

Credit Counseling Organizations

By
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Overview

Introduction

Credit counseling organizations provide valuable services to the public. They educate consumers about better money management techniques, promote debt reduction strategies, and help their clients avoid bankruptcy and its financial consequences. However, some credit counseling organizations prey on the vulnerability of the clients they are supposed to be helping.

The purpose of this article is to raise awareness that there is a potential for abuse by credit counseling organizations that have received or are requesting classification as organizations described in IRC 501(c)(3).

In this article

Part I of this article discusses the Credit Repair Organizations Act, the federal government's response to abuses in the credit repair industry. When considering applications from credit counseling organizations, it is important to keep in mind that in general **the Credit Repair Organizations Act does not apply to IRC 501(c)(3) organizations**. The federal statutory scheme relies on the determination by the Service that an organization qualifies for tax-exempt status.

Part II of this article discusses two states' efforts to protect consumers from financial fraud. **The states' regulatory schemes do not apply to IRC 501(c)(3) organizations**. The states are also relying on the determination by the Service that an organization qualifies for tax-exempt status.

Part III discusses the Model Codes adopted by two voluntary credit counseling certification organizations. These Codes provide a model for exempt credit counseling organizations.

Part IV discusses qualification of credit counseling organizations under IRC 501(c)(3) and IRC 501(c)(4). It examines revenue rulings and court cases.

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Overview, Continued

**In this article,
continued**

Part V discusses the type of development recommended when considering an application for exemption from a credit counseling or credit servicing agency.

Part VI is the Conclusion

Part VII is the Addendum. The Addendum contains a copy of the Credit Repair Organizations Act and samples of consumer alerts from state attorneys general and the Federal Trade Commission. This information is helpful when considering the distinction between legitimate credit counseling agencies and illegal credit repair services.

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Part I: Federal Efforts in Protecting Consumers Against Financial Fraud

Introduction

The Service developed its position on credit counseling agencies in the 1960s. If an agency primarily provided information, exemption under IRC 501(c)(3) was considered appropriate. The need to review this subject stems from recent concern that certain organizations, describing themselves as educational credit counseling agencies, may be engaged in activities that are not described in IRC 501(c)(3).

This article discusses both credit counseling agencies and credit repair organizations.

- A credit counseling agency educates the consumer as its principal activity. It may also assist the consumer in consolidating debt and negotiate between debtors and creditors to lower interest rates and waive late and over-limit fees.
- Credit repair involves claims that the agency can restore credit in a short period of time. Certain credit repair practices are illegal. The states' attorneys general warn that restoring credit is a lengthy procedure, and claims to do it quickly may involve identity theft and other illegal practices.

The federal statutory scheme and that of many states and private certifying organizations rely on the Service's determination that an organization is exempt under IRC 501(c)(3). If an organization can demonstrate that it is exempt under IRC 501(c)(3), it usually avoids all regulatory requirements.

Because the Service's determination of exemption is central to both federal and state regulatory enforcement programs, the determination specialist must examine applications for exemption with a heightened awareness. The following discussion and the development questions are designed to review the published guidance in light of changes in the field of credit counseling and credit repair.

Part I: Federal Efforts in Protecting Consumers Against Financial Fraud, Continued

Federal Legislation

The Federal Trade Commission enforces at least two statutes that apply to the activities of credit counseling and credit repair organizations.

- The Credit Repair Organizations Act became effective on April 1, 1997, and is directed to the credit repair industry.
- The FTC Act, a statute of more general application, applies to the operations of both credit repair organizations and credit counseling organizations.

Bankruptcy reform legislation was proposed in 2002 and remains a concern of Congress. Under the proposals that were considered, the role of credit counseling organizations in the bankruptcy process would be significantly enhanced.

- The proposed legislation provided that an individual may not file a petition for bankruptcy under Chapter 11 of the Bankruptcy Code unless he has sought assistance from an approved nonprofit budget and credit counseling agency. The United States trustee or bankruptcy administrator in each judicial district would be required to compile a list of approved credit counseling agencies.
 - In the event similar legislation passes, there is likely to be an influx of new nonprofit credit counseling organizations setting up business across the country and seeking exemption under IRC 501(c)(3).
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Part I: Federal Efforts in Protecting Consumers Against Financial Fraud - The Credit Repair Organizations Act

Introduction

Congress has taken steps to protect citizens against the worst of the credit repair scams in the Credit Repair Organizations Act, [15 U.S.C. §§ 1679 et seq.] The Act seeks to ensure that prospective buyers of credit repair services are provided with the information necessary to make an informed decision, and to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

Definition of a Credit Repair Organization

The Act defines a credit repair organization as:

any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that they will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of -

(i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service in clause (i).

The Act excludes from the definition of a credit repair organization:

- **any nonprofit organization which is exempt from taxation under IRC 501(c)(3).**

This strong federal expression of consumer protection can be defeated by an erroneous determination that an organization is exempt under IRC 501(c)(3). It is crucial, therefore, that the Service make every effort to adequately develop all the facts and circumstances regarding an applicant's operations.

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Part I: Federal Efforts in Protecting Consumers Against Financial Fraud - The Credit Repair Organizations Act,

Continued

Full disclosure

The Act requires full disclosure regarding consumer rights before any contract for credit repair services is executed. A written statement must be provided and signed by all prospective customers, and must be retained by the credit repair organization for at least two years after the statement is signed. Consumers must be advised:

- They may dispute inaccurate information in their credit report by contacting the credit bureau directly.
 - There is no right to have accurate, current, and verifiable information removed from a credit report unless it is over seven years old. Bankruptcy information can be reported for ten years.
 - They have a right to sue a credit repair organization that violates the Credit Repair Organizations Act.
 - They have the right to cancel a contract with any credit repair organization for any reason within three business days from the date it was signed.
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Written Contract

A written contract is also required and must:

1. specify the terms and conditions of payment, including the total amount of all payments to the credit repair organization or any other person
 2. contain a full and detailed description of the services to be performed by the credit repair organization for the consumer, including:
 - (A) all guarantees of performance; and
 - (B) an estimate of the time required for the performance of the services
 3. contain the credit repair organization's name and principal business address
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Part I: Federal Efforts in Protecting Consumers Against Financial Fraud - The Credit Repair Organizations Act,

Continued

Written Contract, continued

4. contain a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right."

Prohibitions

The statutory scheme provides further protection for consumers with a list of prohibitions. The Act prohibits credit repair organizations, as well as their employees and agents, from:

- misrepresenting the organization's services
- making or enticing consumers to make untrue or misleading statements either to the credit reporting agencies or to the consumer's creditors
- advising consumers to attempt to change their credit identities
- accepting payment or other valuable consideration for their services in advance of fully performing those services.

Civil Penalties

The Act includes civil penalties for violations and procedures for administrative enforcement by both the FTC and the states.

Waiver of Rights

A consumer cannot waive his rights under the Act.

- Any waiver of any protection afforded by the Act is treated as void, and contracts that are not in compliance with the Act's provisions may not be enforced by any federal or state court.

