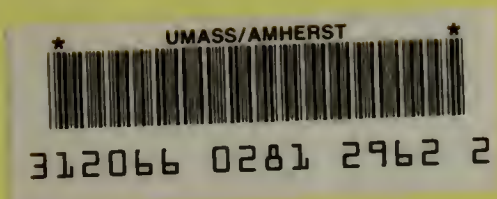


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LOSING CREDIBILITY

Troubling Trends in the Consumer Credit Counseling Industry in Massachusetts

**A Report of the
Senate Committee on Post Audit and Oversight
July 2002**

Massachusetts Senate

The Honorable Thomas F. Birmingham
Senate President

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“Born of people’s misfortunes, credit counseling was a sleepy cottage industry for a long time. Now, larger and troubled, it may be more in need than its clients of being set back on the straight and narrow.”¹

¹ Schmitt, Christopher, Heather Timmons and John Cady. “Consumer Credit: A Debt Trap for the Unwary.” Business Week. 29 Oct. 2001: 82.

Senate Committee on Post Audit and Oversight

Senator Cheryl A. Jacques, Chair

The Senate Committee on Post Audit and Oversight works to ensure that state government is accountable to the citizens of the Commonwealth. The Committee's charge is to monitor compliance with state laws, to act as a watchdog to protect taxpayers from waste and fraud, to evaluate the efficiency and effectiveness of state agencies and programs, and to recommend corrective actions through legislation, regulation or administrative initiatives.

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Many thanks to those who shared their stories including Kathy Pennellatore, Dolores C. Porziella, Farrah Faverey, and Heather McMullen.

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Executive Summary

As the level of consumer debt has exploded in the United States, tens of millions of consumers have become overwhelmed by credit card, automobile, household, and other consumer debt. Each year millions of these debtors turn to credit counseling agencies to help them manage their debts. In response to the rising debt and greatly increased number of consumer bankruptcy filings, legislators in the U.S. Congress filed a bankruptcy reform bill that will require consumers to visit a credit counselor before being allowed to file for bankruptcy.

As a result of the climbing debts and pending legislation, there has been a rapid increase in the number of credit counseling agencies operating in the United States. Credit counseling is generally defined as the provision of budget planning and debt management services for consumers. While some consumer credit counseling agencies are legitimate operations that provide a valuable service, many newer firms have earned a reputation for substandard work, questionable business practices and illegal operations.

AMERICANS AWASH IN DEBT

With credit cards easy to obtain and society's constant encouragement to buy and spend, many Americans find themselves overwhelmed by their debts. National statistics illustrate these debt trends:

- In April 2002, the Federal Reserve reported that there is approximately \$979 billion in outstanding consumer credit debt owed by American consumers.
- More than 1.4 million families in the United States filed for bankruptcy in 2001, an all-time record.
- The number of credit counseling agencies has quadrupled in 10 years; there are now more than 800 credit counseling agencies doing business in the United States.

Reputable credit counseling agencies strive to help people gain control of their finances, provide individual counseling, lead educational workshops and set high training standards for their employees. Well-regarded organizations such as Consumer Credit Counseling Services of Southern New England, a non-profit organization that has served consumers for more than 30 years, are being swamped by new agencies that fail to provide meaningful counseling and use high-pressure marketing tactics and advertising to lure consumers.

Abuses have been widespread in this industry. Consumers in Massachusetts have been victimized by many of these firms.

- Kathy Pennellatore of Weymouth found that her family's credit was ruined after she signed a contract with Consumer Business and Debt Counseling Services, a credit counseling agency that failed to set up agreements with her creditors. She lost more than \$1,000 and gained a tarnished credit record.
- Dolores C. Porziella of Hyde Park opened an account with Consolidated Credit Counseling Service and was immediately charged an unexpected and undisclosed fee for "optional services;" she was also frustrated by this agency's extraordinarily poor customer service.

- Farrah Faverey, formerly of South Boston, found that her credit counseling agency, Gibson Trust, never told her it was unable to negotiate an agreement with all of her creditors even though she had been making payments, eventually leading one creditor to garnish her wages. Farrah lost approximately \$1,000 during this fiasco.

In addition to the short-term impacts of financial loss and the time spent dealing with the hassles of shoddy service, a tarnished record of missed payments will show up on a consumer's record for seven years. This can affect a consumer's access to a variety of lenders for future financial needs such as personal or homeowner loans. Furthermore, a less favorable credit record will affect the amount of the loan offered as well as its interest rate.

Bureau research discovered that more than three-quarters of the credit counseling agencies operating in Massachusetts are operating illegally. Massachusetts law currently states that credit counseling may only be provided by attorneys and nonprofits organized under M.G.L. Ch. 180, §4A, which requires credit counseling organizations to be incorporated as nonprofits in the Commonwealth. However, the law is widely ignored, and, in fact, the vast majority of agencies operating illegally in Massachusetts reach out to consumers through telemarketing, the Internet, and the yellow pages.

Even if a credit counseling agency is registered in Massachusetts, there is no guarantee that it is operating with appropriately high standards because these firms are essentially unregulated.

WHEELING AND SELF-DEALING

Cambridge Credit Counseling Corp., based in Agawam, Massachusetts, is one example of a credit counseling agency that requires consumers to pay questionably high fees to participate in their debt management program. Cambridge Credit Counseling charges consumers a one-time mandatory fee equal to their monthly payment on their debts, (which can be hundreds of dollars) and then a monthly maintenance fee equal to 10% of the debtor's monthly payment. These consumer fees are in addition to fees collected from creditors. Other nonprofit agencies charge consumers much lower fees and frequently offer sliding scale fees to accommodate low-income consumers.

In addition, this agency's management and structure have received national press scrutiny. The personal history of the director of the agency, Richard Puccio, casts a shadow on the agency's operations. In the early 1990s, Richard Puccio was named in a Securities and Exchange Commission civil complaint for financially scamming customers through the use of hard sell tactics. He was barred from the securities industry for five years. Now, as the director of Cambridge Credit Counseling, he has intertwined his non-profit venture with a for-profit debt-referral company owned by his brother. Their intimate working relationship has raised red flags for consumer advocates who see an improper connection between the two companies. In addition to this alliance, consumer advocates raise the point that the high salaries that the Puccio brothers receive, \$312,000 each in FY2000, is a sum considerably higher than the average nonprofit director's salary.

Other States

Other states have been more proactive in addressing flagrant abuses of consumers by bad credit counseling agencies. Through legislation, regulation and enforcement, other states have worked to prevent disreputable credit counseling agencies from operating and advertising in their states.

