

Prepared Statement of  
The Federal Trade Commission

before the

Permanent Subcommittee on Investigations  
Senate Committee on Governmental Affairs

on

Consumer Protection Issues in the Credit Counseling Industry

March 24, 2004

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I. INTRODUCTION

Mister Chairman and members of the Committee: I am Thomas Leary, Commissioner at the Federal Trade Commission ("FTC" or "Commission").<sup>(1)</sup> I appreciate the opportunity to appear before you today on behalf of the Commission to discuss consumer protection issues raised in the credit counseling industry. This statement will describe the industry generally, discuss various practices by some of its members that raise consumer protection concerns, and summarize FTC law enforcement and educational efforts in this area.

As an initial matter, it is helpful to understand the Commission's role in enforcing laws that bear on the credit counseling industry. As part of its broad mandate to protect consumers, the Commission enforces the Federal Trade Commission Act ("FTC Act"), which prohibits unfair or deceptive acts or practices that are in or affect commerce.<sup>(2)</sup> The Commission also enforces a number of specific consumer protection statutes, including several relevant to credit counseling, such as the Telemarketing and Consumer Fraud and Abuse Prevention Act,<sup>(3)</sup> the Credit Repair Organizations Act,<sup>(4)</sup> and the Gramm-Leach-Bliley Act.<sup>(5)</sup>

Under its general consumer protection authority, the Commission focuses its resources on a variety of matters of importance to consumers. In addition to examining the significant consumer protection concerns raised by credit counseling services, the subject of today's hearing, the Commission's recent efforts have included:


- **Launching "Do Not Call."** In January 2003, the Commission adopted an amendment to its Telemarketing Sales Rule establishing the National Do Not Call Registry. Within 72 hours after the FTC opened the Registry, consumers had enrolled over 10 million telephone numbers. By its effective date in October 2003, the Registry contained over 53 million telephone numbers and now tops 58 million numbers. A recent Harris Poll found the Registry to be remarkably successful, with over 90 percent of participating consumers reporting a reduction in telemarketing calls.
- **Law Enforcement Against Fraud and Deception.** The FTC targets the most pervasive types of fraud and deception for law enforcement actions. During the past twelve months, the FTC has filed law enforcement actions targeting work-at-home schemes, Internet scams, online auction fraud, deceptive subprime lending practices, advance fee credit scams, and deceptive health, safety, and weight loss claims, among others. During fiscal year 2003, the FTC obtained multiple federal district court orders in these cases, resulting in more than \$448 million in consumer redress.
- **Consumer Privacy and Identity Theft.** This year, the agency undertook aggressive enforcement actions to protect consumers' privacy and prevent identity theft and other misuses of personal information.



CCAs have a number of options to offer their financially-distressed clients, depending on the client's individual circumstances, which range from simple advice and guidance on managing finances to (in extreme cases) advising that consulting a bankruptcy attorney may be the consumer's best option. In addition, CCAs, since the industry's inception, have offered to put

certain clients into a payment program commonly termed a "debt management plan" ("DMP"). DMPs allow consumers to pay off their unsecured debts, such as credit card balances, by making a single, consolidated monthly payment to the CCA, which then disburses those funds to the creditors of debts covered by the DMP. DMPs can also benefit creditors by forestalling consumer bankruptcy. Importantly, traditional CCAs evaluate each client's individual circumstances and needs before deciding whether to enroll that person in a DMP.

When administered properly, DMPs can benefit consumers because some creditors will reduce interest rates and waive certain charges, such as late and over-the-limit fees, for consumers on a plan. Most creditors and some state laws require CCAs to be non-profit entities before they can arrange payment plans for consumers, apparently for the purpose of eliminating the incentive for CCAs to deceive consumers. However, we are concerned that some CCAs may be evading these requirements by setting up non-profit entities that funnel money to for-profit affiliates.







The IRS announced at the same time its intention to re-examine certain CCAs with 501(c)(3) status to determine whether they are operating in a manner that complies with the laws and regulations governing tax-exempt status. The IRS also stated that in the future it will examine more rigorously CCAs' 501(c)(3) applications. Specifically, the IRS noted that organizations that place clients on DMPs without significant education and counseling do not qualify for tax-exempt status.<sup>(20)</sup>

In addition, the Commission recently issued two consumer education brochures, *Knee Deep in Debt*<sup>(21)</sup> and *Fiscal Fitness: Choosing a Credit Counselor*,<sup>(22)</sup> which provide advice to consumers about how to handle debt and how to choose a credit counselor. We highlighted these publications when we filed the AmeriDebt ca6(e h(h)8(e)-102(w)13(2(s)9( a)4(-12J /

