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EOUST Releases Final Rules for Bankruptcy Counseling and Debtor Education

On Wednesday, March 13, 2013, the Executive Office for United States Trustees (“EOUST”) released its long-awaited final rules for pre-bankruptcy counseling and post-filing debtor education. The regulations update procedures and criteria United States Trustees (“USTs”) shall use when determining whether applicants seeking to become and remain approved as: (1) nonprofit budget and credit counseling agencies (“credit counseling agencies” or “agencies”) (the “**Pre-Bankruptcy Counseling Final Rule**”); and (2) providers of a personal financial management instructional course (“providers”) (the “**Post-Filing Debtor Education Final Rule**”) (collectively the “Final Rules”), satisfy the relevant bankruptcy code requirements. The Final Rules each take effect on April 15, 2013.

In many respects, the Final Rules adopt the provisions of proposed rules issued for comment in 2008, and each includes several virtually identical provisions. In addition, the EOUST announced it intends to add new provisions not previously included in the proposed rules. Because they were not discussed in the proposed rules, EOUST will publish another Notice of Proposed Rulemaking requesting comment on the proposed provisions.

The bulk of the Final Rules codify guidance and policies that the EOUST has been using in its approval and supervision process for several years. Also, the Final Rules modify the proposed rules by making them: (1) less burdensome on credit counseling agencies and providers, respectively; and (2) by providing technical or clarifying modifications. Each Final Rule is accompanied by a summary of the modifications, along with parenthetical references to the regulatory text, and commentary.

Approved agencies and debtor education providers, and their service providers, as well as applicants, should give careful consideration to these regulatory changes and thoroughly assess whether any of their ongoing activities, including those that may have previously been compliant, remain in compliance with the bankruptcy code in light of these new Final Rules.

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***Jonathan L. Pompan**, a partner in the Washington, DC office of Venable LLP, co-chairs the firm's Consumer Financial Protection Bureau Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, nonprofit organizations, and trade and professional associations, before the CFPB, the FTC, state Attorneys General, and regulatory agencies.*

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