NATIONAL FOUNDATION FOR
CREDIT COUNSELING
Knowing the difference can make all the difference.®

2000 M Street, NW / Suite 505 / Washington, DC 20036

August 15, 2011

Nondepository Supervision
Consumer Financial Protection Bureau
1800 L Street, NW
Room 513-H
Washington, DC 20036

RE: **CFPB Docket No. CFPB-HQ-2011-2**

To the CFPB:

On behalf of the National Foundation for Credit Counseling ("NFCC"), thank you for inviting me to participate in the first Consumer Financial Protection Bureau ("CFPB") Roundtable on July 7th, and for this additional opportunity to provide comments relative to the review of "larger participants" in certain consumer financial products and service markets for proposed rulemaking, as outlined in the *Federal Register*, Vol. 76, No. 125, Wednesday, June 29, 2011, pp. 38059-62.

By way of background, the NFCC is celebrating its 60th Anniversary this year, having been founded in 1951. The NFCC is the nation's largest and longest serving network of nonprofit credit and financial education and counseling agencies, with 90 members with 800 offices in communities across the country. NFCC Member Agencies are often known as Consumer Credit Counseling Service and other names. All NFCC Member Agencies are 501(c)(3) organizations under the Internal Revenue Code. In the past two years, NFCC Member Agencies have provided counseling, education and related services to more than 5 million consumers in an effort to help them manage their debts and to take control of their finances.

Given our role in the communities and with the consumers we serve, the NFCC commends the CFPB for undertaking this effort and will focus our comments on "debt relief services." As the CFPB noted in the *Federal Register*, "[d]ebt relief services refer to consumer financial products and services offered to reduce a consumer's debt. Providers generally offer one of two types of products or services. Providers of 'debt management plans,' typically nonprofit credit counseling agencies, work with creditors to develop repayment plans for consumers. These plans typically permit a consumer to repay the full credit balance owed under renegotiated terms, such as substantially reduced interest rates and fees. For consumers who are unable to repay the full balanced owed, 'debt settlement' entities offer to negotiate with a consumer's creditors to enable the consumer to make a lump-sum payment of less than the entire balance owed to the creditor, thereby settling the debt obligation."

The CFPB specifically asked for public comment on:

- What consumer financial product or product or service market should be included in the initial rule?

- How should the financial product or service markets included in the initial rule be defined?

Those are important questions. The NFCC further commends the CFPB for recognizing in its "Notice and Request for Comment" that despite their similar names, there are substantial differences between a "debt management plan" ("DMP") administered by a nonprofit credit counseling agency and a debt settlement program offered by a for-profit debt settlement company. Those differences are in their overall operation and, more importantly, the potential benefit or detriment to consumers. The NFCC will have more to say about debt settlement below, but first, we believe that there is a fundamental element pertaining to the "providers of debt relief services" and that is ***the difference between the business model, services and operations of nonprofit agencies and for-profit companies in the sector***. While acknowledging that there is a patchwork of state laws and regulations that provide varying levels of consumer protection, the NFCC's comments will focus on national and federal standards, laws and regulation.

I. THE DIFFERENCE BETWEEN FOR-PROFIT AND NONPROFIT DEBT RELIEF SERVICES

A. History and Background

The practice known as "credit counseling" was initiated by creditor banks and credit card companies during the mid-1960s in an effort to stem the growing volume of personal bankruptcies. Most, if not all, of the original credit counseling agencies ("CCAs") were members of the NFCC. NFCC Member Agencies were generally community-based, non-profit organizations that provided a full range of counseling, often in face-to-face meetings with consumers. Trained counselors would advise consumers about how to remedy their current financial problems, counsel them on budget planning, and educate them as to how to avoid falling into debt in the future. These counseling sessions were traditionally one-on-one meetings in which an educated counselor performed a detailed analysis of an individual's income, expenses, debts, and other budget requirements. A consumer would meet with a counselor more than once and for significant periods of time. After a budget analysis, the counselor might recommend that the consumer readjust his or her budget, utilize a debt management plan, seek legal or other assistance, or possibly to declare bankruptcy.

From the outset, a popular credit counseling option was the DMP. In order to initiate a DMP, a consumer would authorize the credit counselor to contact each of the consumer's unsecured creditors – primarily credit card companies. The counselor would then negotiate with each creditor to lower the consumer's monthly payment amount, to lower the interest rate, and to waive any outstanding late fees. All of the consumer's lowered monthly payments were then “consolidated” into a single payment. The consumer would send a single payment to the CCA, which would then disburse payments to each of the consumer's creditors.

DMPs were prevalent because each party involved – the consumer, the creditor, and the CCA – received a tangible benefit. Consumers got their finances under control and received concessions from their creditors, such as reduced interest rates, waiver of late fees, and forgiveness of overdue payment status. Creditors, rather than taking a loss from a bankruptcy, received all of the principal debt owed by the consumer. The CCA, in return for organizing the DMP, would receive “fair share” payments from the creditor to cover their expenses, salaries, and operational costs.

This mutually beneficial system operated smoothly for several decades. Some NFCC CCAs charged nominal fees or requested contributions from consumers. Such fees or contributions were used to defray their costs for counseling and initiating and maintaining the DMP, and were small in comparison to the creditor concessions received by the consumer. Today, the fees charged by NFCC Member Agencies remain low.

Growth in consumer credit card debt in the 1990s however, brought many new and aggressive entrants into the credit counseling industry. From 1994 - 2005, 1,215 CCAs applied to the IRS for tax exempt status under Section 501(c)(3). Over 810 of those applicants applied between 2000 and 2003. Many of these “new entrants” were not centered around community-based, face-to-face counseling, but rather upon a nationwide, Internet and telephone-based model focused primarily, if not solely, upon DMP enrollment.

Many of the “new entrants” were set up on a for-profit model. The for-profit model was designed to provide the maximum benefit to related for-profit corporations, which enter into contracts with nonprofit CCAs to siphon off revenue from the CCA. A common method used by the for-profit entity to collect revenue from the CCA was to set itself up as a “back-office processing company,” which contracted to provide data entry and DMP payment processing for the CCA. In many instances, multiple nonprofit CCAs would send processing fees to a single for-profit company, which reaped substantial profits.

Some “new entrants” in the sector developed a completely different business model – a “for-profit model” designed so that their nonprofit credit counseling agencies would generate massive revenues for for-profit affiliates through advertising, marketing, executive salaries, and any number of other activities other than actual credit counseling. The new model looks to the consumer to provide those revenues.

[Much of the above history and background was modeled from the Report of the United States Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, "PROFITEERING IN A NON-PROFIT INDUSTRY: ABUSIVE PRACTICES IN CREDIT COUNSELING," Senate Report 109-55, April 13, 2005 (hereinafter cited as "U.S. Senate Report 109-55"). The full report may be found at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:sr055.pdf]

B. Congressional Action

Not surprisingly, as the number of new entrants with a "for-profit model" grew, so did the number of consumer complaints. Congress responded with a series of hearings before the Ways and Means Committee of the U.S. House of Representatives, the U.S. Senate Permanent Subcommittee on Investigations, and the U.S. Senate Finance Committee. Specifically, the hearings focused on the "new entrants" using a for-profit model and the corresponding need for increased scrutiny by the Internal Revenue Service ("IRS"). The conclusion of the hearings was best summed up by the U.S. Senate Permanent Subcommittee on Investigations, which found:

> "When profit motive is injected into a non-profit industry, it should come as no surprise that harm to consumers will follow. Indeed, the primary effect of the for-profit model has been to corrupt the original purpose of the credit counseling industry – to provide advice, counseling, and education to indebted consumers free of charge or at minimal charge, and place consumers on debt management programs only if they are otherwise unable to pay their debts. Some of the new entrants now practice the reverse – they provide no bona fide education or counseling and place every consumer onto a debt management program at an unreasonable or exorbitant charge." [U.S. Senate Report 109-55, pp. 1-2]

C. The NFCC Nonprofit Model

In the course of the Congressional hearings and in the U.S. Senate Report 109-55, there was a clear distinction between the for-profit model and the NFCC Nonprofit Model. At the heart of that difference, it was noted, was the NFCC's Accreditation Requirements and the NFCC's Member Quality Standards.

