

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

FINAL AGENCY ACTION

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

[REDACTED]

REVIEW OF DECISION TO DENY APPROVED STATUS

[REDACTED] (the "Applicant") seeks review of the November 7, 2006, decision denying her application for approval as a provider of a personal financial management instructional course.

I. Course of this Proceeding

By application dated September 1, 2006, the Applicant applied for approval as a provider of a personal financial management instructional course. After review of the application,¹ an initial determination was made that the Applicant did not satisfy the applicable standards for approval set forth in 28 C.F.R. § 58.25, the Interim Final Rule governing approval for providers of a personal financial management instructional course.² Appendix D of the application listed two instructors: [REDACTED], who filed the application as sole proprietor/owner on behalf of the Applicant; and [REDACTED] husband, [REDACTED]. Neither instructor has any of the certifications/accreditations listed in 28 C.F.R. § 58.25(e). Appendix D of the application does, however, list as an "other" certification that [REDACTED] are "certified endorsed local counselors for [REDACTED]"

A. The Denial Decision

By letter dated November 7, 2006, the Applicant was notified of the decision to deny the application and was provided with an explanation for the denial. Specifically, the denial letter stated that the Applicant had not met the standards for instructors in 28 C.F.R. § 58.25 because none of the instructors demonstrated either the listed certifications/accreditations or equivalent training or experience. The denial letter further noted that the "other" certification received through [REDACTED] "does not satisfy the minimum requirements for teacher qualifications [because] [REDACTED] certification is not certification by an independent organization."

By letter dated November 16, 2006, the Applicant stated that the denial was "appropriate" and "the only justifiable action under the circumstances" since the application failed to list [REDACTED] who would be the "primary teacher." The Applicant asked whether she could

¹ The application was given agency number 10597.

² The Interim Final Rule was published in the Federal Register. 71 Fed. Reg. 38076 (July 5, 2006).

correct the mistakes and amend the application to reflect "the actual situation surrounding our role as a Provider" or whether it should "withdraw our deficient application and submit one that correctly sets forth the parties and their relationships."

By letter dated November 20, 2006, the Applicant was informed that advice could not be given "as to the course of action that should be pursued." The Applicant was told that she was not prohibited from filing a new application, which would be given due consideration based on the information provided in that application.

B. The Request for Review

By letter dated November 21, 2006, which was received on November 28, 2006, the Applicant requested review of the denial of the application. The Applicant included information regarding instructors that had not been a part of the original application. An amended Appendix D was provided which lists [redacted] as an instructor. The Applicant claims that [redacted] is the "actual" instructor who would teach through a prerecorded DVD, while each of [redacted] would serve as a "live facilitator-teacher" for the video classes.

The Applicant also included new information regarding [redacted] certification/training, which states that since 2002 she has spent approximately 250 hours working with 41 counseling clients³; has led [redacted] classes, guiding 320 students through 12 classes; and has spoken at colleges, high schools, and to community groups. According to [redacted] all of the Applicant's work is based on [redacted] "Baby Steps to Financial Peace."⁵

II. Standard of Review

In conducting this review, the Director must consider two factors, as contained in 28 C.F.R. § 58.27(I):

1. Is the denial decision supported by the record?
2. Does the denial decision constitute an appropriate exercise of discretion?

³ The amended Appendix D states that [redacted] has accumulated approximately 250 hours working with 41 counseling clients, but the review request letter claims that [redacted] had accumulated approximately 330 hours with 41 counseling clients. The Applicant receives counseling referrals from the [redacted], which is [redacted] corporate entity, and [redacted] are listed as the [redacted]'s endorsed local financial counselors for New York. See October 12, 2006, email from [redacted] to Doreen Solomon.

⁴ [redacted] is another [redacted] product.

⁵ See October 12, 2006, email from [redacted] to Doreen Solomon.

In this particular case, the review to determine whether the denial decision was proper will examine all information that has been supplied by the Applicant, including the information which was supplied after the initial denial.

III. Analysis

A. Duties of the United States Trustee

Under 11 U.S.C. § 111(a)(2), United States Trustees are required to approve financial management instructional courses for inclusion on a list maintained and made publicly available by the clerks of the United States Bankruptcy Courts. To be granted a discharge, individual chapter 7 and chapter 13 debtors are required to complete an instructional course in personal financial management. 11 U.S.C. §§ 727(a)(11), 1328(g)(1).⁶

Section 111(b) of the Bankruptcy Code provides in relevant part:

(b) The United States trustee . . . shall only approve . . . an instructional course concerning personal financial management as follows:

(1) The United States trustee . . . shall have thoroughly reviewed the qualifications of . . . the provider of the instructional course under the standards set forth in this section, and the . . . instructional courses that will be offered . . ., and may require . . . such provider that has sought approval to provide information with respect to such review.

