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Tune Up Your Credit Counseling Agency's Compliance System

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Credit counseling agencies operate in a dynamic environment influenced by challenges to profitability and survival, increased focus on outcomes to consumers, industry consolidation, advancing technology, and changes in laws and regulations. To help keep your credit counseling agency running at peak performance consider a compliance tune up. Here are a few tips and suggestions, based on recent experiences, to help keep your counseling agency on the right side of legal and regulatory requirements:

. **Review Compliance Management System:** In order to maintain legal compliance, many credit counseling agencies develop and maintain compliance management systems that are integrated into the overall framework of the organization. These programs are designed to address all facets of the operation, including in the design of new and updated services, delivery, and administration – that is, the entire service lifecycle.

  By way of example, according to the Consumer Financial Protection Bureau ("CFPB") Examinations Manual, "an effective compliance management system commonly has four interdependent control components:

  • Board and management oversight;
  • Compliance program;
  • Response to consumer complaints; and
  • Compliance audit."

  Organizations that are often able to avoid most challenges make compliance part of the day-to-day responsibilities of management and their employees. They are able to self-identify issues (sometimes with the help of outside service providers) and take corrective action when necessary.

. **Policies and Procedures Matter:** When a government regulator (e.g., the CFPB, Federal Trade Commission ("FTC"), state banking agency, etc.) comes knocking, the review will often go more smoothly if one can demonstrate that the agency has established policies and procedures that cover all relevant legal and regulatory topics. To this end, you should put your policies in writing, and then implement procedures to ensure that the policy is followed. Also, consider ways to get your Board of Directors and senior management involved so that they have oversight and are able to monitor. And, consider whether you have enough resources to get the job done. In the absence of policies and procedures, it can be difficult to document or put into context compliant behavior.

  For example, with regard to privacy issues, what this means is having a written internal policy document and related procedures, as well as a written disclosure statement that is provided to consumers when they provide personal financial information. Some common questions to consider include whether the policies and procedures cover applicable activities, record retention/description, and use of computer and consumer databases.

. **Actions Speak Louder than Words:** While policies and procedures are important, in the final analysis, it will be more important to show that the credit counseling agency and its staff is actually complying with applicable legal and regulatory requirements. A review of company practices can include: random samples from employees and from the consumer perspective; review of training programs to confirm they are current and consistent with policies and procedures (and the law); and updating monitoring and disciplinary protocols. And, consider how consumer complaints and feedback may help inform whether changes are needed to everyday routines.

. **Public Service Announcements, Advertising, and Marketing:** Television, radio, online content (including social media), and telephone calls can qualify as advertising under the law, meaning they need to comply with state and federal laws governing advertising. Require that any statements be truthful, not misleading, and substantiated. Develop a social media policy and be mindful with how you use consumer information and with whom you'll share it.

- **Service Providers:** Federal and state regulators are increasingly sounding the alarm that they will hold principals responsible for the actions of their service providers. Indeed, the CFPB recently published an entire bulletin on the topic. In order to help avoid a problem with a service provider, credit counseling agencies should review policies and procedures designed to ensure that the entity's third-party service providers comply with legal obligations applicable to the product or service of the organization and provider. If the service provider doesn't appear to be compliant or want to answer important questions then consider your options, including discontinuing the use of the provider.
- **Don't Forget the Internal Revenue Code:** Any credit counseling agency that is recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("Code") and wants to remain tax-exempt cannot ignore the requirements of the Code. Beginning in 2004, the Internal Revenue Service ("IRS") began scrutinizing tax-exempt credit counseling agencies in a manner and scope it never had previously. Since then, the IRS has initiated and completed around 254 audits of credit counseling agencies. While the credit counseling compliance project is nearly complete and many organizations survived the process with their tax-exempt status intact, the IRS is now poised to focus on the activities of housing counseling agencies and can always re-examine credit counseling agencies. Section 501(q) of the Code establishes additional standards that a credit counseling organization must satisfy to qualify for exemption under section 501(c)(3) or 501(c)(4). On top of that, the IRS has issued some guidance over the years, including its "Core Analysis Tool."

No compliance tune up can preclude all liability that may arise for an organization. Staying current on the legal and regulatory requirements applicable to your agency is crucial.

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