislature may consider in the future.

**BACKGROUND**

Budget planning is a form of debt relief, whereby consumers contract with persons or entities to make payments on their behalf to creditors according to a plan.<sup>1</sup> Section 579 of the Banking Law provides that only type B not-for-profit corporations may engage in the business of budget planning. The Governor's proposal would amend the Banking Law and permit all types of not-profit organizations to become licensed budget planners.

The debt relief sector has a long history of abusive, deceptive, and predatory practices, in part because the consumers who are the target market are often economically distressed, vulnerable, and unsophisticated. The past decade saw a dramatic rise in illegal practices by both the nonprofit and for-profit debt relief sectors, partially because of the advent of the internet. To address abuses by for-profit entities, the Federal Trade Commission (FTC) responded by amending the Telemarketing Sales Rule (TSR) through the Telemarketing and Consumer Fraud and Abuse Prevention Act.<sup>2</sup>

---

<sup>1</sup> Budget planning is defined as "the making of a contract between a person or entity in the business of budget planning with a particular debtor whereby (i) the debtor agrees to pay a sum or sums of money in any manner or form and the person or entity engaged in the business of budget planning distributes, or supervises, coordinates or controls the distribution of . . . [sums of money] among certain specified creditors in accordance with a plan agreed upon and (ii) the debtor agrees to pay to such person or entity . . . a sum or sums of money. . . ." N.Y. Gen. Bus. Law § 455 (2013).

<sup>2</sup> 15 U.S.C. §§ 6101-6108; 16 C.R.F. Pt. 310.

On May 11, 2012, the City Bar issued a comprehensive examination of the debt settlement industry entitled *Profiteering from Financial Distress: An Examination of the Debt Settlement Industry*.<sup>3</sup> The White Paper provided an overview of the troubled history of the debt relief sector over time for both nonprofit and for-profit entities, including debt management, and delved deeply into debt settlement in the past decade.<sup>4</sup> The Committees concluded, after exhaustive review of the publicly available record and extensive stakeholder interviews, that debt settlement for more than a nominal fee, even with the FTC regulatory reforms—is an inherently flawed model that causes consumers “net financial loss and lasting financial harm.”<sup>5</sup>

The White Paper examined the legislative history of debt relief regulation in New York State and pointed out that:

The New York State Legislature adopted legislation banning for-profit “budget planning” in 1956. The record from the legislative history includes this notation:

The Attorney General reports that debt consultants lure the financially distressed by false and deceptive advertising; that they charge excessive fees; and that they derive the bulk of their revenue from the poorly educated and the people in the lower income groups.<sup>6</sup>

The record goes on to include the following observation about debt adjusters: “[i]t appears these practices are too common and widespread in the area affected, that the only feasible way to control them is by prohibiting this type of business . . . .”<sup>7</sup>

While the legislative record does not expressly address the rationale for limiting budget planners to type B not-for-profit corporations, the context makes it clear. Type B not-for-profit corporations may be formed for a variety of purposes, including “charitable [and] educational,” which the Committees believe are most relevant to budget planners.<sup>8</sup> The other types of not-for-profit corporations can be formed for “non-pecuniary purposes” such as “political, social, [and]

---

<sup>3</sup> New York City Bar, *Profiteering from Financial Distress: An Examination of the Debt Settlement Industry*, May 2012, available at

<http://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf>.

<sup>4</sup> See, e.g., *id.* at 11-26 (providing an overview of the history of debt relief operators and the emergence of the modern debt settlement industry).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.* at 13 (citing N.Y. Gen. Bus. Law §§ 455-57 (2012) and New York Legislative Annual 451-52 (1955) (Governor’s Memoranda on Bills Approved, “budget planning prohibited”)).

<sup>8</sup> N.Y. Not-for-Profit Corp. Law § 201(b). Other permitted purposes for type B not-for-profit corporations include “religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.” *Id.*

fraternal”<sup>9</sup> for example, or for “any lawful business purposes to achieve a lawful public or quasi-public objective.”<sup>10</sup> Restricting budget planners to type B not-for-profit corporations makes it more likely that licensed budget planners will be organizations that genuinely engage in services that involve charitable and educational purposes and thus will be best situated to provide professional services to consumers.

In 2004, the New York State Banking Department,<sup>11</sup> which previously oversaw budget planners, issued a detailed Industry Letter regarding the oversight of budget planners and examinations by the Department.<sup>12</sup> The Industry Letter is instructive in the focus on educational activities, the fee structure for services, the disclosures required, among other features of the licensed activities.<sup>13</sup> The Industry Letter further states that “[i]t is imperative that the not-for-profit designation not be abused.”<sup>14</sup>

Limiting budget planners to type B not-for-profit corporations would best ensure that appropriate entities are providing meaningful, professional services for consumers – particularly the economically distressed consumers that seek such services – and would best protect the public from unscrupulous operators.

Respectfully submitted,

Thomas A. Cohn  
*Chair, Consumer Affairs Committee*

Dora Galacatos  
*Chair, Civil Court Committee*

May 2013

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> The Banking Department was abolished in 2011 when its functions and authority were transferred to the Department of Financial Services. N.Y.S. Dep’t of Fin. Servs. <http://www.dfs.ny.gov/about/history.htm> (last visited Apr. 20, 2013).

<sup>12</sup> New York State Division of Financial Services, Industry Letter: Examination of Budget Planner Activities and Fee Structure (June 4, 2014), available at [http://www.dfs.ny.gov/legal/industry\\_circular/banking/i1040604.htm](http://www.dfs.ny.gov/legal/industry_circular/banking/i1040604.htm) (last visited May 13, 2013).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*