THE MAINE LESSON

Maine recently passed a strong law aimed at eliminating scams and preventing unscrupulous agencies from taking advantage of Maine consumers. Their new law includes:

- The applicant agency must post a \$500,000 bond.
- The applicant agency must list on its application contact information for those individuals who will handle complaints and compliance examinations.
- The regulations allow the Maine Office of Consumer Credit Regulation to thoroughly review the applicant and make a determination on whether the agency operates in a manner that will ultimately benefit Maine consumers.
- The Office of Consumer Credit Regulation has the power to examine a consumer credit counseling agency's books and records.
- The state has also emphasized consumer education, often through media outlets, which state officials find is an effective way to get the word out about disreputable agencies.

Currently Maine officials are in the middle of an enforcement campaign. They have contacted approximately 25 agencies and have discovered that a number of the agencies operating in the state are for-profit or "fly-by-night" and do not qualify for registration under Maine law.

Findings:

- Aggressive credit counseling firms, usually operating illegally, are pitching debt reduction plans to Massachusetts' consumers.
- Many of these credit counseling firms are seriously harming consumers by charging high initial costs, failing to make payments to creditors as promised, tarnishing credit records, and engaging in questionable business practices. Consumers not only lose money on these plans, but can also suffer from a poor credit record that affects their financial future.
- Massachusetts' consumer credit counseling law is antiquated and no longer reflects the reality of today's consumer credit counseling industry. Other states have taken the lead in protecting consumers by regulating the operation of consumer credit counseling agencies.
- On June 3, 2002, the Massachusetts Office of the Attorney General announced a crackdown on credit counseling agencies that are abusing consumers.

Recommendations:

- Massachusetts should pass a comprehensive law to regulate consumer credit counseling agencies. Such a law should contain provisions that protect consumers, such as:
 1. **Credit counseling agencies should be required to register with the Division of Banks and Loan Agencies (Division of Banks).** These applications should include basic background information on the agency's principal officers, telephone numbers for compliance questions and consumer complaints, and a demonstration of a consumer education and services component. The agencies should also be responsible for filing critical IRS documents with their application to prove their nonprofit status.
 2. **The Division of Banks should have the authority to determine if it is in consumers' interest for the agency to operate in Massachusetts.** The Division should reserve the right to examine an agency's books and records. In addition, the Division of Banks should have the right to refuse an application for erroneous or incomplete information.
 3. **The Division of Banks should be authorized to set a fee cap for the services rendered by credit counseling agencies.** For example, Michigan includes a fee cap in its regulations governing the credit counseling industry. The state allows a credit counseling agency to charge a fee of up to 15% of the amount of the consumer's debt, as well as a \$25 initial counseling session fee. The up to 15% fee has to be returned to the consumer if 51% of the consumer's creditors did not agree to enter into the consumer's debt management plan.
 4. **Applicant consumer credit counseling agencies should be required to provide clearly written consent and full disclosure forms for their clients outlining all of the costs associated with their programs and the methods by which they handle their clients' accounts.** These statements should indicate how much a consumer would pay with an agency's debt management plan, including any start-up and handling fees. In addition, consumers should receive regular updates on their accounts and should be aware of how they can cancel the plan if they desire.
 5. **All consumer credit counseling agencies should be required to carry liability insurance or to post a bond prior to being registered to handle consumer or state penalties.** This will ensure that money will be available to compensate consumers who file claims against an agency and to cover any financial penalties that the state may impose for violating regulations.
 6. **If an unregistered agency is operating in the state, or a registered one is generating numerous consumer complaints, the Division of Banks should be empowered to take enforcement action against these companies by issuing cease and desist letters, requiring the forfeiture of the bond, imposing civil fines for operating illegally or violating regulations, or revoking the agency's registration.**
- The Massachusetts Office of the Attorney General must continue to actively pursue credit counseling agencies that are defrauding consumers.

Background

As the level of consumer debt has exploded in the United States, tens of millions of consumers have become overwhelmed by credit card, automobile, household, and other consumer debt. Each year millions of these debtors turn to credit counseling agencies to help them manage their debts.¹ In response to the rising debt and greatly increased number of consumer bankruptcy filings, legislators in the U.S. Congress filed a bankruptcy reform bill that will require consumers to visit a credit counselor before being allowed to file for bankruptcy.²

As a result of the climbing debts and pending legislation, there has been a rapid increase in the number of credit counseling agencies operating in the United States. Credit counseling is generally defined as the provision of budget planning and debt management services for consumers. While some consumer credit counseling agencies are legitimate operations that provide a valuable service, many newer firms have earned a reputation for substandard work, questionable business practices and illegal operations.

Although credit card debt is not the only type of debt handled by credit counseling agencies, it is a major factor in the growth of consumer overspending and increasing levels of personal debt. Over the past two decades, the number of credit cards issued by banks and nonbanks (from retailers to universities) has exploded along with the type of payments that can now be made with credit cards.³ The first credit card company, Diners Club, appeared in 1950, and by 1958 Visa became the first bank credit card that was available to consumers.⁴ "In 1965, only 5 million cards were in circulation; by 1996, U.S. consumers had nearly 1.4 billion cards."⁵ This mounting use of credit has had a major impact on the U.S. economy and has also led to concerns about the ever-increasing levels of personal debt.

AMERICANS AWASH IN DEBT

With credit cards easy to obtain and society's constant encouragement to buy and spend, many Americans find themselves overwhelmed by their debts. National statistics illustrate these debt trends:

- As of April 2002, the Federal Reserve reported that there is approximately \$979 billion in outstanding consumer credit debt by American consumers.⁶
- More than 1.4 million families in the United States filed for bankruptcy in 2001, an all-time record.⁷
- The number of credit counseling agencies has quadrupled in 10 years; there are now more than 800 credit counseling agencies doing business in the United States.⁸

¹ Schmitt, Christopher, Heather Timmons and John Cady. "Consumer Credit: A Debt Trap for the Unwary." *Business Week* 29 Oct. 2001: 82.

² H.R. 333, 107th Cong. (2001). S. 420, 107th Cong. (2001).

³ See <www.historychannel.com/perl/print_book.pl?ID=53847> (Visited 22 Mar. 2002)

⁴ See http://www.dinersclubnorthamerica.com/US/en/diners_club.jhtml?pageId=us_01_02_02 (Visited 11 Jun. 2002); See <<http://corporate.visa.com/av/main.shtml>> (Visited 11 Jun 2002).

⁵ See <www.infoplease.com/ce6/bus/A0813973.html> (Visited 23 Mar. 2002) Infoplease.com is an online almanac and educational resource.

⁶ See <http://www.federalreserve.gov/Releases/g19/hist/cc_hist_mt.html> (Visited 13 Jun. 2002).

⁷ See <<http://www.abiworld.org/stats/1980annual.html>> (Visited 5 May 2002).

⁸ Waggoner, Darren. "Credit Cards: Credit Counseling Agencies Are Struggling in a New Era of Lower Fees and Increased Competition. Will Banks Bail Them Out?" *Collections & Credit Risk* Feb. 2002: 16.

