

**DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES**

FINAL AGENCY ACTION

APPLICATION OF
FOR APPROVAL AS A PROVIDER OF A
PERSONAL FINANCIAL MANAGEMENT INSTRUCTIONAL COURSE

NO.

REVIEW OF PARTIAL DENIAL OF APPLICATION

seeks review of the decision dated December 5, 2007, denying in part its application to provide personal financial management instructional courses to debtors in bankruptcy. Based on the record before me, I affirm the decision.

I. Course of this Proceeding

(“Provider”) was initially approved as a provider of a personal financial management instructional course for a six-month probationary period on February 24, 2006. On November 16, 2006, as required by 28 C.F.R. § 58.26(f), the Provider submitted a new application to be approved for a one-year period (“2006 Application”).^{1/} The Provider sought to offer instruction in all federal judicial districts.

By letter dated December 5, 2007, the Provider’s 2006 Application was approved for a one-year period effective on August 24, 2006, for all judicial districts, except the district of Oregon as to which it was denied (“Partial Denial Letter”).^{2/} On December 19, 2007, I received the Provider’s timely request for review under 28 C.F.R. § 58.27(d) and (g) of the decision to deny approval of the 2006 Application as to the district of Oregon (“Request for Review”).^{3/}

^{1/} The Provider’s 2006 Application should have been submitted prior to August 24, 2006, which was the conclusion of its initial six-month probationary period; however, the United States Trustees considered the 2006 Application to be timely filed in November. As a result, the Provider was allowed to continue as an approved debtor education provider while its 2006 Application was considered.

^{2/} The decision on the 2006 Application was initially communicated by letter dated November 26, 2007. However, because that letter failed to include the information required by 28 C.F.R. § 58.27(d), it was amended and superseded by the Partial Denial Letter on December 5, 2007. *See* Partial Denial Letter at ¶ 1.

^{3/} The Request for Review is dated December 18, 2007.

II. The Partial Denial Decision

The Partial Denial Letter approved the 2006 Application for all judicial districts, except the district of Oregon. The Partial Denial Letter explained that approval was denied for the district of Oregon because the Oregon Department of Consumer and Business Services, Division of Corporate Finance and Securities (“Oregon DCBS”), had advised the Provider that it was not in compliance with Oregon Administrative Rule 441-910-0095 (“Education Fee Rule”), which regulates the fees that “Debt Consolidating Agencies” may charge for education courses.^{4/} Because an approved provider of a personal financial management instructional course must comply with all applicable laws of the states in which it does business, *see* 28 C.F.R. § 58.25(d), and because the Oregon DCBS deemed the Provider not to be in compliance with its Education Fee Rule, the 2006 Application was denied as to the district of Oregon.

III. Request for Review

The Provider requests that I reverse the decision on the 2006 Application as to the district of Oregon,^{5/} contending that the Education Fee Rule does not apply to it because the Provider is not a “Debt Consolidating Agency,” as defined in Oregon Revised Statute (O.R.S.) § 697.612(1), since it does not “solicit or take any value from the debtor for the purpose of paying any creditor of the debtor.” Request for Review at pp. 1 and 2. The Provider also contends that the Education Fee Rule conflicts or may conflict with federal regulations with regard to the Provider’s fees and course content. Request for Review at p. 4. Thus, the Provider argues that, notwithstanding the determination by the Oregon DCBS, because the Education Fee Rule does not apply to it, the Provider is in compliance with all applicable laws.^{6/}

^{4/} The Education Fee Rule generally provides that a Debt Consolidating Agency must obtain approval for fees it charges to consumers for education classes and for substantive changes in the class materials.

^{5/} The Provider has also submitted a third application dated December 7, 2007 (“2007 Application”), for approval for an additional one-year period beginning August 24, 2007, for all judicial districts, including Oregon. Although the 2007 Application remains pending, the Provider’s Request for Review asks that I also review the decision yet to be made on it. I deny such request because no decision has been made on the 2007 Application, and review would be premature.

^{6/} The Provider also contends that it is not a “Credit Services Organization,” as such term is defined in O.R.S. § 646.382 and, thus, Oregon laws regulating those types of entities do not apply to it either. Although the Provider was asked to submit evidence during the review of the 2006 Application regarding its compliance with those particular laws, any lack of compliance with them was not a basis for the denial of the 2006 Application as to the district of Oregon; therefore, I do not address this argument. *See* Partial Denial Letter.

IV. Standard of Review

In conducting this review, I must consider the following two factors:

1. Does the denial as to the district of Oregon constitute an appropriate exercise of discretion?
2. Is the denial as to the district of Oregon supported by the record?

