A Failing Grade For the Post-*BAPCPA* Credit Counseling and Bankruptcy Education Industry?

Persistent Conflicts of Interest, Rise of Outsourced Filipino Credit Counselors, and Questionable NonProfit Service Providers

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The 1990s was unquestionably the "Decade of Debt."[3] The deregulation of retail banking—highlighted by Travelers' Insurance acquisition of Citibank in 1998—spawned trillion dollar "To Big To Fail" financial services conglomerates (wholesale, retail, investment, insurance, hedge funds) with high priced consumer loan/credit "innovations."[4] Propelled by increasingly sophisticated "risk-based" pricing policies (eg. Capital One) and the entrance of nonbank lenders (eg., GE Finance and more recently Wal-Mart)[5], consumer financial services were aggressively marketed to groups that had been traditionally excluded (students, retirees, seniors) or experienced restricted access to bank loans (minorities, new immigrants, widows and housewives). Not surprisingly, by dramatically reducing loan underwriting standards, consumer lines of credit and household debt levels soared. For example, consumer credit card debt jumped from $70 billion in 1982 to nearly $220 billion in 1990 and then to over $625 billion at

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[3]Manning, Robert D. and Anita C. Butera. "Consumer Credit and Household Debt," in Michael Shally-Jensen (ed.), The Encyclopedia of Contemporary American Social Issues, ABC CLIO/Greenwood Press, 2010; Stuart Vyse, Going Broke, Why Americans Can't Hold On to Their Money, New York, Oxford University Press, 2008; Kevin T. Light and Scott T. Fitzgerald, Postindustrial Peasants, The Illusion of Middle-Class Prosperity, New York, Worth Publishers, 2006; Robert D. Manning, Living With Debt: A Life-Stage Analysis of Changing Attitudes and Behaviors, Charlotte: LendingTree.com, 2005; Elizabeth Warren and Amelia Warren Tyagi, The Two-Income Trap, Why Middle-Class Parents Are Going Broke, New York, Basic Books, 2004; Robert D. Manning, CREDIT CARD NATION: America's Dangerous Addiction to Consumer Credit,New York, Basic Books, 2000; Teresa A. Sullivan, Elizabeth Warren, and Jay Westbrook, The Fragile MiddleClass, Americans In Debt, New Haven, Yale University Press, 2000.

[4]Alan S. Blinder, After the Music Stopped: The Financial Crisis, the Response, and the Work Ahead, New York, Penguin Books, 2013; Andrew Ross Sorkin, Too Big to Fail: The Inside Story of How Wall Street and Washington Fought to Save the Financial System--and Themselves, New York, Penguin Books, 2010; U.S. Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report, Authorized Edition: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, Washington, DC., 2011; U.S. Senate Permanent Subcommittee on Investigations, Wall Street and the Financial Crisis: Anatomy of a Financial Collapse, New York, Red and Black Publishers, 2011.

[5]Robert D. Manning, The Blended Wal-Mart Business Model: MoneyCenters, Banco Walmart de Mexico, and the Formidable Challenge Facing Credit Unions. Madison, Wisconsin, Filene Institute (2010).

the end of 1999. Not surprisingly, the national household savings rate fell sharply—from nearly 10.0% in 1982 to zero in late 1999.[6]

The profusion of increasingly complex financial products in this period include adjustable rate mortgages (ARMs),[7] variable rate credit cards with confusing financial terms (double-billing cycles),[8] interest and payment deferred installment loans (e.g. furniture), car title loans (secured), payday loans (post-dated checks), lease-purchase programs (rent-to-own), unemployment "protection" insurance, and even contracts to "lease cash."[9] While Wall Street rewarded the "gold rush" of deregulated financial services with soaring stock prices, household indebtedness escalated to new heights as real income declined. For the first time, consumer bankruptcy rates escalated while unemployment rates fell in the 1990s. For example, between 1994 and 1998, consumer bankruptcies soared from 780,000 to 1.4 million (79.5%) while national unemployment dropped from 6.0% to about 4.2% (-30.0%).[10]

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[6]Robert D. Manning, Credit Card Nation: America's Dangerous Addiction to Consumer Credit, New York, Basic Books, 2000.

[7]Gretchen Morgenson and Joshua Rosner. Reckless Endangerment: How Outsized Ambition, Greed, and Corruption Created the Worst Financial Crisis of Our Time, St. Martin's Griffin, 2012; Kathleen C. Engel and Patricia A. McCoy. The Subprime Virus: Reckless Credit, Regulatory Failure, and Next Steps, New York, Oxford University Press, 2011; and Mark Zandi, FINANCIAL SHOCK, A 360 Look at the Subprime Mortgage Implosion, and How to Avoid the Next Financial Crisis, New Jersey, Financial Times Press, 2009.

[8]Robert D. Manning, *"Perpetual Debt, Predatory Plastic: From Company Store to the World of Late Fees and Overlimit Penalties,"* in Michael Hudson (ed.), Special Issue on Predatory Lending, "Banking on Misery," Southern Exposure, A Journal of Southern Studies, June 2003:15-19.

[9]For the explosion of "Second-Tier" and "fringe banking" services that complemented the contraction of retail banking services in low-income communities as well as "loans of last resort for the middle class, see Gary Rivlin, Broke, USA: From Pawnshops to Poverty, Inc. – How the Working Poor Became Big Business, New York, Harper Business, 2010; Howard, Karger, Shortchanged: Life and Debt in the Fringe Economy, San Francisco, BerrettKoehler Publishers, Inc., 2005; Christopher L. Peterson, Taming The Sharks, Towards a Cure for the High-Cost Credit Market, Akron, Ohio, University of Akron Press, 2004; Robert D. Manning, "Where ACE Is Not A Hardware Store: Fringe Banking and the Expansion of Second-Tier Financial Services," CREDIT CARD NATION, Chapter 7, New York, Basic Books, 2000; Michael Hudson (ed), Merchants of Misery: How Corporate America Profits from Poverty, Monroe, Maine, Common Courage Press, 1996; and John P. Caskey, Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor, New York, Russell Sage Press, 1994.

[10]Lawrence Mischel, Josh Bivens, Elise Gould, Heidi Shierholz, The State of Working America, 12th Edition, New York, Industrial Relations Press, 2012; Manning, Robert D. and Anita C. Butera. "Consumer Credit and Household Debt," in Michael Shally-Jensen (ed.), The Encyclopedia of Contemporary American Social Issues, ABC CLIO/Greenwood Press, 2010; Stuart Vyse, Going Broke, Why Americans Can't Hold On to Their Money, New York, Oxford University Press, 2008; Robert D. Manning, CREDIT CARD NATION: America's Dangerous Addiction to Consumer Credit, New York, Basic Books, 2000; and Teresa A. Sullivan, Elizabeth Warren, and Jay Westbrook, The Fragile Middle Class, Americans In Debt, New Haven, Yale University Press, 2000.

By the early 2000s, the "Age of Leverage" defined the dynamics of household debt accumulation trends. While the previous decade was characterized by declining loan underwriting standards that expanded household debt capacity,[11] the next decade witnessed the emergence of a new rational calculus that posited higher household debt was counterbalanced by rising household asset values (home equity, 401k retirement accounts, Wall Street managed investments). This view was promoted by the national media which asserted that growing home ownership rates (peaking at 68%) was "democratizing" wealth across class and racial groupings. Of course, declining mortgage underwriting standards (no money down, negative amortization loans) that promoted homeownership among the most financially vulnerable served to mask the depth of U.S. consumer indebtedness and ultimately amplified the seriousness of the impending 2007 Consumer-Led recession and subsequent meltdown of the U.S. financial system. Incredibly, homeownership (with the assumption of immediate asset appreciation) replaced the THREE C's of credit worthiness (**C**haracter, **C**apacity, **C**apital) as Alan Greenspan's Federal Reserve policies, lax banking supervision and investment regulations (including rating agencies such as S&P), interest only and negative amortization mortgages, home equity loans, and "cash-out" mortgage refinancings created the illusion that households could manage their debt obligations even during a period of falling real income.

By the early 2000s, paying MasterCard with VISA was replaced by paying MasterCard with a 'cash-out' mortgage refinance. The Age of Leverage was a rational choice for indebted American households that "revolved" high interest, unsecured credit card debt into tax-deductible, low-interest mortgages. This household financial strategy, which was driven by profitable bank origination fees, is an important contributory factor to the 2008 housing collapse and negative equity mortgage crisis.[12] In the short term, this financial House of Cards was obscured by Wall Street's financial engineering that reduced originator/lender risk and enhanced corporate profitability by packaging and reselling increasingly risky mortgage loan portfolios via Asset Backed Securities (ABS) throughout the U.S. and international investment markets.[13]

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[11]Robert D. Manning, Responsible Debt Relief: An Algorithmic Assessment of Household Debt Capacity and Repayment Capability. Research Report, Filene Research Institute, Madison, Wisconsin, 2008.

[12]Robert D. Manning and Anita C. Butera. "Consumer Credit and Household Debt," in Michael Shally-Jensen (ed.), The Encyclopedia of Contemporary American Social Issues, ABC CLIO/Greenwood Press, 2010.

[13]Viral V. Acharya, Matthew Richardson, Stijn van Nieuwerburgh, and Lawrence J. White, Guaranteed to Fail: Fannie Mae, Freddie Mac, and the Debacle of Mortgage Finance, Princeton University Press,

Such is the origins of the GSE insolvency, vaporization of institutional investments in complex derivative products, and the artificially high housing prices and precarious household financial stability until the collapse of the retail bank lending market.[14]

In this context of the ever expanding credit bubble of the mid-2000s, is it surprising that the average American household was largely unaware of its perilous financial condition upon the enactment of BAPCPA in 2005? Or, that the U.S. Congress was unaware of how the distinctly different groups that file for bankruptcy,[15] with their unique personal/household experiences,[16] shape the need for a wide range of educational pedagogies, delivery methods, culturally sensitive perspectives, illustrative content, integrated course materials (pre-filing, pre-discharge), and post-bankruptcy financial education follow-up programs? Ultimately, both the U.S. Congress and nonprofit service providers were unprepared for the challenges of the ill-conceived "cookie cutter" approach to satisfying the basic objectives of the mandated Credit Counseling and Debtor Education courses.

The Golden Age of Consumer Credit Counseling:
Easy Credit, Rapid Industry Expansion, and Rampant Conflicts of Interest

The difficulty in examining the decade's most important consumer financial rights/bankruptcy related legislation is that the academic literature tends to compartmentalize rather than more broadly examine the respective political objectives of the groups that spearheaded these legislative initiatives and subsequent statutory reforms. This is illustrated by

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2011; Sheila Bair, Bull by the Horns: Fighting to Save Main Street from Wall Street and Wall Street from Itself, New York, Free Press, 2012; Neil Brofsky, Bailout: An Inside Account of How Washington Abandoned Main Street While Rescuing Wall Street, New York, Free Press, 2012; Bethany McLean and Joe Nocera. All the Devils Are Here: The Hidden History of the Financial Crisis, New York, Portfolio Trade, 2011; and U.S. Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report, Authorized Edition: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, Washington, DC. 2011.

[14]At its peak, the United States absorbed nearly three-fifths of global liquidity (available capital) in 2006 through a wide range of seemingly low-risk investments such as mortgage backed securities.

[15]Some of the most salient factors include age, gender, education, income, occupation, household structure, racial/ethnic background, and immigrant status. For example, the difficulty of a twenty something, college educated, single, white, male conducting the pre-filing credit counseling/budgeting session with a 75 year old, retired, High School educated, African American widow who lives in a multigenerational household.

[16]The emotional distress bankruptcy filers explaining their financial insolvency due to factors that the counselor may not have ever experienced or can relate to include prolonged job loss, divorce/widowhood, health related employment problems, medical expenses, large student loans, family pressures for financial assistance, and loss of employment due to family care obligations.

recent scholarly analyses of the founding of the Consumer Financial Protection Bureau.[17] In this context, the *Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA*) of 2005[18] reflects the apex of political influence of the financial services sector.[19] Yet, only two years later, the balance of power between consumers and financial institutions had shifted dramatically. As a social response to the disproportionate size and political influence of the U.S. financial sector or what Kevin Phillips refers to as the "*financialization*" of American society,[20] this mounting political pressure yielded greater consumer protections and institutional regulation following the meltdown of the US financial system in 2007—culminating in the Occupy Wall Street movement. This is mirrored in the enactment of the pro-consumer *Credit Card Accountability Responsibility and Disclosure (CARD) Act* of 2009[21] and then the sweeping *Wall Street Reform and Consumer Protection* Act of 2010 (Dodd-Frank)[22] that created the Consumer Financial Protection Bureau (CFPB). This new legislative agenda is especially important due to the traditional lack of interagency coordination in the federal enforcement of consumer rights/protections[23] as well as the resourcefulness of financial and insurance institutions to changing regulatory and enforcement policies.[24]

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[17]Larry Kirsh and Robert N. Mayer, Financial Justice: The People's Campaign to Stop Lender Abuse, New York, Praeger, 2013; Paul J. Cerutti and Margaret Kolchak (Editors), and The Consumer Financial Protection Bureau: Overview and Analyses, New York, Nova Science Publishers 2013.

[18]The *Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA*) of 2005 is at http://www.gpo.gov/fdsys/pkg/PLAW-109publ8/html/PLAW-109publ8.htm.

[19]For example, Robert Ruben went from managing partner of Goldman Sachs in the 1990s to U.S. Secretary of Treasury under President Clinton to Senior Vice-President of Citibank during the U.S. financial meltdown. He reportedly earned over $100 million during his tenure at Citibank when, ironically, the bank was technically insolvent. Indeed, Ruben and US Treasury Secretary Henry Paulson were instrumental in shaping the multi-billion dollar public bail-out of the financial services sector while bankruptcy laws were significantly tightened to the financial detriment of debtors. See: Cohan, William D. *Rethinking Robert Ruben*. Bloomberg Business, September 30, 2012. Available on line at http://www.bloomberg.com/bw/articles/2012-09-19/rethinking-robert-rubin

[20] See: Phillips, Kevin, Bad Money: Reckless Finance, Filed Politics, and the Global Crisis of American Capitalism, New York, NY: Penguin Books 2008

[21]http://www.gpo.gov/fdsys/pkg/BILLS-111hr627enr/pdf/BILLS-111hr627enr.pdf.

[22]http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

[23]For example, the conflicting role of FDIC and OCC regulators in maintaining the "safety and soundness" of federally chartered depository institutions (often to the detriment of the financial interests of consumers) while FTC enforces consumer protection policies that may reduce the profitability of these banks. See: Sheila Bair, Bull by the Horns: Fighting to Save Main Street from Wall Street and Wall Street from Itself, New York, Free Press, 2012.

[24]For instance, Wall Street's response to increased monitoring/regulation of traditional retail and investment banking activities resulted in the shift to much more risky investments such as the financial engineering of minimally regulated hedge and private equity funds and the rapid growth of complex derivatives trading.

More germane to this article is how the implementation of these different federal laws has impacted the ability of financially distressed households to make informed decisions in regard to filing for consumer bankruptcy. Over the course of the ten-year debate and eventual enactment of *BAPCPA* in 2005, the pre-filing Credit Counseling course was mandated to help financially distressed consumers make informed decisions in an effort to counter public misinformation about the personal consequences of filing for bankruptcy and the presumed economic self-interest of bankruptcy attorneys. Not incidentally, the U.S. Congress specified that only nonprofit Credit Counseling organizations could be authorized by the Executive Office for U.S. Trustees (EOUST) to offer this course whereas both nonprofit and for-profit companies could be authorized to offer the pre-discharge Debtor Education course. Second, the economic boom that generated millions of consumer DMPs and bankruptcies in the 2000s was followed by a sharp rise of unemployment and contraction in consumer lending. The abrupt decline in lucrative DMPs triggered massive consolidation of the nonprofit Consumer Credit Counseling industry (shaped by banks to enhance the efficiency of their debt collections operations) as it grappled with enormous surplus capacity and rapidly declining revenues.

The enactment of the pro-consumer *Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009*[25] eliminated many previously legal and highly lucrative bank policies such as "bait and switch" contract terms, double-billing cycles, and universal default interest rate triggers.[26] More relevant for our purposes here, credit card companies began recommending specific nonprofit Credit Counseling Agencies (CCAs) by including their contact information on monthly customer account statements and by instructing their customer service

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[25]See U.S. Senate, "The Credit Card Accountability Responsibility and Disclosure Act of 2009, Section by Section Summary." Available at http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=721389f5-62b0-46b5-b855-85621d0a8d69.

[26] For summary of key provisions of the CARD Act that were contributing factors in the financial distress that plagued consumers that filed for bankruptcy in the 2000s, see Leslie McFadden, "8 major benefits of new credit card law," Bankrate.com, August 20, 2009 available at http://www.bankrate.com/finance/credit-cards/8-major-benefits-of-new-credit-card-law-1.aspx#ixzz3ZAugfNqM and Center for Responsible Lending. "Maloney Bill Targets credit Card Abuses," February7, 2008 available at http://www.responsiblelending.org/media-center/press-releases/archives/maloney-bill-targets-credit-card-abuses.html.

representatives to refer "hardship cases" to these preferred agencies. The basic criteria for being recommended as a "preferred" Consumer Credit Counseling/Debt Management company is large operational scale, efficient IT operational technologies, and likelihood of enrolling consumers into DMPs.[27]

Lastly, the founding of the Consumer Financial Protection Bureau (CFPB) in 2011[28]—as specified in the Dodd-Frank Act of 2010--was expected to provide more comprehensive and sophisticated federal oversight and regulation of the Consumer Credit Counseling industry. However, instead of designating specific regulators with the primary duty of monitoring the industry (including credit repair organizations and debt settlement companies), the CFPB included credit counseling in the office that monitors consumer debt collection (including FDCA violations). Not surprisingly, the consumer credit counseling industry has not been a high priority of the CFPB's debt collection regulators; complaints regarding violations of consumer rights have focused on for-profit entities. In addition, like many CFPB offices, it has experienced notable staff turnover.[29] A brief history of the Credit Counseling industry follows with an overview of the regulatory challenges and pervasive conflict of interests.

Consumer Credit Counseling Services:

From Nonprofit Community Social Services to Profitable National Service Providers

[27]Interviews with industry insiders. With the sharp decline in voluntary DMP "Fair Share" payments and later grants from creditors in the aftermath of the Great Recession, the largest Consumer Credit Counseling Services organizations eagerly sought to cooperate with the Debt Collections managers of the major credit card companies. Christopher Kohl, Vice-President of Collections for J.P. Morgan Chase, has been the most aggressive and strident leader of the most avarice creditors. The most compliant and financially dependent agencies were most likely to be included on the short list of "recommended" Credit Counseling Agencies led by Money Management International.

[28]According to industry insiders, Republican leaders on the bill's negotiations committee would not agree to support the Dodd-Frank legislation unless its chief advocate, Professor Elizabeth Warren (Special Assistant to U.S. Treasury), was not allowed to become the Director of the CFPB. As a result of this partisan compromise, Professor Warren pursued a successful political campaign to continue her efforts to more stringently regulate Wall Street as the U.S. Senator from Massachusetts.

[29]John Tonetti, CFPB's first Debt Collection Program Manager, joined the Bureau in December 2011 and resigned in September 2013 to become JP Morgan Chase's CCB Risk Director. At the time of Tonetti's departure, his office was involved in a major debt collections settlement between the CFPB and JP Morgan Chase. This recurrent revolving door between CFPB staff and the corporations that they regulate raises many concerns over the long-term regulatory effectiveness of the CFPB. See Tonetti's Linked In account at https://www.linkedin.com/pub/john-tonetti/7/263/821

The nonprofit Credit Counseling industry emerged in the early-1950s,[30] much like Credit Reporting Bureaus, in response to the rapid expansion of retail banking during the post-World War Two boom in suburbanization. Like bookends in the lending cycle, banks needed more accurate payment history information for evaluating new consumer loans and an effective debt counseling/collection network for rehabilitating delinquent borrowers. Initially, banks financed the creation of the new nonprofit credit counseling industry through generous grants and voluntary "Fair Share" debt collection payments from consumer Debt Management Plans (DMPs). The share of consumers' monthly payments that were retained for the nonprofits' operating expenses was typically 15% through the 1980s.[31] This is a relatively high percentage compared to current rates due to the small size of community-based counseling organizations (with their face-to-face consumer budgeting services and account management technologies) and the relatively modest household debt levels. Of course, the latter changed dramatically with the acceleration of retail banking deregulation in the 1990s.

For financially distressed consumers, the advantage of enrolling in DMPs is free professional counseling and budgeting services as well as an affordable repayment plan that includes creditor concessions in the form of lower interest rates and waived penalty fees; principal loan reductions are not offered.[32] Also, the convenience of paying a single 'lump sum' whereby the nonprofit DMP administrator submits monthly payments to each enrolled creditor.

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[30]The National Foundation for Credit Counseling (NFCC) was founded in 1951. It is the industry's oldest trade association and its headquarters is in Silver Spring, MD. Its website is www.nfcc.org.

[31]In terms of bank collection costs, it is important to note that consumer loan finance charges and fees have risen sharply over the last 25 years while Fair Share "voluntary contributions" to CCCSs have been steadily reduced by creditors to about 7% in the 2000s and even lower today. See Consumer Federation of America (CFA) and National Consumer Law Center (NCLC), "Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants," Washington, DC, April 2003 and Lander, David A. *Recent Developments in Consumer Debt Counseling Agencies: The Need for Reform,* American Bankruptcy Institute Law Review, February 2002.

[32]Industry insiders report a troubling trend in the servicing of client DMP accounts. Unlike the new prohibitions again re-setting credit card interest rates, the credit card collection companies have created a new form of adjustable-rate, high interest loans through ostensibly low interest DMPs. That is, when a consumer who is enrolled in a DMP submits late payments to the Credit Counseling Agency, the interest rate jumps from the initial 4% - 12% to as high as 29%. Unlike consumers that enroll in "Hardship Plans" with individual bank collection departments, nonprofit CCAs provide a veneer of credibility for the sharp increase in finance fees as well as the decision to re-age the account which enhances the value of the debt in the secondary debt collection market. The trigger for the higher interest-rate reset is usually after the second late payment which is not uncommon over a 3-4 year repayment plan. What is most troubling is that the monthly payment is fixed which means that the consumer tends not to be aware that the amortization period has been extended due to the declining proportion of the monthly payment that is applied to the principal balance.

Not incidentally, both lenders and borrowers assumed that these nonprofits adhered to the highest ethical standards since debtors' payments are required to be deposited in escrow accounts until payments are deposited by creditors. Since these Consumer Credit Counseling Services (CCCS) organizations are incorporated as nonprofits in their local communities and receive the most rigorous IRS review and audits, consumers have tended to rely on the 501 (c) (3) tax-exempt nonprofit designation for selecting debt management programs. The key assumption is that these services are provided in the best interest of consumers rather than for the profit of the service provider.

As small community-based organizations, the industry's traditional "Social Services" model (SSM) focuses on providing consumer counseling and financial education through direct "face-to-face" contact with debt encumbered households. Historically, lenders attributed the social problem of debt delinquency to the mismanagement of household financial resources and/or flawed moral character of borrowers since banks adhered to strict underwriting standards in this period. Indeed, prior to the unprecedented expansion of consumer credit in the 1990s and 2000s, consumer debt loads were modest in comparison to contemporary household debt levels—typically less than $3000 - $4000.[33] Additionally, households that experienced financial distress due to circumstances outside of their control—such as illness, accidental injuries, unexpected job loss—were viewed as "worthy" debtors that merited special consideration from creditors until they were able to regain control over their personal finances. Hence, the initial focus of CCCSs was to rehabilitate morally flawed debtors and/or to assist those worthy debtors that deserved special treatment during their convalescence back to financial solvency. In this context, DMPs were one of several appropriate SSM "treatments" that were carefully selected based on the objective diagnosis of the sources of the debt "problem."

These "Consumer Credit Counseling Services" (CCCS) organizations and the specific region that they served were identified by the name of the respective company. For example, Consumer Credit Counseling Services of Rochester, New York. These local CCCSs were

[33]Robert D. Manning, Living With Debt: A Life-Stage Analysis of Changing Attitudes and Behaviors, Charlotte: LendingTree.com, 2005, Chapter 6; Robert D. Manning, Credit Card Nation: America's Dangerous Addiction to Consumer Credit, New York, Basic Books, 2000, Chapter 4; and Lendol Calder, Financing The American Dream: A Cultural History of Consumer Credit, Princeton, Princeton University Press, 1999.

affiliated with a single national trade association: the National Foundation for Consumer Credit (NFCC).[34] The NFCC's oversight role included the formulation of various certification requirements for counselors and prescribing other industry business standards.[35] Significantly, compliance with industry "best practices," as formulated by the NFCC, remains voluntary without financial sanctions or enforcement consequences.