The earliest credit counseling agencies came into existence in the 1950s. Founded in 1951, the National Foundation for Credit Counseling (NFCC) is the oldest association in the United States dedicated to assisting people through financial and credit difficulties.⁹ Local offices affiliated with NFCC were established across the country to serve consumers. Currently, NFCC has approximately 150 member agencies nationwide; many share the name of Consumer Credit Counseling Services.¹⁰

In 1972 local Consumer Credit Counseling Services offices sprung up in Connecticut and Massachusetts, and then in Rhode Island approximately 20 years later.¹¹ These three states merged their offices in 1999 to form Consumer Credit Counseling Services of Southern New England (CCCS/SNE).¹² Every four years, CCCS/SNE undergoes an accreditation review by the Council on Accreditation for Children and Families, which conducts a detailed and stringent assessment of CCCS/SNE's practices and standards that includes site visits and six to eight months of paperwork preparation.¹³

ESTABLISHED AND RESPECTED

Consumer Credit Counseling Services of Southern New England (CCCS/SNE) offices have been serving New England consumers for three decades. Its mission "is helping people gain control over their finances."¹⁴ With 20 satellite locations in Massachusetts in addition to their main office in Boston, CCCS/SNE is accessible to many people in all corners of the Commonwealth.¹⁵ Besides individual counseling sessions, the agency also provides educational workshops to the general community and upon request to companies and other organizations.¹⁶ Mel Stiller, CEO of CCCS/SNE, estimates that 300 workshops were conducted in Massachusetts in 2000, and approximately 7000 people attended.¹⁷

CCCS/SNE has high standards for its credit counselors and requires its counselors to complete a six-step module program to learn about counseling and specific debt-related situations.¹⁸ Any costs associated with the training are paid by the organization.¹⁹ The certificates received from the counselor training must be renewed every two to three years.²⁰

⁹ See <http://www.nfcc.org/AboutUs/aboutus_01.html> (Visited 6 Mar. 2002)

¹⁰ Stiller, Mel. CEO, Consumer Credit Counseling Services of Southern New England (CCCS/SNE). Telephone conversation. 11 June 2002.

¹¹ CCCS/SNE. Fact sheet.

¹² See <<http://www.creditcounseling.org/whoweare.html>> (Visited 2 Feb. 2002)

¹³ Stiller, Mel. CEO, CCCS/SNE. Personal interview. 30 Nov. 2001. Founded in 1977, the Council on Accreditation for Children and Families (COA) evaluates organizations based on organizational, management and service standards. COA's many sponsoring organizations include the Child Welfare League of America, Volunteers of America and the National Foundation for Credit Counseling. More information on COA can be found at <http://www.coanet.org>.

¹⁴ See <<http://www.creditcounseling.org/whoweare.html>> (Visited 2 Feb. 2002)

¹⁵ See <http://www.creditcounseling.org/locationsframe.html> (Visited 24 Feb. 2002)

¹⁶ Stiller, Mel. CEO, CCCS/SNE. Personal interview. 14 Dec. 2001.

¹⁷ Ibid.

¹⁸ Collins, Kevin. Regional Team Leader, CCCS/SNE. Personal interview. 14 Dec. 2001.

¹⁹ Ibid.

²⁰ Ibid.

Credit Counseling Standard Procedures

Kevin Collins, Regional Team Leader and financial counselor for CCCS/SNE, gave an overview of the CCCS/SNE process for serving first-time clients:

1. A first-time client usually comes in for a one-on-one meeting with a counselor. Initial counseling sessions typically last one hour.
2. The client is asked to sign a consent form prior to the initial client counseling session. This form reviews the confidentiality of the session, lists the topics and options that will be discussed during the session, and discloses CCCS/SNE's method of receiving from the creditor a percentage of the amount paid by the client. Clients are also asked to sign a privacy release form. (CCCS/SNE staff members encourage clients to sign these forms, although both are optional).
3. The counselor then completes a budget and financial planning worksheet with the client, reviews the client's situation, and suggests best options using an "action plan." A debt management plan is one service offered by most credit counseling agencies. With a debt management plan, the client submits money on a monthly basis to an agency, and after renegotiating some terms of the debt, the agency in turn submits the client's payment to the proper creditors. A client's participation in the debt management plan continues until the client requests termination of the process or until the amount owed is paid off.²¹
4. If a client chooses to sign up for a debt management plan, a separate agreement is signed. A debt management plan is utilized by approximately 30% of CCCS/SNE clients.²²

CCCS/SNE will address any issues that the client presents, including credit card debt, student loans, car payments, mortgage payments, and medical bills, regardless of the debt's potential for being part of a debt management plan. Counselors recognize that in some cases, referral to an outside agency or individual, such as a bankruptcy lawyer, is appropriate.

GETTING DEBT UNDER CONTROL

As Heather McMullen of Belchertown explained to a Post Audit and Oversight staff member, she was in debt and hounded by creditors who were calling her home at least 2-3 times per day. Her boyfriend's mother informed her about CCCS/SNE's services. Heather had an hour-long counseling session with a CCCS/SNE counselor in the Amherst satellite office. After reviewing all of her options, she chose to enter into a debt management plan with the agency. Her participation in the debt management plan helped stop the incessant creditor phone calls, while the counseling session helped her learn to control her spending habits. Now she has almost paid off her entire debt and is grateful for the assistance from the counselors at CCCS/SNE.²³

²¹ Collins, Kevin. Regional Team Leader, CCCS/SNE. Personal Interview. 14 Dec. 2001.

²² Ibid.

²³ McMullen, Heather. CCCS/SNE client. Personal Interview. 5 Feb. 2002.

Agency Financing

Traditionally, all nonprofit credit counseling agencies have financed their operations by relying on three sources:²⁴

- Charity – The money the agency raises through outside contributions and grantwriting.
- Fees – Many agencies have instituted consumer fees, including initial counseling fees and fees that are associated with handling the consumer's debt management plan.
- Fair share – Once a consumer has established a debt management plan, the credit counseling agency requests a donation from each creditor participating in the plan based on the amount distributed on behalf of the consumer. Agencies received up to 15% from creditors, but in recent years their share has dropped to 6-8%.²⁵

Travis Plunkett, Legislative Director for the Consumer Federation of America, notes that "a good credit counseling service will be partially supported by grants and charitable donations and not depend on fair share for any more than 60 percent to 80 percent of its income."²⁶

AN INTERNET ALTERNATIVE – MYVESTA

Myvesta has built a good reputation for offering comprehensive financial counseling to its clients.²⁷ Founded in 1994 by Steve Rhode, who personally had gone through a bankruptcy, and Mike Kidwell, Myvesta does not consider itself a credit counseling agency, instead calling itself a "financial crisis and treatment center."²⁸ Myvesta offers a debt management plan, but steers clients away from enrolling in it because it believes that the plan alone will not solve the client's money troubles. Contrary to many other agencies providing credit counseling, Myvesta only enrolls about 1% of their clients in a debt management plan.²⁹ In its place the nonprofit agency focuses efforts on providing counseling and budgeting services, and the fees charged for providing the various counseling services generate the operating money.³⁰

Debt Management Plans

In today's industry, there are many agencies that provide little if any counseling, instead concentrating on the more lucrative debt management plans that they offer to consumers. These plans consolidate all of the consumer's payments into a single monthly payment to the credit counseling agency.³¹ Once the consumer signs the contract, it is the agency's responsibility to pass the appropriate amount from the consumer's monthly payment to the creditors. Credit counseling agencies often can make deals with the creditors such as lowering the interest rates, or removing the consumer's late fees, in return for the consumer's participation in the debt management plan.³² The agency handling the plan receives a certain

²⁴ Stern, Linda. "Finance: Wrong Credit Counseling Can Hinder Debt Repayment." Reuters Business Report. 7 Nov. 2001.