28 C.F.R. § 58.27(i).

V. Analysis

A. Duties of the United States Trustee

Under 11 U.S.C. § 111(b), United States Trustees approve instructional courses concerning personal financial management that individual chapters 7, 11, and 13 debtors must take in order to obtain a bankruptcy discharge. 11 U.S.C. §§ 727(a)(11), 1141(d)(3), and 1328(g). Courses approved by the United States Trustees are included on a list maintained and made publicly available by the clerks of the United States Bankruptcy Courts. *See* 11 U.S.C. § 111(a)(2).

The criteria for approval of a personal financial management instructional course are set forth in 11 U.S.C. § 111(d) and 28 C.F.R. § 58.25. Among the criteria are the requirements that, at a minimum:

- the course is provided by trained personnel, *see* 11 U.S.C. § 111(d)(1)(A), 28 C.F.R. § 58.25(e);
- the learning materials and teaching methodologies are designed to assist debtors in understanding personal financial management and include information on specified topics, *see* 11 U.S.C. § 111(d)(1)(B), 28 C.F.R. § 58.25(f);
- the provider offers the course at adequate and conveniently located facilities, or if the course is offered by telephone or the internet, that offering it in such manners is effective, *see* 11 U.S.C. § 111(d)(1)(C), 28 C.F.R. § 58.25(h);
- the provider creates records sufficient to evaluate the effectiveness of the course, *see* 11 U.S.C. § 111(d)(1)(D), 28 C.F.R. § 58.25(i);
- any fee for the course is reasonable, and the course is offered even to those who cannot pay the fee, *see* 11 U.S.C. § 111(d)(1)(E), 28 C.F.R. § 58.25(j);

- the course is demonstrably effective in assisting debtors to increase their understanding of personal financial management, *see* 11 U.S.C. § 111(d)(2)(A) and (B); and
- the provider is in compliance with other applicable laws, *see* 28 C.F.R. § 58.25(d).

B. Basis for Partial Denial

During the evaluation of the 2006 Application, the Provider was asked to submit evidence either that it was in compliance with the State of Oregon's applicable statutes, or that it was exempt from compliance. In response, the Provider submitted four letters between it and the Oregon DCBS. In an April 14, 2006, letter from the Oregon DCBS, the Provider was informed that it was not in compliance with the Education Fee Rule and the Provider was directed to cease all education classes. Further, in a July 17, 2006, letter, the Oregon DCBS confirmed that the Provider must be registered with the State either as a Debt Consolidating Agency under the Education Fee Rule or, in the alternative, under the regulations governing "Credit Services Organizations."

The Provider failed to provide evidence in support of its 2006 Application either that it was in compliance with the Education Fee Rule or otherwise registered as a Credit Services Organization. Because 28 C.F.R. § 58.25(d) requires a provider of a personal financial management instructional course to comply with all applicable laws of the states in which it does business, and because the Oregon DCBS deemed the Provider not to be in compliance with the Education Fee Rule, the 2006 Application was denied as to the district of Oregon.

The April 14, 2006, letter from the Oregon DCBS to the Provider specifically finds that the Provider must comply with Oregon's Education Fee Rule, and directs the Provider to cease its instructional course until it complies with that law. I have no authority to reverse the Oregon DCBS's decision or to enjoin its enforcement.^{2/}

Because the Oregon DCBS has determined that the Education Fee Rule applies to the Provider, and the Provider is not in compliance with the Education Fee Rule, the Provider is not authorized to conduct this business in Oregon. Since the Provider is prohibited by Oregon law from providing instruction in Oregon, it cannot provide the services required by 11 U.S.C. § 111 in the district of Oregon.

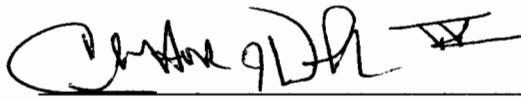
^{2/} Correspondence submitted by the Provider in support of its 2006 Application includes letters from the Provider to Oregon DCBS dated May 10, 2006, and August 30, 2006, disagreeing with the decision of the Oregon DCBS that the Provider has failed to comply with the Education Fee Rule. However, the Provider has not submitted any information to indicate that Oregon DCBS has changed its position or that its decision has been reversed administratively or judicially in accordance with Oregon's Administrative Procedures Act, O.R.S. § 183.310 *et seq.*, or other applicable state law.

V. CONCLUSION

Based upon my review of the record, I affirm the denial of the 2006 Application as to the district of Oregon for failure of the Provider to comply with applicable state law, in accordance with the requirements of 28 C.F.R. § 58.25(d). For the reasons set forth herein, the denial of the 2006 Application as to the district of Oregon is supported by the record and is an appropriate exercise of discretion.

The foregoing conclusions and decisions constitute final agency action in this matter.

Dated: May 9, 2008

A handwritten signature in black ink, appearing to read "Clifford J. White III", written over a horizontal line.

Clifford J. White III
Director
Executive Office for United States Trustees