



The State of South Carolina
Department of Consumer Affairs

3600 FOREST DRIVE
P.O. BOX 5757
COLUMBIA, S.C. 29250-5757

Brandolyn Thomas Pinkston
Administrator

Commissioners
Lonnie Randolph, Jr.
Chairman
Columbia
Mark Hammond
Secretary of State
Columbia
Barbara B. League
Greenville
Louis Mayrant, Jr.
Pineville
Tony Macomson
Cowpens
Wayne K. Sims
Columbia
C. Wayne Powell
Gaffney
David Campbell
Columbia
Carole C. Wells
Woodruff

Celebrating Over 30 Years of Public Service

WRITER'S DIRECT DIAL: (803) 734-4297
FAX: (803) 734-4287
E-MAIL: CLybarker@sccoconsumer.gov

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.

ADMINISTRATOR
803-734-4197
ACCOUNTING
803-734-4264
FAX: 803-734-4299

PUBLIC INFORMATION
803-734-4296
FAX: 803-734-4299

CONSUMER ADVOCACY
803-734-4200
FAX: 803-734-4287

ENFORCEMENT /
INVESTIGATORS
803-734-4236
FAX: 803-734-4287

CONSUMER COMPLAINTS
803-734-4200
FAX: 803-734-4286
Toll Free in SC: 800-922-1594
VOICE/TT: 800-735-2905

E-Mail: SCDCA@SCCONSUMER.GOV
Website: WWW.SCCONSUMER.GOV



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).

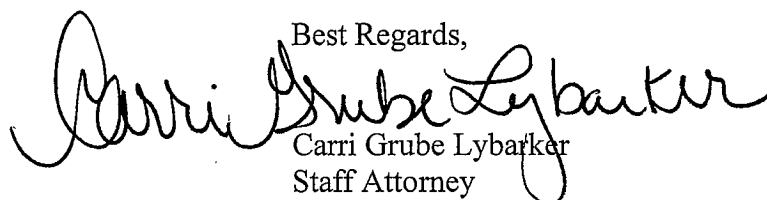
Statutory provisions of the Code shall be liberally construed as well as applied to promote the Title's underlying purposes and policies. § 37-1-102(1); Davis v. NationsCredit Financial Services Corporation et al., 326 S.C. 83, 86, 484 S.E.2d 471,472 (1997). The primary purpose of the Code is to protect consumers, as evidenced within relief provisions contained therein. Camp v. Springs Mortgage Corp., 310 S.C. 514,516, 426 S.E.2d 304,305 (1993). Further, "[t]he Act's 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