²⁵ Mayer, Caroline. "Easing the Credit Crunch? AmeriDebt is One of a Breed of New Debt-Counseling Firms Whose Business Practices are Drawing Regulators' Attention." The Washington Post. 4 Nov. 2001: H1.

²⁶ Stern, Linda. "Finance: Wrong Credit Counseling Can Hinder Debt Repayment." Reuters Business Report. 7 Nov. 2001.

²⁷ Ibid.

²⁸ Rhode, Steve. President and Co-Founder, Myvesta. Telephone conversation. 27 Feb. 2002.

²⁹ Ibid.

³⁰ Ibid.

³¹ Joch, Alan. "Can You Deal Down Debt?" Christian Science Monitor. 10 Dec. 2001:15.

³² Ibid.

percentage of the debt collected by the creditor as one of its means of funding, although this financing is not always disclosed. Currently, agencies receive 6-8% of the consumer's debt from the creditor as payment for handling the debt management plan and retrieving the money owed to the creditor.³³

Cambridge Credit Counseling Corp., based in Agawam, Massachusetts, requires consumers to pay high fees to participate in its debt management program. This agency charges consumers a one-time mandatory fee equal to their monthly payment on their debts (which can be hundreds of dollars) and then a monthly maintenance fee equal to 10% of the debtor's monthly payment.³⁴ These consumer fees are in addition to the fair share contributions collected by the agency. However, this agency also offers its clients an added incentive to stay with the debt management plan – the “Good Payer Program.” Once a client has paid his or her monthly payments on time for six months, Cambridge Credit Counseling gives the client 50% of the fair share contributions collected by the agency from the client's participating creditors.³⁵

Massachusetts Law

The most recent Massachusetts law dealing with credit counseling was enacted in 1969.³⁶ It states that credit counseling may only be provided by attorneys and nonprofits organized under M.G.L. Ch. 180, §4A, which requires credit counseling organizations to be incorporated as nonprofits in the Commonwealth with the Secretary of State's office. Although the Internal Revenue Service has certified a number of the credit counseling agencies operating in Massachusetts as nonprofit, many have not registered in the Commonwealth.

Two bills were filed in the Massachusetts Legislature during the 2000-2002 legislative cycle that would change the credit counseling statute. Massachusetts State Senators Frederick Berry (D-Peabody) and Therese Murray (D-Plymouth) filed Senate Bill 368, “An Act Establishing a Board of Registration of Credit Counselors.” This bill would require credit counseling agencies to be licensed by a board of registration, while also establishing standards for individual credit counselors. Senate Bill 368 is pending before the Senate Committee on Ways & Means. State Representative Jarrett Barrios (D-Cambridge) filed House Bill 579, “An Act Relative to Credit Counseling Services,” which would allow all in-state and out-of-state nonprofit organizations to offer credit counseling services in the Commonwealth. This bill passed the House and is in the Senate Committee on Bills in the Third Reading.

Senate Post Audit and Oversight Bureau researchers discovered that of the 68 credit counseling agencies advertised as operating in Massachusetts, only 33 were registered with the Secretary

³³ Mayer, Caroline. “Easing the Credit Crunch? AmeriDebt is One of a Breed of New Debt-Counseling Firms Whose Business Practices are Drawing Regulators' Attention.” *The Washington Post*. 4 Nov. 2001: H1.

³⁴ Siwolop, Sana. “Credit Counselors Have Problems, Too.” *New York Times*. 20 Jan. 2002: C10.

³⁵ See <<http://www.cambridgecredit.org/about.htm>> (Visited 23 May 2002).

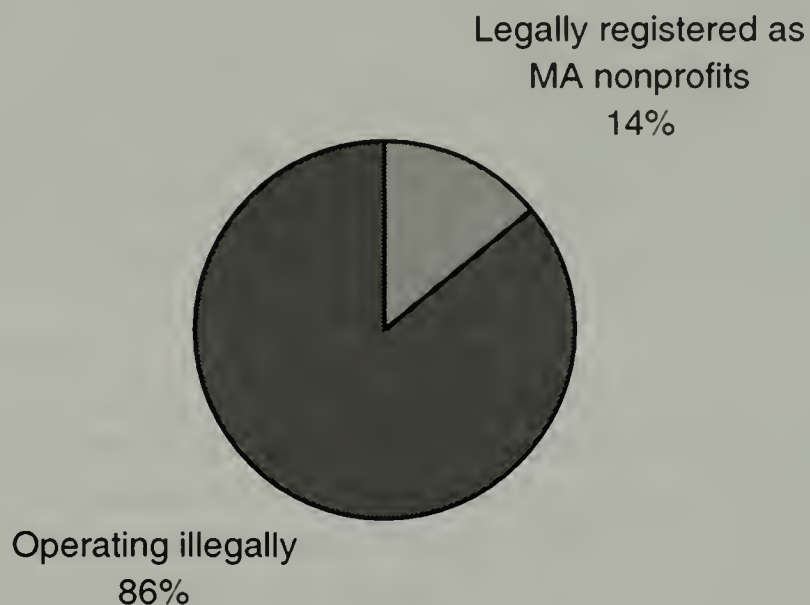
³⁶ M.G.L. Ch. 180 §4A: Credit counseling services as used in this chapter shall mean (a) the providing of financial and budgetary advice and judgment to individuals in connection with the creation of a budgetary plan; or (b) the creation of a plan whereby an individual turns over an agreed amount of his income to a nonprofit credit counseling corporation which distributes it to his creditors in accordance with a plan which they have approved and which may provide for smaller payments or a longer term than the original contract; or (c) the providing of educational services relating to the use of credit; or (d) any combination of these.

No person, other than an attorney or a nonprofit charitable corporation organized under the provisions of this chapter, shall render those credit counseling services specified in clause (b). Each such corporation shall comply with the provisions of section eight F of chapter twelve.

