NEW YORK STATE
CONSUMER PROTECTION BOARD

CREDIT COUNSELING AND DEBT MEDIATION FACT SHEET

Are you overwhelmed with debt?
A credit counseling agency might be a good choice for you.

What is a Counseling Agency?

Credit counseling agencies encourage consumers to make every effort to pay their debts. A certified credit counselor should help you

- Use credit wisely;
- Establish a budget; and,
- Arrange a repayment plan.

How do I choose a Counseling Agency?

If you chose to work with a credit counseling agency, take the time to research your options. You should look for a counseling agency that offers personal service, trained counselors and satisfied clients who can share their recommendations, and educates you on making the right financial choices. Additionally:

- Interview several agencies.
- Look at the advertisements. Good credit counselors rely upon past clients for referrals, rather than getting business through advertising, infomercials, telemarketing, or e-mails.
- Check complaint records. Contact the Better Business Bureau, the Office of the New York State Attorney General, the New York State Consumer Protection Board, and local consumer authorities to find out about a specific credit counseling organization’s records.
- Check to see that the credit counseling agency is licensed and accredited. New York requires credit counselors, also known as budget planners, to be licensed through the Banking Department. Information relating to licensing and accreditation can be found through www.banking.state.ny.us/sibudgpl.htm or by calling the Banking Department at 1-877-BANK-NYS.
- Look for financial services plans that meet your individual needs and situation.
- Make sure that you understand what services the agency is offering. Check out credit counseling agencies offering educational brochures and workshops. If the agency says that a debt management plan is your ONLY option, you should probably look for another agency.

- Get all verbal promises IN WRITING. Make sure you receive a written agreement or contract. Contracts are required in New York State, and must include:
  - A complete list of the debtor's obligations to be adjusted;
  - Total fees;
  - Commencement and termination date of the contract (contracts must be limited to a payment period of 60 months);
  - Statement of the total fees to be charged, including expected available rebates from creditors, expressed as a percentage of the total obligations, principal, and interest to be adjusted under such contract;
  - Settlement terms in case of cancellation of the contract or prepayment of the obligations; and,
  - Notice that the debtor may rescind/cancel the contract until midnight of the 3rd business day after the day on which the debtor has signed the contract. (When rescinded, the debtor is generally entitled to all monies back. A debtor also has the right to cancel the contract within 10 days without additional fees or penalties.)
- Fees: Make sure you understand the nature and amount of fees. You should not expect to pay more than $75 in set-up charges or a monthly fee that exceeds $40. Some credit counseling agencies charge fees ranging from 5-10% of the consumer's debt. Using the option of automated withdrawals for payment may reduce your fees. However, exercise caution. As discussed above, all fees must be in writing.
- Check that the credit counseling agency has adequate privacy and security policies in place. In New York, these agencies are required to comply with privacy policies contained in the federal Gramm-Leach-Bliley Act, which, for example, limits a credit counseling agency's ability to disclose private financial information to non-affiliated third parties. For a complete listing of requirements under this Act, see 15 U.S.C. § 6801 *et seq.*

Warning Signs

Think twice when choosing a particular credit counseling agency if it:

- Is reluctant to provide the organization's business name and address. This is a clear sign of fraud. *A toll-free number or e-mail address is not enough.* Scam artists typically avoid providing their physical location to evade law enforcement.
- Demands account numbers or other financial details before discussing services provided and a written agreement. Reputable credit counseling agencies are willing to provide free information upfront about their services.

- Tells you that monthly payments can be lowered by 30 to 50%.This is rarely true.
- Promises that getting out of debt will be easy.
- Represents that your financial situation can be quickly remedied. It should take experienced counselors at least an hour to review your financial situation before recommending how to address your concerns.
- Claims that negative information, such as a bankruptcy or late payments, will be removed from your credit report. If the negative information is accurate, it cannot be removed from your credit report, unless a certain period of time has passed.
- Issues a blanket recommendation for a debt management plan. They are not for everyone.
- Requires a "voluntary" contribution from you. These contributions are far from voluntary!
- Pressures you to make an immediate decision. Reputable credit counselors or budget planners will give you time to evaluate their offer and shop around. However, remember that too much delay can cause your financial situation to worsen.

Questions to Ask Before you Sign Up for an Agency

- Are your counselors certified, and, if so, by whom?
  - Try to work with an agency that has counselors certified by an outside, independent organization.
- How are your employees paid? Are they paid by commission?
  - Employees paid by commission may not have your best interests at heart.
- Will I work with one counselor or more than one?
- Does your agency help me with my secured debts, such as car loans or mortgages?
  - If secured debts are not part of your payment plan, you will need to contact those lenders directly. If you fall behind on your mortgage payment, contact your lender immediately so as to avoid foreclosure.
- How will I know that the creditors have received my payment?
- How often will I receive reports on my account?
  - Can I access my account online or over the phone?
- How long will it take me to get out of debt?
- How is the agency funded?
  - Most credit counseling agencies are partially funded through voluntary contributions from creditors who participate in debt management plans.
- How is your money held--in a separate trust account or together with the agency's operating funds?
  - Under New York State law, your money must be separate from the agency's operating funds.

NEW YORK STATE

CONSUMER PROTECTION BOARD

CREDIT COUNSELING AND DEBT MEDIATION FACT SHEET

What is a Debt Management Plan?

A debt management plan is a creditor-approved arrangement that allows you to pay your debts at reduced interest rates. The credit counselor will negotiate with creditors to reduce interest rates, eliminate late fees or other penalties. In turn, you will make one payment a month to the counseling agency. Your payments are then used to pay creditors.

Some credit counseling agencies charge a modest fee for managing the plan, but others charge more. Agencies that are members of the National Foundation for Credit Counseling (NFCC) and the Association of Independent Consumer Counseling Agencies (AICCA) are bound by standards limiting the charges for their services. Before signing up, ask what services will be provided at what fee. If it is too high, look for another agency.

Debt Negotiators/Debt Mediators

Debt Negotiators, also known as debt mediators or debt settlement companies, claim that they can reduce a consumer's debts and pay them off. Some of these negotiators claim to be law firms, even though a lawyer will not be handling your case. Consumers should be wary of these claims. Take note of the following potential issues with many of these services:

- They tend to charge hefty fees;
- Debt negotiation will leave charge-offs on your credit report, which could look just as bad to future creditors as bankruptcy;
- Often, a debt negotiator will tell you to stop making payments to creditors and send money to them instead. The money gets placed into an account until the debt negotiator decides to make an offer to the creditor. This can take months. In the meantime, the consumer's credit is ruined and creditors may choose to bring a legal action against the consumer for the debt; and,
- Debts written off may cause consumer problems with the Internal Revenue Service (IRS), because the amount that is forgiven may be considered income.

Credit Repair Agencies

Credit counselors can assist consumers in improving their credit report and scores through financial and debt management. Credit repair organizations, on the other hand, offer to clean up your credit report for a fee. Be warned -- statements such as, "Credit problems? No problem;" "We can remove bankruptcies, judgments, liens, and bad loans from your credit file forever;" "We can erase your bad credit 100% guaranteed;" or "Create a new credit identity legally" -- are red flags that the credit repair organization is not legitimate. **No one can remove accurate and timely negative information from a credit report.** Additionally, you can do everything that a credit repair organization can legally perform, at no cost.