From its inception, the growing national network of CCCSs operated under the direct supervision and financial control of local creditors; banks controlled the Board of Directors and constituted the primary source of income for the operation of local CCCSs.[36] It is this fundamental financial and managerial control by creditors that underlies the industry's most persistent conflict of interest. That is, CCCSs are mandated to provide the best financial advice to consumers while serving the economic interests of creditors whose primary goal is to enroll their delinquent customers into DMPs. It was not until after a settlement with the Federal Trade Commission (FTC) in 1996 that the NFCC began to require its member agencies to disclose this potential conflict of interest before enrolling consumers in DMPs.[37] The FTC settlement also prohibited the NFCC from granting membership to creditors on its national Board of Directors.[38] As a result, this regulatory pressure to dilute the influence of creditors in the Credit Counseling industry significantly reduced the incentive of the new "profit maximizing" Credit Counseling

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[34]NFCC changed its name to National Foundation for Credit Counseling in December 2000. Like the overall industry trend, its membership and revenues have declined rapidly over the last 15 years which has made it even more susceptible to pressures from creditors. In February 2002, it reported approximately 150 members. Today, 2014, it reports 85 members—a 43% decline. See http://www.nfcc.org/about/index.cfm. The overall number of credit counseling agencies has declined even more sharply over this period.

[35]For an informative history of the counseling industry, see David A. Lander, *"Recent Developments in Consumer Debt Counseling Agencies: The Need for Reform,"* American Bankruptcy Institute Journal, February 2002 and Michael .E. Staten, "The Evolution of the Credit Counseling Industry," pp. 275-300 in Bertola, et al (eds.) The Economics of Consumer Credit, Cambridge: The MIT Press, 2006.

[36]Recent federal legislation limits creditors to a minority (49% or less) block of the total number of Directors of a CCCS Board. See: *26 U.S.C. § 501 : US Code - Section 501*.

[37]Stephen Gardner, *"Consumer Credit Counseling Services: The Need for Reform and Some Proposals for Change,"* Advancing the Consumer Interest, Vol. 13, Fall 2001/Winter 2002, pp. 30-35 and John Hurst, *"Protecting Consumers From Consumer Credit Counseling,"* North Carolina Banking Institute Journal, Vol, 9, Vol. 1, 2005: 159-178 available at http://www.law.unc.edu/journals/ncbank/volumes/volume9/citation-9-nc-banking-inst-2005/protecting-consumers-from-consumer-credit-counseling/.

[38]John Hurst, *"Protecting Consumers From Consumer Credit Counseling,"* North Carolina Banking Institute Journal, Vol, 9, Vol. 1, 2005: 159-178. Several Credit Counseling Agencies (CCA) filed an anti-trust suit against the NFCC including Garden State Consumer Credit Counseling v National Foundation for Consumer Credit, No 94-1141 (E.D.N.Y., filed March 14, 1994). See also U.S. Senate, "Profiteering in a Nonprofit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Governmental Affairs, March 24, 2004.

Agencies (CCAs) to join the NFCC. Together with the CCAs' refusal to embrace the more time consuming and costly NFCC best practices policies, they effectively operated in a regulatory vacuum during the rapid growth of the industry in the late 1990s and 2000s.[39]

During the 1990s, the sharp increase in household debt fueled the rapid growth of debt management service providers, peaking at over 1000 credit repair and debt management organizations in the early 2000s. A decade earlier, the number of consumer credit counseling agencies was estimated at only 200—with 90% affiliated with NFCC. By 2003, the proportion of new CCAs that were affiliated with NFCC had plummeted to only 15%.[40] With the unprecedented increase in credit repair[41] and debt management companies, these new profit maximizing CCAs joined the ranks of the credit counseling industry and formed their own trade associations: American Association of Debt Management Associations (AADMA) and American Federation of Independent Credit Counseling Associations (AFICCA). A fourth trade association, the Association of Independent Credit Counseling Agencies (AICCA), was formed to serve the interests of the largest credit counseling agencies.[42]

This 'Golden Age' of the Credit Counseling industry (mid-1990s through late-2000s) is distinguished by the explosive growth of debt encumbered clients as well as the entrance of

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[39]U.S. Congress, "Non-Profit Credit Counseling Organizations: Hearing before the House Subcommittee on Oversight of the Committee on Ways and Means, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003. Available at http://babel.hathitrust.org/cgi/pt?id=mdp.39015090387989;view=1up;seq=1 and John Hurst, *"Protecting Consumers From Consumer Credit Counseling,"* North Carolina Banking Institute Journal, Vol, 9, Vol. 1, 2005: 159-178.

[40]Mark Furletti, *"Consumer Credit Counseling: Credit Card Issuers' Perspectives,"* Payment Center, Federal Reserve Bank of Philadelphia, September 2003. Available on line at http://econpapers.repec.org/paper/fipfedpdp/03-13.htm. Also, U.S. Congress, "Non-Profit Credit Counseling Organizations: Hearing before the House Subcommittee on Oversight, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003.

[41]The Credit Repair Organization Act (CROA) was enacted in 1996. It prohibits untrue or misleading representations and bars "credit repair" companies from demanding advance payment, requires "credit repair" contracts to be in writing, and provides specific contract cancellation rights for consumers. Significantly, these prohibitions are not applicable to tax-exempt nonprofit organizations that provide these services. See Pub. L. No. 104-208, § 2451, 110 Stat. 3009-455 (Sept. 30, 1996), amending title IV of the Consumer Credit Protection Act.

[42]The current Executive Director of the Association of Independent Credit Counseling Agencies (AICCA) is David Jones. He is a past President of what is now called the InCharge Education Foundation which previously operated as Genus Credit Management—a CCA that has been the focus of over a decade of consumer litigation over deceptive practices and excessive service fees for its DMPs. See Statement of David Jones, U.S. Congress, "Non-Profit Credit Counseling Organizations: Hearing before the House Subcommittee on Oversight, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003.

highly capitalized, commercially savvy businesses with their aggressively competitive, for-profit orientation. The most notable of this period include AmeriDebt, Inc. (Germantown, MD),[43] Credit Counselors of America a.k.a. Take Charge America (Phoenix, Arizona),[44] Cambridge Credit Counseling (Agawam, Massachusetts),[45] Consolidated Credit Counseling (Ft. Lauderdale, Florida),[46] and Genus Credit Management (Orlando, Florida).[47] These national

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[43]The AMERIDEBT nonprofit credit counseling company, founded and controlled by Barbara and Andris Pukke, included an extensive network of for-profit companies including DebtWorks (account management services for DMPs), Infinity Resources Group (debt consolidation loans), F&M mortgage, and Fidelity and Trust Mortgage. By the 2004 Senate Permanent Subcommittee on Investigations hearing on consumer abuses of credit counseling organizations, the FTC had indicted Andris Pukke and filed an injunction against AMERIDEBT to stop enrolling new clients; Pukke attended the hearing under the supeona power of the Committee but invoked his 5th Amendment rights against self-incrimination in response to all questions posed by members of the Committee. At end of 2002, a management buyout of DEBTWORKS was completed and a new company was formed: The Ballenger Group. AMERIDEBT stopped enrolling new clients in November 2003 and ceased operations upon the completion of the DMPs of its remaining 72,000 clients in 2006. The Federal Trade Commission complaint against AMERIDEBT was filed in November 2003. It is available at http://www.ftc.gov/sites/default/files/documents/cases/2003/11/031119compameridebt.pdf.

[44]After nearly seven years of negotiations with the IRS, the tax-exempt status of Take Charge America was revoked in late 2012. The negotiated settlement included the resignation of the six family members that dominated the company's executive management which allowed the company to re-apply for tax-exempt status in 2013. Fred O. Williams, *"Behind the Credit Counseling Curtain, Big Agencies Operate With Little Disclosure,"* February 4, 2013. Available at http://www.creditcards.com/credit-card-news/business-credit_counseling-1282.php.

[45]Cambridge was on the forefront of deceptive national marketing campaigns and excessive executive compensation. Its founder, Richard Puccio, had been barred by the U.S. Securities and Exchange Commission from the securities industry for five years due to his 'high pressure, fraudulent sales tactics to the utter disregard of his obligations to [his] customers' welfare [in early 1990s].' See U.S. Securities and Exchange Commission, Exchange Act Release No. 37849, Washington, D.C., October 22, 1996. Consumer advocates criticized the $312,000 salary received by each brother in 2000 as excessive for nonprofit executives. Three years later, each Puccio brother received a salary of $624,000 plus additional compensation from their for-profit marketing and account management companies. The CEO, Christopher Viale, received an annual salary of $400,000 in 2003. Cambridge reported spending nearly $16 million on marketing with an operating surplus of over $53 million in 2003. By 2005, both brothers had been permanently barred from any business relationship with Cambridge Credit Counseling along with millions of dollars in civil penalties including hundreds of millions of dollars in judgments from class-action suits; in 2005, the Puccios personally settled with the State of Massachusetts for $2 million ($500,000 civil penalty, $500,000 restitution, and $1 million for disgorgement of ill-gotten gains) plus $2.2 million from Cambridge ($500,000 civil penalty and $1.7 million for restitution to consumers). See Consumer Affairs, "Cambridge Credit Counseling Fined $4.2 million," November 4, 2005. Available on line at: http://www.consumeraffairs.com/news04/2005/cambridge_credit.html. Also, North Carolina Attorney General Roy Cooper filed a similar suit against Cambridge and the Puccio brothers in April 2004. For further details, see: http://www.ncdoj.com/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/AG-Cooper-takes-aim-at-debt-adjusters.aspx.

[46]Consolidated Credit Counseling faced numerous investigations from State Attorney Generals and is notable for five for-profit companies that generated several million dollars in annual revenue and were owned/controlled by the founder, Howard Dvorkin. See: Zweig, Jason and Rachel Louise Ensign *Credit Counselor has Ties to High Interest Lenders* The Wall Street Journal January 12, 2015. Available on line at http://www.wsj.com/articles/credit-counselor-has-ties-to-high-interest-lenders-1421119983

[47]The Genus Credit Management portfolio of consumer DMPs was sold to American Financial Solutions for $17 million in 2001 and ceased operations upon the consummation of the transaction. Like AmeriDebt, it was engaged in litigation with numerous State Attorney Generals and class-action lawsuits due to aggressive telemarketing phone call campaigns, deceptive advertising, unclear disclosures, and excessive DMP fees. See U.S.

Credit Counseling Agencies (CAAs) are distinguished by their enormous size, emphasis on telephone and internet counseling services (rather than face-to-face consultations), regional and national marketing campaigns (especially television, radio, internet, auto-phone dialers), high executive salaries, sophisticated operational technologies (large IT departments), time limits for counseling sessions, commissions and bonuses for counselors ("sales people"), paid referral programs to third-parties, and the adoption of highly efficient information technology for managing client accounts and electronic payment systems.

In addition to deceptive marketing practices and required service fees with minimal educational programs, the fundamental violation of the nonprofit charter was their relationships with for-profit marketing and business services providers that were either owned or financially benefited the senior management or other interested parties of the nonprofit CCAs. In this regard, even if the Credit Counseling Agency has and strictly follows a conflict of interest policy concerning licensing agreements with for-profit companies, a finding of a private benefit—and, thus, **a violation of the 501(c) (3) status—does not require that payment for goods or service be unreasonable or above fair market value to support a finding that the relationship creates a private benefit for individuals within the management or the Board of the not-for-profit agency**.[48] Thus, as long as CCCSs were locally based and governed by a community-oriented Board of Directors, they were not likely to engage in business activities that violated their tax-exempt corporate charters. That is, tax-exempt nonprofit status is only granted by the IRS to those groups that are organized exclusively for charitable or educational purposes and are not organized or operate for the private benefit of individuals associated with the corporation.[49]

Senate, "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Investigations, March 24, 2004. Available at http://www.gpo.gov/fdsys/pkg/CHRG-108shrg93477/pdf/CHRG-108shrg93477.pdf. According to industry insiders, the tax-exempt nonprofit In-Charge Institute, parent company of Genus, received the proceeds and negotiated the financial settlements for these lawsuits through the early 2010s as a condition of the sale of the portfolio.

[48]See Cf.est of Hawaii v. Commissioner, 71 T.C. 1067(1979) holds that the amount of the private benefit is immaterial when a private entity "benefitted substantially" from the operation of the non-for-profit company. See also: Church by Mail v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), *aff'g* T.C.M. 1984-349 (1984) states that "[t]he critical inquiry is not whether a particular contractual payment of a related for-profit organization is reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially form the operation of the Church".

[49]26 CFR 1.501 (c) (3) available on line at http://www.law.cornell.edu/cfr/text/26/1.501%28c%29%283%29-1.

The blatant disregard of this fundamental IRS guideline, which effectively transferred tens of millions of dollars from the capital reserves of tax-exempt nonprofits to the personal control of private benefactors, produced an investigative and regulatory backlash in the early 2000s including a National Public Radio (NPR) expose on AmeriDebt in February 2002.[50] This national focus on the deceptive and highly profitable practices of the "new breed" of nonprofit credit counseling agencies[51] culminated in the U.S. House of Representatives' investigative hearing in November 2003[52] and the U.S. Senate Investigations Committee hearing in March 2004,[53] a series of civil actions by State Attorney Generals (including Illinois, Maryland, Massachusetts, Minnesota, Missouri, North Carolina, and Texas),[54] and the IRS "Credit Counseling Compliance Project" that resulted in the revocation of tax-exempt status of nine Credit Counseling Agencies in 2006 and the recommendation to revoke the tax exempt status of 30 other agencies.[55] Significantly, nonprofit credit counseling organizations whose tax-exempt status has been revoked may continue to operate as nonprofits albeit their revenues are taxable

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[50]U.S. Congress, "Non-Profit Credit Counseling Organizations," Hearing before the House Subcommittee on Oversight of Committee on Ways and Means, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003. Available at http://babel.hathitrust.org/cgi/pt?id=mdp.39015090387989;view=1up;seq=1. See also Caroline E. Mayer, *"'Alarming Abuses' in Credit Counseling, Senate Panel Issues Scathing Comments on Agencies It Probed,"* The Washington Post, March 24, 2005, E1; Jeff Gelles, *"Debt Counseling Can Be Anything But; A Probe Finds These Nonprofits Can Be Fronts for Operations Preying on Those in Financial Distress,"* Philadelphia Inquirer, April 25, 2004, at E04; and Tom Shean, *"As Debt Counseling Groups Grow, Their Practices Come Under Attack,"* Virginian Pilot, September 14, 2003, p. D1. .

[51] U.S. Congress, "Non-Profit Credit Counseling Organizations," Hearing before the House Subcommittee on Oversight of the Committee on Ways and Means, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003. Available at http://babel.hathitrust.org/cgi/pt?id=mdp.39015090387989;view=1up;seq=1;

[52]U.S.Congress, "Non-Profit Credit Counseling Organizations: Hearing before the House Subcommittee on Oversight, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003.

[53]U.S. Senate, "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Investigations, March 24, 2004. Available at http://www.gpo.gov/fdsys/pkg/CHRG-108shrg93477/pdf/CHRG-108shrg93477.pdf.

[54]For example, see suits filed by Attorney General of Massachusetts Tom Reilly, "Cambridge Credit Counseling Fined $4.2 million," November 4, 2005 at http://www.consumeraffairs.com/news04/2005/cambridge_credit.html. and North Carolina Attorney General Roy Cooper filed a similar suit against Cambridge and the Puccio brothers in April 2004 at http://www.ncdoj.com/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/AG-Cooper-takes-aim-at-debt-adjusters.aspx.

[55]In May 2006, the IRS recommended the revocation of 41 of 63 credit counseling organizations that it had audited—representing about 40% of the $1 billion credit counseling industry. See Money-Zine, "IRS Cracks Down on Credit Counselors," September 2006. http://www.guidestar.org/FinDocuments/2013/860/593/2013-860593598-0a05fa10-9.pdf. Most agencies appealed the adverse decision from the IRS and subsequently spent millions of dollars in legal fees. Some such as Credit Education Services Inc (aka CESI Debt Solutions Inc.) are still negotiating with the IRS over the terms of it eventual settlement while Take Charge America finally settled in 2012. See Fred. O. Williams, *"IRS Oversight of Credit Counseling Fails,* June 4, 2013 at http://www.creditcards.com/credit-card-news/irs-oversight-of-nonprofit-credit_counseling-1282.php and Fred O. Williams, *"Behind the Credit Counseling Curtain, Big Agencies Operate With Little Disclosure,"* February 4, 2013.

by federal and state agencies. In some cases, negotiated settlements with the IRS may include the option to reapply for tax-exempt status such as the agreement in 2012 with Take Charge America.[56]

Not surprisingly, the largest nonprofits have annually expended millions of dollars in legal expenses over the last decade. Although the majority of these legal costs were incurred during the regulatory crackdown of 2004-2009, which explains the steady decline of legal expenses in the 2010s, they still persist in the form of legacy litigation from the IRS "Credit Counseling Compliance Project" (including Take Charge America, CESI, and InCharge) as well as defense of more recent violations.[57] Between 2010 and 2012, after the settlement of most regulatory investigations, the Top Ten CCAs paid at least $11.2 million in fees for outside legal representation as reported on their annual 990 tax returns. These "outside counsel" legal expenses do not include the millions of dollars in negotiated financial settlements arising from class-action lawsuits, retroactively taxed income, and fines from federal and state regulatory agencies. Furthermore, the legal expenses resulting from regulatory investigations are probably even higher due to the deficiencies of data that are voluntarily reported by credit counseling agencies on their the annual 990 tax returns.[58] See Table 1.

Not incidentally, the major beneficiary of this litigation is the national law firm, Venable LLP, with corporate offices located in Washington, D.C., Baltimore, and New York. It is the law firm that is most frequently retained by CCAs to defend investigations, audits, and law suits

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[56]Take Charge America was permitted to reapply for tax-exempt status in 2012 as part of its settlement with the IRS following seven years of protracted litigation; Take Charge lost its tax exempt status for the tax years 2001 – 2011 and is liable for both federal and state taxes. As a result of losing its tax-exempt status, Take Charge also lost its authorization from EOUST to provide the pre-filing Credit Counseling course that is required for bankruptcy filers. See 2012 corporate tax return of Take Charge America at http://www.guidestar.org/FinDocuments/2013/860/593/2013-860593598-0a05fa10-9.pdf.

[57]Steve Rhodes, "IRS Wants More Than A Million Dollars Back From Ossenfort of Pioneer Credit Counseling, February 4, 2011. Available at https://getoutofdebt.org/25761/irs-wants-more-than-a-million-dollars-back-from-ossenfort-of-pioneer-credit-counseling and Barbara Soderlin, "IRS: Pioneer Credit official owes $1.3 million," Rapid City Journal, July 16, 2012. Available at http://rapidcityjournal.com/news/local/irs-pioneer-credit-official-owes-million/article_11b06a07-a112-57cd-ba39-f54e53258efe.html.

[58]This is a conservative estimate since the annual 990 corporate tax returns only report expenses for specific outside legal counsel whose payments exceed $100,000 and are among the nonprofit's Top Five contractors (minimum payment of $100,000 during the tax year). Additionally, the expense of in-house attorneys is often not accurately reported. See www.guidestar.org/organizations.

filed by the IRS, EOUST, state regulatory agencies, and private class-action lawsuits[59] Venable LLP has earned millions per year in representing nonprofit Credit Counseling service providers as well as for-profit debt settlement companies. Ironically, debt settlement companies were the major competitor of the DMP "mills" prior to the 2010 FTC regulations that prohibited the collection of upfront fees by for-profit "debt adjustors."[60] Of course, not all of these legal expenses are related to ongoing litigation or regulatory audits. For example, outside counsel expenses may include legal work for corporate organizational restructurings such as InCharge and its three "sister" nonprofit companies[61] and acquisitions of smaller CCCs (often including negotiated 'golden parachutes for senior managers) for expanding existing DMP portfolios such as Money Management International (MMI).[62]

The most recent "poster child" of the Credit Counseling industry to be penalized by the IRS for multiple violations of its nonprofit charter is Take Charge America. The IRS revoked its tax-exempt status in 2012 after seven years of protracted litigation. Questionable actions and blatant violations include employing at least five family members in high salaried senior management positions,[63] outsourcing some of Take Charge America's business services to its

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[59]The legal fees of Venable LLP (Washington, DC) are reported on the annual 990 corporate tax returns of nonprofit credit counseling organizations as contractor expenses when paid at least $100,000 in the specific tax year. Venable is the preferred firm for legal representation of CCAs as evidenced by the paucity of other law firms listed among the Top Five "Independent Contractors" on the annual 990s. For example, during the three-year period 2010-2012, Money Management International's payments to Venable LLP totaled $2.88 million for legal services.

[60] See U.S. Federal Trade Commission (FTC), *"Debt Relief Companies Prohibited From Collecting Advance Fees Under FTC Rule That Takes Effect October 27, 2010*," October 20, 2010 and Andrew T. Schwenk, *"Debt Settlement: A Beast of Burden Without any Reins,"* Brooklyn Law Review, Vol 76: 3, Spring 2011, pp. 1165-1200.

[61]The three affiliated nonprofit companies are: InCharge Institute of America Inc., InCharge Debt Solutions, and InCharge Education Foundation, Inc. It appears that the motivation for incorporating these companies is to shelter assets during prolonged litigation (primarily due to the financial liabilities of the now defunct Genus credit counseling company) and transfer profitable activities such as the Debtor Education programs of InCharge Debt Solutions to the "mother" company-- InCharge Education Foundation Inc. Interestingly, expenses and salaries for InCharge senior executives are pro-rated across the three different companies. Not incidentally, InCharge has been successfully sued for deceptive marketing practices and excessive for its Debt Management Program. See 990 tax returns for each of the companies which report the transfer of assets to InCharge Education Foundation, Inc. Also, Fred O. Williams, *"Behind the Credit Counseling Curtain, Big Agencies Operate With Little Disclosure,"* February 4, 2013. Available on line at http://www.creditcards.com/credit-card-news/business-credit_counseling-1282.php.

[62]See annual 990 corporate tax returns of Money Management International at http://www.guidestar.org/organizations/54-1837741/money-management-international.aspx.

[63]Upon the revocation of Take Charge's tax exempt status in 2012, senior executives included founder Michael Hall, his wife, son, and two brothers-in-law. At one point, his 95 year old father was receiving a salary. In

network of privately owned companies[64] (including proprietary debt management software and property management/leasing), company software that specifically referred to credit counselors as "sales people," and payments to a credit card company (MBNA) for referring delinquent cardholders for DMPs. Significantly, this strategy of prolonging costly litigation with federal regulators expends valuable financial resources that should have been allocated to the nonprofit's mandated public interest mission.[65] Instead, high legal expenses ($1.3 million over 2010-12 and much more in 2006-09) while laying off Take Charge staff due to lower revenues (plummeting from $29.8 million in 2010 to $19.0 in 2012) did not deter the Hall family from reaping millions of dollars in executive compensation and exclusive business service contracts during appeals of the IRS's examination decisions. Between 2005 and the final settlement with the IRS in 2012, the Hall family received nearly $10 million dollars in salaries, nonmonetary benefits, and contract fees.[66]

In sum, tens of millions of dollars were expended by CCAs for costly litigation expenses and settlement payments in the period 2005- 2012 that should have been allocated to their "public mission" programs and activities. And, of course, these payments primarily benefited the founders, business associates, and senior executives of those nonprofit companies whom violated key conflict of interest regulations of the 501 (c)(3) nonprofit charter.[67] These legal

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total, the compensation for the Hall family exceeded $950,000 per year plus nonmonetary benefits. See: Id., and Take Charge America annual 990 tax returns.

[64]The 2012 IRS settlement with Take Charge America included financial penalties as well as the loss of tax exempt status from 2001 to 2011, the resignation of Michael Hall and members of his family, a one-time fee to acquire Hall's proprietary software, termination of paid referral programs with third-party business, and correction of in-house debt management software that referred to credit counselors as "salespeople. With the revocation of its tax-exempt status, Take Charge also lost its authorization from EOUST to provide the pre-filing Debtor Education course to bankruptcy filers.

[65]For example, Take Charge of America was not able to fulfill its annual contribution to the Take Charge American Education and Research Center at the University of Arizona in 2012. Take Charge had previously provided $800,000 in annual financial support for the activities of the Center. Take Charge reported a $600,000 payment in 2012. See Take Charge America's annual 990 tax returns in 2010 and 2012. See: Williams, Fred O. *Behind the Credit Counseling Curtain* Fox Business News February 11, 2013. Available at http://www.foxbusiness.com/personal-finance/2013/02/04/behind-credit-counseling-curtain/

[66]When Michael Hall resigned as Chairman of the Board in 2012, the salaries of the five Hall family members totaled over $950,000. See Take Charge America's annual 990 tax return for 2012.

[67]If corporate insurance coverage and asset reserves ultimately mitigate the personal liability of these violators of the nonprofit charter, then there is little financial incentive for unscrupulous executives to adhere to these statutory requirements. It is analogous to bank executives that take high lending/investment risks with depositors funds that are FDIC insured accounts. Indeed, moral suasion is unlikely to influence ethical behavior among those whose intent is to pursue their personal/financial interests. As a result, it is crucially important that

related expenses, however, are dwarfed by the business support services (eg, marketing, customized business software, DMP plan development, client account management, office leasing) that could have been performed "in-house" rather than being "outsourced" to for-profit companies owned/controlled by the founders/family members/business associates of the CCAs. In an attempt to monitor potential financial conflict of interests, the annual 990 corporate tax returns require the reporting of "independent contractors" that "received more than $100,000 of compensation from the organization… [during] the calendar year."[68] Unfortunately, this compliance requirement is voluntary with the result that the most flagrant violators fail to accurately disclose this information or fail to identify the financial conflict of interests with their private contractors. For example, Access Credit Counseling does not report a single outside contractor even though it lists numerous categories of expenses that are not performed by in-house staff and exceed the $100,000 threshold.[69]

The financial impact of long-term "siphoning" of nonprofit financial resources is revealed in the "Net Assets or Fund Balances" of these nonprofit organizations.[70] As reported in Table 2, the average net assets of the Top Ten Credit Counseling Agencies in 2012 is $18.2 million. This ranges from a low of $0.7 million for Consolidated Credit Counseling to a high of $48.3 million Money Management International. It is significant to note that the fund balances of these individual companies are derived from billions of dollars in gross revenues over the last twenty years. Over the last 5 years (2008-12), for example, the Top Ten CCAs generated over $1.8 billion dollars in combined revenues yet their combined net assets in 2012 is a paltry $182 million. This represents only a small fraction (9.1%) of this five-year combined revenue total and much lower when calculated over the last 20 years of corporate revenues.[71] As a proportion

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regulators monitor the appointment of corporate directors for potential conflict of interests with corporate officers and executives.

