Administrative Interpretation 7.108-1001
April 15, 2010

Via Electronic and US Mail

RE: South Carolina Consumer Credit Counseling Act: Informal Interpretation

Dear [Redacted]

You have requested an informal interpretation regarding the South Carolina Consumer Protection Code ("the Code"), S.C. Code Ann. § 37-1-101 et seq., more specifically, the South Carolina Consumer Credit Counseling Act ("the Act"), section 37-7-101 et seq. From the information you provided on January 18, 2010 and March 8, 2010, the following question has been posed and will be addressed herein:

Whether the Act permits [Redacted]'s unlicensed counselors to gather South Carolina consumer information, to include the consumer’s date of birth and financial account information, for input into a Budget Analysis.

Pursuant to the Act, “a person may not engage in credit counseling services in South Carolina, whether or not the person has any office, facility, agent, or other physical presence in South Carolina, unless the person obtains from the department a license issued pursuant to this chapter.” Section 37-7-102. ‘Credit counseling services’ includes, among other activities, “receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer’s creditors in full or partial payment of the consumer’s debts” or “negotiating or offering to negotiate to defer or reduce a consumer’s obligations with respect to credit extended by others.” See § 37-7-101(3)(a),(c). An organization providing or offering to provide credit counseling services for a fee compensation or gain, or in expectation thereof, is considered a ‘credit counseling organization’. See § 37-7-101(2). The Act requires the licensing of credit counseling organizations as well as its credit counselors. See sections 37-7-101(2),(4), 37-7-102. A credit counselor is defined as an employee or agent of a credit counseling organization engaging in credit counseling services. Section 37-7-101(4).

1 Further reference to the South Carolina Code of Laws will be by Code section only.
The Act delineates activities in which a credit counseling organization and its credit
counselors shall engage and those that the organization and counselor are prohibited from
engaging. Section 37-7-108 prohibits "a credit counseling organization, through its credit
counselors," from engaging in credit counseling services or debt management plans with South
Carolina consumers unless a budget analysis is completed. Emphasis added. Specifically the Act
states "A licensee may not accept an account unless a written and thorough budget analysis
indicates that the services are suitable for the debtor and that the debtor can reasonably meet the
requirements of the budget analysis." Emphasis added; Section 37-7-108(2). A "licensee" is
defined as a person licensed pursuant to the Act. Section 37-7-101(10).

Statutory provisions of the Code shall be liberally construed as well as applied to promote
the Title’s underlying purposes and policies. § 37-1-102(1); Davis v. NationsCredit Financial
Services Corporation et al., 326 S.C. 83, 86, 484 S.E.2d 471,472 (1997). The primary purpose of
the Code is to protect consumers, as evidenced within relief provisions contained therein. Camp
purpose was to bring regulation and supervision to the world of credit counseling in South
Carolina.” Lexington Law Firm v. SC Dep’t. of Consumer Affairs, 382 S.C. 580, 677 S.E.2d 591
(2009).

The language of section 37-7-108 requires a licensee to perform a budget analysis prior to
engaging in credit counseling services with a South Carolina consumer. As credit counseling
services may only be provided by a licensed credit counseling organization through its licensed
credit counselors, the budget analysis required to be completed by a credit counseling
organization prior to engaging in services must be performed and completed by its licensed
credit counselors.

Therefore, based upon the information that you provided to the Department, it is the
opinion of the Department that credit counselors employed by a licensed credit counseling
organization may not collect information required by sections 37-7-108(2)(a)-(m), to include
financial account information, unless and until the counselor satisfies the licensing requirements
of section 37-7-104(C)(1) whereby the Department has reviewed the counselor’s criminal
background check and made a determination as to the counselor’s general fitness and character,
resulting in the issuance of a license.

Pursuant to sections 37-6-104(4) and 37-6-506(3), reliance upon an administrative
interpretation provides protection from any penalties authorized by the Code if the administrative
interpretation is subsequently declared invalid by a court or is rescinded. Please do not hesitate
to contact me directly should you need any further information.

Best Regards,

Carri Grube Lybarker
Staff Attorney