Any such corporation formed for credit counseling purposes shall not engage in the practice of law. If it appears that an individual receiving credit counseling services needs legal advice or counsel, he shall be referred to an attorney of his own choice, the local bar association referral service, or a local legal aid program, whichever course may seem most appropriate.

of State's office.³⁷ Out of the 33 registered agencies, only 10 were registered in Massachusetts as nonprofits.³⁸ Based on this research, at least 60 agencies, or 86%, are operating illegally.

Credit Counseling Agencies Advertising in Massachusetts



Source: Comparison of Secretary of State records with advertised credit counseling agencies

Not only are many of these credit counseling agencies not registered and for-profit, but even those that are nonprofit can sometimes have troubling and deceptive aspects to their business.

³⁷ These agencies were found on <<http://www.switchboard.com>> and <<http://www.superpages.com>>, two online directory services. The agencies self-described as "credit and debt counseling services."

³⁸ Compiled on 12 Dec. 2001 from <<http://www.superpages.com>> and <<http://www.switchboard.com>>.

WHEN A “NONPROFIT” ACTS LIKE A “FOR-PROFIT”

Will Lund, Director of the Maine Office of Consumer Credit Regulation, indicated that Maine’s investigation of a number of agencies has shown that it is not uncommon for the “nonprofit” status of a credit counseling agency to be a “shell” for a for-profit company.³⁹ The nonprofit agencies may be leasing employees from a for-profit and/or they farm out their accounts to a for-profit company.⁴⁰ Bennett Rushkoff, Senior Counsel with the District of Columbia’s Office of Corporation Counsel, noted, “It is very easy to set up a nonprofit counseling agency and use the counselors to sell the services of a related for-profit company.”⁴¹ In an investigation into the credit counseling industry, the journal Credit Card Management found that many of the officials in some of the newer agencies have a history of working together, with ownership interests in both nonprofit credit counseling agencies and for-profit processing of payments.⁴²

Federal Proposed Legislation

Interest in consumer credit counseling by state agencies and consumer groups has been partially fueled by a provision in the proposed new bankruptcy reform legislation currently before the U.S. Congress. House 333 and Senate 420 are similar pieces of legislation; both include a condition that would require consumers to seek the aid of credit counselors before being allowed to file for bankruptcy protection.⁴³ According to Samuel Gerdano, General Director of the American Bankruptcy Institute, the aim of this legislation “is to make bankruptcy less available, less debtor friendly, to try to reduce the number of bankruptcies and to reduce the scope of relief that’s available to individual debtors in bankruptcy cases.”⁴⁴ The Conference Committee appointed to settle differences between the two bills has almost reached consensus.⁴⁵

The Executive Office of U.S. Trustees, a division of the U.S. Department of Justice that oversees bankruptcy cases, has drafted regulations for the credit counseling industry, which will be proposed if this bankruptcy bill becomes law.⁴⁶ These regulations, which will include an application process and bonding, will only apply to those agencies serving consumers required to seek credit counseling assistance before declaring bankruptcy. According to Sue Ann Slates, an attorney with the U.S. Trustees, her office has been given little power to enforce these regulations, therefore she anticipates that states will strengthen their laws and enforcement to prevent rogue credit counseling agencies from operating.⁴⁷

³⁹ Lund, Will. Director, Maine Office of Consumer Credit Regulation. Telephone interview. 25 Mar. 2002.

⁴⁰ Ibid.

⁴¹ Mayer, Caroline. “Easing the Credit Crunch? AmeriDebt is One of a Breed of New Debt-Counseling Firms Whose Business Practices Are Drawing Real Attention.” The Washington Post. 4 Nov. 2001: H1.

⁴² Simpson, Burney. “Turmoil Among the Debt Counselors.” Credit Card Management. Jan. 2002: 24-29.

⁴³ H.R. 333, 107th Cong. (2001). S. 420, 107th Cong. (2001).

⁴⁴ Gerdano, Samuel. General Director. American Bankruptcy Institute. “2001 Big Year for Bankruptcies.” Interview. Street Sweep. CNNfn. 20 Feb. 2002.

⁴⁵ Hitt, Greg. “Bankruptcy-Overhaul Bill Nears Passage.” The Wall Street Journal. 8 May 2002.

⁴⁶ Slates, Sue Ann. Attorney, Co-Coordinator of the Credit Counseling Working Group, Executive Office of the U.S. Trustees. Telephone conversation. 24 May 2002.

⁴⁷ Ibid.

Problems

Business Week journalists summarized the state of the consumer credit counseling industry: “Born of people’s misfortunes, credit counseling was a sleepy cottage industry for a long time. Now, larger and troubled, it may be more in need than its clients of being set back on the straight and narrow.”⁴⁸

There are two major problems with consumer credit counseling in Massachusetts:

1. Massachusetts has an antiquated law that has not been enforced. As a result, illegal agencies are operating with impunity.
2. Some aggressive new firms in the credit counseling industry are taking advantage of consumers by charging exorbitant fees, failing to follow through on payments to creditors and offering little disclosure of their financial dealings. In addition, these firms lack accountability to consumers.

Antiquated Law

Massachusetts currently regulates the state’s consumer credit counseling industry with a 1969 law that is no longer adequate to control the aggressive credit counseling agencies that operate here.⁴⁹ The world has changed, with the number of debtors and consumer credit counseling agencies increasing at a rapid pace. Massachusetts’ current law lacks basic consumer protections and does not include:

- Any regulations to keep credit counseling agencies accountable to their clients or the state;
- A requirement for agencies to post a bond or carry insurance, which would allow the state or consumers to hold the agencies liable for shoddy or fraudulent business practices; or
- A fee cap to protect consumers from exorbitant and unnecessary fees for service.

ATTORNEY GENERAL CRACKDOWN

On June 3, 2002, the Office of the Attorney General released a statement announcing its investigation of the credit counseling industry. According to the Attorney General’s office, its on-going investigation of credit counseling agencies has focused on the high enrollment and administrative fees charged to consumers, the relationship between nonprofit credit counselors and for-profit telemarketers and deceptive sales tactics that are used to lure consumers.⁵⁰ The June 3rd statement urges “those who believe they have been unfairly treated to report incidents to the Attorney General’s Consumer Protection Hotline at 617-727-8400.”⁵¹

⁴⁸ Schmitt, Christopher, Heather Timmons and John Cady. “Consumer Credit: A Debt Trap for the Unwary.” Business Week 29 Oct. 2001: 82.

⁴⁹ M.G.L. 180§4A.

⁵⁰ Office of the Attorney General. Public Protection Bureau. 28 June 2002.

⁵¹ Statement from Attorney General Thomas Reilly’s Office. 3 June 2002.