[68]Line 1 of Section B of Part VII on page 8 of the 990 tax returns.

[69]Access Credit Counseling does not report any private contractors on any of its 990 corporate tax returns (2011, 2012, 2013) even though it outsources its business support services to a call center in the Philippines. In it13 corporate tax return, Access the following expenses: $1.12 million in "Information Technology," $0.77 million for "Management," $0.37 million for "Legal," and $0.32 million for "Advertising and Promotion." See http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf .

[70]As reported on Line 22 of the first page of the annual 990 corporate tax return. See, for example: http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf .

[71]The 9.1% of Gross revenues that have been retained as Net assets over this period is much less than the tax advantages of not paying annual corporate income or sales taxes.

of only their 2012 gross revenues, the net assets of the Top Ten CCAs range from a low of 2.1% for Consolidated to a high of 149.0% for CESI Debt Solutions. Furthermore, the overall average for the group—64.6%-- is inflated due to the sharp drop in revenues of most of the individual companies in 2012.[72] Also, some companies have increased their asset reserves in anticipation of high legal expenses and/or costly settlements with regulators.[73] Overall, for the period 2008-12, the proportion of net assets to total gross revenues ranges from the low of 0.4% for Consolidated to the high of 24.6% for Clearpoint.

The most notable finding of this cursory analysis of the CCAs' net assets is the extremely low asset reserves of Consolidated which was founded in 1993: $716,413. Based on its market position as the third largest nonprofit CCA,[74] with estimated total gross revenues over the last 20 years of over $400 million dollars, it would be expected that its net fund balance would be at least $15 million and much closer to its peers such as Greenpath with $21.4 million and Take Charge America with $22.3 million.[75] Of course, corporate asset balances rise and fall following vacillations in regional economic boom and bust cycles. Consolidated, however, has reported a decrease in its fund balance since the financial stabilization and recovery of the industry in the early 2010s. It is notable that Consolidated's operational balances do not tend to reflect annual fluctuations in Gross revenues. For example, between 2009 and 2010, Total Gross revenues fell nearly $6.0 million (from $40.8 million to $34.8 million) while the operational surplus rose marginally from $7,294 to $11,977. Similarly, Gross revenues fell -$1.6 million from $32.6 million in 2011 to $31.0 million in 2012 while the operational deficit

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[72]Based on 2010 revenues, the proportion of net assets to annual gross revenues falls to 45.6%.

[73]For example, CESI is accumulating higher asset reserves to finance costly litigation against AMERIX as well as anticipated fines and financial settlements. See Steve Rhodes, *"CESI Debt Solutions Asks Maryland to Help in Dispute With Amerix,"* Get Out of Debt Guy Blog, November 11, 2011 and Steve Rhodes, *"Amerix Files Suit Against CESI Debt Solutions,"* Get Out of Debt Guy Blog, November 3, 2011. Available on line at: https://getoutofdebt.org/

[74]Consolidated become the fourth largest nonprofit credit counseling organization following the merger of Credibility and Clearpoint on December 31, 2013. See *"ClearPoint and CredAility Complete Merger, Combination Creates Second Largest NFCC Agency in U.S.,"* press release, available at **http://www.clearpointcreditcounselingsolutions.org/clearpoint-and-credability-complete-merger/** .

[75]The miniscule asset balance of Consolidated is amplified when considering that the large credit counseling organizations make significant annual contributions to other nonprofit organizations. For instance, Take Charge America donates $600,000 each year to the Take Charge America Institute at the University of Arizona.

improved from -160,357 to -29,965. Over the last four years (2009-12), Consolidated's revenues totaled $139.2 million while it reported a net loss over this period of -$171,051.[76]

Not incidentally, Consolidated was founded by Howard Dvorkin. As the President of Consolidated, Dvorkin was investigated as part of the IRS' 2005 Credit Counseling Compliance Project for financial conflicts of interests and inappropriate outsourcing millions of dollars of Consolidated's business support services to companies owned in whole or in part by him, family members, and business associates.[77] More recently, he has shifted the focus of his for-profit companies to include required Bankruptcy Education courses (Start Fresh Today LLC),[78] Equestrian Center,[79] and business support services for "payday" loan companies.[80]

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[76]The net revenues reported by Consolidated on its annual corporate 990 tax returns are as follows: -$29,965 on 2012-13 gross revenues of $31.0 million, -$160,357 on 2011-12 gross revenues of $32.6 million, +11,977 on 2010-11 gross revenues of $34.8 million, and +7,294 on 2009-10 gross revenues of $40.8 million. See http://www.guidestar.org/FinDocuments/2013/650/401/2013-650401491-0a630ea3-9.pdf .

[77]It is intriguing that the Consolidated 990 corporate tax returns regularly list a Top Five contractor, "Debtor Services Inc, that is located 2.6 miles from Consolidated's offices at 1830 North University Drive, Plantation, FL 33322. Although its payments from Consolidated annually exceed $100,000 for "Employee Leasing Services and Membership Support," each 990 tax return reports "Compensation for these services is based on required labor needs and a calculation necessary to fulfill those needs." It is perplexing that the amount paid for these services is not listed on the audited corporate tax returns even though they are filed in May—eleven months after the end of Consolidated's tax reporting year (June 30th). Also, these filings do not report the reason for the inability to calculate the amount paid each year or whether the company is associated with its past founding President, Howard Dvorkin. Similarly, Media Management Group is located 6.6 miles from Consolidated's offices and it received $1,783,620 for "Media Placement Services" while Zimmerman Partners is located 8.2 miles away and it receive $1,036,340 for Public Awareness and Marketing Services. It is notable that the other large contracts are with awareness/marketing companies from outside of Ft. Lauderdale (Cornerstone Media Group of Minneapolis and Clear Channel Radio of Atlanta) and they received the smallest contracts--$262,470 and $267,905 respectively,-- in comparison to the local companies. See Consolidated's annual 990 corporate tax returns at http://www.guidestar.org/FinDocuments/2012/650/401/2012-650401491-0954fb7e-9.pdf.

[78]Dvorkin and his business partners founded Start Fresh in 2005 and have been one of the earliest providers of requited Bankruptcy Education course. Start Fresh also licensed its courses and delivery platform to other Bankruptcy Education providers. This is the reason that Consolidated does not offer Bankruptcy Education courses—even after EOUST regulators pressured Dvorkin to sell Start Fresh to CESI in March 2015.

[79]Howard Dvorkin and his wife own the multi-million dollar Pine Hollow Equestrian Center (www.pinehollowflorida.com) in Parkland, Florida which has generated local controversy and criticism over violations of local zoning laws. In fact, conflicts of interest have been raised against Dvorkin for "employ[ing] a city commissioner at his debt counseling company, contracts with the father of another commissioner to handle legal work for him, and [personal relationship] with the mayor." See Bob Norman, *"Wellington Dream Causing Nightmare For Neighbors,"* Broward-Palm Beach New Times," September 16, 2010. Available at ww.browardpalmbeach.com/news/wellington-dream-causing-nightmare-for-neighbors-6458001.

[80]Jason Zweig and Rachel Louise Ensign, "Credit Counselor Has Ties to High-Interest Lenders, Consumer-Debt Adviser Howard Dvorkin Has Financial Links to Firms Such as Payday Lenders That Often Drive People Deeper into Debt," The Wall Street Journal, January 11, 2015. Available at http://www.wsj.com/articles/credit-counselor-has-ties-to-high-interest-lenders-1421119983. Also, Pyments, "Consumer Advisor And Advocate Found To Be Tied To Payday Lending," January 11, 2015 available at

What is intriguing about the Consolidated example is Dvorkin's persistent strategy of coordinating the business activities of the nonprofit company with his network of for-profit companies for private benefit, albeit via more sophisticated legal structures. Indeed, Dvorkin and his business associates established Start Fresh Today LLC in 2005—a "hybridized" for-profit bankruptcy education company[81]--in response to the bankruptcy education requirement of *BAPCPA*. Start Fresh quickly became one of the largest providers of pre-filing and pre-discharge bankruptcy education courses as well as the Bankruptcy Education industry's leading licensor of Debtor Education courses.[82] Intriguingly, Consolidated is the only Top Five nonprofit credit counseling organization that does not report multimillion dollar revenues from its Bankruptcy Education program.[83] Since Consolidated advises consumers that cannot qualify for full payment DMPs to consult with a bankruptcy professional, it is peculiar that it has not applied for authorization from EOUST to offer *BAPCPA* required Debtor Education courses. Especially since the Bankruptcy Education program is the highest net income product/service offered by credit counseling agencies between 2005 and 2010. See Table 4.

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http://www.pymnts.com/news/2015/consumer-advisor-and-advocate-found-to-be-tied-to-payday-lending/#.VMUQfCwtHIV.

[81]The innovative legal structure of Start Fresh Today LLC is designed to satisfy the U.S. Congressionally mandated requirements that only nonprofits can offer BAPCPA required pre-filing Credit Counseling courses. By insourcing counselors from an "allied" nonprofit credit counseling organization and licensing its proprietary software and Bankruptcy Education courses for lucrative royalties, Start Fresh Today LLC has been able to legally circumvent the spirit of BAPCPA by providing Bankruptcy Education courses for the financial benefit of its private investors. Furthermore, by creating a separate for-profit legal entity, Dvorkin and his business associates avoided potential financial conflict of interest investigations that would have been initiated if Consolidated contracted with Start Fresh to license its proprietary software licenses from a company owned/controlled by Dvorkin. This example illustrates the indirect financial gains that continue to be extracted by nonprofit founders after they "separate" from nonprofit credit counseling agencies. Clearly, in this case, it has cost Consolidated millions of dollars in potential asset reserves that could have furthered the public mission of the nonprofit organization.

[82]InCharge Education Foundation paid Start Fresh Today LLC $181,340 in 2011and nearly $800,000 in 2010 for "software licensing." Following the relocation of the InCharge Bankruptcy Education program to InCharge Debt Solutions (IDS), InCharge created its own courses and delivery platform when its contract with Start Fresh Today LLC expired in 2011. See InCharge Debt Education Foundation's corporate tax return, p. 8. Available on line at http://www.guidestar.org/FinDocuments/2011/200/152/2011-200152720-089617a6-9.pdf.

[83]Consolidated does not list any Bankruptcy Education program fees in its annual corporate tax returns. See p. 10 of its corporate tax return at http://www.guidestar.org/FinDocuments/2011/650/401/2011-650401491-084f0abe-9.pdf.

Over the last 10 years, Start Fresh's total gross Bankruptcy Education program fees and software licensing royalties are conservatively estimated at over $90 million.[84] If only one-fifth of these gross revenues had been retained for Consolidated's corporate funds balance, then Consolidated's Net Assets would be comparable to its peer Credit Counseling Agencies. Significantly, Start Fresh Today, LLC argued to EOUST that it satisfied the *BAPCPA* requirement that the pre-filing Credit Counseling course be offered by nonprofit service providers by "out"-sourcing these budgeting and credit counseling services to a another nonprofit credit counseling agency.[85] In this way, the net profits of Start Fresh Today LLC have been distributed to its private investors (primarily Howard Dvorkin) rather than the Net Asset Reserves of Consolidated Credit Counseling. This appears to be a strategy to outfox the regulators rather than creating distinctly different operational processes that better serve the public mission of the nonprofit Consolidated "mothership."[86] Hence, the statutory permeability of the regulatory "fire wall" between nonprofits and their for-profit affiliates—as codified by the U.S. Congress in *BAPCA*[87]--continues to facilitate the diversion of tens of millions of dollars

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[84]According to industry insiders and review of its clients' 990 corporate tax returns such as Greenpath and InCharge, if Start Fresh only maintained a 5% market share for the first five years (2005-2010), its combined Bankruptcy Education fees and licensing royalties are estimated at approximately $70-$75 million. During this period it aggressively purchased portfolios of other EOUST authorized providers (pre-filing and post-discharge courses) to compensate for declining program fees and licensing royalties. Between 2011 and mid-2015, when Start Fresh was acquired by CESI, total course fee and licensing revenues are estimated at $26.5 to $29.0 million. Overall, a conservative estimate of Start Fresh's total Gross revenues is $95 to $100 million.

[85] The offices of Start Fresh Today LLC and its "ioutn"sourced nonprofit Credit Counseling agency are in the same office building that is located in Ft. Lauderdale, Florida—next door to each other—while in close proximity to the Consolidated corporate headquarters. Like the marketing partnership of ACCESS (pre-filing Credit Counseling) and Dave Ramsey (pre-discharge Debtor Education), this embedded business relationship enables Start Fresh Today LLC to nationally market a "package" of both required Bankruptcy Education courses at a discount to attorneys as well as individual filers. This is because the U.S. Congress specifically allows for-profit Financial Education companies to offer pre-discharge Debtor Education courses.

[86]Start Fresh Today LLC was sold to on March 20, 2015. This followed over two years of EOUST investigations, enforcement decisions, and eventual negotiated sale to a nonprofit Credit Counseling Agency: Consumer Education Services Inc (CESI). As part of the acquisition by CESI (Raleigh, North Carolina), the Start Fresh Today LLC executives and operations staff remain in Ft. Lauderdale, Florida while providing the overall management of the Bankruptcy Education program. This outsourcing service model is consistent with CESI's past relationship with AMERIX and 3CI. Even so, EOUST regulators opposed the continuing operational control of Start Fresh Today by its current executive team and indirectly by Howard Dvorkin.

See *Consumer Education Services, Inc.'s (CESI) Acquisition of Start Fresh Today: What it Means to you*. March 27, 2015. Available in line at: http://blog.startfreshtoday.com/blog/consumer-education-services-inc.s-cesi-acquisition-of-start-fresh-today-what-it-means-to-you

[87]The statutory provisions of the *Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA*) of 2005 is at http://www.gpo.gov/fdsys/pkg/PLAW-109publ8/html/PLAW-109publ8.htm.

from the asset reserves of tax-exempt nonprofit Credit Counseling Agencies to the financial benefit of private interests.

The Faustian Pact:
Conflict of Interest Between Creditors and Nonprofit Credit Counseling Organizations

This confluence of trends in the late 1990s provided a fortuitous opportunity for bank creditors to transform the small-scale, 'mom and pop' Consumer Credit Counseling industry into a much smaller number of large service providers that are in alignment with banks' more efficient information and electronic payment processing technologies. The rapid growth of these profit-maximizing "wolves in sheep's clothing" nonprofits produced a more commercially aggressive but politically compliant network of CCAs who were eager to achieve the banks' goal of enrolling as many consumers as possible in high yield/low cost DMPs. With this mutual agenda, the new breed of profit maximizing CCAs constituted a crucial catalyst for transforming the traditional Social Services Model (SSM) of consumer credit counseling. That is, the traditional approach of objectively identifying the source(s) of a household's financial distress and formulating solutions for their respective problem(s) that may include alternatives to DMPs is an anathema to the collections departments of the major banks.[88] Remember, the objective of Social Services-based credit counseling sessions is to distinguish the minority of households that may benefit from enrolling in DMPs from the majority of households that may not. The latter include consumers that may simply need basic budgeting assistance while others with more perilous financial problems may require advice from bankruptcy professionals.

The prioritization of consumer/client interests in the traditional "SSM" credit counseling paradigm is contrary to the banks' dual goal of: (1) enrolling as many delinquent borrowers as possible into cost-effective DMPs and (2) discouraging the most debt distressed households from filing for bankruptcy. Hence, from the banks' perspective, the main objective in the late 1990s

[88]Mark Furletti, *"Consumer Credit Counseling: Credit Card Issuers' Perspectives,"* Payment Center, Federal Reserve Bank of Philadelphia, September 2003; U.S. Congress, "Non-Profit Credit Counseling Organizations: Hearing before the House Subcommittee on Oversight, 108th Congress, U.S. Government Printing Office: Washington, D.C., 2003 and David A. Lander, *Recent Developments in Consumer Debt Counseling Agencies: The Need for Reform,* American Bankruptcy Institute Law Review, February 2002.

was to increase the revenues from delinquent borrowers[89] while reducing the operating expenses of their Collections Departments. This was accomplished by initially turning a "blind eye" to the illegal and unethical practices of the profit maximizing CCAs that effectively drove out of business the local 'mom and pop' CCCSs and, in the process, accelerated the national consolidation of the Credit Counseling industry. Indeed, these new economies of scale dramatically enhanced the operational efficiency of the Credit Counseling system while reducing the number of small CCCSs who were less compliant in enrolling "unqualified" consumers into DMPs while requiring higher "Fair Share" contributions due to their greater operating expenses.

As reported in Table 3, the concerted efforts of the major banks to promote the consolidation of the nonprofit Consumer Credit Counseling industry were very successful in the 2000s. By 2010, the market share of the Top Five CCAs account for 277.6 million or an impressive 21.4% of industry revenues while the Top Ten CCAs accounted for $397.0 million or 30.5% of the nearly $1.2 billion industry.[90] Overall, the Top Ten agencies ranged from $18.0 million to $111.7 million in total revenues; the average is $39.7 million. The industry leader, Money Management International (MMI) with revenues of $111.7 million (8.7%), reported nearly three times the revenues of the Number Two ranked agency—Greenpath ($44.09 million). MMI's meteoric growth is explained by its friendly relationships with major banks,[91] referrals from the Collections Departments of major credit card companies, mergers with smaller CCCS, new Foreclosure Prevention counseling programs, and Bankruptcy Education courses. Not surprisingly, MMI President Ivan Hand was richly rewarded for his efforts and cooperative relations with major bank creditors: an annual salary of $880,870 plus benefits. The combined salaries of the Top Ten CCA executives ($15.9 million) comprised 4.0% of their CCA total

[89] It is important to distinguish the "Collections" from "Recovery" Departments of major banks. The former are responsible for customers who are pre- "charge-off" or less than 180 days delinquent. These consumers are enrolled in "hardship" programs that may reduce monthly payments and interest rates but require full re-payment of the principle balance. The latter are post-"charge-off" or after customer accounts are required by the Office of the Comptroller of the Currency (OCC) to be removed from the banks' "performing" consumer debt portfolio. These accounts are often transferred or sold to third-party debt collection companies. Depending on the age of these accounts, they can be typically settled by the consumer or a debt settlement company at from 10% to 60%.

[90]This industry concentration statistic is based on: (1) an estimated $1.2 billion in total industry revenues in 2010 and (2) the total revenues of each agency as reported in their 990 tax return for 2010.

[91]Cordial relationships with major banks, including the support of creditor initiatives, can result in financial gifts in addition to "Fair Share" grants for administering the DMPs of their customers. For example, as reported in the Money Management International 990 tax return for 2012, MMI received a $2.9 million grant from Citibank for its "Financial Education Efforts."

revenues while CEO salaries of the Top Ten ranged from $420,302 to $889.370 or 1.1% of total CCA revenues; the average CEO salary of the Top Ten CCAs is $456,116 in 2012.

An objective measure of the dependence of CCAs on their relationships with the Collection Departments of the major banks is revealed in the proportion of total agency revenues that are attributed to DMPs. Indeed, CCAs with the highest dependence on DMPs must comply with bank policies that have become increasingly draconian in the aftermath of the Great Recession. For example, bank Collection Departments must approve the household budgets and thus the monthly payments of consumers who enroll in DMPs. By reducing allowable budget expenses,[92] banks increase the proportion of consumers that "qualify" for DMPs. Of course, higher rates of DMP enrollments help to compensate CCAs for their declining creditor "Fair Share" and quarterly grant payments that have fallen from 15% in the 1980s to 8-9% in the early 2000s to 3-4% today.[93] In comparison, the "commission" fee charged by for-profit debt collectors has typically ranged between 20 and 40 percent—depending on the amount of debt and its age.[94] The third-party debt collection fee structure has remained stable even though these companies have adopted more efficient, information technologies and many have relocated their call centers to largely unregulated, low-cost developing countries such as India, Philippines, and El Salvador.[95]

As shown in Table 3, the average percentage of total revenues derived from DMPs among the Top Ten CCAs is 75.1% in 2010. That is, one-fourth of agency revenues are from sources other than DMPs. Even so, this proportion belies the even greater dependence of

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[92]The second author personally reviewed a DMP proposal that was submitted by a highly respected CCCS in Utah that was rejected by Bank of America for excessive household expenses. The expense criticized by the Collections Department of Bank of America was the budget item for "food." That is, the DMP proposal would have been approved if "food" expenses had been eliminated from the family's proposed budget.

[93]Consumer Federation of America (CFA) and National Consumer Law Center (NCLC), "Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants," Washington, DC, Apri1 2003and interviews with industry insiders.

[94]Federal law specifies that uncollected, defaulted consumer loans must be purged from consumer credit reports after seven years. Some states, moreover, require that defaulted consumer loans must be purged from consumer credit reports even earlier. For example, the State of New York requires that negative "credit events" must be deleted from a consumer's credit report after six years.

[95]See The Kaplan Group, "How Much Does a Collection Agency Charge?" Available at http://www.kaplancollectionagency.com/how-to-select-a-collection-agency/how-much-does-the-collection-agency-charge/.

specific agencies that have chosen to develop close relationships with creditors while not pursuing other lucrative bankruptcy related programs such as Foreclosure Prevention and Bankruptcy Education. As reported in the annual 990 corporate tax returns of the Top Ten CCAs in 2010, the following is the rank order of agency program revenues for DMPs versus Bankruptcy Education courses:[96] Take Charge America (96.4% v 0.0%), Novadebt (92.7% v 0.9%), CESI Debt Solutions (91.4% v 0.0%), Consolidated (83.4 v 18.3%),[97] Clearpoint (82.9% v 2.4%), Apprisen (78.8 v 6.7%), MMI (75.7% v 10.3%), Greenpath (66.5% v 18.1%), InCharge (53.4% v 44.1%), and Credibility (29.7% v 28.4%).

A comparison of agency revenues and CEO salaries suggests that the relationship between CCAs and banks has grown even closer today. This is demonstrated by Table 4 which reports the deteriorating financial condition of the Credit Counseling industry in 2012. This is due to fewer consumers qualifying for DMPs while Housing Counseling and Bankruptcy Education fees have steadily shrunk.[98] Between 2010 and 2012, total industry revenues declined by about one-fifth—to approximately one billion dollars—while the Top Ten agencies fell by 21.7% to $310.7 million; the Top Five agencies dropped by 21.9% to $216.9 million. Interestingly, MMI experienced the largest revenue decline—from $111.7 million to $84.9 million (24.0%)—yet CEO Ivan Hand's salary rose 6.5% to $947,588. Overall, total expenditures for senior managers remained unchanged for the Top Ten CCAs ($15.9 million) although average CEO salaries fell 8.8% to $416,329.

The most striking feature, aside from the high salaries of senior executives, is the increasing prominence of DMP revenues. Among the Top Ten CCAs, the percentage of revenues from DMPs rose from an average of 75.1% in 2010 to 82.9% in 2012; Bankruptcy Education fees fell from 11.1% in 2010 to 7.0% of total CCA revenues in 2012. More striking is

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[96]Gross revenues reported for Debt Counseling and fee-contingent DMP programs as a proportion of combined Total Program Service Revenue (Part VIII, line 2g of 990 corporate tax return) and Government Grants (Part VIII, line 1e of 990 corporate tax return) which is primarily for housing counseling "contributions." The calculation of "Gross Revenues" excludes the agencies' investment income and general contributions for operating expenses.

[97]For an explanation of the estimated Bankruptcy Education revenues for Consolidated Credit Counseling, see Tables 2 and 3.

[98]Credit Counseling Agencies that are authorized to provide HUD approved housing counseling services earn as much as $240 for a one-hour session with a certified housing counselor. In comparison, an EOUST approved one-hour telephonic pre-filing Credit Counseling session for bankruptcy filers averaged about $45 in 2012.

the proportion of DMP versus Bankruptcy Education revenues for specific agencies: Take Charge America (99.1% v 0.0%), Clearpoint (99.1% v 0.1%), Novadebt (98.0% v 1.5%), CESI Debt Solutions (90.9% v 0.0%), MMI (89.5 % v 2.8%), Consolidated (79.7 v 14.8%),[99] InCharge (79.2% v 16.8%), Apprisen (77.1% v 3.3%), Greenpath (72.4% v 10.6%), and Credibility (71.1% v 26.5%). Hence, in order to justify their high salaries, senior executives of CCAs must work even more closely with banks to satisfy their demand to enroll consumers into DMPs.