(1) The NFCC's Accreditation Requirements

All NFCC Member Agencies must obtain and maintain accreditation by the Council on Accreditation ("COA"). COA is an independent not-for-profit social-service accrediting organization founded in 1977, which has reviewed more than 1,500 national and international social service programs to ensure compliance with rigorous best-practice standards. All NFCC member agencies must be re-accredited by COA every four years.

COA accreditation requires that agencies meet national standards for delivery of service and in overall governance. The accreditation process also analyzes organizational strengths and weaknesses and helps agencies to establish a framework to measure continuous quality improvement.

All agencies seeking COA accreditation are reviewed in eight specific areas:

- **Mission & Purpose —** determines whether consumer needs and preferences guide the organization in its design and delivery of services.

- **Quality Improvement —** evaluates the effectiveness and efficiency of services provided and corrects any observed deficiencies.

- **Governance & Administration** — determines whether the organization is governed and administered according to legal requirements and sound principles of effective management and ethical practice. This is evaluated by neutral oversight through a diversified board.

- **Management of Human Resources —** evaluates the organization’s ability to deploy personnel and foster efficient, effective service delivery for clients.

- **Service Environment —** ensures safe, accessible, and appropriate delivery for the needs of clients, employees and other stakeholders.

- **Internal Financial Management Practices—** ensures that an organization manages its fiscal affairs according to sound financial practices and applicable statutory and professional requirements.

- **Business Ethics and Clients Rights and Responsibilities —** determines whether services are conducted with due regard to ethical and professional requirements and protects confidential information regarding clients.

- **Service Delivery —** ensures that an organization focuses its services on identifying the needs and problems of clients.

In addition, to obtain and maintain accreditation, all NFCC Member Agencies must adhere to a rigid set of COA standards specific to the credit counseling and debt relief sector. They included the requirement that:

- agencies must have annual audits of operating and trust accounts.
- agencies must be licensed, bonded and insured.
- agencies must support and provide a variety of consumer education programs.

- agencies must comply with consumer disclosure requirements.
- DMPs must include a detailed review of current and prospective income, as well as present and anticipated financial obligations.
- clients must have a variety of deposit options including electronic methods, and are offered immediate correction of improper posting.
- each client receives counseling, including an assessment of their financial circumstances and a written comprehensive financial action plan.
- clients receive a statement, at a minimum, every quarter.

(2) The NFCC Member Quality Standards

In addition to the COA standards, all NFCC Member Agencies must comply with the NFCC Member Quality Standards, which have been cited as the most comprehensive and stringent standards to ensure quality, integrity and the highest level of consumer services in the sector.

Specifically, the NFCC Member Quality Standards require that each Member Agency:

a. **[Accreditation]** is currently accredited by the Council on Accreditation.

b. **[Access and Availability]** provides services within a reasonable amount of time and at times convenient to the public regardless of age, race, color, creed, national origin or ancestry, physical or mental disability, medical condition, gender, sexual orientation, religion, employment, marital status, or financial status or any other consideration made unlawful by federal, state or local law.

c. **[Financial Literacy]** develops, fosters and/or provides financial literacy programs on money management, budgeting and the responsible use of credit.

d. **[Counseling Sessions]** provides comprehensive one-on-one money management counseling and provides written assessments and action plans to clients as applicable to the services provided, or as required by law.

e. **[Counselors]** employs counselors certified by the NFCC-approved certification program or that have their work reviewed and approved by a certified consumer credit counselor. Additionally, this Agency does not pay financial incentives to counselors based on the number of DMPs established or assess financial penalties to counselors if their clients leave the DMPs.

f. **[Debt Management Plans]** establishes DMPs only if such a plan: (1) is appropriate; (2) is predicated upon client needs and preferences to assist in achieving their financial goals and objectives; (3) is repaid in 60 months or less; and (4) avoids negative amortization. Additionally, the Agency must: (1) prorate accounts by treating like creditors alike and thus assures that no creditor receives preferential treatment; (2) avoid conflicts of interest by not paying its agents, counselors or employees commissions or referral fees for DMP accounts; and (3) avoid conflict of interest by not paying creditors for client referrals or agreeing to receive reduced fair share to receive referrals.

g. **[Model Member Agency Funding Disclosure]** provides clients with full and comprehensive written disclosures as specified by the NFCC's Member Quality Standards or required by federal or state law or regulations.

h. **[Model Member Agency Dual Role Disclosure]** provides a written disclosure to each client enrolling in a DMP of the dual role that DMPs serve.

i. **[Model Member Agency DMP Duration Disclosure]** provides a reasonable estimate to each client enrolling in a DMP of the length of time it will take to complete the DMP.

j. **[Fiscal Integrity]** (a) has sufficient internal controls to protect the assets of the organization from acts of fraud, misrepresentation, or misallocation; (b) has insurance in appropriate amounts; (c) reconciles operating accounts on a monthly basis; (d) has no known or suspected acts of fraud, misrepresentation, or misallocation of Agency assets; and (e) has an annual independent financial audit.

k. **[Client Trust Accounts]** has sufficient internal controls to protect client funds from acts of fraud, misrepresentation or misallocation. Additionally, the Agency must: (1) maintain client funds separated and segregated from operating account funds and that client funds are deposited in a separate client account in a federally insured financial institution; (2) secure insurance in an amount appropriate to cover potential losses and further meet all applicable state bonding and insurance requirements; (3) reconcile client deposit accounts on a monthly basis; and (4) have no known or suspected acts of fraud, misrepresentation, or misallocation of client funds.

l. **[Annual Financial Audit]** has financial books and records audited on an annual basis and has provided a complete copy of the most recent audit to the NFCC.

m. **[IRS Forms 990 and 990-T]** files accurate and timely IRS Form 990 and 990-T (if applicable) forms with the Internal Revenue Service and provides a full copy of both forms (if applicable) to the NFCC within 30 days of filing.

n. **[<u>Governance/Board of Trustees</u>]** has a diverse, volunteer governing board comprised of at least 10 members.

o. **[<u>D&O, E&O, and Fidelity Insurance</u>]** carries adequate insurance and/or bonding on all employees with any access to agency and/or client funds.

p. **[<u>Fair Fees Guidelines</u>]** keeps fees charged to customers or clients as low as possible, does not refuse counseling due to a client's inability to pay, and does not receive fees in advance of services.

q. **[<u>Ethical Practices and Conduct</u>]** follows the highest ethical standards in governing and conducts all activities to avoid harming, confusing, or undermining consumers, clients, volunteers, employees, media, other NFCC members, and the NFCC**.**

r. **[<u>Advertising</u>]** does not engage in deceptive, misleading or false advertising, and adheres to the highest standards of honesty and fairness.

s. **[<u>Compliance with Federal, State, and Local Laws</u>]** (1) complies with all federal, state, and local laws; (2) is appropriately licensed and/or registered as required by law; and (3) has provided notice to the NFCC of any audit or similar inquiry or investigation of this agency by a federal or state regulatory entity within 5 business days of receipt.

t. **[<u>Grievances</u>]** has established written procedures to provide consumers and clients with a formal mechanism for expressing and resolving complaints and grievances.

u. **[<u>Private Inurement and Private Benefit</u>]** is not organized or operated for the benefit of private interests.

v. **[<u>Reporting</u>]** submits complete and accurate data to the NFCC as required.

w. **[<u>Nepotism</u>]** maintains policies and procedures that prohibit nepotism.

x. **[<u>Technology</u>]** has the technical systems and capability to assure the timely, accurate and effective delivery of quality programs. Additionally, the Agency must: (1) possess an adequate and secure technical infrastructure for communications with clients, including unique email addresses for senior staff; (2) have a website that identifies products and services the Agency delivers to the public; (3) disburse client payments to creditors at least once a week; and (4) have the ability to have ready access to credit reports.

y. **[Data Security]** has sufficient security and privacy controls in place to protect client and employee data including but not limited to clients' names, social security numbers, addresses, telephone numbers, credit card account numbers, bank account numbers and other identifying information.