Part I: Federal Efforts in Protecting Consumers Against Financial Fraud – The Federal Trade Commission Act

The Federal Trade Commission Act

The FTC Act [15 U.S.C. §§ 41 et seq.] is a statute of more general application than the Credit Repair Organizations Act. It prohibits "unfair or deceptive acts or practices in or affecting commerce." This general proscription applies to the operations of both credit repair companies and credit counseling agencies. It is not clear, however, whether IRC 501(c)(3) organizations will come under the FTC Act enforcement umbrella.

Part II: State Efforts in Protecting Consumers Against Financial Fraud

State Legislative Action: California

California is just one example of the many states that have taken steps to protect consumers against the worst of the credit repair scams. In 1993, the California legislature imposed strict standards on credit service organizations and the credit repair industry. The Act, (Civ. Code §§ 1789.12, 1789.16), provides prospective buyers of credit repair services with the information necessary to make an intelligent decision regarding the purchase of those services. It aims to protect the public from unfair or deceptive advertising and business practices. It defines credit services organizations (also known as "CSOs" or "credit repair services") as organizations that promise any of the following services for a fee to:

1. improve a buyer's credit record, history, or rating
 2. obtain a loan or other extension of credit for a buyer
 3. provide advice or assistance to a buyer with regard to either of the above.
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CSO Requirements

The Act requires a CSO to register with the California Attorney General's Office and obtain a \$100,000 surety bond before starting to do business in the state. The CSO must give each prospective client an information statement and a written contract spelling out its services before providing any services, and must complete all services within six months.

Prohibitions

The statutory scheme provides further protection for consumers with a list of prohibitions. The most important of these is that CSOs are not allowed to charge "up-front fees." All services must be completed before any fee can be collected. The Act also prohibits a CSO from:

1. charging referral fees for referral to other agencies if the credit terms offered are substantially the same as those available to the general public, or are the same as the buyer could have obtained without the CSO's assistance
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Part II: State Efforts in Protecting Consumers Against Financial Fraud, Continued

Prohibitions, continued

2. encouraging a buyer to make false or misleading statements to a consumer credit reporting agency, or to any present or potential creditor, for the purpose of improving his credit rating
 3. advising a buyer to create a new credit record by using a new name, address, social security number, or employee identification number
 4. engaging directly or indirectly in any course of business that would operate as a fraud or deception upon any persons in connection with its services
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Civil and Criminal Penalties

The Act includes criminal and civil penalties for violations. The state attorney general, district attorneys, and city attorneys may prosecute any violation as a misdemeanor and may also seek injunctive relief. In addition, a buyer who is injured by a CSO's violation of the Act or breach of contract may recover actual damages at least equal to the amount paid to the CSO, plus costs and reasonable attorneys' fees. He also may seek injunctive relief and may be awarded punitive damages.

The Act Does Not Apply to IRC 501(c)(3) Organizations:

The Act does not apply to:

- certain individuals and institutions that are already regulated. These include: licensed and regulated lenders or creditors; FDIC-insured banks and savings institutions; licensed prorsaters and real estate brokers; licensed attorneys who are not directly affiliated with a CSO; and broker-dealers who are registered with the U.S. Securities and Exchange Commission.
 - **Most significantly, the Act does not apply to nonprofit organizations that have received a final determination from the Service that they are exempt under IRC 501(c)(3) and are not private foundations.**
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Part II: State Efforts in Protecting Consumers Against Financial Fraud, Continued

California Is Not Alone

We have not done a state-by-state survey of consumer protection schemes. California and the states included in the Addendum are representative of what is happening as states awaken to the nationwide problem within the debt consolidation/credit repair industry. The states are leading the way by identifying the worst of the abuses as well as adopting legislation to regulate the industry.

Knowledge of the latest applicable state laws and licensing regulations will help determination specialists distinguish educational credit counseling organizations from credit repair organizations that may be performing activities that are not charitable.

Part III: Voluntary Credit Counseling Agency Certification

Model Codes The Model Codes described in this section are voluntary. We discuss them here because they provide a model for exemplary credit counseling organizations and are helpful in guiding the development and consideration of applications for exemption under IRC 501(c)(3).

National Foundation for Credit Counseling (NFCC) - A Model Code The National Foundation for Credit Counseling (NFCC) is an independent not-for-profit organization dedicated to establishing voluntary standards for the credit counseling industry. The NFCC Council on Accreditation (COA) is an independent not-for-profit organization. COA accredits over 4,000 programs throughout the United States and Canada, including nearly 200 credit counseling services. An organization need not be a member of the NFCC to be accredited by COA. Once an agency is accredited, COA certifies that the agency uses the appropriate checks and balances to protect the consumer.

Only IRC 501(c)(3) Organizations May Be Accredited Before even being considered for accreditation by the COA, a credit counseling agency must meet certain minimum requirements:

- must be exempt under IRC 501(c)(3)
- services must be provided according to best practice standards
- all applicable licenses required by the state and locality in which it operates must be secured
- the agency must have operated for at least one year
- the agency must be an organization. Individuals are not eligible for certification.

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Part III: Voluntary Credit Counseling Agency Certification, Continued

The Best Practice Standards Required by COA

The best practice standards required by COA include:

- The agency must have its operating and trust accounts audited annually.
- The agency must be licensed, bonded and insured.
- The agency must support and deliver a variety of consumer education programs.
- The agency must meet all consumer disclosure requirements as set forth by the U.S. Federal Trade Commission.
- Client debt management plans must include a detailed review of current and prospective income, as well as present and anticipated financial obligations. In addition, the plan must represent the client's best effort in payment of all debts, and assure that all lines of credit are closed.
- Funds are disbursed at least twice per month, and funds are disbursed promptly in emergencies.
- An agency discontinues a client's debt management plan after two consecutive missed payments and notifies the creditor of this discontinuation within 10 days.
- Creditors receive fair and equitable distribution of funds, and the agency offers electronic funds transfer to those creditors that request it.
- Clients have a variety of deposit options including electronic methods, and are offered immediate correction of improper postings.
- Persons with immediate needs are served immediately or referred to another organization for immediate service.
- Each consumer receives an assessment of how he/she got into financial trouble, a comprehensive financial plan, and a written action plan.
- Clients receive (at minimum) a quarterly statement.
- Clients are encouraged to increase deposits if their financial situation improves so they may speed the liquidation of their debt.

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Part III: Voluntary Credit Counseling Agency Certification, Continued

Association of Independent Consumer Credit Counseling Agencies (AICCCA)

The Association of Independent Consumer Credit Counseling Agencies (AICCCA), another national membership organization established to promote quality and consistent delivery of credit counseling services, has also adopted industry standards. The standards are similar to those adopted by the NFCC and are voluntary.

AICCA Standards

Some of the standards adopted include:

Only IRC 501(c)(3) Organizations May Be Accredited

- Must provide a community resource for educational materials and information concerning personal finance and debt issues.
 - Must be an IRC 501(c)(3) organization.
 - Must be licensed in any state (that has a licensing procedure) in which it conducts business and adhere to all licensing requirements.
 - Must maintain a satisfactory rating with the Better Business Bureau.
 - Must begin resolution of client complaints within 10 days of notification.
 - Must have an independent board of directors, the majority of which cannot be compensated employees of the agency or related by blood or marriage to other board members or employees.
 - Must have operated continuously in the state in which it is organized for at least one year.
 - Must maintain a permanent physical business location and not operate solely out of a post office box.
 - Must meet all applicable state licensing, registration, bonding and statutory requirements.
 - All counselors must receive proper training within one year.
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Part III: Voluntary Credit Counseling Agency Certification, Continued

AICCCA Standards, continued

- Counselor compensation cannot be based on the outcome of the counseling process.
 - All services must be made available to the public regardless of ability to pay.
 - Fees for debt management plans must not exceed a maximum set-up fee of \$75, nor will fees exceed \$50 per month for maintenance of the plan.
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Part IV: Qualification for Exemption under IRC 501(c)(3)

Service Precedent

The Service addressed credit counseling agencies when they first entered the marketplace in the 1960s. The revenue rulings issued at that time provide examples of a credit counseling agencies exempt under IRC 501(c)(4) and IRC 501(c)(3).