Although ostensibly critical of the enormously profitable DMP "mills," banks tolerated the private inurement of their founders/beneficiaries through high salaries, management "perks" and most significantly the "outsourcing" of marketing and operational business services to for-profit companies that they owned or controlled through business associates and family members. For creditors, this was a necessary trade-off for attracting profit maximizing "change agents" that precipitated the modernization phase of this $1 billion industry. The banks' goal of consolidating the number of service providers and dramatically upgrading their information technologies (especially payment processing systems) was boldly presented in an influential 1999 report by VISA. Credit card collections departments, the most powerful policy-makers in the consumer credit counseling industry, sought to accelerate this transformation by "encouraging" CCCSs to contract with private sector companies to perform back-office administrative tasks that would increase operational efficiency and improve client/debtor services. This was the argument presented by Matthew Case, CEO of AMERIDEBT, in justifying the costly outsourcing of DMP account management services to its for-profit affiliate, Debtworks.[100]

Since these for-profit "back-end" companies were founded by experienced credit counseling executives with extensive relationships with creditors, it is not surprising that their

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[99]For an explanation of the estimated Bankruptcy Education revenues for Consolidated Credit Counseling, see Tables 2 and 3.

[100]See U.S. Senate testimony of Matthew Chase, CEO of AMERIDEBT, "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Investigations, March 24, 2004, p. 38. At the time of the report, VISA was privately "owned" and its policies/governance dominated by its largest bank shareholders. Today, following the settlement of several class-action lawsuits, VISA and MASTERCARD are independent and publically owned corporations. See *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No 1720 (JG)(JO). See also Notice of Class Action Settlement Authorized by the US District Court, Eastern District of New York. Available on line at http://www.duffonhospitalitylaw.com/files/2013/03/Visa-MC-Settlement-Notice2.pdf

enormous profitability was overlooked by bank executives during this period. For example, Bernaldo Dancel founded the tax-exempt nonprofit Genus Credit Management (with longstanding consumer rights violations that have been the focus of over a decade of litigation) and then left the company to establish the for-profit AMERIX Corporation that provides "back-end" client account management services to tax-exempt nonprofits as well as "front-end" marketing services. This includes the nonprofit CESI Debt Solutions of Raleigh, North Carolina. It was founded in 2001 by Dancel's for-profit AMERIX network to provide the "front-end" nonprofit interface for mass marketing DMPs directly to consumers; AMERIX helped to establish several nonprofit CCAs that essentially operate to guide debt distressed consumers into its DMP money making machine. All basic marketing and operational tasks were outsourced by CESI to the Dancel network of for-profit companies. Incredibly, in less than a decade, CESI ranked as the fifth largest CCA as measured by total revenue. This front-end customer interface is crucial to the DMP mills since creditors generally do not accept consumer payment plans that are submitted by for-profit CCAs. Between 1999 and 2002, AMERIX's annual corporate revenues jumped from $43 to $95 million.[101]

According to Dancel, AMERIX's contracts with nonprofit CCCSs specify payment of from 50% to 85% of their annual DMP revenues, depending upon the bundle of services that may include national marketing campaigns. Indeed, AMERIX only generates revenues from consumers that enroll/perform in approved DMPs with a contractually required enrollment minimum of 30% of consumers that contact their CCCS/CCA clients. More instructive is Dancel's justification for the high cost of these services in 2004 that reflects the industry consolidation and business rationalization objectives of the major credit card issuing banks:

> *"we [AMERIX] bring tremendous economies of scale, technological advance, which allows [CCAs] to not only operate and put more funds toward their educational and counseling mission, but it also allows them to operate and*

[101]Dancel also founded another nonprofit credit counseling organization: Ascend One. It offers a range of educational services as well as debt management and debt relief programs. Not incidentally, Genus was sold by Take-Charge Institute to American Financial Solutions in 2001 for $17 million and is a client of AMERIX. See U.S. Senate testimony of Bernaldo Dancel, CEO of AMERIX Corporation, "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Investigations, March 24, 2004, p. 78, Available on line at: http://www.gpo.gov/fdsys/pkg/CHRG-108shrg93477/pdf/CHRG-108shrg93477.pdf.

provide debt management plans [DMPs] for consumers at a low [cost] level that is commensurate with what is in the industry, if not lower."[102]

Ironically, Dancel's explanation of the value of AMERIX's services mirrors the argument articulated by the major bank debt collection executives in justifying the steady decline in their voluntary "Fair Share" contributions to CCCSs following the modernization of the industry with its lower operational costs.

Clearly, AMERIX's high fee structure was sustainable for only as long as banks maintained their relatively high, voluntary "Fair Share" contribution rates (8% to 9%) of the early 2000s[103] and CCCSs maintained high yield client enrollment rates (at least 30%). In 2004, the "$15-$16 [monthly fee] level" for AMERIX's management of the American Financial Solutions' DMP account portfolio contrasted sharply with the $1.20 monthly per DMP account fee charged by an outside vendor to CCCS of Southern New England and $2 monthly per DMP account fee for CCCS of Los Angeles. Although Dancel asserted that these cost differentials reflect the much higher value services provided by AMERIX, [104] major clients such as American Financial Solutions (AFS) and Consumer Education Services, Inc. (aka CESI Debt Solutions) have aggressively sought to renegotiate their AMERIX contracts with the latter resulting in several years of litigation.[105]

Hence, the initially lucrative Faustian pact between the founders of the DMP mills and their creditor partners during the industry's Golden Age has swiftly evolved into a Master-Slave relationship. Banks dictate the much less generous terms of approved consumer DMPs (higher

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[102]See U.S. Senate testimony of Bernaldo Dancel, CEO of AMERIX Corporation, "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Investigations, March 24, 2004, p. 78.

[103]Consumer Federation of America (CFA) and National Consumer Law Center (NCLC), "Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants," Washington, DC, Apri1 2003and

[104]See U.S. Senate testimony of Bernaldo Dancel, CEO of AMERIX Corporation, "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," hearing before the Permanent Subcommittee on Investigations, March 24, 2004, p. 78, regarding questions from the U.S. Senators on the Committee and the American Financial Solutions' contract.

[105]For the CESI Debt Solutions' contract, see Steve Rhodes, *"Amerix Files Suit Against CESI Debt Solutions,"* Get Out of Debt Guy blog, November 3, 2011. Available at https://getoutofdebt.org/31973/amerix-files-suit-against-cesi-debt-solutions.

DMP interest rates decrease the percentage of qualified enrollees)[106] while sharply reducing the compensation for CCCS services. The result has been a huge financial benefit to banks and a dramatic increase in unprofitable outsourcing contracts for both CCCSs and their outsource business services partners.

For CCCSs that embrace their social services mission, the 'bottom line' mentality of these new competitors is abhorrent since the quality of client services has declined sharply with their profit maximizing policies. These include aggressive and deceptive marketing tactics, lack of face-to-face contact with clients, large up-front "set-up" fees, DMP-only focus with dwindling range of programmatic services, late payments to creditors, and "hybrid" DMPs whereby only the easiest creditors are enrolled with clients assuming responsibility for the most difficult creditors.[107] In addition, the DMP-mills posed a serious challenge to nonprofit operational policies by offering financial incentives to affiliate "partners" for referrals, employee "bonuses" for enrolling DMP clients and other performance "targets," aggressive multimillion dollar national marketing campaigns with deceptive cost and performance claims, highly efficient and capital-intensive operational processes with skilled IT departments, and cost-cutting policies that eliminated nonrevenue generating services.[108] For those few nonprofit Consumer Credit Counseling Services (CCCSs) organizations that remain, their future survival is based on receiving grants from local community foundations (eg, financial education programs) and government agencies (eg, foreclosure prevention).

Executives of the major bank Collections Departments could have immediately put the profit maximizing CCAs out of business by simply not accepting their DMPs. Instead, they conveniently ignored the consumer abuses of their customers until they became a highly

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[106]Higher interest rates for enrolled debts increases the total monthly payment to creditors and thus increases the pressure on CCCSs to manipulate qualification criteria in order to generate operating revenue and satisfy banks and outsource service providers.

[107]Interviews with industry insiders. Some companies such as Ascend actually use this client problem to their profitable advantage. That is, the easiest accounts are enrolled in full-payment DMPs while the most difficult accounts are enrolled in their more profitable less than full payment debt settlement programs.

[108]The most blatant violators of the early 2000s include AmeriDebt, Cambridge, Genus. and Take Charge. For detailed discussion of these and other violations of nonprofit guidelines, see "Non-Profit Credit Counseling Organizations," Hearing before the House Subcommittee on Oversight, 108th Congress, November 20, 2003 and "Profiteering In A Non-Profit Industry: Abusive Practices in Credit Counseling," Hearing before the Permanent Subcommittee on Investigations, March 24, 2004.

publicized social problem that spurred regulatory scrutiny and government intervention in the mid-2000s. For example, bank executives such as JP Morgan Chase Vice-President of Collections—Christopher Kohl[109]—actively worked with the largest CCAs in an effort to accelerate the consolidation of the Credit Counseling industry through economies of scale based on the adoption of sophisticated information processing technologies. The primary goal of the bank creditors like Kohl was to lower the cost of administering DMPs by supervising a much smaller number of large compliant agencies.[110] This close relationship between for-profit bank Collections Departments and nonprofit Credit Counseling Agencies is illustrated by the recruitment of Hubert H. Rivera in late 2010 as "Collections Strategy - Relationship Manager" at JP Morgan Chase. At the time, Rivera had been employed for nearly 20 years at InCharge Debt Solutions in positions that include Director of Vendor/Creditor Relations.[111] In sum, with the effective end of fixed bank "Fair Share" contributions and the implementation of the stringent 2010 FTC regulations on debt settlement companies,[112] the Debt Collections executives of the major banks celebrated the successful transformation of the Credit Counseling/Debt Management industry following the enactment of the omnibus *Dodd-Frank Act* of 2010.

Overview of the Bankruptcy Education Industry:
The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005

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[109]See presentation of Christopher Kohl in Mark Furletti, *"Consumer Credit Counseling: Credit Card Issuers' Perspectives,"* Payment Center, Federal Reserve Bank of Philadelphia, September 2003.

[110]Interviews with industry insiders. Kohl aggressively persuaded CCAs to offer a special "hardship" DMP that required five years to complete as an alternative to consumer bankruptcy. CCCSs and CCAs acquiesced to his demands while recognizing that the hardship DMP program offered little value to consumers since their perilous financial situation would most likely force them to drop out and file for bankruptcy within a few months.

In many cases, the executives of these nonprofit credit counseling organizations feared that they would not be paid their quarterly "grant" payment from Chase (as a replacement of the "Fair Share" payment) if they did not follow the "best practices" policies of the bank. This was not an idle threat since some CCAs were not paid their quarterly grants for not closely adhering to these policies as determined by the banks' Collections Departments. This includes majors CCAs such as Consolidated Credit Counseling.

[111]See Rivera's Linked In account at https://www.linkedin.com/in/huberthrivera.

[112]Interviews with industry insiders. The new FTC regulations began on September 27, 2010. See also: *"FTC Issues Final Rule to Protect Consumers in Credit Card Debt,"* July 29, 2010 at http://www.ftc.gov/news-events/press-releases/2010/07/ftc-issues-final-rule-protect-consumers-credit-card-debt and *"Debt Relief Companies Prohibited From Collecting Advance Fees Under FTC Rule That Takes Effect October 27, 2010*," October 20, 2010 at http://www.ftc.gov/news-events/press-releases/2010/10/debt-relief-companies-prohibited-collecting-advance-fees-under.

After more than a decade of intense legislative debate and a Presidential veto by Bill Clinton in 2000,[113] one of the most costly corporate lobbying campaigns of the last two decades finally delivered a major, pro-bank revision of the federal bankruptcy code in 2005. This was the first comprehensive reform of the U.S. Federal Bankruptcy code since 1979 and constituted a hard won victory for large banks, credit card companies, auto lenders, and consumer debt collection agencies.[114] With the housing market approaching its 2006 apex and credit card debt and auto loans routinely "revolved" by consumers into mortgage refis and home equity loans, the primary objective of the *Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA*) of 2005[115] was to increase the difficulty of discharging future unsecured consumer debt through a Chapter 7 "fresh start" bankruptcy. Indeed, the goal of *BAPCPA* was not to distinguish the "worthy" from "unworthy" debtors such as those who had encountered unexpected job interruptions and income reductions during the Great Recession, survived health-related emergencies that produced large medical bills, or experienced personal crises such as divorce or widowhood. Nor was the legislative intent to implement a sophisticated "means-test" that would identify irresponsible debtors and objectively estimate affordable debt repayment plans.[116]

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[113]The second author testified as an expert witness at the U.S. Senate Judiciary Hearing on Consumer Bankruptcy Reform. Although the new BAPCPA guidelines ultimately deepened the "Consumer-Led" Recession of 2007 by delaying the eventual discharge of tens of billions of dischargeable consumer debt that could have increased household credit capacity (and thus increasing household consumption), the growing national receptivity to responsible debt relief became a catalyst for increasing public awareness in the media that contributed to the coalescence of a coalition of consumer, union, and environmental groups along with some major private philanthropic foundations. The success of this social policy coalition led to the enactment of the 2009 Credit Card Reform Act which paved the legislative path to the Dodd-Frank Act of 2010 and the subsequent establishment of the politically independent Consumer Financial Protection Agency (CFPB). See David A. Skeel, William D. Cohan, and Harvey R. Miller, The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences, New York, Wiley, 2010 and Larry Kirsh and Robert N. Mayer, Financial Justice: The People's Campaign to Stop Lender Abuse, New York, Praeger, 2013.

[114]President Clinton vetoed the Bankruptcy Reform Act of 2000 (H.R. 2415) on December 19th. See Peter Feltman and Paula Cruickshank, "*President Vetoes Bankruptcy Reform Bill*," CCH, December 28, 2000.

[115]The *Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA*) of 2005 is available on line at http://www.gpo.gov/fdsys/pkg/PLAW-109publ8/html/PLAW-109publ8.htm.

[116]The sponsors of *BAPCPA* emphasized the moral imperative of the legislation. That is, they asserted that Americans were ignoring their financial responsibilities by defaulting on their loans and thus imposing higher costs on fiscally prudent households. This inability to constrain compulsive and irresponsible consumption—even though it was promoted by multi-billion dollar corporate marketing campaigns—was presented as crucial evidence for the need for federal laws that would impede or even reverse the moral decay of American society.

Ironically, *BAPCPA*'s focus on indulgent and irresponsible consumer behavior belied the much more serious and pernicious excesses of Wall Street's insatiable appetite for consumer debt (packaged and sold as Asset Backed Securities [ABS]). By the time *BAPCPA* was implemented, the meltdown of the U.S. financial system shifted public attention from irresponsible consumption to irresponsible lending. By the end of 2007, banks

Instead, the implicit goal of *BAPCPA* was simple. To reduce the number of bankruptcy filings and the amounts of discharged consumer debt by increasing the difficulty of all debtors to file for consumer bankruptcy. This was effectuated by requiring higher court filing fees, more restrictive asset exemptions, greater reporting obligations by bankruptcy attorneys, limiting dischargeability of debts incurred immediately before filing for bankruptcy, imposing a crude "means-test" that forced some higher income families (as defined by median household income) to file for Chapter 13 reorganization rather than Chapter 7 debt liquidation plans, and requiring the completion of pre-filing Credit Counseling and pre-discharge Debtor Education courses. Significantly, *BAPCPA* could not address the deteriorating macro-economic conditions that precipitated the collapse of the housing market in 2008 and subsequently led to record levels of discharged credit card debt. This is due to the rapid growth of negative equity mortgages (nearly 25% in 2008) that have priority in bankruptcy payment plans and thus sharply reduce the assets/cash flow available for distribution to unsecured creditors. Also, nearly three-fourths of Chapter 13 bankruptcy plans failed in this period. In most cases, debtors converted their Chapter 13 reorganization plans to a Chapter 7 liquidation and refiled their petition for approval by the Bankruptcy Court.[117]

What's Education Got To Do With It?

As mandated by the *Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)* of 2005, consumer bankruptcy filers (Chapter 7 and 13) are required to complete a pre-filing Credit Counseling course and a pre-discharge Debtor Education course. For the pre-filing course, the U.S. Congress specified that only nonprofit Credit Counseling Agencies (CCAs) can be authorized by the U.S. Department of Justice's (DOJ) Executive Office for U.S. Trustees (EOUST) to offer the required credit counseling sessions. It is important to note that this requirement, which was strongly supported by the American Bankers Association and the

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unilaterally shut-off the consumer credit spigot—even with cost of capital at unprecedented lows—which obviated the need for many of the more draconian provisions of *BAPCPA* in the late 2000s. Today, the prosecution of financial fraud tends to focus on institutional bank policies (eg, 'robo' signing of foreclosure documents) and senior corporate executives (Goldman Sach's investment bankers) than low- or middle-income bankruptcy petitioners.

[117]For annual reports, statistics, and analyses of post-*BAPCPA* bankruptcy trends by year, see U.S Administrative Office of US Courts available at http://www.uscourts.gov/Statistics/BankruptcyStatistics/bapcpa-report-highlights.aspx.

nonprofit Credit Counseling trade associations, was not without controversy; many critics were concerned that CCAs would pursue their financial self-interest and discourage financially distressed consumers from filing for bankruptcy.[118] That is, this provision of *BAPCPA* deepened the symbiotic conflict of interest between creditors and nonprofit Credit Counseling Agencies[119] whose mutual financial objective is to enroll financially distressed consumers into DMPs.[120] In addition, the activities of other financial advisors/professionals (eg., accountants, financial planners, nonlawyer document preparers of bankruptcy petitions) that influence their clients' decision to file for bankruptcy, whether to file Chapter 7 or 13, and even the timing of the filing have been interpreted by several state courts in the late 1990s and early 2000s as the "unauthorized practice of law."[121] As it relates to the pre-filing Credit Counseling requirement of *BAPCPA*, Krivinskas concludes that, "By counseling debtors about the merits of filing for bankruptcy, or by refusing to refer debtors to bankruptcy attorneys altogether, credit counselors

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[118]From a profit-maximizing perspective, credit counseling organizations have little to gain in offering Bankruptcy Education courses compared to enrolling consumers into DMPs. Today, 2015, Bankruptcy Education fees (pre-filing and pre-discharge) average less than $50 per filer and as low as $20 whereas DMP fees average $900-$1000 per year (account management of $300-$350 and creditor grants/Fair Share of $600-$700 based on average enrolled credit card balances of $15,000). Hence, it is not surprising that many large CCAs have decided to avoid antagonizing the major bank collections departments by not offering Bankruptcy Education courses. The impending crisis facing the large credit counseling organizations is the limit on the proportion of their revenues that can be earned from DMPs. Until recently, housing counseling revenues have enabled large CCAs to satisfy this criterion but this source of income is steadily declining. This may explain the decision of Consumer Education Services Inc to recently acquire the for-profit Bankruptcy Education provider—Start Fresh Today LLC. The nonprofit Credit Counseling/Debt Management industry's near-term salvation is a proposed federally subsidized student loan default mitigation program that will earn fees similar to the ongoing housing counseling program.

[119]Industry insiders confided that representatives of bank collection departments routinely conduct site visits with the specific goal of ensuring that the agencies' credit counselors do not recommend bankruptcy to prospective DMP clients. This includes listening to live counseling sessions on the phone and/or reviewing recorded sessions.

[120]For excellent reviews of concerns over the pre-filing Credit Counseling requirement deepening the conflict of interest between creditors and Credit Counseling nonprofits during the middle and end of the BAPCPA legislative debate process, see Lea Krivinskas, *"'Don't File!": Rehabilitating Unauthorized Practice of Law-Based Policies in the Credit Counseling Industry,"* American Bankruptcy Law Journal, Vol 79, No. 1, 2005: 51-78 and Howard Hoffman, *"Consumer Bankruptcy Filers and Pre-Petition Consumer Credit Counseling: Is Congress Trying to Place the Fox in Charge of the Henhouse?"* Business Law Journal, Vol. 54, 1999: 1629-1640. For the opposing view that the pre-filing Credit Counseling requirement improves consumer moral behavior as well as enhances deficient financial planning and budgeting skills, see Daniel Brown, Charles Link, and Michael Staten, *"The Success and Failure of Counseling Agency Debt Repayment Plans,"* Eastern Economic Journal, *Vol.* 38, 2012: 99-117; Michael E. Staten, Gregory Elliehausen, and E. Christopher Lundquist, *"The Impact of Credit Counseling on subsequent Borrower Credit Usage and Payment Behavior,"* March 2002; and American Bankers Association, *"Bankruptcy Reform" a*vailable at http://www/aba.com/Industry+Issues/Bankruptcy_Reform_Main_Menu.htm.

[121]Howard Hoffman, *"Consumer Bankruptcy Filers and Pre-Petition Consumer Credit Counseling: Is Congress Trying to Place the Fox in Charge of the Henhouse?"* Business Law Journal, Vol. 54, 1999: 1629-1640 and Lea Krivinskas, *"'Don't File!": Rehabilitating Unauthorized Practice of Law-Based Policies in the Credit Counseling Industry,"* American Bankruptcy Law Journal, Vol 79, No. 1, 2005: 51-78.

may be providing debtors with implicit or explicit advice about the proper timing of a bankruptcy filing."[122]

The expectation of EOUST regulators is that new, nonprofit Bankruptcy Education providers will successfully obtain tax-exempt 501 (c) (3) status from the U.S. Internal Revenue Service (IRS). This is the most rigorously reviewed nonprofit status since the IRS waives corporate income tax obligations in return for the assurance that the corporation operates in the public interest.[123] For this reason, new Debtor Education providers are granted conditional approval by EOUST to offer the pre-filing course, pending the outcome of the IRS review process. If a nonprofit Credit Counseling Agency's application for tax-exempt status is denied by the IRS and it appeals the decision, or its 501 (c) (3) application is eventually rejected by the IRS, EOUST regulators have the discretion to allow individual agencies to continue to offer the required Credit Counseling course.[124]

Due to their tax-exempt status, 501 (c) (3) nonprofit agencies are required to publicly report their financial records in a timely manner such as their federal 990 corporate income tax returns. Nonprofit organizations also have constraints on executive compensation and employee bonuses as well as the obligation to operate in the best interest of the general public. That is, nonprofits are expected to allocate corporate resources for community outreach/public service programs as a *quid pro quo* for not paying corporate income taxes. Furthermore, operational surpluses must be transferred to the nonprofit corporation's assets/capital reserves in order to protect the future financial viability of the organization. The latter obligations are part of the

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[122]Lea Krivinskas, *"'Don't File!": Rehabilitating Unauthorized Practice of Law-Based Policies in the Credit Counseling Industry,"* American Bankruptcy Law Journal, Vol 79, No. 1, 2005:68.

[123]The Office of the Attorney General of the nonprofit corporation's state of incorporation is authorized to review the operational activities of its nonprofit corporations. This authority includes auditing nonprofit financial records (eg, executive compensation/expenditures) which could result in the suspension and, in the most egregious cases, even rescission of the state's incorporation charter of the nonprofit organization. See for example: N.Y. NPCL §301 et seq.

[124]See Federal Register, Vol. 78, No. 50 (Thursday, March 14, 2013) at 16142 that states, "11 U.S.C. 111 requires a credit counseling agency to be organized as a nonprofit entity, but does not require tax exempt status. Organization as a nonprofit entity is a matter of state law, and nonprofit organizations do not necessarily qualify for 501(c) (3) tax-exempt status, which is a matter of federal law. When determining whether an agency constitutes a nonprofit entity, EOUST takes into consideration whether an agency has been approved or rejected for 501(c) (3) status, and requires an agency to notify EOUST if 501(c) (3) status is revoked, but tax-exempt status is not required under the statute to operate as a nonprofit entity."

"balancing" test for evaluating whether an organization operates as a for-profit entity and thus satisfies its public responsibilities as a tax-exempt, nonprofit corporation.[125]

For-profit Debtor Education providers are only authorized by EOUST regulators to offer the pre-discharge Debtor Education or personal finance course. Significantly, these financial education companies are not required to publicly report their financial revenues and expenditures. Private companies do not have restrictions on executive compensation, distribution of operational profits, or allocation of financial gains to owners/stockholders. Furthermore, they can raise capital by selling equity in their companies or offering corporate bonds. Also, private companies are not obligated to offer free community outreach or public-interest programs. And, they are not under the regulatory supervision of the State Attorney General of their state of incorporation or required to provide audited financial tax returns to state regulators to justify their designation as a "Charitable Foundation." **For many private companies, the legal shield from private disclosure and public accountability is well worth the loss of the advantages of tax-exempt, nonprofit status**.

In most cases, nonprofit financial education companies such as ACCESS and CRICKET Credit Counseling offer both pre- and post-filing Debtor Education courses. Other financial education companies have established separate nonprofit and for-profit companies. For example, the founders of ABACUS offer their pre-filing Credit Counseling course through its nonprofit charter and Debtor Education courses through their for-profit company—SAGE Financial Education. In other cases, for-profit financial education organizations have opted not to offer their credit counseling services to consumer bankruptcy filers due to the requirement to publicly disclose their revenues and expenses (especially executive compensation) in their annual federal (990) income tax return.

