

Credit Counseling Organizations - Questions and Answers about New Requirements

Updated November 1, 2011

The Pension Protection Act of 2006 adopted new Internal Revenue Code section 501(q), which establishes standards that a credit counseling organization must satisfy to qualify for exemption under Code section 501(c)(3) or 501(c)(4).

1. Does the new law apply to my organization?

The new law applies to you if a substantial purpose of your organization is either to educate the general public on budgeting, personal finance, financial literacy, saving and spending practices, or to conduct financial counseling -- and you want to be tax-exempt under section 501(c)(3) or 501(c)(4).

[Note: If you provide credit counseling that is only incidental to achieving other exempt purposes, you may not be subject to the new law. For example, if you are a school and offer a financial literacy course as part of your curriculum, the new law does not apply to you.]

2. What does the new law require for credit counseling organizations exempt under Code section 501(c)(3) or 501(c)(4)?

In addition to [current legal requirements](#), an organization must meet the following new rules:

- **Services** – Must provide credit counseling services tailored to the specific needs and circumstances of the consumer;
- **Loans** – Cannot make loans to debtors;
- **Credit Repair** – Can only provide incidental services to improve consumer credit records and credit history, and cannot charge a separate fee for such services;
- **Ability to Pay** – Cannot refuse services based on ability to pay or ineligibility/unwillingness of consumer to enroll in a debt management plan (“DMP”);
- **Fee Policy** – Must charge reasonable fees and provide waivers if consumer is unable to pay;
- **Board Composition** – Majority of members must represent broad interests of the public; maximum of 49 percent can be employed by organization or benefit from it;
- **Ownership** – Cannot own more than 35 percent of an entity that is involved in the credit counseling or similar business; and
- **Referrals** – Cannot pay for referrals or receive amounts for providing referrals for debt management plans

3. **Are there other requirements for section 501(c)(3) organizations?**

There are two additional requirements for a section 501(c)(3) organization:

- Contributions: Cannot solicit contributions from consumers during initial counseling process, or while consumer is receiving services from organization;
- Revenue from debt management plan ("DMP") services: The amount of revenue an organization may receive from its customers' creditors which is attributable to DMP services is limited:
 1. For new organizations, such revenue cannot exceed 50 percent of total revenues.
 2. For existing organizations, such revenue cannot exceed the following limits (for those taxpayers on a calendar year accounting period):
 - a. 80 percent -- effective January 1, 2008
 - b. 70 percent -- effective January 1, 2009
 - c. 60 percent -- effective January 1, 2010
 - d. 50 percent -- effective January 1, 2011

[Note: For taxpayers on a fiscal year accounting period, the transitional rules apply to the first taxable year beginning one year after August 17, 2006.]

4. **Am I required to comply with the new law even if I do not offer debt management plans (DMPs)?**

Yes. See [Applicability of New Law](#).

5. **Are there restrictions on who may serve on the governing board of a credit counseling organization?**

Yes. At least 51 percent of the board members must represent the broad interests of the public. This includes public officials, community leaders and persons having special knowledge or expertise in credit or financial education. No more than 49 percent of the board may be employees of the organization, creditors or those who will benefit financially in any other way.

[Note: For example, a three-member board will fail to meet the requirement if two members are employed by the organization.]

6. **Can we put our activities that don't meet the criteria of the new law into a wholly-owned taxable subsidiary?**

Credit Counseling Organizations - Questions and Answers about New Requirements

Updated November 1, 2011

No. You may not own more than 35 percent of a business that lends money; repairs credit or provides debt management plan (DMP) services, payment processing, or similar services.

[Note: Examples include a DMP processor, a debt-negotiation/debt-settlement service and a pay-day or short term loan initiator.]

7. May I buy lists of potential customers from the Internet site that carries my ads?

No. You cannot purchase leads of customers from third party vendors, and you cannot sell the names of your customers to other providers.

8. The statute says we cannot solicit contributions from consumers. How can we raise operating funds?

You cannot ask for voluntary contributions from consumers during the initial counseling process or while they are receiving services. You may, however, charge reasonable fees for education, individual counseling sessions or debt management plan services. You may also seek government or foundation grants and contributions from individuals who are not customers.

9. Does the statute limit how much we can receive from debt management plan (DMP) services?

You are [limited](#) in the amount that you receive from creditors participating in your program that is attributable to DMP services (for example, fair share payments). Amounts received from consumers for set-up and monthly fees are not included in this calculation, however.

10. When does the statute take effect?

The dates below apply to taxpayers on a calendar year accounting period:

For new organizations, the statute is effective January 1, 2007.

[Note: For taxpayers on a fiscal year accounting period, the new law applies to taxable years beginning after August 17, 2006.]

For existing organizations, the statute is effective January 1, 2008.

[Note: For taxpayers on a fiscal year accounting period, the new law applies to taxable years beginning one year after August 17, 2006.]

Credit Counseling Organizations - Questions and Answers about New Requirements

Updated November 1, 2011

11. **If I don't meet the requirements of the new law, is my income from debt management plans (DMPs) taxed?**

Yes, your DMP services will be treated as [unrelated trade or business](#).

***Note:** For example, if you are a school that is exempt under Code section 501(c)(3) and also offer an incidental amount of DMPs, the income from the DMPs will be taxed.*

12. **Where can I get more information about credit counseling organizations?**

Access the IRS website at www.irs.gov/eo (the *Charities and Other Nonprofits* page). Click on [More Topics](#) on the left side of the page, and then click on [EO Abusive Tax Avoidance Transactions](#). Then click through to [Credit Counseling Organizations](#).