Rev. Rul. 65-299

The Service recognized a credit counseling service (agency) open to the general public as exempt under IRC 501(c)(4) in Rev. Rul. 65-299, 1965-2 C.B. 165. The agency was incorporated as a nonprofit corporation to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy. The agency did not limit its services to those in need of such assistance as proper recipients of charity.

The agency:

- employed specialists to interview applicants, analyze the specific problems involved, and counsel applicants on the payment of their debts
- arranged a monthly distribution to creditors based on the debtor's ability to pay
- communicated with creditors and, with the creditors' consent, set up plans which debtors agreed to follow
- made its facilities available for debtors to make their monthly pro rata distributions to creditors
- made no loans to applicants nor negotiated loans on their behalf
- charged nominal fees to cover postage and supplies for its monthly prorating services
- charged no fees for the counseling service
- relied upon voluntary contributions from local businesses, lending agencies, and labor unions to cover its costs of operations.

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Part IV: Qualification for Exemption under IRC 501(c)(3), Continued

**Rev. Rul.
69-441**

A credit counseling service (agency) was recognized as exempt under IRC 501(c)(3) in Rev. Rul. 69-441, 1969-2 C.B. 115. This agency limited its services to low-income individuals and families with financial problems. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The agency:

- provided educational information to the general public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications
- assisted low-income individuals and families with financial problems by providing them with individual counseling and, if necessary, by establishing budget plans
- serviced the budget plan by allowing the debtor to voluntarily make fixed payments through the agency; holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors, whose approval was obtained in advance
- made no loans to debtors or negotiated loans on their behalf
- charged no fees for counseling services or proration services - the debtor received full credit against his/her debts for all amounts paid
- relied upon voluntary contributions, primarily from the creditors participating in the organization's budget plans, for its support

The Service distinguished the facts in this ruling from the facts in Rev. Rul. 65-299 that held the organization was exempt under IRC 501(c)(4):

- The agency in Rev. Rul. 65-299 was not engaged in any educational activities.
- The agency in Rev. Rul. 65-299 did not limit its assistance to a charitable class -- families or individuals in need of such assistance as proper recipients of charity.

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Part IV: Qualification for Exemption under IRC 501(c)(3), Continued

CASE LAW:

Consumer
Credit
Counseling
Service of
Alabama v.
U.S.

Credit
Counseling
Centers of
Oklahoma v.
U.S.

The Consumer Credit Counseling Service and the Credit Counseling Centers (Agencies) were umbrella organizations made up of numerous individual credit counseling centers. Both had been recognized as exempt under IRC 501(c)(3).

- The Agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. The Agencies also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families. The Agencies charged a nominal fee of up to \$10 per month for some of their services, but waived the fee in instances where payment would work a financial hardship.
- The Agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way of America. An incidental amount of their revenue was from the counseling fees. This was consistent with the fact that only 12 percent of the professional counselors' time was spent on debt management programs as opposed to education. The balance of time was devoted to the educational programs.
- The Agencies were controlled by a community board of directors. The boards were required to have at least a 60 percent representation of the general public. The Agencies were not controlled by or the captive of any creditor.

In 1976, relying on Rev. Ruls. 65-299 and 69-441, the Service notified the Agencies that it had made a mistake and was reclassifying them under IRC 501(c)(4). What followed are two pivotal declaratory judgment (IRC 7428) cases: Consumer Credit Counseling Service of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) and Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979).

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Part IV: Qualification for Exemption under IRC 501(c)(3), Continued

CASE LAW, continued

The reasons given by the Service for revocation of the IRC 501(c)(3) status were:

Service Position

- the Agencies were not organized and operated exclusively for charitable or educational purposes
- the debt management services were not limited to low-income individuals or families
- fees were charged for the services rendered.

Courts' Holdings

The courts did not agree with the Service and directed verdicts for the plaintiffs. The courts held that:

- Organizations that are charitable and educational in nature are described in IRC 501(c)(3). Providing information regarding the sound use of consumer credit is charitable because it advances education and promotes social welfare within Reg. 1.501(c)(3)-1(d)(2). These programs are also educational because they instruct the public on subjects useful to the individual and beneficial to the community. Reg. 1.501(c)(3)-1(d)(3)(i)(b).
- The counseling assistance programs are likewise charitable and educational in nature. Since the community education and counseling assistance programs are the Agencies' primary activities, the Agencies are organized and operated exclusively for charitable and educational purposes.
- The debt management and creditor intercession activities are an integral part of the Agencies' counseling function, and thus are charitable and educational undertakings. Even if this were not the case, these credit intercession activities are incidental to the Agencies' principal functions.

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Part IV: Qualification for Exemption under IRC 501(c)(3), Continued

Courts' Holdings, continued

- The law does not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under IRC 501(c)(3). Organizations may be properly designated under IRC 501(c)(3) notwithstanding the fact that the general public is served.
 - Nonetheless, the Agencies do not charge a fee for the programs that constitute their principal activities. A fee may be charged for a service that is an incidental part of an agency's function, but even where a fee is so charged it is nominal. Moreover, even this nominal fee is waived where payment would work a financial hardship.
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Part V: Exemption Applications Case Development

A Critical Eye The public, the federal government, and the states give great weight to the Service's determination of exemption. Thus, it is essential to review applications for exemption (Form 1023/1024) with a critical eye. Because credit repair activities may be illegal, a careful review of applications from credit counseling organizations and credit repair or debt management organizations is necessary. Any case in which there is a concern that the organization, or any organizations in which its founders, officers or directors have an interest, may be engaged in non-exempt activities should be coordinated with T:EO:RA.

Sample Questions

The following questions may be used to develop cases.

1. List the names of the members of your board of directors and provide a resume for each. How much will you compensate each member for their services as a director or consultant? For each member receiving compensation, indicate how many hours/week he/she provides services to you. Provide the same information for each of your officers.
2. Please indicate whether any of your officers and/or directors are related to each other and explain the relationship.
3. Explain the expertise of each board member and officer in the area of consumer credit counseling as well as any expertise or previous experience in the credit repair industry.
4. Disclose any ownership interests the members of your board of directors and your officers (and members of their families) have in for-profit or non-profit businesses that perform credit counseling, credit repair, or provide services that will be used by you in your provision of services to the public.
5. Describe the facility that you will use to provide your services. How much rent do you pay? Is there any business or professional relationship between you and your landlord? If there is, please explain in detail.