The most prominent example is the consumer finance guru—Dave Ramsey. An ambitious and flamboyant businessman who previously filed a Chapter 7 bankruptcy, Ramsey is

[125]See Martin Ives, Terry K. Patton, and Susan R. Patton, Introduction to Government and Not-for-Profit Accounting (7th Edition), Prentice-Hall, 2012 and Earl Wilson, Jacqueline Reck, and Susan Kattelus, Accounting for Governmental and Nonprofit Entities, New York, McGraw-Hill, 2009.

founder and President of the private Lampo Group. It is headquartered outside of Nashville, Tennessee with over 400 employees.[126] Ramsey's for-profit financial education company has partnered with ACCESS Counseling in a symbiotic relationship that enables him to market a package of both required Debtor Education courses to his attorney network; ACCESS offers the pre-filing Credit Counseling course for $25 and Ramsey offers the post-filing Debtor Education course for $25.[127] By pairing the pre-filing ACCESS Credit Counseling course with his pre-discharge Debtor Ed course, Ramsey is able to maintain his relatively high $25 price structure ($45 for DVD version) without the concern of intense price discounting pressures from ACCESS.[128] More importantly, this partnership enables Ramsey to avoid the public disclosure and scrutiny of the millions of dollars of annual revenues and assets that are under his personal control. Recent reports estimate Dave Ramsey's personal fortune at over $50 million (Turner, 2014). **Hence, the statutory loophole that allows for-profit companies to participate in the Bankruptcy Education market has created opportunities and financial incentives to exploit the nonprofit charter and evade regulatory oversight**.

All consumer credit counselors employed by EOUST approved Debtor Education providers must pass a rigorous certification exam from a recognized accreditation company along with a formal criminal background investigation. Those credit counselors that satisfy the EOUST requirements are granted U.S. Department of Justice administrative credentials. This

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[126]See Dave Ramsey, The Financial Peace Planner: A Step-by-Step Guide to Restoring Your Family's Financial Health Paperback, New York: Penguin Books, 1998, Dave Ramsey, The Total Money Makeover: Classic Edition: A Proven Plan for Financial Fitness, Thomas Nelson Publishers, 2013 and official Dave Ramsey website at http://www.daveramsey.com. For a recent critical investigation of Dave Ramsey and his companies, see Michael Paul Turner, *"Spies, Cash, and Fear: Inside Christian Money Guru Dave Ramsey's Social Media Witch Hunt,"* Daily Beast, May 29, 2014. Available at http://www.thedailybeast.com/articles/2014/05/29/spies-cash-and-fear-inside-christian-money-guru-dave-ramsey-s-social-media-witch-hunt.html

[127]The HopeAccess webportal at www.HopeAccess.net.

[128]The ACCESS-Ramsey partnership enables ACCESS to offer the Credit Counseling course at its highest price point. That is, ACCESS offers some bankruptcy law firms the pre-filing Credit Counseling course for as little as $5 and the pre-discharge course for as little as $8.95. The Ramsey partnership also offers ACCESS a "shield of credibility" for its outsourced Filipino workforce. Ramsey maintains a high profile with his popular nationally syndicated personal finance radio show (8 million listeners) with its biblically-based common sense wisdom (on debt, investing, and retirement), dozens of large personal finance revivals each year across the country that sell hundreds of thousands of personal finance books and DVDs, a regular 'Dave Says' news column that is included in over 400 publications, and the Ramsey Financial Peace University where nearly 2 million families have enrolled. Significantly, Ramsey's core audience is largely low- to middle-income, socially conservative, religious (primarily Protestant) families in the South that often encounter employment displacement pressures from offshore workers.

enables use of the DOJ administrative data base so that required course completion certificates can be issued directly to the debtor, his/her attorney, and/or the appropriate District Bankruptcy Court. Credit Counselors are expected to issue certificates in a timely manner—typically within 24 hours—although sophisticated IT-based companies such as Cricket claim to issue certificates within one hour of completing the course. The latter is particularly important. A debtor that cannot prove the completion of the required pre-discharge Debtor Education course will have his/her bankruptcy petition dismissed by the Bankruptcy Court. In such cases, the debtor is required to re-file the bankruptcy petition. And, sometimes U.S. Trustees have concerns regarding specific bankruptcy filings such as fraudulent conveyance of a personal asset prior to a bankruptcy discharge. This may lead to requests for authorized credit counselors to locate previously issued Debtor Ed course completion certificates from the authorized Bankruptcy Education agency. In such situations, the credit counselors' ability to ensure client confidentiality and client data security as well as the ability to navigate course certificate archives are crucially important in the potential prosecution of such criminal cases.

Course Fee Limits and Price Competition

The *Bankruptcy Abuse Prevention and Consumer Protection Act* (BAPCPA) of 2005 mandates a Bankruptcy Ed course fee limit of $50 per debtor per course or a total of $100 per filer.[129] For joint filers, the combined maximum cost for pre- and post-filing courses is $200. A higher fee can the charged for filers that satisfy their education requirements with telephonic courses. The period 2006 to 2010 was the florescence of the Bankruptcy Education industry as providers rapidly accelerated the transition from costly face-to-face credit counseling sessions to more cost-effective and convenient to use internet-based course delivery systems. Additionally, profit margins were high since the prevailing Debtor Ed course fees hovered at their statutory maximum due to the limited number of authorized providers and the escalating demand of bankruptcy filers.

This new revenue stream was crucial to the survival of nonprofit Credit Counseling Agencies (CCAs) in the late 2000s. This is due to rapidly declining creditor (bank) "Fair Share"

[129] For EOUST final ruling, see: Federal Register, Vol 78, No. 50, Thursday March 14, 2013.

contributions for Debt Management Plans (DMPs) and the shrinking number of clients that qualified for these full repayment plans. Significantly, private banks have exploited the nonprofit Consumer Credit Counseling system by radically changing their payment policies and performance criteria. By shifting from fixed "Fair Share" payments (averaging about 6% of enrolled debt in the early 2000s) to a voluntary grants-based formula that rewards nonprofit CCAs based on achieving banks' debt collection goals, private banks have shifted the priority of these nonprofit organizations from serving the best interest of consumers (eg, recommending filing for bankruptcy) to increasing the profitability of lenders (eg, recommending six-year DMP repayment plans that are rarely completed). In fact, current regulatory policy does not require banks to make any payments to nonprofit CCAs for their counseling and administrative services. As a result, nonprofit CCAs are often referred to as the "soft arm" of the banks' debt collection apparatus.

Recent DOJ regulations have increased the cost of revising Debtor Education courses as well as requiring more costly client follow-up review/counseling sessions.[130] Even so, intensifying competition and ongoing IT enhancements reduced average BK Ed course prices to less than one-half of these initial fees by mid-2011 when ACCESS Counseling began marketing its courses. As long as price competition was driven by credit counselors receiving prevailing US compensation rates as well as by greater worker productivity due to more efficient IT technologies, the nonprofit credit counseling sector registered high operating surpluses, frequent fee-based participation in bankruptcy association conferences, and regularly offered community outreach/public service programs. Furthermore, approved Bankruptcy Education providers had adequate profit margins for investing in more secure, internet-based data management systems. Yet, only one year after ACCESS began offering its BK Ed courses with low-wage Filipino credit counselors, the health of the nonprofit Credit Counseling industry exhibited considerable financial distress. By the end of 2013, several national Credit Counseling Agencies had exited the industry and many more were experiencing unprecedented operational losses.

The COLE GROUP, Inc. Business Model:
Exploiting the Non for Profit Charter for Personal Gain

[130]Interviews with industry insiders.

Cole Group Inc. is a for-profit corporation originally founded and managed by Sevan Aslanyan and his wife Suzanne Hunt-Aslanyan[131] it was incorporated in 2005 in the State of Nevada. Cole Group Inc.'s certificate of incorporation currently lists Art Basmajian as president, secretary, treasurer, and director.[132] Basmajian has also been listed as an officer or director of six other companies that were founded or engaged in business relationships with Sevan Aslanyan.[133] Cole Group Inc. is located in Los Angeles, California and is the sole international representative of Cole Asia Business Center (CABC) Inc. The latter company, which is located in a suburb of Manila (Makati), Philippines, offers backend office services and call center counselors Worldwide.[134] ACCESS Counseling Inc. exclusively uses the contract business support services of Cole Asia Business Center Inc.[135]

In only two years, the practice of outsourcing call center services to the Philippines has dramatically impacted the economic viability of the nonprofit Bankruptcy Education industry. Although it has generated moderate price benefits to debtors, from $50 to an average of $25 - $35 per course, it has been accompanied by declining quality of customer services, lower investment in IT infrastructure and client data security, rapid decline in vendor participation in

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[131] Original Certificate of Incorporation is available on line at https://getoutofdebt.org/wp-content/uploads/2011/12/Entity-Details-Secretary-of-State-Nevada.pdf

[132] Available on line at http://nvsos.gov/SOSEntitySearch/CorpDetails.aspx?lx8nvq=oK0Lli726Gcd6phYqEQ0sA%253d%253d

[133] For a detailed list of some of the corporations of other companies related to Sevan Aslanyan see: http://www.corporationwiki.com/p/2d28zg/cole-group-inc and http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=oK0Lli726Gcd6phYqEQ0sA%253d%253d Interesting, Mr. Basmajian is the president of Cocanico, a company founded by Alsnyan's daughter, Colette Alslanyan (in art "Colette Carr"), past president of Ozan Enterprise Inc., a corporation listed as a debtor in the Bankruptcy of Cole Travel Group Inc., a company controlled by Aslanyan's wife as well as past secretary of Access Counseling Inc. See: http://www.corporationwiki.com/California/Los-Angeles/art-basmajian/45398967.aspx and http://bankrupt.com/TCR_Public/110916.mbx.

[134]See See Robert D. Manning, "Does Outsourcing BK Ed Counselors Increase Client Risk and Attorney Liability?" National Association of Chapter 13 Trustees (NACTT) Newsletter, May 12, 2014 at http://considerchapter13.org/2014/05/11/does-outsourcing-bk-ed-counselors-increase-client-risk-and-attorney-liability/?utm_source=May%2012%20email&utm_campaign=5%2F12%2F14&utm_medium=email. The Cole Asia Business Center (CABC) website was taken down immediately after this article was featured in the NACTT Newsletter. However, the author included links to screenshots of the CABC website in the essay.

[135]Information provided by industry insiders. In 2011-12, nonprofit Allen Credit and Debt Counseling Agency utilized the business support services of Cole Asia Business Center Inc. through its "sister" management company—Cole Group Inc. Based on Program Service revenue of $807,988 in 2012, its "Management Fee" is listed as $428,550. See p.10, line 24 a at http://www.guidestar.org/FinDocuments/2012/203/413/2012-203413292-09207052-9.pdf. Significantly, Allen Credit posted a loss of -$99,553 in 2011 and did not renew its outsourcing agreement. The results are suggestive. Allen Credit recorded a modest operational surplus of$45,594 in 2012 followed by an operational surplus of $89,147 in 2013.

nonprofit bankruptcy professional associations with loss of significant conference revenues, and sharp reduction in free community outreach/financial education programs. It is important to note, as codified in the *Bankruptcy Abuse Prevention and Consumer Protection Act* (BAPCPA) of 2005, that the primary objective of offering these courses by nonprofit companies is to ensure that the long-term quality of the customer service is prioritized over the short-term financial gain of private individuals and other private business interests.[136]

The next sections of this article focus on a business strategy that has successfully evaded federal enforcement of financial conflict of interest guidelines for 501(c) (3) nonprofit organizations. It features the creation of an interlocking network of for-profit companies that provide and manage business support services that are outsourced to the Philippines. By reviewing the 990 corporate tax returns of a sample of nonprofit Bankruptcy Education providers, the analysis reveals that tax fraud and questionable hiring/service contracts continues to plague the nonprofit business sector ten years after the IRS' *"Credit Counseling Compliance Project"* of 2005. Lastly, as a case-study of the U.S. Debtor Education industry, it empirically estimates the negative effects of outsourcing U.S. workers to the Philippines with its serious consequences to the nonprofit credit counseling industry.

The main argument for outsourcing workers is to reduce operational costs (labor expenditures in particular) in order to enhance the ability of nonprofits to pursue the goals of their public mission. Unlike for-profit companies, nonprofits must allocate operational surpluses to their asset/capital reserves or spend them on programs that satisfy their public mission as specified in the charter of incorporation; fund balances of nonprofits cannot not be distributed or transferred to for-profit entities including individuals for personal/private gain. Furthermore, nonprofit corporations cannot issue stock or raise capital by selling equity in the company. Nonprofits can accept tax deductible donations but they cannot be used to influence the activities or decisions of the organization such as competitive bidding on a service contract. For this reason, nonprofits must adhere to a carefully monitored conflict of interest policy which includes

[136]Lois R. Lupica, The Consumer Bankruptcy Fee Study Final Report, American Bankruptcy Institute and National Conference of Bankruptcy Judges, Dec 2011. Significantly, the U.S. Congress did not mandate that the pre-discharge Bankruptcy Education course be offered only by nonprofit organizations. As a result, for-profit financial education companies can be authorized by EOUST to offer the "second" Financial Education course.

members of the Board of Directors and other governance bodies. A policy approved by the corporate Board of Directors must be reported and recorded in the official minutes of the Board's meetings. Any existing financial conflict of interest must be annually reviewed by the Board and reported in the 990 corporate tax return.[137]

Assessing the Impact of Outsourcing on the Bankruptcy Education Industry:
Research Methodology and Data Collection

When BAPCPA was enacted in 2005, Bankruptcy Courts were faced with the implementation of new pre-filing counseling and pre-discharge debtor education requirements. The assumption was that nonprofit Credit Counseling agencies would provide objective and informative education services that would best serve the public interest. In the process, a new $200 million dollar annual industry was born with congressionally mandated fee limits of $50 per course that jumped to $100 for joint filers and even more if the course was delivered telephonically.[138]

In its infancy, the Bankruptcy Education industry adapted its personalized, face-to-face debtor counseling sessions from its local, walk-in facilities to national markets that required sophisticated IT delivery and data management systems. This includes accounts for attorneys to monitor the progress of their clients (including receipt of course completion certificates) and more recently the direct delivery of certificates to the bankruptcy courts. During this process, attorney account software was developed and refined for use by paralegals and even by attorneys at their respective court houses. IT innovation was driven by economies of scale and price competition as these requirements were viewed more as an inconvenience by filers and their attorneys than important educational courses that offered useful decision-making tools.

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[137]Interestingly, unlike other large Debtor Education companies, ACCESS does not specify in its federal income tax return any reference to a company conflict of interest policy that applies to its Board of Directors or corporate executives. Hence, there is not any evidence that the Board reviewed the conflict of interest of its President, Garo Jemelian, when he executed a management services agreement with Jemelian's previous employer, Sevan Aslanyan in 2011. See ACCESS's 990 corporate tax returns.

[138]Interviews with industry insiders. In 2005, the average fee for the both pre-filing Credit Counseling and pre-discharge Debtor Education courses was $50. For joint filers, it was $100 with additional fees for telephonic and DVD options. Some service providers also charged fees for online attorney accounts for monitoring the progress of their clients and obtaining course completions certificates. Based on 2.08 million filings in 2005, the total Gross fee revenues peaked at over $210 million in 2005. See United States Courts, available at http://www.uscourts.gov/Statistics/BankruptcyStatistics/12-month-period-ending-december.aspx.

In an attempt to empirically estimate the impact of ACCESS on the nonprofit Debtor Education industry, a stratified sample of nonprofit Bankruptcy Education providers was selected based on the following criteria: (1) size based on volume of Debtor Education revenues (large, medium, small), (2) organizational form (exclusively BK Ed providers versus multiple consumer credit counseling services),[139] and (3) geographic distribution (Westcoast, Midwest, Eastcoast, Southeast). Then, the 990 federal income tax returns for this sample of ten nonprofit companies were examined (when available) for tax years 2010, 2011, and 2012.[140] That is, one year before ACCESS became operational, the year that ACCESS began aggressively marketing its courses, and (3) the year after ACCESS became a fully operational service provider. The sample is comprised of the following nonprofit Credit Counseling Agencies: Abacus, Access, Allen Credit, Black Hills Children's Ranch (DBA Pioneer Credit Counseling), Cricket, Credit Card Management (DBA Debt Helper), Debt Education and Certification Foundation (DECAF), InCharge Debt Education Foundation, Institute for Financial Literacy (IFL), and A123 Counseling. See Table 5.

In 2010, the combined Debtor Education fee revenue of the sample of nine Debtor Education companies was $30.1 million. Overall, these authorized credit counseling agencies account for about one-third of the total revenues of the Bankruptcy Education industry in 2010. That is, in only 5 years, total industry revenues had plummeted from over $200 million (over 2 million filers) in 2005 to less than $100 million (1.54 million filers) in 2010.[141] This is based on reviewing the respective federal 990 income tax returns and reflects an 11.2% increase of

[139]Includes CCAs that offer other services such as Debt Management Plans (DMPs), Housing Counseling, and Student Loan Consolidation Counseling sessions.

[140]Tax-exempt nonprofit corporations are required to publicly disclose their audited, annual federal income tax returns. This is required to maintain their state designation as a "Charitable Foundation" for approval to operate under nonprofit regulations in individual states. Copies of tax returns submitted to the IRS are available for public review at http://www.guidestar.org/.

[141]Interviews with industry insiders. By 2010, pre-filing Credit Counseling course fees had fallen to an average of about $40 and pre-discharge Debtor Education courses averaged about $30. Nearly one-third were joint filers (an average of $25 for both courses—a significant savings) while about 15% used telephonic or DVD options which cost an average of an additional $25. Based on 1.54 million bankruptcies and nearly one-third joint filers in 2010, Gross fee revenue fell to under $100 million: $74 million for 1.06 single filers, $12 million for joint filers, and $6 million for telephonic and DVD courses. In 2014, industry revenues fell below $50 million. See United States Courts, available at http://www.uscourts.gov/Statistics/BankruptcyStatistics/12-month-period-ending-december.aspx.

bankruptcy filers between 2009 and 2010. Overall, the "Net" Debtor Education fee income of the nine nonprofits totaled $7.88 million in 2010. Based on $30.1 million Gross revenue, this represents an impressive 26.2% "profit" margin for the sample of service providers.[142] Hence, the 2010 corporate financial statements confirm that the Debtor Education industry was very financially healthy before ACCESS unleashed its national marketing campaigns. The following year, 2011, constitutes a transition period as ACCESS prepared to unleash its intensive national marketing campaigns in the late summer. For this reason, few Bankruptcy Education providers experienced a significant erosion of market share until the next year. However, in an effort to retain their clients, many agencies began to respond with a variety of discounted pricing policies. It is not until 2012 that ACCESS's intensifying competitive pressures—primarily based on its outsourcing strategies, resulted in sharp reductions in the Gross revenues and Net income of Bankruptcy Education providers. See Tables 5 and 6.

The impact of ACCESS's offshore Filipino workforce on the U.S. Debtor Education industry has been swift and dramatic. With its extremely low wage structure,[143] about one-sixth of the compensation levels of Credit Counselors in the US,[144] ACCESS began aggressively marketing Debtor Education courses in Summer 2011. During the year, total consumer bankruptcies fell to 1.41 million filers (-8.4%) while the combined Debtor Education fee revenue of the sample of nine other BK Ed companies fell by -8.8% to $27.46 million. From a Gross revenue perspective, the sample's performance was consistent with the national U.S. average. Although ACCESS reported fee revenue of only $497,142 in 2011, its modest market share of the total sample ($0.497 million out of $27.96 million or 1.8%) belies the intensifying fee discounting pressure on its competitors. This is reflected in the sample's Gross revenue which is

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[142]"Gross" and "Net" income are calculated solely on reported Debtor Education course revenues since this is the only product that is offered by ACCESS. Hence, this analysis excludes other sources of consumer counseling income (Debt Management, Housing, Student Loans) for those CCAs that provides multiple counseling services. In the sample, the CCAs that generate multiple consumer counseling and related revenue streams are Debt Helper, InCharge, Institute for Financial Literacy (IFL), and Pioneer. See Table 6 for definitions and calculations.

[143]Cole Asia Business Center, Inc. advertises a beginning wage of $2.25 per hour for entry level staff in Spring 2014. See Cole Asia Business Center, Inc. website at http://www.jobscity.net/pls/jobs/companyprofile?comid=Y1Nl6.

[144]See Robert D. Manning, "Does Outsourcing BK Ed Counselors Increase Client Risk and Attorney Liability?" National Association of Chapter 13 Trustees (NACTT) Newsletter, May 12, 2014at http://considerchapter13.org/2014/05/11/does-outsourcing-bk-ed-counselors-increase-client-risk-and-attorney-liability/?utm_source=May%2012%20email&utm_campaign=5%2F12%2F14&utm_medium=email.

only $0.11 million less than would have been expected without competition from ACCESS. See Table 6.

The modest impact of ACCESS on Gross revenues masks the much greater impact on the profit margins of these nonprofit organizations. That is, the pressure to reduce course prices to compete with the lower cost structure of ACCESS's outsourced Filipino counselors is mirrored in the sample's steep decline (-28.2%) in "Net" (Total Revenues minus Expenses) income--from $7.88 million in 2010 to $5.16 million in 2011. As a percentage of Gross revenue, "Net" income fell moderately among the nine other nonprofit Debtor Education providers companies—from 26.2% in 2010 to 18.8% in 2011.[145] This moderate impact is not surprising since ACCESS did not begin its aggressive "price war" marketing campaigns until Fall 2011. Only DECAF, Allen Credit, A123 Counseling[146] and ACCESS (high start-up expenses, one-half year of revenues) report operational deficits in 2011. However, when Net revenues as a proportion of Gross revenues (profit margin) are examined, the severity of ACCESS's negative impact can be empirically estimated. With the 2010 profit margin of the sample (26.2%) referenced as the baseline, the difference in expected Net revenues ($7.19 million) and actual Net revenues ($5.16 million) greatly exceeds the decline in Gross revenues: -$2.03 million versus -$0.11 million. That is, the reduction in Net revenues (-$2.03 million) is already adjusted for the 2011 decline in bankruptcy filings (-8.4%). Hence, a substantial part of the decline in Net revenues is the ACCESS "effect" that begins in Fall 2011.

[145]This estimated decline in the Debtor Education course revenues of the other nine nonprofits of the sample is independent of ACCESS's modest growth in market share of 1.8% and the overall shrinking number of bankruptcy filers (-8.8% or $2.5 million in fee revenue) in 2011. The residual Net income loss reported in Table 6 for the combined sample of nine service providers (-$2.03million) reflects their initial price-discounting response in an attempt to retain existing clients and attract new ones.

[146]The combined salaries of the founders of 123 Counseling (Richard and Elizabeth Garcia) is nearly double the reported operational loss in 2010. Also, following the sharp decline in Debtor Education fee revenue (-41.9% in 2011-12), the operational deficit that is primarily due to these high executive salaries was paid by the nonprofit's previously accumulated Net Fund Balances. In 2012, the Net Asset Reserves of 123 Counseling had been depleted while the combined income of the Garcias ($202,442) accounted for an astounding 33.1% of the company's Gross revenue. See Table 5, footnote six, and 990 corporate tax returns available at http://www.guidestar.org.

Only one year later, 2012, the Debtor Education industry experienced much greater financial distress. With consumer bankruptcies falling to 1.22 million filers (-13.5%),[147] the total "Gross" fee revenue of these nine nonprofit companies (excluding ACCESS) shrunk from $27.46 million to $21.57 million (-21.4%). The sharp decline in these nonprofit companies' Debtor Ed fee revenue in 2012 (exclusive of the 13.5% decline in bankruptcy filers) reflects the intense price competition primarily originating from low-cost ACCESS courses that resulted in significantly lower Debtor Ed fees. Many service providers reduced the price of the pre-filing course in an attempt to encourage clients to take the pre-discharge course at full "retail" price. Some CCAs eliminated joint filer and attorney account management fees while others offered discounts to law firms based on client volume. ACCESS even offered free courses to law firms for all filers during a specified period (e.g, 90 days) and recently offered $5 pre-filing Credit Counseling courses if attorneys agreed to use the ACCESS pre-discharge course.[148]

Not surprisingly, ACCESS revenues jumped from $0.50 million in 2011 to $2.46 million in 2012. This is an astounding increase of 392.0% in only one year. The Bankruptcy Education agencies that suffered the largest loss of market share include Cricket whose fee revenue declined from $5.36 million to $3.99 million (-25.6%), DECAF from $5.31million to $3.88 million (-26.9%), Institute for Financial Literacy from $2.26 million to $1.27 million (-43.8%), and Pioneer from $2.11 million to $1.38 million (34.6%). The loss of market share to ACCESS ($2.46 million out of total sample revenue of $24.03 million or 10.2%) is compounded by the **decline in "Net" fee income—from $5.16 million in 2011 to a miniscule $0.11 million in 2012. This is an astounding decline of -97.9% in only one year**.[149] Furthermore, as a percentage of Gross revenue, combined "net" income among the nine nonprofit Debtor Education providers plummeted dramatically--from 18.8% in 2011 to nearly zero (0.0005%) in

[147]The total number of consumer bankruptcy filings has steadily declined since its recent peak of 1,536,799 in 2010, falling 8.2% to 1,410,653 in 2011 and then 13.4% to 1,221,091 in 2012. See: Tabb. Charles J and Ralph Brubaker Bankruptcy Law: Principles, Policies and Practice, 2014 Supplement. Lexis Nexis, 2014

[148]Interview with industry insiders, at National Consumer Bankruptcy Association (NCBA) Annual meeting in New York City, April 25, 2013.