[For the full content of the NFCC's Member Quality Standards, see Attachment A.]

(3) Congressional Conclusion

In reviewing the NFCC's Nonprofit Model with its Accreditation Requirements and the NFCC's Member Quality Standards, and in contrasting them to the abusive practices being utilized by many of the "new entrants" in the sector, the U.S. Senate Permanent Subcommittee on Investigations concluded: ***"If applied throughout the industry, these professional standards [the NFCC's Nonprofit Model] could significantly address the abusive practices identified in this Report."*** [U.S. Senate Report 109-55, p. 32, emphasis added]

D. Standards of the Executive Office for United States Trustees

In 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act (Public Law 109-8) was enacted and made substantive changes to the Bankruptcy Code. As part of those changes, budget and credit counseling from a nonprofit credit counseling agency was required for debtors seeking to file a Chapter 7 or Chapter 13 bankruptcy. The Executive Office for United States Trustees ("EOUST") of the U.S. Department of Justice was tasked with establishing the standards for participating agencies, as well as the application process for agencies.

The standards established by the EOUST are designed to protect financially vulnerable consumers, and are both comprehensive and stringent. Virtually all aspects of a participating nonprofit agency's activities, operations and governance are subject to those standards and regulations, including:

- Compliance with Laws
- Prohibition on Legal Advice
- Structure and Organization
- Ethical Standards
- Credit Counselor Training, Certification and Experience
- Use of the Telephone and the Internet to Deliver a Component of Client Services
- Language Services to Clients and Potential Clients

- Mandatory Disclosures to Clients
- Complaint Procedures
- Employee Background Checks
- Agency Recordkeeping
- Limits on Agency Fees
- Mandatory Waiver of Agency Fees
- Issuance of Counseling Certificates
- Requirements for Debt Repayment Plans
- Bonding Requirements

[See U.S. Department of Justice, 28 CFR Part 58, and the EOUST's Notice of Proposed Rulemaking for the "Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees" contained in the *Federal Register*, Vol. 73, No. 22, Friday, February 1, 2008, Docket No. EOUST 102, pp 6062-73, which may be found at:
http://www.justice.gov/ust/eo/rules_regulations/docs/Credit_Counseling_NPRM.pdf]

Nearly all NFCC Member Agencies are approved by the EOUST to provide bankruptcy-related counseling and are subject to the EOUST standards and regulations. It should also be noted that in those states where the U.S. Trustees do not operate, comparable rules have been adopted by the Administrative Office of the United States Courts.

E. The Internal Revenue Service Core Analysis Tool and Chief Counsel Memoranda

In response to the Congressional hearings and the concerns raised over the "new entrants" operating in the nonprofit sector using "for-profit" business practices and tactics, the IRS undertook extensive revisions in its process of reviewing and approving the applications of credit counseling agencies for 501(c)(3) status under the Internal Revenue Code. In addition, the IRS announced that all agencies with 501(c)(3) status would be subject to audit. In 2006, stringent new rules, called the "Core Analysis Tool," became the standards by which IRS examiners and auditors evaluated applicants and agencies. The Chief Counsel of the IRS also issued Memoranda in 2004 and 2006 outlining permissible activities for nonprofit credit counseling agencies, emphasizing the 501(c)(3) requirements related to education and counseling activities. The NFCC strongly supported the IRS' initiatives.

Specifically, the guidance produced by the IRS Chief Counsel said:

> "Based on the statute, case law and published guidance, whether a credit counseling organization primarily furthers educational purposes within the meaning of § 501(c)(3) can be determined by assessing the methodology by which the organization conducts its counseling activities. The process the organization uses to interview clients and develop recommendations, train its counselors and market its services

> can distinguish between an organization whose object is to improve a person's knowledge and skills to manage his personal debt, and an organization that is offering counseling primarily as a mechanism to enroll individuals in a specific option (e.g., debt management plans) without considering the individuals' best interest.
>
> "In general, if you find that an organization's method of counseling is educational, you should conclude that the organization is exempt under § 501(c)(3), absent a showing of inurement or substantial private benefit. On the other hand, if you find that an organization's method of counseling does not further education, you should conclude that the organization is not exempt under § 501(c)(3)." [See the Memorandum of the IRS Office of Chief Counsel, Number: 200620001, May 9, 2006, which may be found at: http://www.irs.gov/pub/irs-wd/0620001.pdf]

F. Section 501(q) of the Internal Revenue Code

In 2006, Congress enacted substantive new rules for nonprofit credit counseling agencies with the NFCC's full endorsement and support. Section 1220 of H.R. 4, the Pension Reform legislation (Public Law 109-280), created a new section of the Internal Revenue Code ("IRC"), Section 501(q). IRC Section 501(q) became effective in 2008 and established additional requirements and standards that credit counseling agencies must meet in order to obtain and maintain their nonprofit status under IRC Section 501(c)(3).

Specifically, under the new law, a 501(c)(3) nonprofit credit counseling agency:

- must provide credit counseling services tailored to the needs and circumstances of the client;
- may not make loans to its clients (other than loans with no fees or interest);
- may not negotiate loans on behalf of clients (Note: The legislative history suggests that "negotiation" involves the terms of a loan and not the process of obtaining a loan and the IRS has clarified that the modification of an existing mortgage of a distressed homeowner is permitted.);
- may not engage in credit repair activities or charge a separate fee for credit repair activities, outside of what is part of credit counseling services;
- may not refuse to provide credit counseling services due to a consumer's inability to pay, or a consumer's ineligibility or unwillingness to enroll in a DMP;
- must have reasonable fees (Note: The legislative history provides that compliance with state fee caps will be "evidence of reasonableness of fees but is not determinative," and further implies that the IRS will give greater scrutiny to the fees of agencies in states where fees are not regulated.)
- may not, unless allowed by state law, base fees on a percentage of a client's debt, DMP payments, or savings from enrolling in a DMP;

- must have a governing body that represents the broad interests of the public, has no more than 20% representation by employees of the agency, and has no more than 49% representation of individuals who may benefit financially from the agency's activities;
- may not own more than a 35% interest in a for-profit trade or business that lends money, repairs credit, provides DMP services, or provides payment processing or similar services;
- may not pay or receive referral fees (Note: The legislative history clarifies that nominal payments for using or maintaining a toll-free locator service for consumer-initiated calls do not constitute referral fees.); and
- may not solicit "contributions" apart from disclosed and reasonable fees or reimbursement of the cost of services provided, from a client during the initial session or while the client is receiving services.

In addition, IRC Section 501(q) imposes a cap on revenue from creditors that is attributable to DMP services (i.e., "fair share" revenue). The cap is a percentage of the agency's total revenues and for existing agencies, was phased-in over a five year period. (For the 2008 tax year, an agency's revenue from fair share could not exceed a cap of 80% of its total revenue. In 2009, the cap was 70%. In 2010, the cap was 60%.) Beginning in 2011, and thereafter, the cap is 50%. The legislative history notes that compliance with the cap alone will not be sufficient to maintain 501(c)(3) status and that an agency must meet the other IRC Section 501(c)(3) and 501 (q) requirements.

In addition, as outlined in the legislative history, IRC Section 501(q) provides that DMP services should only be offered when appropriate to a client's circumstances and, even then, should only be provided in conjunction with credit counseling services. Failure to abide by that standard could result in the DMP services revenue being taxed as unrelated business income.

[For the full text of IRC Section 501(q), see Attachment B.]

G. The For-Profit Model

With the increased scrutiny and regulation of the nonprofit sector, many of the "new entrants" masquerading as nonprofits morphed into for-profit companies. The business model of a for-profit company is exactly that: to make a profit. And the for-profit companies operating in the debt relief sector seek to make a profit by selling products and services to financially vulnerable consumers. Many of the for-profit companies provide consumers with little or nothing in the way of financial education and counseling.