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Part V: Exemption Applications Case Development, Continued

Sample Questions, continued

6. Please describe the duties of each person you will employ. Provide a brief explanation of the education and experience you will require for each employee along with the salary you intend to pay. In addition, please describe any bonus structure your employees will be eligible for.
7. State whether your counselors are certified to perform credit repair services. Please indicate the name of the certifying organization and whether it is a federal, state or private certification organization.
8. Explain your advertising practices. Submit copies of all types of advertising copy that you plan to use, including TV ads, Internet ads and ads in the print media. Please submit a balance sheet detailing the revenues and expenses attributable to your advertising budget.
9. Explain in detail how you will make the availability of your services known to potential clients.
10. Explain in detail how your services will be provided. Please walk us through a client encounter from the first phone call through the expected services you will provide. In this regard, please submit:
 - copies of all promotional material given to the consumer
 - a copy of your customer contract
 - a copy of a typical debt management plan. Please include an assessment, a comprehensive financial plan, and a written action plan.
 - copies of the report you provide consumers detailing the allocation of any up-front fees
 - copies of periodic reports showing the allocation of all amounts paid in
11. Please submit copies of the training material you provide your counselors, including any recommended scripts for use with customers.

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Part V: Exemption Applications Case Development, Continued

Sample Questions, continued

12. What do you anticipate will be the average length of time it will take a debtor to get out of debt using your services? What is your policy in the event a debtor misses one or more payments to you?
 13. Explain your fee structure in detail. Please include a discussion of any voluntary contributions that are not considered fees for services. If you charge for educational material, please submit your fee schedule and a copy of all material.
 14. Submit copies of all material you provide the customer explaining the fees to be charged for your services.
 15. Have any of the members of your board of directors been an officer, director, or employee of a credit counseling, credit repair agency or organization issuing credit cards? If so, please explain in detail.
 16. Have you obtained the licenses to do business that are required by your state or locality? Please submit a copy of each license.
 17. How often are your operating and trust accounts audited? How was the auditor selected? Please submit a copy of your last audit report.
 18. Are your personnel licensed, bonded, and insured? Please explain.
 19. Are your services provided in conjunction with any other entities, such as credit counseling agencies, credit repair organizations or organizations issuing credit cards? Do you refer your clients to specific credit card companies to obtain additional credit?
 20. Do you refer your clients to any other entities for services that are necessary for them to complete the program you set up to assist them in paying off their debts? If so, please identify the entities that you work with or refer clients to. How were these organizations selected? Please submit copies of all contracts you have with these entities.
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Part VI: Conclusion

This article is not about credit counseling organizations that provide legitimate educational and charitable services. It is meant to raise your awareness about the agencies whose practices may be abusive. IRC 501(c)(3) status is an essential element in the federal statutory scheme as well as that of the states. IRC 501(c)(3) exemption is seen as a badge of legitimacy by consumer watchdogs. Given the relevance of tax-exempt status, the Service must pay close attention to applications for exemption.

The Revenue Rulings, court cases, federal and state consumer protection efforts, and voluntary codes provide guidance for the proper development of applications for exemption under IRC 501(c)(3) and IRC 501(c)(4). Turn to the Addendum to see how the state attorneys general and the Federal Trade Commission are alerting the public to potential abuses in this area.

Part VII: Addendum

THE CREDIT REPAIR ORGANIZATIONS ACT

Sec. 1679a. - Definitions

For purposes of this subchapter, the following definitions apply:

- (1) Consumer:** The term "consumer" means an individual.
- (2) Consumer credit transaction:** The term "consumer credit transaction" means any transaction in which credit is offered or extended to an individual for personal, family, or household purposes.
- (3) Credit repair organization:** The term "credit repair organization" -
 - (A)** means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of -
 - (i)** improving any consumer's credit record, credit history, or credit rating; or
 - (ii)** providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and
 - (B)** does not include -
 - (i)** any nonprofit organization which is exempt from taxation under section 501 (c)(3) of title 26;
 - (ii)** any creditor (as defined in section 1602 of this title), with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or
 - (iii)** any depository institution (as that term is defined in section 1813 of title 12) or any Federal or State credit union (as those terms are defined in section 1752 of title 12), or any affiliate or subsidiary of such a depository institution or credit union.
- (4) Credit:** The term "credit" has the meaning given to such term in section 1602e (e) of this title.

Sec. 1679b. - Prohibited Practices

(a) In general no person may -

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to - "creditworthiness,".

(A) any consumer reporting agency (as defined in section 1681a (f) of this title); or

(B) any person -

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(2) make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to -

(A) any consumer reporting agency;

(B) any person -

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(3) make or use any untrue or misleading representation of the services of the credit repair organization; or

(4) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

(b) Payment in advance -No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed

Sec. 1679c. - Disclosures

(a) Disclosure required

Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed: "CONSUMER CREDIT FILE RIGHTS UNDER STATE AND FEDERAL LAW"

"You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any 'credit repair' company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

"You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

"You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

"You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

"Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

"You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

"If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

"The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact: "THE PUBLIC REFERENCE BRANCH "FEDERAL TRADE COMMISSION "WASHINGTON, D.C. 20580".

(b) Separate statement requirement - The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

(c) Retention of compliance records

(1) In general - The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

(2) Maintenance for 2 years - The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

Sec. 1679d. - Credit repair organizations contracts

(a) Written contracts required - No services may be provided by any credit repair organization for any consumer -

(1) unless a written and dated contract (for the purchase of such services) which meets the requirements of subsection (b) of this section has been signed by the consumer; or

(2) before the end of the 3-business-day period beginning on the date the contract is signed.

(b) Terms and conditions of contract - No contract referred to in subsection (a) of this section meets the requirements of this subsection unless such contract includes (in writing) -

(1) the terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) a full and detailed description of the services to be performed by the credit repair organization for the consumer, including -

(A) all guarantees of performance; and

(B) an estimate of -

(i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or

(ii) the length of the period necessary to perform such services;

(3) the credit repair organization's name and principal business address; and

(4) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right."

Sec. 1679e. - Right to cancel contract

(a) In general -

Any consumer may cancel any contract with any credit repair organization without penalty or obligation by notifying the credit repair organization of the consumer's intention to do so at any time before midnight of the 3rd business day which begins after the date on which the contract or agreement between the consumer and the credit repair organization is executed or would, but for this subsection, become enforceable against the parties.

(b) Cancellation form and other information -

Each contract shall be accompanied by a form, in duplicate, which has the heading "Notice of Cancellation" and contains in bold face type the following statement:

"You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

"To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to (name of credit repair organization) at (address of credit repair organization) before midnight on (date) "I hereby cancel this transaction, (date) (purchaser's signature)."

(c) Consumer copy of contract required -

Any consumer who enters into any contract with any credit repair organization shall be given, by the organization -

(1) a copy of the completed contract and the disclosure statement required under section 1679c of this title; and

(2) a copy of any other document the credit repair organization requires the consumer to sign, at the time the contract or the other document is signed.

Sec. 1679f. - Noncompliance with this subchapter

(a) Consumer waivers invalid - Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter -

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(b) Attempt to obtain waiver - Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this subchapter shall be treated as a violation of this subchapter.

(c) Contracts not in compliance - Any contract for services which does not comply with the applicable provisions of this subchapter -

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

Sec. 1679g. - Civil liability

(a) Liability established - Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) Actual damages

The greater of -

(A) the amount of any actual damage sustained by such person as a result of such failure; or

(B) any amount paid by the person to the credit repair organization.