[149]The indirect effect of ACCES is more dramatic after comparing the pre-ACCESS year (2010) with the Transition year (2011) and Post-Transition year (2012). For example, the expected Net income of the sample, based on 2010 "profit" margin of 26.2%, is $7.19 million in 2011 and $5.85 million in 2012. Instead of a two-year total of $13.04 million in Net income for the nine nonprofits, they earned a total of only $6.26 million. See Table 6.

2012.[150] Overall, the impact of ACCESS's fee pricing policies and outsourcing practices on the Debtor Education industry is astounding in such a short period of time. If the sample's Net revenue as a proportion of Gross revenue rate had remained at its 2010 level, net income for the sample would have been approximately +$5.65 million rather a meager +$0.11 million in 2012. See Table 6. That is**, <u>the combined direct and indirect effects of ACCESS's marketing and attorney acquisition campaigns resulted in a reduction of over 99.99% of the combined Net income of the sample's Debtor Education revenues in only one year</u>**.[151]

Even so, five of the seven largest service providers report modest operating surpluses for their Debtor Education programs whereas DECAF, InCharge, Allen Credit, and A123 Counseling report substantial operating losses—ranging from 11.1% to 18.0% of annual Gross revenues although losses in the largest providers most likely reflects overhead and management expenses that were charged to their Bankruptcy Education programs. See Table 5. Only Abacus, Cricket, and Debt Helper report a total net operating surplus for their revenue generating activities;[152] Pioneer and IFL report operational surpluses in their Bankruptcy Education programs while reporting an overall operational deficit in 2012. This underscores the perilous state of the nonprofit Credit Counseling industry and the important role of Debtor Education course revenues in compensating for the steep reduction in bank "Fair Share" revenues that credit counseling organizations have traditionally received for managing their clients' Debt Management Plans (DMPs).

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[150]If the 2012 operating loss (-$0.16 million) reported by ACCESS, based on its $2.46 million Gross revenue is included, then the "Net" income for the combined sample of ten nonprofit CCAs (total gross revenue of $24.78 million) falls to -$0.05 million. Instead, as will be shown, the estimated net income of ACCESS is most likely more than $700,000 in 2012 and over $1 million in 2013

[151]The quantifiable estimates of the impact of ACCESS's marketing policies on the net income of the sample of nine nonprofit Bankruptcy Education providers is based on the following assumptions. First, if the 2012 net income rate was replaced with the 2010 rate (26.2%): $5.85 million versus $1.62 million. Second, if the 2012 net income rate was replaced with the 2011 rate (18.8%): $4.2 million versus $1.62 million. Third, if 2012 net income (26.2%) and 2010 price competition rates were maintained: $6.22 million versus $1.62 million. Fourth, if 2011 net income (26.2%) and 2010 price competition rates were maintained: $4.47 million versus $1.62 million.

[152]The total operational surplus for these three companies in 2012 ranges from $150,000 to $480,000. This includes investment yields on prior operating surpluses. As a *quid pro quo* for not paying corporate income taxes, these nonprofit companies are required to retain operational surpluses in their capital reserves which are expected to be prudently managed in low risk savings/investment accounts.

Incredibly, even with enormous revenue growth, low-cost outsourced Filipino counselors, modest office expenses/rent in Los Angeles, and a large team of Filipino marketing specialists, **Access Counseling reported an operational LOSS of -$161,388 in 2012. This follows a reported operational loss of -$197,149 in 2011.**[153] See Table 5. As will be shown below, it is highly unlikely that ACCESS experienced an operational loss in 2012 as reported in its annual corporate (990) tax return.[154] In fact, ACCESS most likely registered an operational surplus of over $700,000 in 2012.

Estimating Operational Expenses:

A Comparison of ACCESS and Peer Debtor Education Companies

Accounting fraud is the cornerstone of White Collar crime. Indeed, yesterday's quill pen and today's word processor are "mightier than the sword" in masking ethical improprieties and Illegal financial transactions.[155] This is revealed by comparing key operational expenses of ACCESS with its peer Debtor Education companies. First, based on this sample of Bankruptcy Education providers (ACCESS Counseling and nine competitor Debtor Education agencies), the average expenditure in 2012 for combined Executive, Management, Customer Service Staff (Counselors, Customer Service Relations Specialists) and Operational Employees is 63.5% of each company's gross fee revenue. As reported in their corporate income tax returns, this statistic is calculated from the 2012 expenditures of the seven major Debtor Ed course providers

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[153]The combined two-year operational loss of $358,633, as reported in the 2011 and 2012 ACCESS federal tax returns, raises an important question: Who is assuming the financial obligations of the ACCESS operational deficit—if there really is one? Based on the low executive salaries reported in this period, it is unlikely that the President and/or VP were able to assume these financial obligations. The reported salaries of ACCESS executives are as follows: President Garo Jemelian ($3,500 in 2011 and $42,000 in 2012) and Vice-President Alberto Duarte ($20,000 in 2011and $95,375 in 2012). Their combined gross income in the 2011-2012 period is only $160,875—less than one-half (44.9%) of the reported two-year operational deficit of the company. A review of all filed ACCESS 990 corporate tax returns (2010-12) is perplexing: the expense category for debt service "interest" is blank. See p. 10, line 20 at

[154]This raises serious questions about the veracity of the ACCESS corporate tax returns. For example, ACCESS reports Net Assets of -687,087 in 2013. Yet, it does not report any interest expense on its 990 tax return. See p. 10 at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf. In comparison, Allen Credit reports and "Interest" expense of $60,129 on its 2011 corporate tax return based on a Net Fund Balance of -282,903 in 2011. See p. 10, line 20 at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

[155]Jay Thibodeau and Deborah Freier, Auditing and Accounting Cases: Investigating Issues of Fraud and Professional Ethics, New York, McGraw-Hill, 2010 and Jacob Soll, The Reckoning: Financial Accountability and the Rise and Fall of Nations, New York, Basic Books, 2014.

(with at least $1.5 million in course fee revenue in 2011) included in the sample: Abacus, Cricket, Debt Education and Certification Foundation (DECAF), Credit Card Management (DBA Debt Helper), Institute for Financial Literacy, Black Hills Children's Ranch (DBA Pioneer Credit Counseling), and InCharge Debt Solutions (IDS). This group includes the largest nonprofit Bankruptcy Education providers whose primary business service is Debtor Education courses. The smallest companies, whose revenues have suffered the most from the financial pressures of ACCESS, are not included since their operational expenses are distorted due to their proportionately large operating deficits. See Appendix A.

The most noteworthy finding is that nearly two-thirds (63.5%) of Gross fee revenue of these large nonprofit providers is dedicated for Management and Employee related expenditures. This proportion is consistent with the industry leader—Cricket—that spent 65.3% in 2012. In comparison, ACCESS Counseling reports only 40.2% of its fee revenue for wages, salaries, pension, and employment taxes. This is due to its policy of outsourcing all customer services and operational staff to the Philippines. Even so, the analysis of the 990 corporate tax returns is suggestive. ACCESS consistently reports annual operational deficits even though its outsourcing of contract workers in the Philippines yields a major operational cost savings. Since the senior management and Board of Trustees of ACCESS have a duty to operate in the best interest of the nonprofit (eg, generating asset reserves) and its public mission (promoting financial education and literacy), then how can its current management policies and business strategies be justified? Indeed, for the reasons detailed below, the price war initiated by ACCESS in 2011 seems to have only two main beneficiaries: (1) Cole Asia Business Center, Inc. that is located in Makati, Philippines (suburb of Manila) and (2) Cole Group, Inc that is located in Los Angeles, California and operates as the exclusive business agent for Cole Asia.

Outsourcing Business and Customers Service Staff the Philippines:

Estimating ACCESS' Expected Operational Cost Savings

Based on its reported Gross revenues of $2.463 million in 2012, ACCESS spent 40.2% on Management and Employee related expenses. See Appendix A. This constitutes an operational savings of 21.9% of its Gross program fee revenue in comparison with its largest

competitors.[156] This is due solely to outsourcing its management, counseling, and customer support services to the Philippines. On average, this represents an expected operational savings of $538,740 compared to its peer service providers in 2012. Overall, as will be shown, the net outsourcing savings reported by ACCESS is surprisingly small considering that wage-rates in the Philippines are only 15% to 20% of comparably skilled workers in the United States. This is due to the high management fees paid to Cole Group Inc. and the additional operational expenses passed on to ACCESS by Cole Asia Business Center[157] which employs the contract workforce in Manila. Even so, by sharply reducing staff compensation and management costs,[158] ACCESS is able to market its debtor education courses at below the cost of providing them in the US. This constitutes an enormous advantage in terms of marketing lower priced Debtor Education courses to price sensitive bankruptcy filers and their attorneys.

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[156]This outsourcing "savings" is based on the average operational expenses of the seven largest Bankruptcy Education providers (62.1%) of the sample: ABACUS (51.2%), CRICKET (65.3%), DEBT HELPER (74.5%), DECAF (68.8%), INCHARGE (57.8%), IFL (59.1%), and PIONEER (57.8%). Hence, the sample average (62.1%) minus ACCESS (40.2%) yields the outsourcing savings of 21.9%. See Appendix A.

[157]According to industry insiders, these additional fees include high telephone charges, office/technology services (phone, computer, furniture), workforce relocation during frequent storms, workforce training, higher weekend rates, special language rates (eg, Spanish), special technology needs such as recording company messages, extra costs for assigning additional tasks to workers, and delayed work schedule adjustments which results in unneeded workers.

[158]It is intriguing that ACCESS reports total compensation of only $3,500 for President Garo Jemelian and $20,000 for Vice-President Alberto Duarte in 2011 while ACCESS management fees totaled $137,213. The following year, 2012, the compensation for Jemelian increases to only $44,500 while Duarte's compensation jumps to $97,189. In addition, "Other Salaries and Wages" climb to $239,631 while "Management" fees soar to $591,913 based on Gross revenues of $2.46 million? In 2013, the compensation of Jemelian and Duarte remained unchanged even though Gross Revenues climbed nearly 40% to $3.43 million. And, "Other Salaries and Wages" more than doubled to $524,209 while "Management" fees jumped to $770,153. Who is being paid for "Other Salaries and Wages" since only Jemelian and Duarte are listed as senior executives? This is suggestive. Is the outsourced workforce reported as "Other Salaries and Wages? Are "Management" fees paid to Cole Group Inc. and for what services? Furthermore, why are not any contractors not listed on the 990 corporate tax returns?

For comparison purposes, the combined compensation of President Jemelian and Vice-President Duarte ($141,689) is 5.8% of ACCESS's Gross revenues in 2012. This represents less than one-half of its peer competitors. For example, the combined compensation of CRICKET's Executive Director Brian Sunderland ($294,310) and Director of Operations J. Greg Beber ($254,400) constitutes 13.8% of its $3.99 million Gross Bankruptcy Education fees while DECAF reports its President/CEO Mitch Allen ($239,200) and President/COO Doug Tonne ($200,000) account for 11.3% of Gross revenues of $3.88 million. Similarly, the husband and wife management team of Pioneer Credit Counseling (Todd and Laca Ossenfort) report combined compensation of $282,329 (12.3%) based on $2.3 million Gross revenues (about $1.4 million attributed to Bankruptcy Education fees [See Table 5]) while the Institute for Financial Literacy (IFL)'s husband and wife management team (John and Leslie Linfield) received total compensation of $248,553 based on $1.27 million or (19.6%) Gross Bankruptcy Education fees. It suggests that there may be other compensation provided to these officers through the Aslanyan Business network in violation of nonprofit compensation regulations.

If ACCESS operated as a tax-exempt 501(c) (3) nonprofit corporation, its annual operational surpluses would be designated for its annual Fund Balances (Net Assets)[159] and invested to ensure future organizational stability. However, ACCESS's financial objective is not to generate a profit for accumulating asset reserves since this would require allocating fund balances to its public mission of promoting financial literacy. Instead, the role of ACCESS is to generate maximum tax-free revenue for payments to its for-profit "sister" companies by reporting operational losses on its annual 990 corporate tax returns. This enables Cole Group, Inc. to extract high business management fees and ensure inflated contract costs for business services provided by its "sister" company (Cole Asia Business Center [CABC]) in Makati, Philippines).[160] In essence, tax-exempt revenues from ACCESS are funneled through Cole Group Inc., in the form of costly management revenues for low-wage workers provided by CABC. Significantly, all three companies were founded and/or controlled by Sevan Aslanyan

[159]Like Consolidated Credit Counseling, the third largest Credit Counseling Agency that was founded by Howard Dvorkin (See Zweig, Jason and Rachel Louise Ensign, 2015), ACCESS's market position in the Debtor Education industry belies its current Funds Balances. According to its most recent 990 corporate tax returns (2012 and 2013), ACCESS reports a combined operating loss of $0.36 million based on Gross course fee revenue of $5.86 million. See http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

[160]It also benefits the Aslanyan for-profit business network by paying some of these companies' expenses such as accounting, legal, and office rent expenses. In addition, since those contractors paid over $100,000 per year are not reported on the ACCESS 990 corporate tax return, it is possible that some of its other major operational services such as IT are contracted by other companies controlled by Aslanyan; in 2012-13, ACCESS reports a total of $1.83 million paid for "Information Technology" services: $0.71 million in 2012 and $1.12 million in 2013.

through family, friends, and employees as well as his associated network of for-profit companies.[161]

Is ACCESS Counseling Bankrupt?

If ACCESS Counseling operated at an average level of efficiency in comparison to its major competitors, its outsourcing policy should have realized an annual surplus of nearly $540,000—based on its gross fee revenue of $2.43 million in 2012. This amount is independent of its large market position and its economy of scale efficiencies that it shares with its largest competitors. Even assuming lower operational efficiency of its outsourced Filipino workers, **a conservative estimate is a net operational cost reduction of at least $350,000- $400,000 in comparison to its peer competitors--solely due to outsourcing its management and operational workforce**. This is based on labor costs in the Philippines for counselors and business support staff that are about 15% to 20% of the compensation of US workers in the Bankruptcy Education industry and even lower for technical workers such as IT computer programmers and systems maintenance engineers.[162]

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[161]For example, Suzanne Hunt is Sevan Aslanyan's wife and Karen Hunt is his sister-in-law. Gary Jemelian is a long-term employee (over 10 years) who was the account manager of Cole Group, Inc. before being appointed President of ACCESS by Aslanyan. Other long-term employees (Julie Baldwin), including a personal attorney (Aurora Talavera), business partners (Art Basmajian was President of Cole Retail, Inc and Ozan Enterprises before they were dissolved and is President of Cocanico and a Director of Cole Group, Inc. See http://www.corporationwiki.com/California/Los-Angeles/art-basmajian/45398967.aspx), and family members (cousin Aret Kocoglu and daughter Nicole) have been appointed officers of Aslanyan's businesses. See *https://opencorporates.com/officers/9541623* and *http://commerce.state.ak.us/CBP/TempPDF/c24e90ea-c62e-4101-ab60-23e112812dc9.pdf*. Cole Management Group, Inc. was incorporated in Nevada on May 12, 2011, three months after ACCESS was incorporated. Suzanne Hunt Aslanyan (http://www.corporationwiki.com/Nevada/Las-Vegas/suzanne-aslanyan/135157715.aspx) has served as an officer and Sevan Aslanyan (http://www.corporationwiki.com/p/2bo9x8/sevan-aslanyan) has served as a Director and sole employee. See http://www.corporationwiki.com/Nevada/Las-Vegas/cole-management-group-incorporated/133924181.aspx. Due to litigation, Cole Management Group, Inc. was dissolved (Nevada incorporation in default) and a successor company, Cole Group, Inc (DBA Cole Business Group) was founded in California on February 22, 2012; its business office remains in Los Angeles. See https://opencorporates.com/companies/us_ca/C3445006. Currently, Art Basmajian, a long-time business associate of Aslanyan, has served as president, secretary, treasurer and director of COLE Group Inc. See http://nvsos.gov/SOSEntitySearch/CorpDetails.aspx?lx8nvq=oK0Lli726Gcd6phYqEQ0sA%253d%253d

Not incidentally, Sevan Aslanyan filed for personal bankruptcy in 2000 and owes over 1.2 million in back taxes to State of California. See Bill Kisliuk, ***"Local businesses named in state's list of tax scofflaws,"*** Glendale-News Press, April 26, 2011and http://www.boe.ca.gov/sutax/top500.htm.

[162]See Robert D. Manning, "Does Outsourcing BK Ed Counselors Increase Client Risk and Attorney Liability?" National Association of Chapter 13 Trustees (NACTT) Newsletter, May 12, 2014.

Furthermore, economies of scale are crucial in a labor-intensive service industry where ACCESS's competitive advantage is primarily due to marketing Bankruptcy Education courses below U.S. costs.[163] For example, ACCESS offered $5 Credit Counseling courses in 2013 while the industry average was $30-$35.[164] Even so, ACCESS's major competitors with comparable or higher Debtor Ed fee revenues (Abacus, Cricket, Debtor Helper, InCharge, IFL) report annual operating surpluses that ranged from $0.15 million to $0.93 million in 2012. See Table 4. The average operational surplus that is derived solely from Debtor Education programs among this group is $0.44 million. The Bankruptcy Education programs of other authorized service providers with Gross revenues of over $1million were likely to be at least marginally profitable in 2012; it may be simply a corporate accounting issue in terms of charging overhead costs (eg, legal expenses and high executive salaries) to the most profitable departments.[165] For instance, Pioneer Credit Counseling and the Institute for Financial Literacy (IFL) both report overall operating losses in 2012. However, this appears to be the result of operational costs, accounting decisions, high legal expenses,[166] and employment of many family members that are unique to these particular companies in that particular year. Even though both companies report significant declines (23.6% and 63.7%) in Debtor Education fee revenue in the two-years period 2011 – 2012, it is noteworthy that their Bankruptcy Education programs generated a net operating

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[163]ACCESS's revenues are derived exclusively from BAPCPA mandated Bankruptcy Education courses. ACCESS is not approved to provide HUD approved housing counseling nor is it approved to provide Debt Management Programs (DMPs). See https://accesscounselinginc.org/AboutUs.html.

[164]See Lois R. Lupica, The Consumer Bankruptcy Fee Study Final Report, American Bankruptcy Institute and National Conference of Bankruptcy Judges, Dec 2011 and interviews with industry insiders in April 2014.

[165]InCharge Debt Solutions reports an operational loss for its Bankruptcy Education program that is primarly attributable to subsidizing operational deficits of other departments and high legal expenses (See Table 1). The InCharge Education Foundation offered the Debtor Education Courses until it was essentially merged into InCharge Debt Soutions in mid-2011; it reported net operating revenues of $2.17 million in 2011 and $2.6 million in 2010. In regard to DECAF, its operational loss is primarily due to high management compensation of senior executives and the salaries of the founders' family members while reorganizing in response to the competitive pressures of ACCESS. See http://www.guidestar.org/FinDocuments/2012/202/870/2012-202870155-09855256-9.pdf.

[166]Pioneer Counseling reports a total of $1.63 million in legal expenses during 2010-12. See Table 7. This is primarily for legal expenses of President/COO Todd Ossenfort and his wife Laca Ossenfort (combined salary of nearly ($282,329) for a variety of financial conflicts of interest and transactions that benefited the Ossenforts and other family members. This includes sale of the customer case-management and data processing system to PIONEER that were challenged by the IRS. See Steve Rhodes *IRS Wants More Than A Million Dollars Back From Ossenfort of Pioneer Credit Counseling,"* Get Out of Debt Guy Blog, February 4, 2011, and Barbara Soderlin, "IRS: Pioneer Credit official owes $1.3 million," Rapid City Journal, July 16, 2012.

surplus of over $250,000 in 2012 with Net income rates of 19.6% and 19.9%, respectively.[167] See Table 5.

In sum, it is difficult to imagine a scenario whereby ACCESS Counseling could have experienced an operational loss (-$161,383) as reported on its 2012 corporate tax return. Instead, based on its volume and moderate business expenses, it should have generated an operational surplus of at least $300,000 (average of its three largest competitors in the sample)—PLUS the large savings in management and employee compensation of at least $400,000 due to outsourcing its employees to the Philippines. Together with the lack of community outreach and free financial education programs,[168]ACCESS Counseling should have registered an operational surplus of at least $750,000 in 2012. Another method of estimating the expected operational surplus of ACCESS is by calculating its (a) Net revenues together with its (b) savings from outsourcing its workers. This approach estimates the ACCESS operational surplus to be $765,060 in 2012.[169] **Hence, even assuming much lower worker productivity and organizational efficiency, ACCESS's economy of scale and outsourced workforce should have yielded an operational surplus of over $700,000 in 2012.**

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[167]IFL reports an operational loss of $71,805 in 2012 that includes costly payments/transfers ($337,890) to its sister company for educational books/materials authored by the company's founder (Leslie Linfield) and depreciation expenses related to recent acquisition of its office building ($35,031); the combined salaries of John ($93,652) and Leslie Linfield ($154,901) is $248,553 in 2012. Even so, IFL reports an operational surplus from its Bankruptcy Education program of $252,381 based on Gross revenues of $1,266,458. This Net revenue rate of 19.9% is consistent with the estimate of the rest of the sample (19.4%) in 20012. See Table 4.

Similarly, Pioneer Counseling reports a loss of $233,462 in 2012. Like its much larger competitor, Take-Charge Today, Pioneer features high compensation of the CEO and his wife ($282,329), five family members on company payroll (combined $90,399), high occupancy expenses ($254,689) for office and staff/employee parking paid to company controlled by CEO's family, high legal expenses ($236,865) on behalf of CEO for financial transactions that benefitted the CEO and his family, and high depreciation expenses ($110,761). Even so, this operational loss masks the large surplus generated by its estimated Debtor Education course fees of $1,382,000. A conservative approximation of Pioneer's Net Bankruptcy education revenues is $270,000 or 20.5% in 2012.

[168]Most nonprofit credit counseling agencies employ community outreach staff, partner with other organizations in public education activities, and/or provide financial or in-kind donations to groups that pursue a common public mission.

[169]For instance, if the sample's average 2011 Net revenue rate (exclusive of ACCESS) is used (18.8%), then ACCESS should have reported an operational surplus of over $460,000. If lower labor productivity is assumed based upon its outsourced workforce, for example one-half of the sample's Net Revenue rate (9.4%), then it is reasonable to assume an adjusted Net operational surplus that includes (a) $230,000 computed from $2.46 million Gross Revenue plus (b) the savings of over $540,000 for outsourcing its workforce to the Philippines. The total operational surplus based on these assumptions is $770,000 in 2012.

Massaging the Numbers:
Identifying ACCESS's Most Inflated Operational Expenses

There are several dubious expenditures reported in ACCESS's 2012 federal corporate tax return. First, ACCESS's small management staff is located in Los Angeles, California. It includes the President/CEO Garo Jemelian—who previously managed the client accounts of Cole Group, Inc.—whose business support services are provided by its "sister" company in the Philippines: Cole Asia Business Center.[170] In 2012, **ACCESS Counseling had only 5-6 full-time employees working its Los Angeles office.[171] Yet, its combined "Occupancy/Office Expenses" is an enormous $393,612**. This compares with $74,561 for Abacus and $100,797 for Cricket with over 50 employees.[172] Even if most ACCESS office expenses are included in the "Advertising/Promotion" category ($264,356), it is estimated that **the combined costs for these operational expenses (Occupancy/Office Expenses/Advertising & Promotion) is overstated by at least $300,000**.

The most questionable operational expense reported by ACCESS in its 990 corporate tax returns is "Information Technology." When compared to companies with similar volume, it is clear that the ACCESS's reported IT costs of $713,731 (28.9% of 2012 gross revenues) is dramatically larger than any other competitor service provider.[173] For instance, DECAF

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[170]According to industry insiders, Jemelian met with an attorney in Rochester, NY. for the purpose of incorporating ACCESS Counseling as a nonprofit corporation in Wilmington, Delaware. This meeting occurred in December 2010 when Jemelian was still employed by Cole Group Inc.

[171]According to industry insiders, ACCESS Vice-President Alberto Duarte works out of his home office in Orlando, Florida while its attorneys have their own offices in the Los Angeles Metropolitan Area. ACCESS did not employ any community outreach staff in 2012 nor did it employ any "in-house" IT staff. Other professional services were provided by contract workers. This raises serious questions regarding who was paid "Other Salaries and Wages" of $239,631 in 2012.

[172]Although Debt Helper's office related expenses are much higher than its larger competitors ($191,719), this amount reflects the costs of its new "Affordable Housing" program which includes the purchase/rehabilitation of residential properties that are subsequently leased to low-income families. Even IFL, which had recently purchased its own office building in 2011 and has had difficulty securing tenants, reported much lower combined "Occupancy/Office Expenses" of $141,048—even with a staff over three times larger than ACCESS in 2012 and a reduction in course fee revenue of 40%. Pioneer Credit Counseling is much more difficult to interpret since it leases a much larger office facility from a company controlled by its CEO (Todd Ossenfort) than is needed for its business activities. Pioneer's annual leasing expenses for office space and parking is approximately $180,000.