Interestingly, some of the companies that were investigated, sued, sanctioned and otherwise forced out of the nonprofit sector by the regulators, have been very aggressive in their efforts to change state laws that allow only nonprofits to operate in the sector. Those for-profit companies and their lobbyists use the rather novel argument that because they were forced out of the sector because of higher standards and the enforcement of the law, the law should be changed to create a safe haven for them.

The central finding of the U.S. Senate Permanent Subcommittee on Investigations bears repeating: "When profit motive is injected into a non-profit industry, it should come as no surprise that harm to consumers will follow."

H. Conclusion

For-profit companies operating in the debt relief sector often contend that the ***only*** difference between them and the nonprofit agencies is that they pay taxes. That simply is not true.

A nonprofit 501(c)(3) credit counseling agency is, at a minimum, subject to Section 501(c)(3) of the Internal Revenue Code; the IRS Core Analysis Tool and the IRS Chief Counsel's Memoranda; Section 501(q) of the Internal Revenue Code; and other oversight and regulation by the IRS. If the nonprofit agency is approved by the EOUST to provide bankruptcy-related counseling, it is also subject to EOUST oversight and regulation. If the agency is a NFCC Member Agency, it is also subject to the COA standards for obtaining and maintaining accreditation, and the NFCC Member Quality Standards, the most stringent standards in the sector. ***NONE*** of those are applicable to for-profit companies operating in the sector.

By law, a nonprofit agency must provide holistic, comprehensive counseling, education and related services tailored to meet the needs of the consumer. Those laws are not applicable to for-profit companies that seek to profit by selling products and services to vulnerable and debt-strapped consumers, which may not include any counseling or education. ***It is truly ironic that with the IRS, EOUST, COA and NFCC standards, consumers have a much higher level of federal and national protection in dealing with a nonprofit agency than they do when dealing with a for-profit company.***

If the CFPB determines that "debt relief providers" are a "larger participant," the NFCC strongly urges the CFPB to be cognizant of the very different regulatory structure and business models of nonprofit agencies and for-profit companies that operate in the sector. A very laudable first step would be for the CFPB to apply the same federal standards, regulations and consumer protections that are applicable to nonprofit agencies – including the requirements related to counseling, education and serving the consumer's needs – to the for-profit companies that seek to sell services to the very same consumers. Until the for-profit companies are subject to those requirements, the difference between the for-profit companies and the nonprofit agencies will remain very distinctive, and consumers will be at risk.

II. THE REGULATION OF DEBT SETTLEMENT COMPANIES AND DEBT SETTLEMENT PLANS

As noted in our introductory comments, the NFCC highly commends the CFPB in its recognition of the difference between a “debt management plan” and a “debt settlement plan.” Whether because of the similarity in the names, or by the design and efforts of some to intentionally blur the distinction between the two, when it comes to regulation, those activities are often lumped together under the broader category of “debt management.” This is unfortunate, and the NFCC would suggest that the activities be carefully identified and categorized by the manner in which the respective plans operate and the potential benefit or potential harm that they present to consumers.

A. Debt Management Plans

Consumers who contact a nonprofit credit counseling agency may have a variety of motives, such as trying to end collection calls and tactics, avoid bankruptcy, to take control of their financial lives, etc. In any event, the common element is that they are seeking assistance in finding a solution to their current financial situation. In the nonprofit model, a counselor will work with a consumer in an effort to find the underlying cause or causes and through counseling and education, find a way to address it or them. It has been the experience of the NFCC that consumers who contact a NFCC Member Agency fall into three categories: those that only need counseling and education, after which they are able to administer their own finances; those with problems and needs for other assistance (e.g., to address circumstances requiring social services, substance abuse treatment, bankruptcy protection, etc.) that are of such a magnitude that counseling and education alone will not be sufficient to address them; and those who have the desire to avoid bankruptcy and to repay their debts. It is the latter that may qualify for a debt management plan.

In the nonprofit model, in conjunction with counseling and education, a counselor will explore options that may be appropriate solutions for the consumer’s financial situation. One option may be a structured, but voluntary, DMP in which the consumer agrees to make regular payments that are disbursed to the consumer’s creditors and in return, the creditors agree to cease collection tactics and to make other concessions, which usually includes a reduction of interest charges as well as the elimination of penalty fees, such as late- and over-the-limit fees. The agency generally serves as the conduit to which the consumer makes payments and through which the consumer’s funds are disbursed to creditors. While the agency may charge the consumer a disclosed, but separate and nominal fee for the administration of the plan, ***100 cents on the dollar of the consumer’s payments to the agency for the repayment of debts is disbursed to the consumer’s creditors on the consumer’s behalf and is credited to the consumer as 100 cents on the dollar by the creditor.*** A creditor may later return a small percentage of total disbursements back to the agency to support the agency’s overall operations (“fair share”), but that has no bearing or any detriment on consumers’ efforts to reduce their debt to that creditor. A DMP may not result in negative amortization or exceed 60 months in duration.

As the objective of a DMP is to be a tool to assist consumers in the reduction of their debts, every DMP has some measure of success. Every payment made by consumers on a DMP reduces their overall indebtedness. For a variety of reasons, not all consumers who enroll on a DMP remain on the plan to completion; however, ***no consumer who has begun a DMP administered by an NFCC Member Agency has ever left the plan deeper in debt because the plan failed to make payments to creditors on the consumer's behalf.***

For that reason, the operation of a DMP and the potential benefit to consumers is a very significant distinction from the operation of a debt settlement plan and the potential harm to consumers.

[For more information, please see the Federal Trade Commission's "Overview of Debt Relief Services, Part A. *Credit Counseling Agencies*," as contained in its Notice of Proposed Rulemaking in the *Federal Register,* Vol. 74, No. 159, Wednesday, August 19, 2009, pp. 41990-93, which may be found at:
http://www.ftc.gov/os/2009/07/R411001tsrnprm.pdf]

B. Debt Settlement Plans

The operation of a typical debt settlement plan is very different from that of a DMP. While from the outset, a DMP is structured in cooperation with a consumer's creditors, and every payment accrues to the benefit of the consumer in the form of a reduction of his/her debts, a debt settlement plan generally operates in an opposite manner.

The very nature of a debt settlement plan is to cease any payment to a consumer's creditors and instead, place the consumer's payments into a "settlement account." No payment is made to a consumer's creditor unless and until a sufficient amount has accumulated in a settlement account that may be proffered to a creditor on virtually a "take-it-or-leave-it" basis. It may take years before a consumer has accumulated enough funds in a settlement account before even a single debt is "settled." And because the relationship with a creditor in a debt settlement plan is highly adversarial, most creditors will continue their lawful collection activities against a consumer in a debt settlement plan. In addition, because the creditors are no longer receiving regular payments on an account, most creditors will assess high "default" interest rates and other penalty fees, such as late- and over-the-limit fees. As a result, consumers on a debt settlement plan generally find to their detriment that their outstanding balances and total indebtedness increase substantially. In fact, as the Federal Trade Commission ("FTC") found, there is no benefit – and significant harm – to consumers participating on a debt settlement plan ***until or unless*** an account is actually settled. Testimony has demonstrated that historically, only a small percentage of accounts enrolled on a debt settlement plan are actually ever settled.

[For more information, please see the Federal Trade Commission's "Overview of Debt Relief Services, Part B. *For-profit Debt Settlement Services,*" as contained in its Notice of

Proposed Rulemaking in the *Federal Register*, Vol. 74, No. 159, Wednesday, August 19, 2009, pp. 41993-97, which may be found at:
http://www.ftc.gov/os/2009/07/R411001tsrnprm.pdf]

In 2010, the FTC issued final rules amending the Telemarketing Sales Rule to curtail many of the abusive practices utilized by debt settlement companies. As FTC Chairman Jon Leibowitz said in announcing the changes, "This rule will stop companies who offer consumers false promises of reducing credit card debts by half or more in exchange for large, up-front fees. Too many of these companies pick the last dollar out of consumers' pockets – and far from leaving them better off, push them deeper into debt, even bankruptcy." [See "FTC Issues Final Rule to Protect Consumers in Credit Card Debt," July 29, 2010, which may be found at:
http://www.ftc.gov/opa/2010/07/tsr.shtm]

The FTC's Final Rule limited fees that debt settlement companies may collect from consumers before performing any actual settlements; established regulations for settlement accounts; required debt settlement companies to make specific disclosures to consumers; and prohibited debt settlement companies from making misrepresentations and fraudulent claims in advertising.

