



The State of South Carolina
Department of Consumer Affairs

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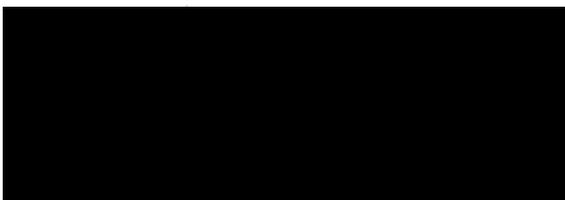
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Administrative Interpretation 7.108-1003

June 29, 2010

Via Electronic [REDACTED] and US Mail



RE: South Carolina Consumer Protection Code Informal Interpretation Request

Dear [REDACTED]

You have requested an informal interpretation regarding the South Carolina Consumer Protection Code ("the Code"), S.C. Code Ann. sections 37-1-101 *et seq.*¹ From the information you have provided, the following question has been posed and will be addressed herein:

Whether the Code permits an organization to take assignment of contracts for the provision of credit counseling services to South Carolina consumers and perform credit counseling services for such consumers prior to providing a consumer education program, performing a budget analysis or entering into a contract with the respective consumer when no fee is being charged to the consumer.

The Code regulates consumer credit counseling under Chapter 7, the South Carolina *Consumer Credit Counseling Act* ("the Act"). See sections 37-7-101 *et seq.* 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." '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 sections 37-7-101(3)(a),(c).

¹ Further reference to the South Carolina Code of Laws will be by Code section only.

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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 section 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.

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 credit education program is provided and a budget analysis completed. Emphasis added; Section 37-7-108(1), (2); See also section 37-7-113 (Requiring an individualized credit counseling and education session be performed.) The Act further 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). The Act also prohibits a credit counseling organization from providing credit counseling services which require a payment, fee or other consideration unless a written and dated contract meeting the requirements of sections 37-7-110(B) and (C) is executed by the consumer. Section 37-7-110(A).

The words of a statute must be given their plain meaning and consistently construed within the parameters of the statute's purpose and subject. Ga. Carolina Bail Bonds, Inc. v. City of Aiken and Goddard, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). 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 plain language of the Act indicates the Legislature's intent to require persons engaging in credit counseling services for a fee, compensation or gain, or in expectation thereof, to provide a consumer with a credit education program, budget analysis and written contract compliant with the Act prior to providing credit counseling services to the consumer. When assignment is involved in a contractual matter, South Carolina case law is clear that the assignee "stands in the shoes of the assignor". Twelfth RMA Partners, LP, v. Nat'l Safe Corp., et al., 335 S.C. 635, 639-640, 518 S.E.2d 44, 46 (1999) (Quoting Singletary v. Aetna Cas. & Sur. Co., 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct. App. 1994)). This requires that a separate analysis be utilized contingent upon whether the assignor is a licensed credit counseling organization or has failed to meet the Act's requirements.

A licensed credit counseling organization receiving South Carolina consumer contracts through assignment from a credit counseling organization that was licensed at the time of



entering into the contracts with South Carolina consumers, and maintained the required licenses while servicing such contracts, need not duplicate the efforts of the licensed assignor and must merely ensure that the education program, budget analysis and contract entered into were in compliance with the Act's requirements. If not, then such activities must be performed by the assignee prior to engaging in credit counseling services with consumers for a fee, compensation or gain, or expectation thereof.

If the licensed assignee, however, obtains the credit counseling service contracts from an organization which failed to obtain the required licenses per the Act, the assignee must provide a consumer with a credit education program, budget analysis and written contract compliant with the Act prior to providing credit counseling services to the consumer unless the organization is providing such services free of charge as the Act does not apply to a person who does not receive, nor expect to receive, fees, compensation or gain. If [REDACTED] and [REDACTED] do not charge a consumer a fee, as described in the information you provided, however, the Act may still apply. It is the opinion of the Department that "fee, compensation or gain" is not merely limited to monies received from or on the behalf of a consumer, but also those being received by the organization from other sources, such as fair share contributions and grant funding.

Therefore, as based upon the information provided by you, it is the Department's opinion that if [REDACTED] and [REDACTED] obtain contracts through assignment, if the parameters set forth above with regard to the license status of the assignor are not met, the organization may provide credit counseling services to the South Carolina consumers only if performed on a free of charge basis, meaning that no monies will be received or expected from any source for the provision of such services. Once the assignee organization has complied with the Act, however, fees, compensation or gain may be received.

When taking assignment, please also be mindful of other provisions of the Code governing assignments. Section 37-2-412, for example, requires that notice of the assignment be given to a consumer while section 37-2-404 states the parameters by which an assignee is subject to the same claims and defenses of the consumer against the assignor. *See also American Fed'l Bank, FSB v. White*, 296 S.C. 156, 370 S.E.2d 923 (Ct. App. 1988)

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