Concerns with the Newer Entrants

Aggressive Marketing

Credit counseling agencies use many aggressive marketing techniques to attract consumers to their agencies. Television and radio advertisements, direct mail, unsolicited email, and persistent telemarketing are the most common ways for these agencies to advertise themselves as providing credit counseling, yet many of these agencies' primary goal is to get consumers on debt management plans, regardless of other options a consumer might have.

Out-of-state credit counseling agencies routinely use telemarketing to reach Massachusetts consumers. Massachusetts residents have repeatedly received phone calls from organizations like National Consumer Council, an agency based in Washington, D.C., and more recently, Integrated Credit Solutions of Florida. Integrated Credit Solutions is one company that was telemarketing in Maine until it recently received a cease and desist letter from state officials because it was not licensed to operate in the state.⁵² The substance of the calls from both companies is virtually the same. An example follows:

“This is Jeffrey Colwell with the National Consumer Council at 1-800-555-3991. I’m calling in regards to your consumer credit cards and the high interest rates that they carry. Your record is now in our database and we would be happy to assist and recommend consolidation, cutting your monthly payments in half in most cases. I encourage you to call us here at the NCC. We are a non-profit organization formed to help homeowners(/students) just like yourself. There will be absolutely no charge for any advice that we may give, yet we will show you how to be debt free in less than five years and you will be spending less, probably, than you are spending now. So please call the Council at 1-800-555-3991. Thank you.”⁵³

High Fees and Lack of Disclosure

More recent entrants into the credit counseling industry have changed the focus from counseling to debt management. Consumer advocates and legislators from California to Maine have been concerned with the proliferation of debt management companies that have engaged in practices that may be legal, but are also deceptive to consumers who are trying to make a decision about who to turn to for help in dealing with their debt.⁵⁴ For example, many debt management companies pocket a consumer’s first month’s payment on the plan as the consumer’s advance payment to the company for setting up the debt management plan. However, the company often takes this first payment without adequately informing the consumer, and the loss of the consumer’s first payment may cause them to be yet another month late with their creditors. This advance payment, also known as a “voluntary contribution,” is in addition to a monthly fee charged by the agency for managing the plan.⁵⁵

⁵² See <http://www.state.me.us/pfr/press/ccr_florida_desist.htm> (Visited 22 Mar. 2002)

⁵³ Messages left on Senate Post Audit and Oversight staff members’ answering machines. 7 Feb. 2001. Some credit counseling agencies push debt consolidation loans as well as debt management plans. Another agency mentioned above, Integrated Credit Solutions, has pursued a telemarketing effort similar to the National Consumer Council and offered debt consolidation loans to consumers over the telephone. Integrated Credit Solutions is currently being investigated by the Florida Attorney General’s Office for its business practices and the high number of consumer complaints from across the country.

⁵⁴ Gardner, Stephen. “Consumer Credit Counseling Services: the Need for Reform and Some Proposals for Change.” *Advancing the Consumer Interest*. Volume 13, Fall 2001/Winter 2002: 30-35.

⁵⁵ Joch, Alan. “Can You Deal Down Debt?” *Christian Science Monitor*. 10 Dec. 2001:15.

DECEITFUL PRACTICES

Dolores C. Porziella of Hyde Park stated that she began her credit counseling experience with an unexpected and undisclosed fee for "optional services," and as time went on, she was frustrated by the agency's extraordinarily poor customer service.⁵⁶

When she started going into debt, Dolores sought the help of Consolidated Credit Counseling Services (CCCS), based in Florida. Almost immediately after signing up with CCCS, she had problems with their services. First, Dolores was unwittingly signed up for an optional service for which she had to pay an extra fee. She called the agency right away and informed them that she had never signed up for this program. Only after Dolores sent two letters stating that she did not want to participate in the program was she finally exempted from it.

In addition, Dolores was charged \$29.99 per month in exchange for the agency paying her creditors and obtaining a lower interest rate. Dolores assumed that CCCS had contacted her creditors in order to negotiate her debt management plan and the lower rate. However, after the first month of working with CCCS, Dolores received her statement and her interest rates were not lowered. A representative from CCCS informed her that it would take another month before her interest rates were lowered. After another month her interest rates still did not change.

Each time she called, a different representative would fail to give her a straight answer. At this time, feeling suspicious of the agency, Dolores called two of her creditors, both of which informed her that they had never received any information from CCCS. These incidents prompted Dolores to cancel her program. She sent a letter, via registered mail, to the agency informing them of her cancellation. Despite confirmation of her letter's receipt by the agency, Dolores continued to receive calls warning her that she needed to continue to pay them. Finally, Dolores sent a second letter in which she threatened to report CCCS to the Attorney General's Office and the Better Business Bureau. Dolores never heard from the agency again.⁵⁷

⁵⁶ Porziella, Dolores C. Personal interview. 26 Mar. 2001.

⁵⁷ Ibid.

NOT ONE TO “TRUST”

Farah Faverey, formerly of South Boston, stated that she was inundated with telemarketing calls to persuade her to sign up with Gibson Trust, a Florida-based credit counseling agency.⁵⁸ Gibson officials set up a debt management plan that included all of her creditors, but failed to pay all of them each month. One company never received a payment because Gibson officials continually sent the monthly payments to the wrong address. Farrah was never informed of these problems. She continued to make payments to Gibson Trust assuming that the payments were heading to the appropriate creditors, but she eventually found out from her creditors that they had not received her payments, and one creditor took further action by garnishing her wages.⁵⁹ Farrah’s attempts at reaching the appropriate people at Gibson Trust were nearly futile as she was consistently put on hold for long periods of time and the representatives were frequently unable to answer her questions and concerns. Farrah extracted herself from the plan within six months of first entering into an agreement with the agency, but not before losing approximately \$1,000.⁶⁰

Shady Backgrounds

Another important area of concern for regulators and consumer advocates is the background and work histories of agency leadership. Advocates have called for greater disclosure of an agency’s officials’ past experiences with financial institutions since credit counseling agencies deal with sensitive personal financial information.⁶¹ According to an article in Business Week, “Customers who divulge some of their most private information to counseling agencies may be surprised who gets access to it. It’s not unusual for top agency executives to have violated securities and other laws.”⁶²

⁵⁸ Faverey, Farrah. Personal Interview. 19 Mar. 2001. Farrah lived in Boston, Massachusetts when she signed up with Gibson Trust. She has since moved out of state.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Joch, Alan. “Can You Deal Down Debt?” Christian Science Monitor. 10 Dec. 2001.

⁶² Schmitt, Christopher, Heather Timmons and John Cady. “Consumer Credit: A Debt Trap for the Unwary.” Business Week 29 Oct. 2001: 82.