[For more detail, see "Federal Trade Commission, Telemarketing Sales Rule, Final Rule Amendments," 16 CFR Part 310, as contained in the *Federal Register,* Vol. 75, No. 153, Tuesday, August 10, 2010, pp. 48458-48523, which may be found at:
http://www.ftc.gov/os/2010/07/100810tsrdebtreliefamendments.pdf]

C. Conclusion

The NFCC, in the strongest possible terms, endorses and supports the FTC's Final Rule and believes that it has significantly contributed to curtailing some of the most abusive practices utilized by debt settlement companies. The NFCC recognizes that the FTC used the best means under its jurisdiction, the Telemarketing Sales Rule, to implement these important consumer protections, but because of the limitations of the Telemarketing Sales Rule, there are holes in coverage of the Rule and the protections it provides. Consequently, the NFCC strongly encourages the CFPB to include for-profit debt settlement companies as a "larger participant" in consumer financial products and services, and to promulgate comprehensive regulations to protect consumers from abusive and predatory debt settlement practices.

The NFCC believes that the FTC's Final Rule could serve as the template for such regulations, and would urge the CFPB to consider additional consumer protections in its regulations, such as:

- Mandate the use of written contracts for debt settlement services, with disclosures to the consumer including: an itemization of the services to be provided; a list of the consumer's debts; a clear and conspicuous list of all fees and compensation to be paid by the consumer to the debt settlement company; a good faith estimate of the proposed accumulation goals and the total amount to be paid by the consumer; and a notice of the consumer's cancellation and refund rights.

- Require a determination, supported by a financial analysis, that the consumer is able to reasonably meet the requirements of the proposed debt settlement program, and that there is a tangible benefit to the consumer to enter into the proposed debt settlement program.
- Require a disclosure to the consumer that the failure to make scheduled payments to creditors will likely have serious adverse consequences.
- Mandate that debt settlement fees are reasonable and commensurate to the actual services provided, and that they can not exceed specified amounts.
- Provide consumers with a right to cancel a debt settlement contract and to receive a refund of fees paid to the debt settlement company as well as all funds accumulated and held in a settlement account.
- Provide that a debt settlement company may not advertise or market results that are better than the average that it actually achieves.
- Provide the FTC with the explicit authority and obligation to regulate the advertising and marketing practices of debt settlement companies.
- Provide for enforcement through the CFPB, FTC, state Attorneys General and private rights of action.
- Protect the right of the States to regulate in this area and to provide additional consumer protections under State law.

However, in its consideration of appropriate regulation of debt settlement companies, it is absolutely critical that the CFPB distinguish between the operation of a DMP and a debt settlement plan. While a DMP has traditionally involved the repayment of a consumer's full balance, the NFCC is actively advancing new consumer solutions, which may involve a partial or "less-than-full-balance" repayment plan. From the consumer's perspective, it is envisioned that such a plan would operate exactly like a traditional DMP – with the on-going benefit of actual debt reduction with every payment made by the consumer – but with the objective of paying an agreed upon amount that may be less than the outstanding balance. It would be most unfortunate to view a less-than-full balance DMP to be the same as a debt settlement plan. ***The determining factor in any regulation promulgated by the CFPB in this area should be how the plan operates and its potential benefit or harm to a consumer, and not solely whether a plan results in an agreement between the creditor and consumer to accept less than the outstanding balance.***

As work on the development of improved consumer solutions in the form of greater concessions from creditors in order to meet the needs and circumstances of consumers in economic distress advances, the NFCC would welcome the opportunity keep the CFPB apprised.

III. OTHER CONCERNS

The long-standing tradition of the NFCC has been its ability to provide the highest quality education, counseling and related services to consumers in the communities in which our Member Agencies serve. Historically, a significant amount of support for those activities came from creditors in the form of “fair share.” In recent times, however, and due in a large part to the economic turmoil in the financial services industry, the amount of creditor support and “fair share” payments to nonprofit agencies has dropped precipitously. Many nonprofit agencies have been forced to merge, or worse, to curtail or cease operations because of the lack of funding. Federal programs, particularly those aimed at assisting consumers facing mortgage foreclosure, have allowed nonprofit agencies to keep their doors open, but even that funding is now in jeopardy.

As the CFPB considers its role in determining “larger participants,” the NFCC asks the CFPB to keep in mind the value and consumer benefits that nonprofit financial education and counseling provides, and to consider whether regulation of financial institutions to provide support for such activities may be appropriate. As demonstrated by the crisis in housing where millions of American families acquired mortgages they could not afford and did not understand, the need for third-party and impartial financial counseling and education has never been greater. Without the support of government or from those who sell financial products and services to consumers, the future prospects of the availability of nonprofit financial counseling and education are endangered.

IV. CONCLUSION

The NFCC again commends the CFPB in its outreach and solicitation of comments. We greatly appreciate this opportunity to outline the NFCC Nonprofit Model and the difference in the federal regulation of nonprofit agencies and for-profit debt relief companies; the distinction between the operation of a DMP and a debt settlement plan; and the need find sustainable means to support nonprofit agencies.

On behalf of the NFCC, I would be happy to respond to any questions that you may have with regard to any of the issues raised in this comment letter.

Sincerely,

William P. Binzel
Corporate Secretary and Counsel to the Board
National Foundation for Credit Counseling

ATTACHMENT A

NFCC MEMBER QUALITY STANDARDS

Member Quality Standard # 01.00

Accreditation

Member agencies shall obtain and maintain NFCC-approved accreditation.

OFFICIAL COMMENT:

Membership in the NFCC is predicated upon total quality service. Accreditation standards encompass the values and best practices of the NFCC. Currently, the NFCC recognizes the Council on Accreditation. (COA) as its accrediting body.

Potential members must have submitted the applicable application fee to COA before they can be approved for membership in the NFCC.

New member agencies must submit their COA self-study within nine months of their membership approval date and be fully accredited within 18 months of their approval date. Such agencies shall thereafter be reaccredited within the time frame established by the accrediting body.

Member Quality Standard # 02.00

Access and Availability

Member agencies shall provide services within a reasonable amount of time and at times convenient to the public. Member agencies will not discriminate in providing service for any of the following reasons: age, race, color, creed, national origin or ancestry, physical or mental disability, medical condition, gender, sexual orientation, religion, employment, marital status, financial status or any other consideration made unlawful by federal, state or local law.

OFFICIAL COMMENT:

NFCC member agencies will not discourage counseling for any reason.

Pre-screening for Debt Management Plans (DMP)* is expressly prohibited. Member agencies should refrain from waiting to schedule a counseling session until the potential client completes and returns a written application or questionnaire; such action will be considered a form of pre-screening. Member agencies must have operating procedures in place to assure timely service, recognizing that various times of the year create increased consumer demands.

> * A Debt Management Plan is defined as an agreement between the client and a member agency to assist the client in repaying all unsecured outstanding debt. DMP agreement forms must include the client's expectations and responsibilities, an enumeration of the debts, a proposed payment for each creditor, the total debt owed, and a statement of the client's right to cancel the agreement.

Member Quality Standard # 03.00

<u>Financial Literacy</u>

Member agencies shall develop, foster, or provide financial literacy programs on money management, budgeting and the responsible use of credit for consumers using methods that meet the community need.

<u>OFFICIAL COMMENT</u>:

Membership in the NFCC requires adherence to the mission of the NFCC. We are an educational organization providing high caliber, professional, confidential counseling and education services.