[173] ACCESS does not report any Bankruptcy Education licensing fees on its 990 corporate tax returns. If ACCESS licenses Bankruptcy Education courses provided by a third-party provider, then the question is where are these expenses listed on its 990 corporate tax return. Otherwise, it can be assumed that ACCESS's IT expenses are primarily the moderate costs of updating its online courses as well as general platform security and delivery maintenance expenses.

reported IT expenses of $90,076 (2.3%) followed by PIONEER $33,127 (1.7%) and IFL 15,697 (1.1%). Furthermore, InCharge Debt Solutions claimed IT expenses of $168,140 (0.008% of gross revenues of $20.3 million) in 2012. This amount includes IT expenses for its other financial counseling and education products and services; InCharge shifted its Bankruptcy Education division from InCharge Education Foundation to its much larger credit counseling/DMP "sister" company (InCharge Debt Solutions) in 2011.[174] Even if all of InCharge's IT expenses were attributed to the operational activities of its Bankruptcy Education program, it would only account for 2.8% of InCharge's $5.99 million in gross Debtor Education revenues. See Appendix A.

Of course, without specifying the contractors and IT services provided to ACCESS on its 990 corporate tax return—which is an IRS reporting requirement for service contracts of at least $100,000—it is not possible to track the actual IT services that were provided and the recipient of the IT payments as well as its "Management" services provider. Nevertheless, after reviewing the IT needs and expenses of other Bankruptcy Education providers, ACCESS mostly likely overstated its IT costs of $713,731 in 2012 by at least $500,000-$550,000.[175] This assumes that ACCESS greatly expanded its IT infrastructure during its explosive growth in 2012 and that these IT services were provided by US programmers and computer technicians. The latter assumption is highly unlikely since ACCESS outsources all of its business operational support services to contract workers in the Philippines.[176]

Lastly, ACCESS Counseling does not report any community outreach and/or free financial education programs as expected from its nonprofit charter. This is particularly striking for a company with over $2 million in Bankruptcy Education fee revenues. Indeed, ACCESS does not report a community relations/outreach staff person or any financial education programs in its 2012 tax return. In comparison, the other Bankruptcy Education companies offer a wide

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[174] The Bankruptcy Education Program fees reported for InCharge are compiled as follows: InCharge Education Foundation Inc in 2010, InCharge Education Foundation Inc combined with InCharge Debt Solutions Inc in 2011, and InCharge Debt Solutions Inc combined with InCharge Institute of America Inc in 2012. See Table 5 and the 990 corporate tax returns of the three "sister" nonprofit companies.

[175] See pages 8-10 of the ACCESS 990 corporate tax return for 2012 and 2013 at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

[176] Interviews with industry insiders.

variety of financial education and community outreach programs including free educational materials and even financial donations to community-based, financial education activities. By reporting an operational loss in 2012, ACCESS can argue that this financial hardship (combined operational losses of approximately $357,000 as reported 2011 and 2012 federal tax returns) precludes its ability to provide free community outreach and other financial education programs. The failure of ACCESS to honor its "public mission" distinguishes it from its peer service providers. **As a result, it is likely that these two key expense categories are inflated by at least $800,000 to $850,000 in 2012. This is consistent with the prior estimates of ACCESS's operational surplus.**

As a post-script to the preceding analysis of the 2012 sample of Debtor Education service providers, ACCESS is one of the first agencies to submit its 2013 corporate tax return in late summer 2014. Incredibly, with its gross Bankruptcy Education service revenues increasing 39.0% (from $2.46 to $3.43 million) and its customer and business support services outsourced to workers in the Philippines, ACCESS reported a third-consecutive annual operating loss of $202,648. Overall, for the first three-years of its existence, ACCESS reports Net Assets of -687,087 based on total revenues of nearly $6.4 million. Intriguingly, ACCESS does not report any debt service expenses for financing its annual operational losses on any of its corporate 990 tax returns. Nor does it report external loans or other financial support for mitigating its claimed financial losses.[177]

According to its 2013 corporate tax return, ACCESS reports "non employee" fees of $770,153 for management services along with $1,130,963 for "Information Technology" (an astounding 33.0% of Gross revenues), Other Salaries and Wages of $524,209 (only the salaries of President Jemelian at $44,500 and Vice-President Duarte at $97,169 are specifically listed), legal expenses of $366,133, and "Office Expenses" of $331,131. As previously mentioned, ACCESS refuses to report the "five highest compensated independent contractors that received

[177]With Net Assets of -687,087 at end of 2013, it is reasonable to expect "Interest" payments of at least $60,000 (based on 9% APR). Instead, ACCESS does not report any debt service expenses on any of its annual 990 tax returns. Of course, it is possible that ACCESS does not need a loan to service its negative fund balance if the operational deficits are not properly stated on its annual federal tax returns. See p. 10, line 20 of 2013 ACCESS tax return at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

more than $100,000 of compensation from the organization" as required of all 990 corporate tax returns. In fact, this section of the 990 corporate tax return (p. 8) is completely blank for all ACCESS tax returns (2010-2013) which raises questions about the veracity of the reported expenses for IT services, Management Services, Other Salaries and Wages, Legal Services, and Office Expenses.[178] At a minimum, it appears that ACCESS has reported at least $2 million in inflated expenses to the IRS in the period 2012-13 that has financially benefited private interests rather than the public mission as mandated in its corporate charter.

By referencing 2012 expenses of the Bankruptcy Education provider sample as the benchmark for estimating ACCESS's operating surplus in 2013, it is clear that its Net revenue increased substantially. For example, if ACCESS maintained its outsourcing savings rate of 21.9% for Management and Employee related expenses, then it realized a net gain of over $750,000 on Gross revenues of $3.43 million in comparison to its major competitors. Similarly, if ACCESS's Net income rate is benchmarked at one-half of the 2012 sample rate (18.8%), then its Total Net Income for 2013 is conservatively estimated to be approximately $1.1 million.[179] Conversely, by subtracting inflated reported expenses ($1.6 million) from Net revenues of -$202,678, ACCESS's operational surplus is estimated at $1.4 million in 2013.[180] **Overall, based on conservative operational cost assumptions, ACCESS's fund balances should have totaled $1.8 million (0.7 million in 2012 and $1.1 million in 2013) versus its reported combined loss of -$0.36 million in 2012-13**. This is an incredible difference of $2.16 million reported to the IRS over the last two years. Hence, the key question is where did the money go?

[178]See pages 8-10 of the 2013 ACCESS tax return at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

[179]That is, $750,000 for outsourcing its workforce to the Philippines plus $320,000 for its average operating "profit."

[180]The inflated operational expenses reported by ACCESS are conservatively estimated: $800,000 for "Information Technology," $100,000 for "Legal" expenses, $450,000 for "Management fees," $150,000 for "Office expenses" and $100,000 for "Advertising and promotion" expenses. Hence, $1.6 million in exaggerated expenses plus -$0.2 million in Net revenues equals $1.4 million. See p. 10 of 2013 ACCESS corporate tax return at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

CONCLUSION:

The Consequences of For-Profit Foxes In the Nonprofit Henhouse

The systematic outsourcing of ACCESS's business support staff and its counselors to the Philippines has essentially transferred a large share of the operational surplus of the U.S. nonprofit Credit Counseling industry to the private control of two private entities: Cole Group, Inc. and Cole Asia Business Center, Inc. Since the only competitive advantage of ACCESS is its employment of international workers at extremely low wage-rates (as discussed, that is 15% to 20% of U.S. average), the intensive marketing of ACCESS Bankruptcy Education courses has featured drastic price cutting—as low as free for the first 1-3 months.[181] This has led to a new market segment where Debtor Education courses are offered at below the cost of providing these services with U.S. employees. These Bankruptcy Education certificate "mills" are distinguished by low prices (less than $10 per course), fewer days of week and hours of day for "live" customer support (weekdays only), and fewer products/services (English only courses). Some major CCAs such as Money Management International (MMI) have opted to reduce their respective market shares rather than succumb to price competition.[182] Others have pursued price discounting strategies while restricting their range of products and customer support to online services.[183] Lastly, many small agencies have simply ended their money-losing Bankruptcy Education programs by selling their client portfolios, merging with larger and/or more diversified companies, or ceasing their operations altogether after exhausting the Net asset reserves of their organizations.[184]

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[181]Industry insiders report that ACCESS has invested minimal resources in its IT infrastructure and prefers to use manual procedures with low-cost workers (such as issuing course completion certificates) rather than utilizing more efficient computer technologies. This business operations strategy belies the enormous IT expenses reported in the ACCESS 990 corporate tax returns (2011 – 2013).

[182]According to the MMI website, the fee for pre-filing Credit Counseling and pre-discharge Debtor Education courses remains unchanged at $50 per online session. See https://www.bankruptcycertificate.com/popup/disclosureC2-en.php.

[183]Replacing face-to-face and telephonic with online customer support reduces costs of phone service, USPO expenses such as for delivery of course completion certificates, salaries of counselors, taxes and benefits for fewer employees, and lower rents for smaller offices.

[184]The Executive Office for United States Trustees (EOUST) lists on its website those credit counseling organizations that are no longer authorized to offer Bankruptcy Education courses—both voluntarily and involuntarily. For example, Consumer Credit Counseling Services of Rochester, New York voluntarily stopped offering BAPCPA mandated Bankruptcy Education courses in states outside of New York in 2013. It still offers these courses to residents of New York for $50.

Like the earlier "rationalization" of the nonprofit debt management industry in the late 1990s and 2000s, which led to its dramatic reorganization and consolidation, this trend has not only destabilized the nonprofit Consumer Credit Counseling Services industry (as evidenced by declining corporate funds balances) but it has also resulted in much lower agency expenditures on public education programs, nonprofit professional association sponsorships such as trade shows, and IT security infrastructure that makes consumer financial data more vulnerable to computer hackers and identity theft. Indeed, a key job generating policy of the Government of the Philippines is to entice major multinational corporations to relocate their call centers by offering low-wage workers with limited labor rights and minimal consumer protections regarding data security of personal (eg, medical records) and private financial information (eg, Social Security numbers). In fact, currently there are no regulations in the Philippines governing data protection or even legal redress for consumer data security breaches that are used in scams against American citizens.[185] And, of course, these "competitive advantages" of minimal federal regulation underlies the loss of thousands of desperately needed jobs in America. In 2011, the Philippines surpassed India as the global hub of offshore call centers with more than 400,000 Filipinos employed by a diverse range of companies such as T-Mobile, JP Morgan Chase, and Expedia.[186]

Like the multiple layers of federal and state regulation that failed to effectively monitor and respond to the excessive and often fraudulent financial engineering of the U.S. banking system in the mid-2000s,[187] this case-study of the U.S. Debtor Education industry illuminates the

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[185]A study on outsourcing call centers to the Philippines concluded that," the lack of effective legal and practical protections for [U.S.] consumer privacy and data security, the powerful [Philippines] Business Process Outsourcing (BPO) association's drive to limit regulations on BPOs, and the Philippine government's commitment to more U.S. companies to export call center jobs to the Philippines seriously compromises U.S. consumers' privacy and data security." See Communications Workers of America, *"Offshoring Security: How Overseas Call Centers Threaten U.S. Jobs, Consumer Privacy, and Data Security,"* Washington, DC, October 2013, p. 10.

[186]Communications Workers of America, *"Offshoring Security: How Overseas Call Centers Threaten U.S. Jobs, Consumer Privacy, and Data Security,"* Washington, DC, October 2013, p. 14.

[187]Sheila Bair, Bull by the Horns: Fighting to Save Main Street from Wall Street and Wall Street from Itself, New York, Free Press, 2012; Neil Brofsky, Bailout: An Inside Account of How Washington Abandoned Main Street While Rescuing Wall Street, New York, Free Press, 2012; Gretchen Morgenson, and Joshua Rosner, Reckless Endangerment: How Outsized Ambition, Greed, and Corruption Created the Worst Financial Crisis of Our Time, St. Martin's Griffin, 2012; Simon Johnson and James Kwak, 13 Bankers: The Wall Street Takeover and the Next Financial Meltdown, New York, Vintage, 2011; US. Senate Permanent Subcommittee on Investigations, Wall Street and the Financial Crisis: Anatomy of a Financial Collapse, New York, Red and Black Publishers, 2011; Andrew Ross Sorkin, Too Big to Fail: The Inside Story of How Wall Street and Washington Fought to Save the Financial System--and Themselves, New York, Penguin Books, 2010.

cautionary tale that white collar criminality can flourish even in ostensibly highly regulated and monitored industries. Indeed, the investigative and enforcement actions of the IRS' *"Credit Counseling Compliance Project"* of 2005, which were spurred by the U.S. Congressional investigative hearings of 2003-04,[188] have not proven effective in discouraging future violators of the nonprofit charter as expected by policy-makers, researchers, and federal regulators.[189] On this point, IRS Commissioner Mark Everson was resolute during his 2003 testimony at the U.S. Congressional Hearing on "Non-Profit Credit Counseling Organizations,"

> "**[A tax-exempt Credit Counseling] organization must not distribute net earnings to insiders (the prohibition on inurement) and it must operate for the benefit of the public rather than for the benefit of private interests (the prohibition on private benefit).** With respect to the private benefit rule, an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled directly or indirectly by such private interests… **we are committed… to ensure that tax-exempt credit counseling organizations comply with all applicable requirements**. The public deserves and will receive our protection in the area of credit counseling services."[190]

Unfortunately, without the swift and judicious exercise of IRS enforcement power, nonprofit tax-exempt corporations continue to be founded and exploited for the financial gain of private interests.[191] While the Federal Trade Commission (FTC) has been effective in its investigation of consumer complaints regarding excessive service fees and deceptive program disclosures of nonprofit credit counseling agencies, the IRS has been much less successful in its recent pursuit of violators of the prohibitions against inurement and private benefit in the

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[188]U.S. Congress, *"Non-Profit Credit Counseling Organizations,"* Hearing before the House Subcommittee on Oversight, 108th Congress, November 20, 2003, U.S. Government Printing Office: Washington, D.C., 2003 and U.S. Senate, *"Profiteering In A Nonprofit Industry: Abusive Practices in Credit Counseling*," Hearing before the Permanent Subcommittee on Governmental Affairs, March 24, 2004, U.S. Government Printing Office: Washington, D.C., 2005.

[189]John Hurst, *"Protecting Consumers From Consumer Credit Counseling,"* North Carolina Banking Institute Journal, Vol, 9, Vol. 1, 2005: 159-178.

[190]Honorable Mark Everson, testimony before U.S. Subcommittee on Oversight of the Committee on Ways and Means, Hearing on "Non-Profit Credit Counseling Organizations," November 20, 2003, p. 12 and 15.

[191]The founders/violators of nonprofit corporations frequently "cash-out" by prolonging enforcement actions as part of the final regulatory settlement with the expectation that the appointment of new management will result in re-instatement of tax-exempt status and authorization to offer products/services that are restricted to 501 (c) (3) nonprofits. Or, these nonprofits are simply abandoned/dissolved following the loss of their tax-exempt status.

nonprofit Credit Counseling industry.[192] This is due to the substantial resources required to identify organizational and individual "webs" of financial conflicts of interest as well as the ability of individual violators to pay for costly legal representation from the nonprofits' annual revenues and asset reserves. As a result, the lack of recent IRS investigative action against credit counseling agencies has permitted the conflicts of interest between for-profit entities/individuals and nonprofit Credit Counseling Agencies to flourish with near regulatory impunity. Admittedly, the sharp reduction of IRS investigative personnel has contributed to this problem since it was not anticipated that the IRS would lose over 5,000 positions since 2010.[193] Nevertheless, the increasing public and industry demand for supervisory investigations has shifted this regulatory burden to other enforcement agencies at federal (eg, EOUST) and state agencies (eg, Attorney General) whom are also struggling with reduced personnel and thus not able to assume greater enforcement workloads. Even so, it is notable that EOUST recently affirmed a 2013 administrative decision not to renew a credit counseling organization's authorization to provide Bankruptcy Education courses due to its violations of the prohibition against private benefit and inurement.[194]

Not surprisingly, the most flagrant abusers of the nonprofit charter are not concerned about potential litigation or the possibility of criminal prosecution. As previously discussed,

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[192]In regard to violators of "private benefit" and "private inurement" prohibitions, it is the responsibility of federal regulators such as IRS and EOUST whereas the Office of Attorney General and Office of Taxation and Finance are the appropriate regulators at the state level. Ideally, the IRS and EOUST would coordinate their investigations in order to more effectively and expeditiously pursue their enforcement mandates. Note, this is a different regulatory focus from individual consumer complaints about deceptive disclosures, excessive costs, and poor quality services. The latter is the purview of the Federal Trade Commission (FTC) while the Office of Consumer Affairs is the appropriate regulator at the state level.

[193]According to a formal statement sent by the IRS to The Washington Post on April 8, 2015, *"The IRS enforcement workforce has declined more than 5,000 positions since 2010, and that includes a reduction of revenue officers who collect money owed by taxpayers. Given these limitations, we must make difficult decisions on where and how to collect tax revenue based on the amount of taxes owed, available staffing resources and the best collection options available. This can vary by office and other factors. There is no doubt that we have cut back on personal visits to those who owe money. While the amount of money owed is significant factor in the workload that is assigned to our revenue officers … We have a variety of collection tools available to collect tax debts."* Cited in Lisa Rein, *"IRS: Our Collections Staff is Depleted But Don't Get the Idea that We Are Not Pursuing Tax Cheats,"* The Washington Post, April 13, 2015.

[194]On April 4, 2015, EOUST affirmed the U.S. Trustee Program (USTP) decision of December 18, 2013 to remove Hummingbird Credit Counseling and Education, Inc. of Raleigh, North Carolina from the list of personal financial management instructional course providers that are approved by the USTP. This was due to conflicts of interest and other governance improprieties that resulted in financial benefits to private individuals in violation of the nonprofit 501 (c) (3) charter. See EOUST Final Agency Action, Case Nol. 2014-1. Available at http://www.justice.gov/ust/eo/rules_regulations/admin_decisions/cc_admin.htm.

litigation expenses are assumed by the specific nonprofit organizations rather than the individual violators who have gained financially from their transgressions. This is evidenced by a wide range of nonprofit credit counseling companies with their outside attorneys becoming secondary beneficiaries through costly billings. See Tables 1 and 7. Furthermore, the rational calculus of these for-profit foxes is that the expense of developing sophisticated legal schemes and difficult to identify networks of privately-owned service providers, is simply the cost of conducting business in the nonprofit "hen house."[195] If investigated by federal regulators, such as the IRS and Executive Office for U.S. Trustees (EOUST), they expect that punishment will be limited to benign sanctions such as not renewing authorization to offer BAPCPA required credit counseling courses or forcing individual violators to terminate professional and business relationships with the nonprofit organization. In cases that result in more severe financial and civil penalties, most offenders assume that fines or financial settlements can be evaded by corporate or personal bankruptcy after legal expenses have been paid by their respective nonprofit companies.[196]

In conclusion, the U.S. criminal justice system needs to respond more aggressively to white-collar criminality since the lessons of the Wall Street meltdown have not resulted in more coordinated and effective enforcement actions by federal and state regulators in the nonprofit sector. Sadly, more financial blood, regulatory resources, and tax-exempt revenues will be spilled before nonprofit providers in the Debtor Education industry will find safe haven from predatory wolves in "sheep's clothing." Without aggressive and forceful intervention by federal and state government regulators who are willing to coordinate their enforcement powers, entire nonprofit sectors could be essentially gutted as their tax-exempt financial resources are transferred to private entities for the benefit of private individuals. This snapshot of the rapidly changing financial fortunes of the nonprofit credit counseling industry illustrates that, even in the

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[195]For example, the innovative legal structure of Start Fresh Today (founded by Howard Dvorkin and other investors) is designed to satisfy the U.S. Congressionally mandated requirements that only nonprofits can offer BAPCPA required pre-filing Credit Counseling courses. By "insourcing" counselors from an "allied" nonprofit credit counseling organization and licensing its proprietary software and Bankruptcy Education courses for lucrative royalties, Start Fresh Today has been able to legally circumvent the spirit of BAPCPA by providing Bankruptcy Education courses for the financial benefit of its private investors. Note, the U.S. Congress specifically allows for-profit Financial Education companies to offer pre-discharge Debtor Education courses. The most high profile example is personal finance guru Dave Ramsey and his Lampo Group.

[196]Industry insiders refer to previous U.S. Federal Trade Commission (FTC) and Internal Revenue Service enforcement actions against nonprofit DMP mills in the 2000s as evidence that the financial gains outweigh the potential regulatory penalties.

post-Dodd-Frank regulated and more consumer friendly economy, powerful actors are still able to exploit existing regulatory systems in pursuit of their personal and private financial interests.

Table 1

Top Ten Nonprofit Credit Counseling Agencies (CCAs):

Outside Counsel Legal Expenses (2010, 2011, 2012)*

NONPROFIT CCA	YEAR 2010	YEAR 2011	YEAR 2012	TOTAL (2010 -2012)
MMI	$1.93 million	$0.73 million	$0.45 million	$3.1 million
Greenpath	$0.13 million	$0.15 million	$0.20 million	$0.5 million
Consolidated**	$0.33 million	$0.05 million	$0.11 million	$0.5 million
CredAbility***	$0.22 million	$0.18 million	$0.15 million	$0.6 million
Novadebt	$0.07 million	$0.05 million	$0.06 million	$0.2 million
InCharge****	$0.68 million	$0.55 million	$0.28 million	$1.5 million
CESI*****	$0.73 million	$0.84 million	$1.10 million	$2.7 million
Clearpoint***	$0.12 million	$0.19 million	$0.12 million	$0.4 million
Take Charge ******	$0.33 million	$0.49 million	$0.48 million	$1.3 million
Apprisen	$0.19 million	$0.10 million	$0.14 million	$0.4 million
TOTAL:	$4.85 million	$3.33 million	$3.02 million	$11.1 million
AVERAGE:	$485,000	$333,000	$302,000	$373,000

Sources: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*Reported legal expenses only include payments for outside legal counsel services. These do not include costs of legal services provided by staff attorneys of the nonprofits and/or their affiliates. Also, accounting/auditing expenses are reported separately and thus not included in these payments.

** The legal expenses for Consolidated's "sister" Bankruptcy Education provider (Start Fresh Today, LLC) are not reported. This is because Start Fresh was incorporated as a for-profit corporation and thus its annual corporate tax return is not available on www.guidestar.org. This is significant since regulatory investigation and enforcement pressure by EOUST led to its acquisition by Consumer Educational Services, Inc. (CESI) in March 2015.

***On December 31, 2013, Credibility and Clearpoint merged to become the nation's second largest nonprofit Credit Counseling Agency: ClearPoint Credit Counseling Solutions. With its headquarters in Atlanta, the combined organization has 51 offices in 16 states—from California to New York. During the five year period, 2009-13, the two agencies reportedly counseled almost 2 million households and processed the repayment of over $1 billion in credit card debt. See ClearPoint Credit Counseling Solutions, "ClearPoint and CredAbility Complete Merger, "Combination Creates Second Largest NFCC Agency in U.S," corporate press release, December 31, 2013, http://www.clearpointcreditcounselingsolutions.org/clearpoint-and-credability-complete-merger/.

****The legal expenses reported for InCharge is the combined total of its three affiliated nonprofit companies: InCharge Institute of America Inc., InCharge Debt Solutions, and InCharge Education Foundation Inc. This is a conservative estimate since it includes only contracted outside legal services and some data is missing for specific companies during this period.

*****CESI has been engaged in protracted negotiations with the IRS since it received notice of intent to revoke its tax-exempt status in 2005. CESI also is in litigation with AMERIX (for-profit company that has been the primary recipient of CESI client referrals and is a major factor in the IRS revocation recommendation) to end its multimillion dollar referral/servicing/ outsourcing relationship. In 2010, CESI paid over $15 million to AMERIX (DMP client management services) and $4.7 million (marketing services) to its "sister" 3CI company—56.3% of total CESI revenues.

******Take Charge America settled its seven year battle with the IRS in 2012. As part of the settlement, Take Charge had its tax-exempt status revoked during the period 2001-2011 and is negotiating a final tax liability that the IRS estimated at about $2.5 million. President John Fisher and several family members who were senior executives resigned as part of the settlement. Take Charge reapplied to the IRS for federal tax-exempt status in 2012 and also reapplied for authorization from EOUST to offer the required pre-filing bankruptcy Credit Counseling course. The Take Charge legal expenses are estimated for 2010 since its 990 corporate tax return for 2010 is not available at www.guidestar.org.

Table 2

Top Ten Nonprofit Credit Counseling Agencies (CCAs):

Gross Revenues, Net Assets, and Net Assets By Gross Revenues **(2012)***

NonProfit Credit Counseling Agency	Gross Revenues 2012	Gross Revenues 2008-12	Net Assets 2012	Net Assets/ Gross Revenues 2012	Net Assets/ Gross Revenues 2008-12
Money Management International	$84.9 million	$490.3 million	$48.3 million	56.9%	9.9%
Greenpath	$42.7 million	$213.2 million	$21.4 million	50.1%	10.0%
Consolidated**	$32.6 million	$179.9 million	$0.7 million	2.1%	0.4%
CredAbility***	$29.4 million	$188.4 million	$12.3 million	41.8%	6.5%
InCharge****	$27.3 million	$172.8 million	$5.5 million	20.1%	3.2%
Novadebt	$24.6 million	$104.3 million	$4.3 million	17.5%	4.1%
CESI Debt Solutions	$20.6 million	$160.2 million	$30.7 million	149.0%	19.2%
Clearpoint***	$19.9 million	$91.2 million	$22.4 million	112.6%	24.6%
Take Charge America	$19.0 million	$129.9 million	$22.3 million	117.4%	17.2%
Apprisen	$18.0 million	$86.1 million	$14.1 million	78.3%	16.4%
AVERAGE:	$31.9 million	$181.6 million	$18.2 million	64.6%	11.1%

Sources: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*Gross Revenues include all sources of reported corporate revenue including investment income.