(2) Punitive damages

(A) Individual actions - In the case of any action by an individual, such additional amount as the court may allow.

(B) Class actions - In the case of a class action, the sum of -

(i) the aggregate of the amount which the court may allow for each named plaintiff; and

(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

(3) Attorneys' fees - In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

(b) Factors to be considered in awarding punitive damages

In determining the amount of any liability of any credit repair organization under subsection (a)(2) of this section, the court shall consider, among other relevant factors -

- (1) the frequency and persistence of noncompliance by the credit repair organization;
- (2) the nature of the noncompliance;
- (3) the extent to which such noncompliance was intentional; and
- (4) in the case of any class action, the number of consumers adversely affected.

Sec. 1679h. - Administrative enforcement

(a) In general

Compliance with the requirements imposed under this subchapter with respect to credit repair organizations shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.

(b) Violations of this subchapter treated as violations of Federal Trade Commission Act

(1) In general

For the purpose of the exercise by the Federal Trade Commission of the Commission's functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), any violation of any requirement or prohibition imposed under this subchapter with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45 (a)).

(2) Enforcement authority under other law

All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act shall be available to the Commission to enforce compliance with this subchapter by any person subject to enforcement by the Federal Trade Commission pursuant to this subsection, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of any Federal Trade Commission trade regulation rule, without regard to whether the credit repair organization -

(A) is engaged in commerce; or

(B) meets any other jurisdictional tests in the Federal Trade Commission Act.

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State -

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 1679g of this title as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Commission

(A) Notice to Commission - The State shall serve prior written notice of any civil action under paragraph (1) upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) Intervention - The Commission shall have the right -

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation

Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

Sec. 1679i. - Statute of limitations

Any action to enforce any liability under this subchapter may be brought before the later of -

(1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or

(2) in any case in which any credit repair organization has materially and willfully misrepresented any information which -

(A) the credit repair organization is required, by any provision of this subchapter, to disclose to any consumer; and

(B) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter,

the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation.

Sec. 1679j. - Relation to State law

This subchapter shall not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with any law of any State except to the extent that such law is inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

Consumer Alerts

Florida

How to Protect Yourself: CREDIT REPAIR SCAMS

Source: The Florida Attorney General's Office

"Credit Problems? NO problem ..."

"We can erase your bad credit! 100% guaranteed."

"We can remove bankruptcies, judgments, liens, and bad loans from your credit file, FOREVER!"

"Create a new credit identity - Legally!"

Do yourself a favor and save some money, too. Don't believe these statements. Credit repair companies typically charge from \$50 and up, but often do little or nothing for you before vanishing. If you are considering taking steps to improve your credit report, please consider the following:

TIPS FOR CONSUMERS

Accurate Negative Credit Information Can Not Be Erased.

If a credit repair company tells you that it will be able to remove negative information from your credit report, the company is not telling you the truth. Accurate information which is within seven years of the reporting period, or ten years if the information relates to a bankruptcy, cannot be erased from a credit report. The only information that can be changed are items which are actually wrong, or are beyond the seven or ten year reporting date. If you have a poor credit history, time is the only thing that will heal your credit report.

Hiding Bad Credit May Be Illegal.

Some credit repair schemes promise you that they can "hide" bad credit by helping you to establish a new credit identity. If you pay a fee for such a service, the company may direct you to apply for an Employer Identification Number (EIN) from the Internal Revenue Service, and to use the EIN in place of your social security number when you apply for credit. You may also be instructed to use a new mailing address. This practice, known as file segregation, is a federal crime.

How To Clean Up Your Credit Report Yourself.

The truth is, you can help yourself re-build a better credit record. Start by contacting your creditors when you realize that you cannot make scheduled payments. If you need help working out a payment plan and a budget, contact your local credit counseling service. These non-profit groups offer credit guidance to consumers, and their services are available at little or no cost to you. Also, check with your employer, credit union, or housing authority for other no-cost credit counseling programs. Anything a credit repair company can do, you can do on your own. Contact a local credit bureau and request a copy of your credit report. You are entitled to a free copy of your credit report if you've been denied credit, insurance or employment and request the report within 60 days of notice, or if you can prove that (1) you're unemployed and plan to look for a job within 60 days, (2) you're on welfare, or (3) your report is inaccurate because of fraud. Otherwise, the credit bureaus may charge you a small fee for a copy of your credit report. Review your credit report for mistakes and outdated information - anything beyond the seven or ten year reporting period. If there are mistakes, contact the credit bureau and request a dispute form. The form is available at no charge. Then submit the form with any supporting documentation which provides as much information as possible about the inaccurate information. The bureau must reinvestigate the matter, and delete or correct any information which they are unable to verify. If the dispute still exists, you can file a written explanation, which the credit bureau must include in your credit report.

Other facts you should know:

- Bankruptcy information can be reported for 10 years.
- Information about a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.
- Information reported because of an application for a job with a salary of more than \$75,000 has no time limit.
- Information reported because of an application for more than \$150,000 worth of credit or life insurance has no time limit.

Research The Companies.

Contact consumer agencies such as the Florida Department of Agriculture and Consumer Services, the Attorney General's Office, and local consumer agencies in the county where the company is located to determine if there are complaints or legal actions pending against the company. Do not rely on Chambers of Commerce or other associations where membership is based solely on payment of a fee. You also may contact the Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580; 202-326-2222; TDD, 202-326-2502.

Maryland

TV advertisement: Can't pay your bills? Can't cope? Call us! We can help you pay off your debts sooner, and relieve your stress and worry, with one low monthly payment!

If you're struggling with debt, ads like this for a debt management plan seem to offer a lifeline. They promise to get your creditors to reduce interest rates and accept smaller payments, so you'll be able to manage to pay down your debt. They promise to get the bill collectors off your back and to make things easier for you with only one monthly payment.

It sounds good, and with the right credit counseling company, it can be the solution you're seeking. Many consumers have successfully used debt repayment plans to pay off their debts.

However, not all consumers have a positive experience with these plans. Some complain of hidden fees, poor counseling, and companies that don't pay creditors on time, resulting in penalties and late fees. Other consumers have been scammed by companies that advertised debt management but actually steered clients to take out debt consolidation loans or to declare bankruptcy.

- A Silver Spring woman entered a debt management plan. After three months she had paid \$667, but only \$95 had been paid to her creditors. In fact, one of her creditors had refused to participate with the plan and she hadn't been told. In order to keep her accounts from going into collection, she had to pay her creditors separately.
- A Baltimore man discovered that the company administering his debt plan wasn't going to send any of his first monthly payment of \$150 to his creditors, but was keeping it as a "voluntary contribution."
- Another consumer's company made seven late payments to her creditors, resulting in negative history on her credit report, and mistakenly doubled an automatic withdrawal, causing her checking account to be overdrawn.

Here are things you should do before you sign up for a debt management plan:

Watch out for illegal fees or hidden "contributions." Maryland law prohibits organizations from charging fees for providing a debt management plan. Because they may not charge fees, some organizations ask consumers to pay a voluntary "contribution." You might not be told about this, but it could appear in the agreement (contract) you will be asked to sign.