Public relations and marketing activities do not qualify as education events. One-on-one counseling sessions provide valuable education, but do not qualify in this standard as a group educational event.

The organization offers financial literacy programs which may include seminars taught by qualified instructors that are designed to meet the current needs of the financially stressed individuals and to comply with the 501(C)(3) service requirements.

Member Quality Standard # 04.00

Counseling Sessions

Member agencies must provide comprehensive, one-on-one money management counseling and provide a written assessment and action plan to the client as applicable to the service provided, or as required by law.

OFFICIAL COMMENT:

Comprehensive money management counseling is defined as an interview or series of interviews which includes but is not limited to, discussion of financial goals, sources of income, expenses, consumer debt (secured and unsecured), housing costs, utilities, garnishments, tax debt, credit reports, referrals to other sources, settlements of debts, etc. when it is applicable to reach goals. Quality counseling is based on thoroughness. Our goal is to educate and give guidance to those who seek our help. A thorough review of the client's financial situation must be an integral part of the service regardless of whether a debt management plan is feasible or necessary.

A written assessment and action plan is defined as a document outlining the client's individual situation and offering appropriate solutions. It will include:

- a complete budget assessment with a review of income, expenses, debt, housing issues, etc.;
- identification of problems and need for appropriate referral or services;
- an assessment of the client's and family's strengths and resources for addressing their problems and reaching their goals; and
- options and action steps for the individual or family.

Clients shall be provided with adequate information through the written assessment and action plan to assist them after they leave the counseling session. This is our opportunity to assist in their personal financial plan with educational handouts, referrals and prioritized action steps. Clients under stress cannot be expected to remember the counselor's advice in all cases. Both counselor and client can refer back to the written assessment.

Member Quality Standard # 04.01

Counselors

Individuals providing counseling must be certified by an NFCC-approved certification program or have their work reviewed and approved by a certified consumer credit counselor.

Member agencies are prohibited from paying financial incentives to counselors based on the number of DMPs established or assessing financial penalties to counselors if their client leaves a DMP program.

OFFICIAL COMMENT:

Member agencies shall employ qualified individuals who must obtain consumer credit counseling certification within one-year from the date of their employment as a counselor and maintain NFCC certification as outlined in the counselor certification process.

Member agencies must conduct a state or county criminal background check on all counselors prior to their start of duties.

Member agencies must establish additional training and development programs for counselors to improve knowledge of agency policy and procedures, interpersonal skills, and abilities that enhance counselor sensitivity to the needs and preferences of clients.

Member agencies must register, with the approved certifying entity, all new counselors within 120 days of date of employment or assignment as a credit counselor.

Member Quality Standard # 05.00

Debt Management Plans

Member agencies shall establish debt management plans only when appropriate and predicated upon client needs and preferences to assist in achieving their financial goals and objectives.

OFFICIAL COMMENT:

NFCC membership is an assurance of quality to both client and creditor. Member agencies shall ensure:

- that the amount available for the repayment of the client's indebtedness represents the client's best effort after a thorough evaluation of income, expenses, assets and debts;

- that proposed debt management plans will reflect that the consumer's indebtedness can be repaid in 60 months or less, including interest. A plan may be established for longer than 60 months, with documented extenuating circumstances. Debts with contractual repayment periods of over 60 months, such as automobiles, mortgages, and other secured debt, may be included in the plan, but can be excluded from the monthly payout calculation;

- that in any proposed plan, negative amortization shall be avoided and that all known debts are accounted for in the written action plan;

- that a method of prorating accounts shall be employed that treats like creditors alike, assuring that no creditor receives preferential treatment in return for financial support;

- that the disposition of credit cards is recorded;

- that the DMP reflects that the client will close all lines of credit and refrain from obtaining future credit without the member agency's approval;

POLICY # 05.00 (continued)

- that client confidentiality and the creditor's rights to information are recognized. All counseling provided by member agencies is strictly confidential. Client confidentiality as it relates to debt management plans refers to family, friends, employers, etc. A creditor participating in a debt management plan has the right to pertinent information (full disclosure) such as: addresses, phone numbers (unless the phone number is unlisted), assets, income, expenses, other creditors involved in plan, balances owed, reason for plan, etc. Non–participating creditor should not be given any information without the client's approval. When a client's debt management plan has been closed, information may also be verified and/or released to only those original creditors listed on the original plan. Any creditor found to be using the information provided to harass an existing depositing client should be reported to the agency's management/creditor relations division and may be denied information in the future. The NFCC's Monitoring and Compliance Committee should be notified of any such actions taken with creditors;

- that the agency provides, at a minimum, a quarterly status report to active DMP clients that fully discloses their deposit and disbursement history and approximate balances;

- that the agency establishes and adheres to a process of reviewing existing debt management plans annually, preferably including the client; and

- that the agency does not create any plans for the benefit of an individual client which jeopardizes the plans of existing or future clients.

Member agencies will avoid conflicts of interest by not paying agents, counselors, or employees commissions or referral fees for DMP accounts.

Member agencies will avoid conflicts of interest by not paying creditors for client referrals or agreeing to receive reduced fair share to receive referrals.

Member Quality Standard # 05.01

<u>Model Member Agency Funding Disclosure</u>

Member agencies must provide in writing to all clients counseled the following disclosure and explanation:

> **"Most of our funding comes from voluntary contribution from creditors who participate in Debt Management Plans ("DMP"). Since creditors have a financial interest in getting paid, most are willing to make a contribution to help fund our agency. These contributions are usually calculated as a percentage of payments you make through your DMP— up to fifteen percent (15%) of each payment received. However, your accounts with your creditors will always be credited with one hundred percent (100%) of the amount you pay through us and we will work with all of your creditors regardless of whether they contribute to our agency."**

<u>OFFICIAL COMMENT:</u>

If an NFCC member agency does not request a full fifteen percent (15%) fair share contribution from any creditor, then that agency may replace the fifteen percent (15%) in the above disclosure with the highest percentage that it does request from any creditor. In addition, if an agency does not receive a majority of its funding from DMP contributions, the lead in phrase "most of" can be replaced by "some of", as long as this statement is accurate and not misleading to prospective clients. In those cases where an agency uses the phrase "some of", the agency must submit to NFCC an authorized certification of its Board that the disclosure used is accurate and correct.

The above model member agency funding disclosure must be included in all promotional materials involving DMPs that an NFCC member provides to consumers, including any agreements for service that are filled out and/or signed by consumers. This phrase should also be used in response to inquiries about how NFCC's members are funded.
Agencies will report the date this form was revised on Exhibit 1 that will accompany the Annual Compliance form and if it has been revised within the last year, will attach the disclosure form.

Member Quality Standard # 05.02

Model Member Agency Dual Role Disclosure

Member agencies must disclose the dual role that DMPs serve. Any materials that discuss DMPs must include the following:

> **"Our DMPs <u>are voluntary programs that</u> serve the dual role of helping you repay your debts and helping creditors to receive the money owed them."**

<u>OFFICIAL COMMENT:</u>

Optional language is underlined above.

Agencies will report the date this form was revised on Exhibit 1 that will accompany the Annual Compliance form and if it has been revised within the last year, will attach the disclosure form.

Member Quality Standard # 05.03

Model Member Agency DMP Duration Disclosure

Member agencies must provide to each client enrolling in a Debt Management Plan ("DMP") a reliable estimate of the length of time it will take to complete the DMP. This estimate must be provided in writing and identify all the client's debts that are included in the plan; the total debt owed to each creditor; the proposed payment to each creditor; and the anticipated number of months to liquidate the debt. This estimate must be provided within 30 days of the date that the client submits their complete request for a DMP.

Member Quality Standard # 06.00

Fiscal Integrity

Member agencies must have sufficient internal controls to protect the assets of the organization from acts of fraud, misrepresentation, or misallocation.

OFFICIAL COMMENT:

NFCC member agencies are expected to handle all financial activities in a professional manner.