WHEELING AND SELF-DEALING

Cambridge Credit Counseling Corp., based in Agawam, Massachusetts, has received national press scrutiny for the management and structure of its credit counseling operations. The personal history of the director of the agency, Richard Puccio, casts a shadow on its operation. In the early 1990s, Richard Puccio was named in a Securities and Exchange Commission civil complaint for financially scamming customers through the use of hard sell tactics.⁶³ He was barred from the securities industry for five years.⁶⁴

In the opinion delivered by the Securities and Exchange Commission, the Commission wrote that "Puccio's misconduct could hardly be more serious. For more than two years, he engaged in high pressure, fraudulent sales tactics in utter disregard of his obligations to customers and their welfare. Even his own attorney conceded that Puccio's conduct was egregious. We are not dealing here with an isolated instance of misbehavior. Even before he was employed at Stratton, Puccio violated securities laws at ICI [Investors Center, Inc.]. Then, at Stratton, he engaged in a broad pattern of fraudulent conduct over an extended period of time."⁶⁵

Now the director of Cambridge Credit Counseling, Puccio has intertwined his non-profit venture with a for-profit debt-referral company owned by his brother.⁶⁶ Their intimate working relationship has raised red flags for consumer advocates who see an improper connection between the two companies that are serving virtually the same population.⁶⁷ In addition to this questionable alliance, consumer advocates raise the point that the high salaries that the Puccio brothers receive, \$312,000 each in FY2000, is a sum considerably higher than an average nonprofit director's salary.⁶⁸

In February 2002, National Public Radio's program, "All Things Considered," placed AmeriDebt, a Maryland based credit counseling agency that operates nationwide, in the spotlight. This company has been receiving a great deal of public scrutiny for its aggressive marketing tactics, poor disclosure of its consumer charges, processing mistakes, and a questionable decision a couple of years ago to buy a for-profit payment processing company controlled by the husband of AmeriDebt's founder.⁶⁹

⁶³ Hyatt, James C. "SEC Says Stratton Oakmont Manipulates Stock Prices, Uses 'Boiler Room' Tactics." Wall Street Journal. 23 Mar. 1992: B5.

⁶⁴ Ibid.

⁶⁵ United States. Securities and Exchange Commission. Exchange Act Release No. 37849. In the Matter of Richard J. Puccio. Washington: 22 Oct. 1996.

⁶⁶ Mayer, Caroline. "Easing the Credit Crunch? AmeriDebt is One of a Breed of New Debt-Counseling Firms Whose Business Practices Are Drawing Real Attention." The Washington Post. 4 Nov. 2001: H1.

⁶⁷ Ibid. Consumer advocates interviewed for this article included Eric Friedman, Administrator, MD Division of Consumer Affairs; Bennett Rushkoff, Senior Counsel, Office of the Corporation Counsel, Washington, D.C.; and Travis Plunkett, Legislative Director, Consumer Federation of America.

⁶⁸ Ibid.

⁶⁹ Obermeyer, Joel. "Profile: AmeriDebt Faces Criticism From Some of Its Customers." All Things Considered. National Public Radio. 12 Feb. 2000.

Difficult to Recoup Losses

It is difficult for a consumer to sue a company if it closes or is located out-of-state; therefore, the consumer currently has little to no recourse for a bad credit counseling experience that may include the loss of money and the development of a bad credit record.

SNARING A CONSUMER

Kathy Pennellatore stated that her credit was ruined after she signed a contract with Consumer Business and Debt Counseling Services (CBDCS), a credit counseling agency that never set up proper credit counseling contracts with creditors, thus digging her deeper into debt.⁷⁰

After having her second child, Kathy left her job to take care of her children. As a result, Kathy and her husband began charging more and more items on their credit cards to provide for their family, and eventually their bills became unmanageable. They sought the assistance of CBDCS, formerly based out of Braintree. Kathy and her husband believed that CBDCS could help them continue to pay their creditors on time and thus avoid developing bad credit. Kathy began paying CBDCS each month, but she was still receiving credit card statements, which stated that she was not paying her bills on time.

Kathy immediately called CBDCS and representatives told her that they were "fixing" everything. Six months later, one of the Pennellatores' accounts was handed over to a collection agency because it was in arrears. Kathy also found out at this time that CBDCS had never set up proper credit counseling contracts with several of her creditors. When she pulled her family's credit history, the Pennellatores learned that their credit was ruined as a direct result of working with CBDCS. Subsequently the Pennellatores were unable to get a second mortgage for a home. When Kathy contacted CBDCS with this information, she was again informed that they would "fix" everything. After this interaction, the Pennellatores never heard from CBDCS again and discovered that the organization had closed. Kathy had no way of contacting the organization and was unable to take action against CBDCS. Ultimately, the Penallatores lost more than \$1,000 and their credit record was tarnished.⁷¹

As the Penallatores' case indicates, a poorly executed credit counseling agreement can have long-term impacts on a consumer. In addition to the short-term impacts of financial loss and the time spent dealing with the impact of unscrupulous service, a tarnished record of missed payments will show up on a consumer's record for seven years.⁷² This can affect a consumer's access to a variety of lenders for future financial needs. Furthermore, a less favorable credit record will affect the amount of the loan offered as well as its interest rate.⁷³

There are serious concerns with how credit counseling services are being provided to Massachusetts consumers. However, there are some relatively simple measures that the Commonwealth can take to improve the accountability of credit counseling agencies and reinforce the notion that credit counseling agencies exist to help consumers manage their debt and learn to better handle their finances.

⁷⁰ Pennellatore, Kathy. Personal interview. 21 May 2001.

⁷¹ Ibid.

⁷² Child, Kip. Community Affairs Specialist, Federal Deposit Insurance Corporation. Telephone conversation. 24 May 2002.

⁷³ Ibid.

Other States

In a number of states, laws and regulations help protect consumers from being taken advantage of by unscrupulous agencies. According to the Executive Office of U.S. Trustees, only five states have absolutely no laws regulating credit counseling, but many other states only affirm who can practice credit counseling without imposing any further regulations or restrictions.⁷⁴

SURVEYING OTHER STATES

The states that regulate credit counseling agencies offer a number of different measures to protect consumers including:

- requiring credit counseling agencies to be licensed and bonded;
- setting a fee cap for services;
- doing background research on the chief officers; and
- performing annual reports and regular on-site inspections.⁷⁵

Other measures include requiring the agency's license to be posted conspicuously in the agency's office,⁷⁶ making sure an agency keeps records for an extended period of time,⁷⁷ and obliging the credit counseling agency to maintain an in-state bank account in which to deposit the payments made to the agency from that state's clients.⁷⁸

Maine and New York are two Northeastern states that have put stronger laws in place to protect consumers from fraudulent credit counseling agencies. Companies that do not pass Maine and New York's requirements and are of concern to their reviewing agencies are not allowed to practice in these states, although with Internet and telephone solicitations this can be difficult to enforce. Will Lund, Director of the Maine Office of Consumer Credit Regulation stated that "[c]ertain Internet companies are like JELL-O[®], you just can't nail them to the wall."⁷⁹ Yet in many circumstances, educated consumers often provide the state with the extra eyes and ears needed to identify companies doing business in the state illegally.