These contributions can be high—your entire first payment may be taken as a contribution, with none going to your creditors. There may also be a monthly contribution for each of your accounts. These "contributions" can wipe out any savings the plan is supposed to get for you in reduced finance charges.

Read your agreement carefully. The company cannot force you to make the contribution, so if you do not want to make one, ask to have any wording about agreeing to make a contribution deleted from your agreement.

Better still, look for a company that does not charge fees or request "contributions" of any kind. The Consumer Credit Counseling Service of Maryland and Delaware (1-800-642-2227; www.cccs-inc.org) and the Consumer Credit Counseling Service of Greater Washington (1-800-747-4222; www.debtfreeforme.com) provide debt management plans at no cost.

Check out the reputation of the company offering the plan. Call the Maryland Attorney General's Consumer Protection Division and/or the Better Business Bureau to see if other consumers have filed complaints against the company. Also, find out how long it has been in business.

Debt management plans have been offered for many years by non-profit agencies such as the Consumer Credit Counseling Services (CCCS), which are members of the National Foundation for Credit Counseling. In recent years, many new non-profits and some for-profit companies have begun offering these plans, and some have used questionable sales practices and provided poor service. Know that just because a company says it is non-profit doesn't mean it can't be a scam.

Find out if your creditors will deal with the company. Some creditors will work with some credit counseling companies, but not others.

Determine if a debt management plan is right for you. A debt management plan is not the best solution for everyone's situation. A counselor should take the time to thoroughly go over your income and debts and determine if it is the right choice for you. A company that automatically puts every client into a debt plan may only be interested in its own bottom line.

Be aware that not all debts can be included in a debt management plan. Secured debts such as car loans, home mortgages or second mortgages, as well as student loans and debts to the IRS, usually cannot be included in a debt management plan.

Read your plan agreement carefully before signing. Make sure you understand every line.

Follow up with your creditors to be sure they are being paid. Being in a debt plan does not relieve you of your responsibility to make sure your creditors are paid. The plan can be a helpful middleman, but you are still the person who owes the money and who will suffer if the plan makes a mistake. Make sure you get a monthly report from the plan showing payments to creditors, and follow up with your creditors to be sure they have received the payments.

Watch out for delays in getting the plan started. Many consumers report problems within the first and second months after entering a debt plan. They made their payments and thought the company would handle everything. However, due to delays in getting creditors to agree to the plan, the creditors were not paid, and the consumers were assessed late charges and penalties. You should keep checking with both the company and your creditors until all your creditors have

agreed to accept payments through the debt management plan and are receiving payments as scheduled.

Know that participation in a debt management plan may be reflected in your credit file, and it will not erase your prior credit problems. Your creditors may continue to report your payment history to the credit bureaus. A creditor may report that your account is in financial counseling, and when it is paid off, it may report that some of the debt was written off. Ultimately, however, getting your debts repaid will result in a better credit history.

August/September 2002

Maryland Attorney General's Consumer Protection Division
Consumer hotline: (410) 528-8662 or 1 (888) 743-0023 toll-free

Uniform Consumer Credit Code

EVERYTHING YOU SHOULD KNOW ABOUT CREDIT REPAIR

Because most consumers use credit to pay for everything from their weekly entertainment to their homes, the extension and receipt of credit are of great value. If credit problems impair your ability to obtain credit, you may be tempted to seek the help of credit repair companies (also called "credit clinics" or "credit doctors"), that claim to improve your credit standing or erase bad credit. Before doing business with any credit repair company, it is important for you to become familiar with the federal and state laws that regulate credit repair and credit reports. Knowledge of these laws will help you determine if you should spend money to hire a credit repair company, or do the work yourself for free.

DEFINITIONS

Credit Bureau or Consumer Reporting Agency - A private company that compiles your credit information, as reported by your creditors or from public records, and reports or sells that information to creditors. There are a few large national credit bureaus, as well as local ones.

Credit Report - A report compiled and issued by a credit bureau which lists all activity which may affect your credit standing, including your creditors, the amount of your debts, your credit limits, late payments, defaults, charge-offs, repossessions and bankruptcies.

Credit Repair Company - Any person or business that, for a fee, advertises or claims they can improve your credit record or report.

CREDIT REPORTING LAWS

The Federal Fair Credit Reporting Act and Colorado Consumer Credit Reporting Act regulate what appears on your credit report, for how long, and how you can obtain and correct any errors in the report. You can get a copy of your credit report, and information on how to correct the report, from any credit bureau. Colorado law requires credit bureaus to provide you with one free copy of your credit report each year upon your request. In addition, a credit bureau must send you a notice once a year if negative information was added to your credit report or if there were ten or more inquiries on your credit report. An inquiry occurs when a creditor reviews your credit report because you applied for credit or a creditor wants to offer you a credit product. You can stop unsolicited credit offers based on your credit report by calling (888) 567-8688.

To receive a copy of your credit report, credit bureaus typically request your full name, address, social security number, date of birth, place of employment, and a copy of your driver's license. The credit bureaus already possess most of this information, as reported by your creditors, but need you to verify it to make certain they provide you with the correct report. The three major credit bureaus are:

Equifax Credit Information Services

*P.O. Box 740241
Atlanta, GA 30374
(800) 685-1111
www.equifax.com*

Experian

*P.O. Box 949
Allen, TX 75013
(888) 397-3742
www.experian.com*

Trans Union Corp.

*P.O. Box 390
Springfield, PA 19064-0390
(800) 916-8800
www.tuc.com*

If you are denied credit based on the contents of a credit report, the creditor must give you the name and address of the credit bureau that provided the report. If you contact the credit bureau within 60 days after the creditor's notification, the credit bureau must provide a free copy of your credit report.

After receiving your credit report, do the following:

- Review the credit report for inaccurate information. If you find a mistake or error, write to the credit bureau, explain the problem, and request the correction of your report. Include copies of canceled checks, receipts, or other documents to verify payment or identification with the correction request.
- Contact your creditors directly, to ensure that their records are correct. This may be another way to correct inaccurate information on your credit report.
- Remember, credit bureaus must remove accurate information after seven years and bankruptcies after ten years old. Otherwise, credit bureaus do not have to remove accurate information, no matter how negative.
- When a credit bureau receives your correction request, it must investigate and remove or correct any inaccurate information that is not verified within a reasonable period of time, usually 30 days. Note, a credit bureau may ignore frivolous correction requests.
- At your request, the credit bureau will send a corrected copy of your report to anyone who received the incorrect version within the past six months.
- If, after the investigation, you are not satisfied, you can file an explanation with the credit bureau that will become part of your report.

COLORADO CREDIT SERVICES ORGANIZATION ACT

The Colorado Credit Services Organization Act was adopted to provide consumers with information necessary to make an intelligent decision regarding the purchase of credit repair services and protect the public from unfair or deceptive advertising and business practices. If you are tempted to use a credit repair company, make sure that the company is complying with the law.

Before you sign a credit repair agreement, the credit repair company must you disclose in writing:

- How you can correct your credit report yourself under Colorado and federal law;
- Your right to cancel the agreement for any reason within five working days (a detachable cancellation form must be included);
- The total fee, conditions of payments, and a full and detailed description of the services to be performed; and
- A copy of your credit report, with the incorrect information indicated.