Member agencies shall secure insurance in an amount appropriate to cover potential losses and meet all applicable state bonding requirements.

Member agencies must reconcile operating accounts on a monthly basis.

Member agencies must immediately report to the NFCC all known or suspected acts of fraud, misrepresentation, or misallocation of funds.

Member agencies must have an annual financial audit conducted pursuant to Member Quality Standard #06.02.

Member Quality Standard # 06.01

Client Trust Accounts

Member agencies must have sufficient internal controls to protect client funds from acts of fraud, misrepresentation, or misallocation. Transfer or use of client funds for any purpose other than repayment of client debt is strictly prohibited.

OFFICIAL COMMENT:

Member agencies must exercise diligence in their fiduciary capacity as custodians of client funds entrusted to them. Client funds will be kept separated and segregated from operating account funds. Client funds must be deposited in a separate client deposit account in a federally insured financial institution.

Member agencies shall secure insurance in an amount appropriate to cover potential losses and further meet all applicable state bonding and insurance requirements.

Member agencies will reconcile client deposit accounts on a monthly basis.

Member agencies must immediately report to the NFCC all known or suspected acts of fraud, misrepresentation, or misallocation of funds. Member agencies must also report unexplained variances in the trust account in excess of 1% of the trust account value.

Evidence of compliance must be provided to NFCC annually.

Member Quality Standard # 06.02

Annual Financial Audit

Member agencies shall have all financial books and records audited on an annual basis. Member agencies shall provide the NFCC with an entire copy of the completed audit report within 180 days of the close of each fiscal year. The audit report should include a note referencing the fact that a separate client trust account is maintained and that the account was reviewed by the auditor as part of standard audit procedures. Member agencies may submit a separate letter from their auditors noting the client trust account was reviewed if the trust account does not appear as part of the financial statements.

OFFICIAL COMMENT:

Member agencies must have an audit conducted not less than annually by an independent Certified Public Accountant. The audit must be conducted in accordance with Generally Accepted Auditing Practices (GAAP) as defined by the American Institute of Certified Public Accountants. Tests of compliance and evaluation of controls associated with this GAAP audit are to be applied to client deposit accounts and activity as well as the operating accounts and statements of the members, and shall be so noted by the auditor.

The governing board must appoint a board member(s) to meet with the independent auditor to review the auditor's findings. The board member(s) must make a report to the full governing body at the next officially scheduled board meeting. Evidence of compliance must be provided to NFCC annually.

Member Quality Standard # 06.03

IRS Forms 990 and 990-T

Member agencies must annually file accurate and timely 990 and all applicable forms to the Internal Revenue Service. Member agencies must provide a full copy of all applicable forms to NFCC within thirty days of filing.

OFFICIAL COMMENT:

If member agencies submit an extension request, it must be submitted to the NFCC within 30 days of filing.

Member agencies under NFCC's tax umbrella are prohibited from engaging in activities that would endanger the non-profit status of the umbrella.

Member agencies under NFCC's tax umbrella must submit changes to tax exempt purpose in writing to NFCC 90 days prior to implementing program. NFCC has the right to deny activity if activity is deemed to jeopardize tax exempt umbrella.

Member Quality Standard # 07.00

Governance / Board of Trustees

To ensure broad-based, non-discriminatory community representation, NFCC member agencies shall have a diverse, voluntary governing board comprised of at least 10 members. No more than 10% of the voting members of the governing board may be persons directly or indirectly compensated by the NFCC member agency. No family members of the personnel of the NFCC member agency may serve on the governing board.

The governing board shall be comprised of persons who do not have, or give the appearance of, a conflict of interest with the NFCC member agency. Governing board members and related parties are prohibited from using their relationship with the NFCC member agency for personal gain. This prohibition, however, does not apply to the compensation received by paid personnel of a NFCC member agency who serve as a governing board member.

Member agencies shall establish and enforce a conflict of interest policy for employees and governing board members that include the principles and prohibitions embodied in this standard.

Member agencies must be in compliance with the requirement of Internal Revenue Code 501(q).

OFFICIAL COMMENT:

Governing board members must disclose any business relationship with or financial interest in a corporation, partnership or entity with which the NFCC member agency transacts business and must not participate in any NFCC member agency governing board discussion or vote concerning such corporation, partnership or entity.

Nothing in this standard or official comment prohibits governing board members from providing free or discounted products or services to an NFCC member agency. The provision by a governing board member of discounted products or services, however, must be supported by documentation showing the fair market value of such products or services. The documentation must demonstrate that the products or services were provided to the NFCC member agency at a discount.

Nothing in this standard or official comment prohibits a person who serves as an officer, director, employee, partner, proprietor, or owns or controls 10% or more of a credit granting organization from serving as a governing board member of a NFCC member agency, provided, however, that no more than 40% of an NFCC member agency governing board may be comprised of such persons.

Related parties include family members and businesses in which a person owns or controls 10% or more of the entity. Family members include, but are not limited to, parents, spouses, siblings, children, stepchildren and relatives-in-law.

Member Quality Standard # 08.00

D&O, E&O and Fidelity Insurance

Member agencies must carry adequate insurance and/or bonding on all employees with any access to agency and/or client funds.

Member agencies must name the NFCC on their certificate of insurance and/or bonding policies for the sole purpose of receiving notice from the insuring company of any potential lapse in coverage.

OFFICIAL COMMENT

Member agencies must carry appropriate Directors & Officers (D&O), Errors & Omissions (E&O), and Fidelity (employee dishonesty) coverage with limits deemed appropriate by its local board of trustees and/or state/local requirements.

Evidence of compliance must be provided to NFCC annually.

Member Quality Standard # 09.00

Fair Fees Guideline

Member agencies should keep fees charged to customers or clients as low as possible. Member agencies may not refuse to provide counseling due to a client's inability to pay.

OFFICIAL COMMENT:

As a non-profit human service agency that serves individuals and families in financial distress, member agencies should strive to make their services available to as broad a population as possible and not limit access to services due to an inability to pay.

Member agencies may not receive fees in advance of service.

Member agencies must disclose within the DMP an estimate of the total fees to be paid to the organization by the client and/or the creditor over the term of the agreement.

Member Quality Standard # 10.00

Ethical Practices and Conduct

Member agencies will follow the highest ethical standards in governing their organizations and conducting all activities to avoid harming, misleading, confusing, or undermining consumers, clients, volunteers, employees, media, other NFCC members, and the NFCC.

OFFICIAL COMMENT

Member agencies are prohibited from providing false or misleading information about an organization or individual to the public; this prohibition precludes using NFCC's communication tools and systems to provide information to NFCC members that cannot be substantiated.

Member agencies must maintain the confidentiality of information entrusted to them or known to them as a result of their professional activities.

Member agencies must manage all financial activities honestly following policies and procedures established to ensure financial honesty and prevent individual gain at the expense of a member organization or the NFCC.

Member agencies must assume responsibility for remediating errors caused by any of their employees.

Member Quality Standard # 11.00

Advertising

Member agencies shall not engage in deceptive, misleading or false advertising, and shall adhere to the highest standards of honesty and fairness.

Member agencies must have the ability to prove any stated claim made within an advertisement.

OFFICIAL COMMENT:

Member agencies must accurately describe advertised services.

Member agencies must list their name, corporate address, and phone number on their website homepage and other nationally publicly distributed or available materials.

On locally distributed or available printed materials and printed advertisements, Member agencies must list their corporate name, corporate address, and corporate phone number or the applicable, authorized local branch name(s), local address(es), and local phone number(s).

Member agencies are prohibited from referring to themselves as “Local” in any communication in a community if they do not have a brick and mortar office in the community in question.

Member agencies are prohibited from publishing a phone number with an area code and local exchange in any geographic area where they do not have a brick and mortar office. “Brick and mortar office” means a defined location at which face-to face counseling is delivered. Advertising or public information about your services cannot give the appearance of a larger or more local office if that is not the case.

Member agencies are expected to abide by all applicable requirements of trademark use set forth in any published NFCC policy, guideline, or license.