(2) The United States trustee . . . shall have determined that . . . such instructional course fully satisfies the applicable standards set forth in this section.

11 U.S.C. § 111(b).

Section 111(d) of the Bankruptcy Code sets forth the standards for approval of instructional courses concerning personal financial management:

(d) The United States trustee . . . shall only approve an instructional course concerning personal financial management –

⁶ Subject to certain deadlines, the debtor must file with the court a statement regarding completion of the requirement. Interim Bankr. R. 1007(b)(7), (c), and 4004(c)(1)(H); Official Form 23.

(1) for an initial probationary period under subsection (b)(3)⁷ if the course will provide at a minimum –

(A) trained personnel with adequate experience and training in providing effective instruction and services;

(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective;

(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course . . . ; and

(E) if a fee is charged for the instructional course, charge a reasonable fee, and provide services without regard to ability to pay the fee.

11 U.S.C. § 111(d).

To be included on “the list of approved providers” of personal financial management instructional courses under 11 U.S.C. § 111, 28 C.F.R. § 58.25(b) requires that a provider “shall meet” qualifications including the following:

(e) Standards for teachers. A provider shall employ trained personnel with adequate experience and training in providing effective instruction and services, which means the provider shall employ, at a minimum, an individual who holds at least one of the following current certifications and/or accreditations, or who has equivalent training or experience, to supervise instructors:

(1) A state teacher's certificate in any subject;

(2) Certification as a Certified Financial Planner (CFP);

⁷ An instructional course is first approved for a probationary period not to exceed six months, after which it may be approved for one-year periods. 11 U.S.C. § 111 (b)(3), (4).

- (3) Certification or accreditation as a credit counselor or a financial counselor by a recognized independent organization;
- (4) Certification by the American Association of Family and Consumer Sciences;
- (5) Registered as a Registered Financial Consultant (RFC); or
- (6) Certified as a Certified Public Accountant (CPA).

28 C.F.R. § 58.25(b), (e).

B. Failure of Applicant to Meet the Standards for Instructors

The Applicant contends that because [redacted] is an instructor⁸ his qualifications allow the Applicant to meet the standards for a provider's instructors as set out in 28 C.F.R. § 58.25. Even if [redacted] is treated as an instructor, despite the fact that he has no interaction with the Applicant's students, there is no evidence that he is employed to supervise the Applicant's instructors. Supervision of instructors by a certified/accredited instructor is required by 28 C.F.R. § 58.25(e).

Aside from [redacted], the Applicant alternately contends that [redacted] possesses training or experience equivalent to the certifications/accreditations listed in 28 C.F.R. § 58.25(e). This contention is without merit. First, [redacted]'s training is not equivalent. Although [redacted] is a certified counselor through the [redacted] course, this certification followed less than one week of training and is not tantamount to certification by an independent organization. [redacted]'s training is preparation for teaching the [redacted] course, not for teaching general personal financial management. Moreover, no continuing education is required for [redacted] to maintain certification. Second, [redacted]'s experience is not equivalent. All of [redacted]'s work is based on the [redacted] materials, and her classroom experience is limited to leading students through those materials. Her counseling experience with clients totals only 250 hours since 2002. Although [redacted] course materials have been approved for use in a personal financial management instructional course, [redacted] has not demonstrated the breadth of training or experience that would be equivalent to the certifications/accreditations listed in 28 C.F.R. § 58.25(e).

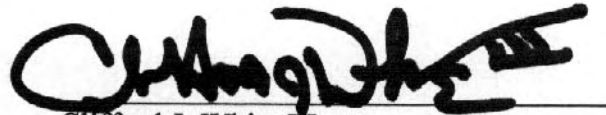
⁸ Although the Applicant claims that [redacted] is the actual instructor, [redacted] letter dated November 21, 2006, inconsistently states that [redacted]-trained counselors – including both [redacted] instructors – “operate independently” of [redacted], the [redacted], [redacted], and other related entities.

IV. Conclusion

Based upon my review of the record, I affirm the decision to deny the application of the Applicant for approval as a provider of a personal financial management instructional course. It was properly concluded that the Applicant failed to meet the standards of 28 C.F.R. § 58.25. The denial decision 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: January 17, 2007

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