The Federal Telemarketing Rule prohibits credit repair companies from collecting **any** advance fees other than those connected with the cost of obtaining credit reports. Although Colorado's law allows advance fees if the credit repair company files a surety bond with the Colorado Secretary of State, federal law takes precedence and overrides that part of Colorado law.

Beware of the following credit repair practices:

- Promises to remove any negative information or bankruptcies from your credit report. This will occur only through the passage of time. Credit repair companies may be able to temporarily delete information, but once it is re-verified, it may again appear on your credit report.
- Requests for advance payment for services, including by post-dated checks. This is illegal under federal law and it is difficult to recover any money paid in advance.
- Promises to improve your credit standing by showing you how to obtain and use a tax identification number or a false social security number in place of your actual social security number. This may be illegal.

REMINDERS

\$ YOU CAN CORRECT ANY ERROR IN YOUR CREDIT REPORT YOURSELF, WITHOUT PAYING A FEE, BY CONTACTING THE CREDIT BUREAUS DIRECTLY.

\$ DO NOT PAY ADVANCE FEES TO A CREDIT REPAIR COMPANY.

\$ DO NOT CONTRACT WITH OR SEND MONEY TO AN OUT-OF-STATE CREDIT REPAIR COMPANY. BECAUSE IT IS DIFFICULT TO ENFORCE COLORADO LAW AGAINST OUT-OF-STATE COMPANIES, IT MAY BE IMPOSSIBLE TO RECOVER YOUR MONEY, IF PROBLEMS ARISE.

\$ IF YOU DECIDE TO USE A CREDIT REPAIR COMPANY, KEEP A RECORD OF ALL PAYMENTS YOU MAKE BY KEEPING THE CANCELED CHECKS, OR GETTING RECEIPTS FOR PAYMENTS BY CASH OR MONEY ORDER.

HOW TO HANDLE PROBLEMS

Credit Problems - If bad credit is affecting your ability to obtain credit, try to negotiate with your creditors to accept smaller payments or waive interest. Consult a credit counseling service or an attorney for help in negotiating with creditors. Follow all payment arrangements. Call or write your creditors, if you have to pay late.

Debt Collection Problems - If your account is assigned to a collection agency, try to negotiate with the collection agency for favorable payment arrangements. For more information concerning state collection laws, or to report problems with a collection agency, contact the Collection Agency Board, 1525 Sherman St., 5th Fl. Denver, CO. 80203, (303) 866-5304. www.ago.state.co.us/cab.htm

Credit Repair Problems - If a credit repair company is violating your rights under Colorado law, you can sue the business, and may be entitled to recover damages. For more information concerning credit repair, contact your local Better Business Bureau, your local District Attorney's Office, or the Office of the Uniform Consumer Credit Code, 1525 Sherman St., 5th Fl.; Denver, CO. 80203, (303) 866-4494. www.ago.state.co.us/uccchome.htm

Credit Bureau Problems - If a credit bureau is violating your rights under the Fair Credit Reporting Act, or if you are having problems with your credit report, contact the Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Ave., NW #130, Washington, D.C., 20580, (877)-FTC-HELP, www.ftc.gov, or a private attorney.

February 2, 1999

Nationwide Crackdown Hits 43 Phony Credit Firms That Turn Consumers Into Felons

Announcement Coincides With National Consumer Protection Week

Columbus – In a massive crackdown on operators who turn credit-challenged consumers into lawbreakers, Attorney General Betty D. Montgomery today announced that 17 law enforcement agencies have filed 43 law enforcement actions against defendants who claim to help consumers obtain new credit histories through new identification numbers – a practice known as file segregation. The effort is in conjunction with the National Association of Attorneys General (NAAG) and the Federal Trade Commission (FTC).

These cases were announced in conjunction with National Consumer Protection Week, a nationwide consumer education and law enforcement initiative sponsored by a broad coalition of consumer protection advocates. Using the Internet and other media to make claims such as "brand new credit file in 30 days," the suspect firms sell instructions about how consumers can substitute federally issued, nine-digit employee identification numbers or taxpayer identification numbers for social security numbers. They illegally advise consumers to use the new identification numbers when applying for new credit, and thus build new credit profiles that will allow them to get credit they may be denied based on their real credit histories.

"Using a false identification number to apply for credit is a felony," Montgomery said. "This type of credit fraud creates criminals out of unsuspecting consumers who simply want to repair their credit. Individuals who promote file segregation and consumers who use it could face fines and even jail time."

Ohio's lawsuit was filed against Leurhman E. Saulsberry and Mary E. Saulsberry of Columbus. The Saulsberrys operate a business over the Internet called G-Wiss and 4th Limited. The business solicits sales for a credit repair program that allegedly involves file segregation. It also allegedly represents that the business can wipe out consumers' bad credit, that the program is 100 percent legal, and that consumers will qualify for credit cards, car loans, and mortgages. The lawsuit alleges violations of state and federal laws including the Credit Repair Organization Act, the Credit Services Organizations Act, and the Ohio Consumer Sales Practices Act. It seeks a permanent injunction prohibiting the defendants from continuing in the alleged illegal activities, consumer restitution to all consumers damaged by the alleged scam, civil penalties of up to \$25,000 per violation, and attorneys fees and investigative costs.

"Because this scam was advertised over the Internet, we may never know how many consumers have been affected both here in Ohio and across the country," Montgomery said. "This type of scam typically targets consumers who are already in a vulnerable financial situation. By highlighting this scam through a nationwide effort we can help to educate citizens about their rights and responsibilities as consumers."

In addition to Ohio's case, 14 complaints were filed by the FTC, along with another three filed by the Department of Justice at the FTC's request. Another 20 cases were announced by the attorneys general of Arizona, California, Connecticut, Delaware, Illinois, Kentucky, Minnesota, Missouri, Nevada, North Carolina, Oklahoma, Oregon, and Pennsylvania. Finally, the Treasury Inspector General for Tax Administration (formerly the IRS Internal Security Division) announced that criminal search warrants had been executed in an additional five cases. Other law enforcement agencies participating in the joint effort, but not announcing cases today, include the Orange and Santa Clara County, CA, District Attorneys; the San Diego, CA, City Attorney; the United States Attorney for the District of New Jersey; and the Massachusetts, Michigan, Tennessee, and Wisconsin attorneys general.

Consumers who would like more information about file segregation or other consumer scams can contact Attorney General Montgomery's **Consumer Protection Hotline at 1-800-282-0515** or visit her web site at www.ag.state.oh.us.

A copy of Ohio's lawsuit can be obtained by calling (614) 466-3840.

Federal Trade Commission

January 2002

Erase Bad Credit

The ad claims, "Erase bad credit or reduce payment to your creditors!"
What's true and what's hype?

I'm Shirley Rooker for the Federal Trade Commission.

No matter what the ad states, a poor credit history can't be erased...but there are some things you can do.

Under the Fair Credit Reporting Act, you can question an item in your credit file and your complaint must be investigated. However, the negative information will be removed only if an investigation determines it's incorrect. A credit repair company, no matters what it claims, cannot compel the credit bureau to remove negative information from your file, if that information is accurate.

Some companies claim they will work with your creditors to consolidate your debts, or reduce the size of your monthly payments. Before you pay large sums of money to these companies, call our office for referral to non-profit counseling services that provide free or low-cost help.