Member Quality Standard # 12.00

Compliance with Federal, State, and Local Laws

Member agencies are responsible for understanding and complying with all federal, state, and local laws. Member agencies must be appropriately licensed and/or registered as required by law.

OFFICIAL COMMENT:

Member agencies must notify the NFCC of any notice of investigation or actual investigation by a federal or state regulatory entity within five business days of receipt.

Member Quality Standard # 13.00

Grievances

Member agencies must establish written procedures to provide consumers and clients with a formal mechanism for expressing and resolving complaints and grievances.

OFFICIAL COMMENT:

Member agencies must provide consumers a grievance procedure at the time of initial application, and to clients upon request or at the initiation of a grievance.

Member agencies must include an appeal process and ensure the timely resolution of issues. At the conclusion of the process, written documentation of final resolution must be included in client files.

Member agencies must provide all clients access to their individual files as long as the client's review is done on site and in the presence of agency personnel. Clients have the right to include statements in their files regarding the services they have or wish to receive.

Member agencies must provide NFCC with their grievance policy and procedures if requested.

Member Quality Standard # 14.0

<u>Private Inurement and Private Benefit</u>

Member agencies must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a IRC Section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization.

<u>OFFICIAL COMMENT:</u>

Member agencies are prohibited from transferring property to employees and/or their families and/or other closely related parties such as board members or vendors for less than market value.

Member agencies are prohibited from signing above market value contracts with any individual or organization.

Member agencies must be able to justify employee salaries within local, regional, or national employment markets as appropriate.

Member agencies are prohibited from paying unreasonable compensation to employees.

Member agencies must review salary structure with their Board at least bi-annually and such discussion should be noted in the minutes of said board meeting.

Member Quality Standard # 15.0

Reporting

When requested and approved by the Board, member agencies must submit accurate data to NFCC by stated deadline.

OFFICIAL COMMENT:

NFCC will require specific data on a quarterly basis and may on an annual basis require additional information. Additional requests will state the need to comply with this standard when information is necessary.

Member agencies needing clarification on requested information must send to NFCC a clarification request in writing at least seven days prior to submission deadline.

Member Quality Standard # 16.0

<u>Nepotism</u>

Member agencies shall maintain policies and procedures that prohibit nepotism and specify:

a. conditions for employing and retaining relatives of governing body or advisory board members;
b. conditions for employing and retaining relatives of employees; and
c. protection against favoritism in supervision and employment decisions.

<u>OFFICIAL COMMENT:</u>

NFCC defines “nepotism” as favoritism based on a personal relationship.

Member agencies must report annually all situations of direct and indirect family member supervision that exist at the “Officer” or “Key Individual” level as defined by the Internal Revenue Service for Form 990 purposes. Such member agencies must annually submit all policies related to the direct or indirect supervision of individuals.

Member agencies must have nepotism policies and procedures in place that:

- allow non-family and family members to file grievances to an independent individual; and

- require independent review, verification, and justification of salary increases or bonuses.

Member Quality Standard # 17.0

Technology Requirements for Delivering Quality Programs

Member agencies must have the technical systems and capability to assure the timely, accurate and effective delivery of quality programs.

OFFICIAL COMMENT:

Member agencies shall possess an adequate technical infrastructure to address all communications with clients; specifically, they must have sufficient phone lines and Internet capabilities if they provide services by phone or Internet.

Member agencies must have unique email addresses for senior staff.

Member agencies must have a web site that identifies the products and services that they deliver to the public.

Member agencies must disburse client payments at least once a week.

Member agencies must have the ability to have ready access to credit reports.

Member agencies must have the ability to electronically transmit non-client-specific data in a prescribed format as set by the NFCC Board of Trustees.

Member Quality Standard # 18.0

Data Security

Member agencies must have sufficient security and privacy controls in place to protect client and employee data including but not limited to clients' names, social security numbers, addresses, telephone numbers, credit card account numbers, bank account numbers and other identifying information.

OFFICIAL COMMENT:

The agency has a business continuity plan in the event of a system outage or disaster.

All agency representatives are trained in the policy and proper procedures for handling personally identifiable client data and for protecting its security and confidentiality. Those policies and procedures are codified and evaluated or updated at least annually.

The agency uses antivirus software, firewalls, passwords and encryption software to protect client data which is passed electronically or stored in a Client Management System. The agency has fireproof, locking file cabinets or a system to scan and encrypt to manage hardcopy client records. These "security tools" are updated regularly and an annual penetration test is conducted to evaluate their efficacy.

The agency creates and stores daily data backups at offsite facilities. Those facilities are secure and equipped to properly handle this sort of information. "Offsite" does not include an individual's private home, an unsecure PC or similar ad hoc arrangement.

The agency has a procedure for reporting system issues and security incidents/compromises.

The agency has measures in place that restricts access to client or employee data and information. In addition to assigning access to client information on a "need to know" basis, the agency also ensures that faxes, computer monitors, mail bins and the like are placed outside the flow of non-essential traffic. Telecommuting policies and procedures also require review to ensure confidential information is protected.

The agency has identified staff and vendors with access to sensitive data and has completed confidentiality agreements with these people/entities. Where appropriate, the Agency has conducted its own security audit or, at a minimum, has received copies of the vendors' third party audits to evaluate the quality and effectiveness of their security practices.

The agency has a procedure for the destruction of data when no longer needed.

ATTACHMENT B

The text of Section 501(q) of the Internal Revenue Code:

`(q) Special Rules for Credit Counseling Organizations-

`(1) IN GENERAL- An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

`(A) The organization--

`(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

`(ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

`(iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

`(iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

`(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

`(C) The organization establishes and implements a fee policy which--

`(i) requires that any fees charged to a consumer for services are reasonable,

`(ii) allows for the waiver of fees if the consumer is unable to pay, and

`(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

`(D) At all times the organization has a board of directors or other governing body--

`(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

`(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

`(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

`(E) The organization does not own more than 35 percent of--

`(i) the total combined voting power of any corporation (other than a corporation which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

`(ii) the profits interest of any partnership (other than a partnership which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

`(iii) the beneficial interest of any trust or estate (other than a trust which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

`(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

`(2) ADDITIONAL REQUIREMENTS FOR ORGANIZATIONS DESCRIBED IN SUBSECTION (c)(3)-

`(A) IN GENERAL- In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

`(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

`(ii) The aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage of the total revenues of the organization.

`(B) APPLICABLE PERCENTAGE-

`(i) IN GENERAL- For purposes of subparagraph (A)(ii), the applicable percentage is 50 percent.

`(ii) TRANSITION RULE- Notwithstanding clause (i), in the case of an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) and exempt from tax under subsection (a) on the date of the enactment of this subsection, the applicable percentage is--

`(I) 80 percent for the first taxable year of such organization beginning after the date which is 1 year after the date of the enactment of this subsection, and

`(II) 70 percent for the second such taxable year beginning after such date, and

`(III) 60 percent for the third such taxable year beginning after such date.

`(3) ADDITIONAL REQUIREMENT FOR ORGANIZATIONS DESCRIBED IN SUBSECTION (c)(4)- In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

`(4) CREDIT COUNSELING SERVICES; DEBT MANAGEMENT PLAN SERVICES- For purposes of this subsection--

`(A) CREDIT COUNSELING SERVICES- The term `credit counseling services' means--

`(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

`(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

`(iii) a combination of the activities described in clauses (i) and (ii).

`(B) DEBT MANAGEMENT PLAN SERVICES- The term `debt management plan services' means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.'.

(b) Debt Management Plan Services Treated as an Unrelated Business- Section 513 (relating to unrelated trade or business) is amended by adding at the end the following:

`(j) Debt Management Plan Services- The term `unrelated trade or business' includes the provision of debt management plan services (as defined in section

501(q)(4)(B)) by any organization other than an organization which meets the requirements of section 501(q).'.

(c) Effective Date-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) TRANSITION RULE FOR EXISTING ORGANIZATIONS- In the case of any organization described in paragraph (3) or (4) section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act.