⁷⁴ Slates, Sue Ann. Attorney, Co-Coordinator of the Credit Counseling Working Group, Executive Office of the U.S. Trustees. Telephone conversation. 24 May 2002.

⁷⁵ Slates, Sue Ann. Attorney, Co-Coordinator of the Credit Counseling Working Group, Executive Office of the U.S. Trustees. Telephone conversation. 24 May 2002. Also, Senate Post Audit and Oversight Bureau research as of June 2002. Some of the states that have comprehensive credit counseling laws that may include some or all of these measures include Arizona, Iowa, Virginia, Maine, New York, Oregon, Connecticut, New Hampshire, Rhode Island, and Illinois.

⁷⁶ Arizona and New York are two states that include this measure in their credit counseling laws.

⁷⁷ Iowa, Arizona and New Hampshire are three states that include this measure in their credit counseling laws.

⁷⁸ New Hampshire, Michigan and Arizona are three states that include this measure in their credit counseling laws.

⁷⁹ Lund, Will. Director, Maine Office of Consumer Credit Regulation. Telephone interview. 10 Jan. 2002.

THE MAINE LESSON

Maine recently passed a strong law aimed at eliminating scams and preventing unscrupulous agencies from taking advantage of Maine consumers. Their new law includes:

- The applicant agency must post a \$50,000 bond.
- The applicant agency must list on its application contact information for those individuals who will handle complaints and compliance examinations.
- The law allows the Maine Office of Consumer Credit Regulation to thoroughly review the applicant and make a determination on whether the agency operates in a manner that will ultimately benefit Maine consumers.
- The Office of Consumer Credit Regulation has the power to examine a consumer credit counseling agency's books and records.
- The state has also emphasized consumer education, often through media outlets, which state officials find is an effective way to get the word out about disreputable agencies.⁸⁰

Currently Maine officials are in the middle of an enforcement campaign. They have contacted approximately 25 agencies and have discovered that a number of the agencies operating in the state are for-profit or "fly-by-night" and do not qualify for registration under Maine law.⁸¹

EYEING THE EMPIRE STATE

The New York State Banking Department requires "budget planners," otherwise known as credit counselors, to file a detailed license application and pay a fee that is used by the Banking Department to investigate the agency applying for the license. Once licensed and operating, the agency must file annual reports with the Banking Department. The Banking Department also has the power to investigate an agency's books and records at any given time. Every two years there is an on-site comprehensive evaluation to ensure compliance with all state regulations.⁸²

Enforcement is also a tool used by the state to oversee agencies' practices. The Banking Department works with the Office of the Attorney General to process consumer complaints. In October 2000, Attorney General Eliot Spitzer shut down an illegal credit counseling agency that was targeting Latinos. The judge ruled that the Trescha Corporation, also known as Financial Law Fitness and Multi-Service, was guilty of fraud. The judge ordered the company to pay restitution to thousands of consumers.⁸³

States have many mechanisms at their disposal to protect consumers from unscrupulous credit counseling agencies. Massachusetts can learn from other states' experiences and create

⁸⁰ Ibid.; 32 M.R.S.A., c. 80-A, the Nonprofit Debt Management Services Act.

⁸¹ Lund, Will. Director, Maine Office of Consumer Credit Regulation. Telephone interview. 25 Mar. 2002. 17 M.R.S.A. §701 prohibits the practice of "budget planning" by unregistered agencies.

⁸² Blankley, Bethany. Public Information Office. New York State Banking Department. Telephone conversation. 27 June 2002.

⁸³ "Spitzer Wins Order Shutting Down Bogus Queens Debt Reduction Service." Office of New York State Attorney General Eliot Spitzer. Press Release. 17 Oct. 2000.

regulations that encourage accountability, but also provide the necessary flexibility to allow reputable organizations from across the country to serve Massachusetts consumers.

Findings and Recommendations

Findings:

- Aggressive credit counseling firms, usually operating illegally, are pitching debt reduction plans to Massachusetts' consumers.
- Many of these credit counseling firms are seriously harming consumers by charging high initial costs, failing to make payments to creditors as promised, tarnishing credit records, and engaging in questionable business practices. Consumers not only lose money on these plans, but can also suffer from a poor credit record that affects their financial future.
- Massachusetts' consumer credit counseling law is antiquated and no longer reflects the reality of today's consumer credit counseling industry. Other states have taken the lead in protecting consumers by regulating the operation of consumer credit counseling agencies.
- On June 3, 2002, the Massachusetts Office of the Attorney General announced a crackdown on credit counseling agencies that are abusing consumers.

Recommendations:

- Massachusetts should pass a comprehensive law to regulate consumer credit counseling agencies. Such a law should contain provisions that protect consumers, such as:
 1. **Credit counseling agencies should be required to register with the Division of Banks.** These applications should include basic background information on the agency's principal officers, telephone numbers for compliance questions and consumer complaints, and a demonstration of a consumer education and services component. The agencies should also be responsible for filing critical IRS documents with their application to prove their nonprofit status.
 2. **The Division of Banks should have the authority to determine if it is in the consumers' interest for the agency to operate in Massachusetts.** The Division should reserve the right to examine an agency's books and records. In addition, the Division of Banks should have the right to refuse an application for erroneous or incomplete information.
 3. **The Division of Banks should be authorized to set a fee cap for the services rendered by credit counseling agencies.** For example, Michigan includes a fee cap in its regulations governing the credit counseling industry. The state allows a credit counseling agency to charge a fee of up to 15% of the amount of the consumer's debt, as well as a \$25 initial counseling session fee. The up to 15% fee has to be returned to the consumer if 51% of the consumer's creditors did not agree to enter into the consumer's debt management plan.

4. **Applicant consumer credit counseling agencies should be required to provide clearly written consent and full disclosure forms for their clients outlining all of the costs associated with their programs and the methods by which they handle their clients' accounts.** These statements should indicate how much a consumer would pay with an agency's debt management plan, including any start-up and handling fees. In addition, consumers should receive regular updates on their accounts and should be aware of how they can cancel the plan if they desire.
 5. **All consumer credit counseling agencies should be required to carry liability insurance or to post a bond prior to being registered to handle consumer or state penalties.** This will ensure that money will be available to compensate consumers who file claims against an agency and to cover any financial penalties that the state may impose for violating regulations.
 6. **If an unregistered agency is operating in the state, or a registered one is generating numerous consumer complaints, the Division of Banks should be empowered to take enforcement action against these companies by issuing cease and desist letters, requiring the forfeiture of the bond, imposing civil fines for operating illegally or violating regulations, or revoking the agency's registration.**
- The Massachusetts Office of the Attorney General must continue to actively pursue credit counseling agencies that are defrauding consumers.