I'm Shirley Rooker, director of WTOP radio's Call For Action for the Federal Trade Commission.

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Federal Trade Commission

Credit Repair: Self-Help May Be Best

You see the advertisements in newspapers, on TV, and on the Internet. You hear them on the radio. You get fliers in the mail. You may even get calls from telemarketers offering credit repair services. They all make the same claims:

"Credit problems? No problem!"

"We can erase your bad credit-100% guaranteed."

"Create a new credit identity-legally."

"We can remove bankruptcies, judgments, liens, and bad loans from your credit file forever!"

Do yourself a favor and save some money, too. Don't believe these statements. Only time, a conscious effort, and a personal debt repayment plan will improve your credit report.

This brochure explains how you can improve your credit worthiness and lists legitimate resources for low or no-cost help.

The Scam

Everyday, companies nationwide appeal to consumers with poor credit histories. They promise, for a fee, to clean up your credit report so you can get a car loan, a home mortgage, insurance, or even a job. The truth is, they can't deliver. After you pay them hundreds or thousands of dollars in up-front fees, these companies do nothing to improve your credit report; many simply vanish with your money.

The Warning Signs

If you decide to respond to a credit repair offer, beware of companies that:

Want you to pay for credit repair services before any services are provided;

Do not tell you your legal rights and what you can do-yourself-for free;

Recommend that you not contact a credit bureau directly;

Suggest that you try to invent a "new" credit report by applying for an Employer Identification Number to use instead of your Social Security Number; or

Advise you to dispute all information in your credit report or take any action that seems illegal, such as creating a new credit identity. If you follow illegal advice and commit fraud, you may be subject to prosecution.

You could be charged and prosecuted for mail or wire fraud if you use the mail or telephone to apply for credit and provide false information. It's a federal crime to make false statements on a loan or credit application, to misrepresent your Social Security Number, and to obtain an Employer Identification Number from the Internal Revenue Service under false pretenses.

Under the Credit Repair Organizations Act, credit repair companies cannot require you to pay until they have completed the promised services.

The Truth

No one can legally remove accurate and timely negative information from a credit report. But the law does allow you to request a reinvestigation of information in your file that you dispute as inaccurate or incomplete. There is no charge for this. Everything a credit repair clinic can do for you legally, you can do for yourself at little or no cost. According to the Fair Credit Reporting Act:

You are entitled to a free copy of your credit report if you've been denied credit, insurance or employment within the last 60 days. If your application for credit, insurance, or employment is denied because of information supplied by a credit bureau, the company you applied to

must provide you with that credit bureau's name, address, and telephone number.

You can dispute mistakes or outdated items for free. Ask the credit reporting agency for a dispute form or submit your dispute in writing, along with any supporting documentation. Do not send them original documents.

Clearly identify each item in your report that you dispute, explain why you dispute the information, and request a reinvestigation. If the new investigation reveals an error, you may ask that a corrected version of the report be sent to anyone who received your report within the past six months. Job applicants can have corrected reports sent to anyone who received a report for employment purposes during the past two years.

When the reinvestigation is complete, the credit bureau must give you the written results and a free copy of your report if the dispute results in a change. If an item is changed or removed, the credit bureau cannot put the disputed information back in your file unless the information provider verifies its accuracy and completeness, and the credit bureau gives you a written notice that includes the name, address, and phone number of the provider.

You also should tell the creditor or other information provider in writing that you dispute an item. Many providers specify an address for disputes. If the provider then reports the item to any credit bureau, it must include a notice of your dispute. In addition, if you are correct—that is, if the information is inaccurate—the information provider may not use it again.

If the reinvestigation does not resolve your dispute, have the credit bureau include your version of the dispute in your file and in future reports. Remember, there is no charge for a reinvestigation.

Reporting Negative Information

Accurate negative information generally can be reported for seven years, but there are exceptions:

Bankruptcy information can be reported for 10 years;

Information reported because of an application for a job with a salary of more than \$75,000 has no time limitation;

Information reported because of an application for more than \$150,000 worth of credit or life insurance has no time limitation;

Information concerning a lawsuit or a judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer; and

Default information concerning U.S. Government insured or guaranteed student loans can be reported for seven years after certain guarantor actions.

The Credit Repair Organizations Act

By law, credit repair organizations must give you a copy of the "Consumer Credit File Rights Under State and Federal Law" before you sign a contract. They also must give you a written contract that spells out your rights and obligations. Read these documents before signing the contract. The law contains specific protections for you. For example, a credit repair company cannot:

make false claims about their services;

charge you until they have completed the promised services; or

perform any services until they have your signature on a written contract and have completed a three-day waiting period. During this time, you can cancel the contract without paying any fees.

Your contract must specify:

the payment terms for services, including their total cost;

a detailed description of the services to be performed;

how long it will take to achieve the results;

any guarantees they offer; and

the company's name and business address.

Have You Been Victimized?

Many states have laws strictly regulating credit repair companies. States may be helpful if you've lost money to credit repair scams.

If you've had a problem with a credit repair company, don't be embarrassed to report them. While you may fear that contacting the government will only make your problems worse, that's not true. Laws are in place to protect you. Contact your local consumer affairs office or your state attorney general (AG). Many AGs have toll-free consumer hotlines. Check with your local directory assistance.

Need Help? Don't Despair

Just because you have a poor credit report doesn't mean you won't be able to get credit. Creditors set their own credit-granting standards and not all of them look at your credit history the same way. Some may look only at more recent years to evaluate you for credit, and they may grant credit if your bill-paying history has improved. It may be worthwhile to contact creditors informally to discuss their credit standards.

If you can't resolve your credit problems yourself or you need additional help, you may want to contact a credit counseling service. There are non-profit organizations in every state that counsel consumers in debt. Counselors try to arrange repayment plans that are acceptable to you and your creditors. They also can help you set up a realistic budget. These counseling services are offered at little or no cost to consumers. You can find the office nearest you by checking the white pages of your telephone directory.

In addition, nonprofit counseling programs sometimes are operated by universities, military bases, credit unions, and housing authorities. They're also likely to charge little or nothing for their services. Or, you can check with your local bank or consumer protection office to see if it has a list of reputable, low-cost financial counseling services.

Do-It-Yourself Check-Up

Even if you don't have a poor credit history, it's a good idea to conduct your own credit check-up, especially if you're planning a major purchase, such as a home or car. Checking in advance on the accuracy of the information in your credit report could speed the credit-granting process.

You're entitled to one free report a year if you can prove that (1) you're unemployed and plan to look for a job with 60 days, (2) you're on welfare, or (3) your report is inaccurate because of fraud. Otherwise, a credit bureau may charge you up to \$9.00 for a copy of your report.

Credit bureaus usually are listed in the yellow pages of your telephone book under "credit reporting agencies." Three large national credit bureaus supply most credit reports: Equifax, Experian and Trans Union. You may want to contact each of them for a copy of your report.

Equifax

1-800-685-1111

www.equifax.com

Experian

1-888-EXPERIAN (397-3742)

www.experian.com

Trans Union

1-800-916-8800

www.transunion.com

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FEDERAL TRADE COMMISSION FOR THE CONSUMER

1-877-FTC-HELP www.ftc.gov