**The revenues for Consolidated's "sister" Debtor Education provider (Start Fresh Today, LLC) are not included. During this period, Start Fresh was incorporated as a for-profit corporation and thus its financial information is not available on www.guidestar.org. Start Fresh is a Top Five Bankruptcy Education provider and generated millions of dollars in annual gross revenues.

***On December 31, 2013, Credibility and Clearpoint merged to become the nation's second largest nonprofit Credit Counseling Agency: ClearPoint Credit Counseling Solutions**.** With its headquarters in Atlanta, the combined organization has 51 offices in 16 states—from California to New York. During the five year period, 2009-13, the two agencies reportedly counseled almost 2 million households and processed the repayment of over $1 billion in credit card debt. See ClearPoint Credit Counseling Solutions, "ClearPoint and CredAbility Complete Merger, "Combination Creates Second Largest NFCC Agency in U.S," corporate press release, December 31, 2013, http://www.clearpointcreditcounselingsolutions.org/clearpoint-and-credability-complete-merger/**.**

****The reported corporate Gross Revenues for InCharge are the combined total of its three affiliated "sister" nonprofit companies: InCharge Institute of America Inc., InCharge Debt Solutions, and InCharge Education Foundation Inc. Due to missing information in the annual 990 corporate tax returns, the total revenues are estimated for the period 2008-2012.

Table 3

Top Ten Nonprofit Credit Counseling Agencies (CCAs) in 2010:*

Total Revenues, Executive Compensation, DMP Revenues, and Bankruptcy Ed Revenues

NONPROFIT CCA	TOTAL REVENUES**	TOTAL EXEC COMP	DMP*** REVENUES	BK ED**** REVENUES
Money Mgt International	$111.71 million	$3.78 million (3.4%)	75.7%	10.3%
Ivan Hand (President)		$889,870 (0.8%)		
Greenpath	$44.90 million	$2.59 million (5.8%)	66.5%	18.1%
Jane McNamara (President)		$590,883 (1.3%)		
CredAbility*****	$45.47 million	$1.48 million (3.3%)	29.7%	28.4%
Suzanne E. Boas (President)		$377,424 (0.8%)		
Consolidated******	$40.78 million	$0.69 million (1.7%)	83.4%	---%
Gary Herman (President)		$300,309 (0.7%)		
CESI Debt Solutions*******	$34.71 million	$0.24 million (1.7%)	91.4%	-----%
Diane Chen (President)		$236,126 (1.2%)		
InCharge********	$31.11 million	$1.33 million (4.3%)	53.4%	44.1%
Etta Money (President)		$293,886 (0.9%)		
Take Charge America	$29.77 million	$1.88 million (6.3%)	96.4%	0.00%
John Fisher (President) *********		$327,251 (1.1%)		
Novadebt	$20.64 million	$1.46 million (7.1%)	92.7%	0.9%
Joel Greenberg (President)		$565,652 (2.7%)		
Clearpoint*****	$19.85 million	$1.20 million (6.0%)	82.9%	2.4%
Chris Honenberger (President)		$323,670 (1.6%)		
Apprisen	$18.01 million	$1.26 million (7.0%)	78.8%	6.7%
Michael Kappas (President)		$420,302 (2.3%)		
TOTAL:	$396.98 million	$15.90 million		
AVERAGE:	$39.7 million	$1.59 million (4.0%)	75.1%	11.1%
President/CEO		$456,116 (1.1%)		

*Total compensation includes base compensation, bonus and incentive compensation, other reportable compensation, retirement, other deferred compensation and nontaxable benefits.

**Total Gross revenues include program service fees (primarily for debt management, housing, and bankruptcy counseling), contributions, grants, and investment income.

***Gross Revenues reported for Debt Counseling and fee-contingent DMP programs as a proportion of combined Total Program Service Revenue (Part VIII, line 2g of 990 corporate tax return) and Government Grants (Part VIII, line 1e of 990 corporate tax return) which is primarily for housing counseling "contributions:" Money Management International ($64.08 million of $79.29 million which includes $6.08 million for housing counseling) plus $20.56 million in government grants; Greenpath (estimated $19.46 million of $27.07) plus approximate $2.2 million in government grants (at least $12 million in additional revenues related to housing counseling); Consolidated (estimated $31.52 million of $37.77) plus $0.00 million in government grants; if estimated $7.1 million Bankruptcy Ed fees and course royalties included, then $31.52 / $44.87= 70.2%) and Bankruptcy Ed fees estimated at $13.94; CredAbility ($10.47 million of $20.31 million) plus $14.99 million in government grants; Novadebt, ($17.02 million of $17.65 million) plus $713,577 in government grants; CESI Debt Solutions ($13.56 million of ($14.93 million) plus $0.0 million in government grants; InCharge ($11.2 million of $20.96 million) plus $0.0 million in government grants; Clearpoint ($14.55 million of $14.69 million) plus $2.38 million in government grants; Take Charge ($25.52 million of $29.58 million) includes $1.06 million in revenues for housing counseling programs (no reported government grants), and Apprisen ($6.96 million of $7.95 million) plus $887,599 in government grants. Greenpath is estimated due to its practice of reporting total annual revenues rather than itemizing its program revenues.

****Gross Revenues reported for Bankruptcy Counseling and Education programs as a proportion of combined Total Program Service Revenue (Part VIII, line 2g of 990 corporate tax return) and Government Grants (Part VIII, line 1e of 990 corporate tax return) which is primarily for housing counseling "contributions:" Money Management International ($8.68 million of $79.29 million); Greenpath (estimated $5.3 million of $27.07) plus $2.2 million in government grants; Consolidated (estimated $7.1 million of $31.52 +$7.1 million = 18.3%); CredAbility, ($9.80 million of $20.31 million) plus $14.99 million in government grants; Novadebt, ($0.17 million of $17.65 million) plus $713,577 in government grants; InCharge ($9.25 million of $20.96 million) plus $0.0 million in government grants; Clearpoint ($446,216 thousand of $15.89 million) plus $2.38 million in government grants; Take Charge ($4,700 of $29.58 million) plus $0.0 million in government grants; and Apprisen ($594,183 of $7.95 million) plus $887,599 in government grants. Greenpath is estimated due to its practice of reporting total annual revenues rather than itemizing its program revenues.

*****On December 31, 2013, Credibility and Clearpoint merged to become the nation's second largest nonprofit Credit Counseling Agency: ClearPoint Credit Counseling Solutions. With its headquarters in Atlanta, the combined organization has 51 offices in 16 states—from California to New York. During the five year period, 2009-13, the two agencies reportedly counseled almost 2 million households and processed the repayment of over $1 billion in credit card debt. See ClearPoint Credit Counseling Solutions, "ClearPoint and CredAbility Complete Merger,

"Combination Creates Second Largest NFCC Agency in U.S," corporate press release, December 31, 2013, http://www.clearpointcreditcounselingsolutions.org/clearpoint-and-credability-complete-merger/**.**

******The founder of Consolidated, Howard Dvorkin, formed a separate corporation (Start Fresh Today LLC) in 2005 that provides the required pre-filing and pre-discharge Bankruptcy Education courses. StartFresh is a top five Bankruptcy Education provider in this period and licensed its online Debtor Education courses to many providers including InCharge Education Foundation. When the program revenues of both Consolidated ($40.78 million) and Start Fresh (conservative estimate of $7.1 million) is combined in 2010, Bankruptcy Education revenues account for approximately 15% of the total. That is, $7.1 million divided by $47.88 ($40.78 million +$7.1 million)= 14.8%. After more than 2 years of investigation and settlement negotiations with EOUST regulators, Start Fresh was sold to nonprofit CESI in March 2015.

*******Founded in 1998 by current CEO Diane Chen with financial support of Bernard Dancel as part of the nonprofit network of CCAs whose DMP client services have been provided by AMERIX and its "sister marketing company 3CI. CESI did not offer Bankruptcy Education courses until March 2015 when it acquired Start Fresh Today, LLC from Howard Dvorkin. This belated entry into the Bankruptcy Education market reflects its close ties with the major bank credit card collection departments and long-term business model that is primarily based on DMP revenues. See http://www.guidestar.org/FinDocuments/2012/562/106/2012-562106758-08acab52-9.pdf.

********The reported revenues for InCharge is the combined total of its three affiliated nonprofit companies: InCharge Institute of America Inc., InCharge Debt Solutions, and InCharge Education Foundation Inc. In 2010, the Bankruptcy Education revenues reported by the InCharge Education Foundation Inc is $9.1 million as listed on its 990 corporate tax return. See http://www.guidestar.org/FinDocuments/2011/200/152/2011-200152720-089617a6-9.pdf.

*********According to the 2011 Take Charge America 990 corporate income tax return, the organization did not receive approval from EOUST to provide pre-bankruptcy counseling services until January 2010. Take Charge reports $80,688 in expenses and $4,200 in course fee income from its pre-filing Credit Counseling program. This belated entry into the Bankruptcy Education market reflects its close ties with the major bank credit card collection departments and long-term business model that is primarily based on DMP revenues.
See http://www.guidestar.org/FinDocuments/2012/860/593/2012-860593598-0922763c-9.pdf.

Table 4

Top Ten Nonprofit Credit Counseling Agencies (CCAs) in 2012:*

Total Revenues, Executive Compensation, DMP Revenues, and Bankruptcy Ed Revenues

NONPROFIT CCA	TOTAL REVENUES**	TOTAL EXEC COMP	DMP*** REVENUES	BK ED**** REVENUES
Money Mgt International	$84.85 million	$3.52 million (4.1%)	89.5%	2.8%
Ivan Hand (President)		$947,588 (1.1%)		
Greenpath	$42.70 million	$2.28 million (5.4%)	72.4%+	10.6 %
Jane McNamara (President)		$478,993 (1.1%)		
Consolidated*****	$32.61 million	$0.72 million (2.2%)	79.7%	---%
Gary Herman (President)		$300,988 (0.9%)		
CredAbility******	$29.39 million	$1.43 million (4.9%)	71.1%	26.5%
Phillip N. Baldwin (President)		$304,770 (1.0%)		
InCharge*******	$27.33 million	$1.40 million (6.8%)	79.2%	16.8%
Etta Money (President)		$273,877 (1.3%)		
Novadebt	$24.61 million	$1.75 million (7.1%)	98.0%	1.5%
Joel Greenberg (President)		$516,374 (2.3%)		
CESI Debt Solutions	$20.59 million	$0.34 million (1.7%)	90.9%	-----%
Diane Chen (President) ********		$244,267 (1.2%)		
Clearpoint	$19.93 million	$1.28 million (6.4%)	99.0%	.007%
Chris Honenberger (President)		$350,715 (1.8%)		
Take Charge America	$19.02 million	$2.16 million (11.4%)	99.1%	0.00%
John Fisher (President)*********		$319,186 (1.7%)		
Apprisen	$16.32 million	$1.02 million (6.3%)	77.1%	3.3%
Michael Kappas (President)		$426,528 (2.6%)		
TOTAL:	$310.66 million	$15.90 million		
AVERAGE:	$31.07 million	$1.59 million (5.1%)	82.9%	7.0%
President/CEO		$416,329 (1.3%)		

Sources: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*Total compensation includes base compensation, bonus and incentive compensation, other reportable compensation, retirement, other deferred compensation and nontaxable benefits.

**Total Gross revenues include program service fees (primarily for debt management, housing, and bankruptcy counseling), contributions, grants, and investment income.

***Gross revenues reported for Debt Counseling and fee-contingent DMP programs as a proportion of combined Total Program Service Revenue (Part VIII, line 2g of 990 corporate tax return) and Government Grants (Part VIII, line 1e of 990 corporate tax return) which is primarily for housing counseling "contributions:" Money Management International ($57.75 million of $64.52 million); Greenpath (estimated $16.46 million of $22.37); Consolidated (estimated $16.57 million of $20.78; if estimated $3.87 million Bankruptcy Ed fees and course royalties included, then $16.57 million / $24.65 million = 67.22%); CredAbility ($7.49 million of $10.53 million) plus $15.1 million in government grants for housing counseling; Novadebt, ($21.762 million of $21.85 million) plus $347,786 in government grants; CESI Debt Solutions ($13.56 million of ($14.93 million) plus $0.0 million in government grants; InCharge includes grants for credit counseling and education as part of DMP program ($16.31 million of $20.61 million); Clearpoint ($14.55 million of $14.69 million) plus $4.02 million in government grants for housing counseling; Take Charge America ($18.76 million of $18.93 million) including $172,577 in housing counseling revenues; and Apprisen ($5.84 million of $6.45 million) plus $1.12 million in government. Greenpath is estimated due to its practice of reporting total annual revenues rather than itemizing its program revenues.

****Gross revenues reported for Bankruptcy Counseling and Education as a proportion of combined Total Program Service Revenue (Part VIII, line 2g of 990 corporate tax return) and Government Grants (Part VIII, line 1e of 990 corporate tax return) which is primarily for housing counseling "contributions:" Money Management International ($1.83 million of $64.52 million); Greenpath (estimated $2.4 million of $22.37); Consolidated (estimated $4.1 million of $20.78 +$4.1 million = 16.5%); CredAbility, ($2.8 million of $10.49 million); CESI Debt Solutions does not offer Bankruptcy Education courses; Novadebt, ($0.33 million of $21.85 million) plus $347,786 in government grants; InCharge includes grants for credit counseling and education as part of DMP program ($3.46 million of ($20.61 million); Clearpoint ($238 thousand of $14.69 million); Take Charge America ($1050 of $18.93 million); and Apprisen ($253 thousand of $6.45 million) plus $1.12 million in government grants.

*****The founder of Consolidated, Howard Dvorkin, formed a separate corporation (Start Fresh Today LLC) in 2005 that provides the required pre-filing and pre-discharge Bankruptcy Education courses. StartFresh is a top five Bankruptcy Education provider in this period and licensed its online Debtor Education courses to many providers including InCharge Education Foundation. When the program revenues of both Consolidated ($20.78 million) and Start Fresh (conservative estimate of $4.1 million) is combined in 2012, Bankruptcy Education revenues account for approximately 16.5% of the total. That is, $4.1 million divided by $24.88 ($20.78 million +$4.1 million) = 16.5%. After more than 2 years of investigation and settlement negotiations with EOUST regulators, Start Fresh was sold to nonprofit CESI in March 2015.

*******On December 31, 2013, Credibility and Clearpoint merged to become the nation's second largest nonprofit Credit Counseling Agency: ClearPoint Credit Counseling Solutions. With its headquarters in Atlanta, the combined organization has 51 offices in 16 states—from California to New York. During the five year period, 2009-13, the two agencies reportedly counseled almost 2 million households and processed the repayment of over $1 billion in credit card debt. See ClearPoint Credit Counseling Solutions, "ClearPoint and CredAbility Complete Merger, **"**Combination Creates Second Largest NFCC Agency in U.S," corporate press release, December 31, 2013, http://www.clearpointcreditcounselingsolutions.org/clearpoint-and-credability-complete-merger/**.**

*******The reported revenues for InCharge is the combined total of its three affiliated nonprofit companies: InCharge Institute of America Inc., InCharge Debt Solutions, and InCharge Education Foundation Inc. In 2012, the Bankruptcy Education revenues reported by the InCharge as listed in their respective 990 corporate tax returns are InCharge Debt Solutions Inc ($3.46 million) combined with InCharge Institute of America Inc ($1.78 million) or total of $5.24 million. InCharge reports a total net loss from its 2012 Bankruptcy Education programs of $577,473: InCharge Debt Solutions (-$748,097) and InCharge Institute of America, Inc (+$170,624).

********Founded in 1998 by current CEO Diane Chen with financial support of Bernard Dancel as part of the nonprofit network of CCAs whose DMP client services have been provided by AMERIX and its "sister marketing company 3CI. CESI did not offer Bankruptcy Education courses until March 2015 when it acquired Start Fresh Today, LLC from Howard Dvorkin. This belated entry into the Bankruptcy Education market reflects its close ties with the major bank credit card collection departments and long-term business model that is primarily based on DMP revenues. See http://www.guidestar.org/FinDocuments/2013/562/106/2013-562106758-09e3cae2-9.pdf.

***** The founder of Consolidated, Howard Dvorkin, formed a separate corporation (Start Fresh Today LLC) that provides the required pre-filing and pre-discharge Bankruptcy Education courses. StartFresh is a top five Bankruptcy Education provider. When the program service revenues of both companies is combined in 2012, Bankruptcy Education fees account for an estimated 15.7% ($3.87 divided by $20.78 plus $3.87) of the total. After more than 2 years of investigation and settlement negotiations with EOUST regulators, Start Fresh was sold to nonprofit CESI in March 2015.

*****According to the 2012 Take Charge America 990 corporate income tax return, the IRS revoked its tax exempt status for the years 2001- 2011; Take Charge is appealing the $2.5 million total tax bill (corporate taxes, interest, penalties) for this period. Also, EOUST did not renew Take Charge's authorization to offer Bankruptcy Education courses. In November 2012, John Fischer resigned as President and Take Charge re-applied for tax-exempt from the IRS and authorization from EOUST to offer the required Bankruptcy Education courses. See http://www.guidestar.org/FinDocuments/2013/860/593/2013-860593598-0a05fa10-9.pdf.

Table 5
Sample of Debtor Education Service Providers (N=10):
Bankruptcy Education Fee Revenues (2010, 2011, and 2012)

Consumer BK Filings	2010 (+11.2%)	2011 (-8.4%)	2012 (-13.5%)	2013* (-12.3%)
ACCESS	N.A.	$0.50 million	$2.46 million	$3.43 million
Annual Change	N.A.	-----	+395.8%	+39.4%
Revenues - Expenses	N.A.	-$0.20 million	-$0.16 million	-$0.20 million
ABACUS**	$2.07 million	$3.13 million	$2.80 million	
Change	+681.9%	+51.8%	-10.5%	
Revenues - Expenses	+$1.36 million	+$1.64 million	+$0.48 million	
CRICKET	$5.99 million	$5.36 million	$3.99 million	
Change	+41.8%	-10.5%	-22.9%	
Revenues - Expenses	+$1.80 million	+$0.79 million	+$0.15 million	
DEBT HELPER	$0.61 million	$1.52 million	$1.61 million	
Change	-----	+74.6%	+5.6%	
TOTAL - Expenses	+$0.07 million	+$0.49 million	+$0.39 million	
DECAF	$4.30 million	$5.31 million	$3.88 million	
Change	-27.0%	+23.5%	-26.9%	
Revenues - Expenses	+0.52 million	-$0.38 million	-$0.62 million	
PIONEER***	$2.36 million	$2.11 million	$1.38 million	
Change	+ 32.6%	-10.6%	-34.6%	
Revenues - Expenses	+$0.63 million	+$0.50 million	+$0.27 million	
IFL	$3.60 million	$2.26 million	$1.27 million	
Change	+5.1%	-37.3%	-43.9%	
Revenues - Expenses	+$0.84 million	+$0.23 million	+$0.25 million	
INCHARGE****	$9.10 million	$6.40 million	$5.24 million	
Change	+15.1%	-29.7%	-18.1%	
Revenues - Expenses	+$2.62 million	+$2.17 million	-$0.58 million	
ALLEN CREDIT*****	$1.02 million	$0.54 million	$0.79 million	
Change	-12.1%	-49.1%	+46.3%	
Revenues - Expenses	+$0.16 million	-$0.18 million	-$0.12 million	
A123 COUNSELING	$1.05 million	$0.83 million	$0.61 million	
Change******	+23.3%	-21.0%	-26.5%	
Revenues - Expenses	-$0.12 million	-$0.10 million	-$0.11 million	

TOTAL GROSS	$30.10 million	$27.93 million	$24.03 million
Change	+13.4%	-7.2%	-14.0%
Without ACCESS	$30.10 million	$27.43 million	$21.57 million
Change	+13.4%	-8.8%	-21.4%
TOTAL Revs – Expenses Without ACCESS	+$7.88 million	+5.16 million	+0.11 million
Change	+10.7%	-34.5%	-97.9%

Source: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*ACCESS's financial data is included in 2013 because it submitted its 990 corporate tax return after the completion of the analysis of the entire sample of credit counseling agencies. A more detailed discussion of this data is summarized at the end of the article.

**The total revenues and net revenues for the sample are slightly underestimated since the data for Abacus's for-profit "sister" company-- Sage Financial Education-- are not publicly available. Based on the market position of Abacus, its gross revenues during this period are estimated in the $1.5-$2.0 million and are profitable throughout this period. As a for-profit company, it is not required to file a 990 corporate tax return. See www.guidestar.org/organizations.

***The Bankruptcy Education fee revenues reported by Pioneer are estimated from its total program service revenue of $2,304,131 in 2012. This includes DMP fees from clients and creditors as well as housing counseling fees. Based on the size of its DMP client portfolio, it is estimated that DMP/housing counseling related revenues were $0.83 million and Debtor Education program fees of $1.48 million. See http://www.guidestar.org/FinDocuments/2012/460/358/2012-460358693-096cd5c8-9.pdf.

****The Bankruptcy Education revenues reported for InCharge are compiled as follows: InCharge Education Foundation Inc ($9.1 million) in 2010, InCharge Education Foundation Inc ($3.11 million) combined with InCharge Debt Solutions Inc ($3.29 million) for total of $6.40 million in 2011, and InCharge Debt Solutions Inc ($3.46 million) combined with InCharge Institute of America Inc ($1.78 million) for total of $5.24 million in 2012 as listed in the respective corporate 990 tax returns. InCharge reports a total net loss from its 2012 Bankruptcy Education programs of $577,473: InCharge Debt Solutions (-$748,097) and InCharge Institute of America, Inc (+$170,624).

*****It is notable that the reported operational loss is greatest when the agency outsourced its business support services to Call Asia Business Center (Makati, Philippines) in 2011. This is the same outsourcing company that is used by ACCESS. The expected labor cost-savings were not realized and the outsourcing relationship was terminated in 2012. The agency subsequently acquired the customer portfolio of nonprofit Hummingbird Credit Counseling whose authorization to offer the required Bankruptcy Education courses was not renewed by EOUST in its 2013 decision. This was based on a persistent financial conflict of interest that was finalized in its March 2015 decision.

******The current operating deficit is primarily attributed to the high salaries of the husband and wife management team of Richard (part-time CFO) and Elizabeth (Executive Director) Garcia. For example, in 2011 the Garcias report combined income of $235,640 while the nonprofit registered an operating loss of -$99,428. Overall, the Garcias' salaries accounted for 28.4% of total Gross fee revenue of $831,484 in 2011. Following a 26.5% decline in Gross fee revenue to $611,052 in 2012, the nonprofit reported an annual operational loss of -$107,720. The Garcias' combined salaries of $202,442 constituted 33.1% of Gross revenues. It appears that the strategy is to exhaust the prior Net Fund Balance rather than to restructure the company with the goal of enhancing organizational stability.

Table 6

Bankruptcy Filings, Debtor Education Fee Revenues, and Net Income:

Sample of Bankruptcy Education Providers (2010, 2011, 2012)*

YEAR	2010	2011**	2012
Bankruptcy Filings	1.54 million	1.41 million	1.22 million
Annual Change	+11.2%	-8.4%	-13.5%
ACCESS Market Share*** (Sample of Ten Providers)	-----	1.8%	10.2%
Gross Debtor Education Fees	$30.10 million	$27.96 million	$24.03 million
Excluding ACCESS fees	-----	$27.46 million	$21.57 million
Annual Change (w/o ACCESS)	+13.4%	-8.8%	-21.4%
"Expected" Gross Debtor Education Fees**** (Excluding ACCESS)	-----	$27.57 million	$23.75 million
Difference of Expected versus Actual Gross Fees	-----	-$0.11million	-$2.18 million
Estimated "Net" Debtor Ed Income Based on 2010 Net Margin (26.2%)	-----	$7.19 million	$5.65 million
Actual "Net" Fee Income	$7.88 million	$5.16 million	$0.11 million
Annual Change******	+10.8%	-34.5%	-97.9%
Difference of Estimated Versus Actual "Net" Income		**-$2.03 million**	**-$5.54 million**
"Net" Debtor Ed Income Divided by Gross Fees*******	26.2%	18.8%	0.0005%
Annual Change********	+16.0%	-28.2%	-99.9%

Sources: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*Sample data is based on the following ten Bankruptcy Education providers: Abacus, Access, Cricket, Debt Education and Certification Foundation (DECAF), Debt Helper, Incharge, Institute for Financial Literacy (IFL), Pioneer, Allen Credit, and A123 Credit Counseling; Abacus began offering debtor education courses at end of 2009,Debt Helper in late 2010, and Access in mid-2011. Hence, data includes only nine companies in 2010.

**The Bankruptcy Education revenues reported for InCharge are compiled as follows: InCharge Education Foundation Inc ($9.1 million) in 2010, InCharge Education Foundation Inc ($3.11 million) combined with InCharge Debt Solutions Inc ($3.29 million) for total of $6.40 million in 2011, and InCharge Debt Solutions Inc ($3.46 million) combined with InCharge Institute of America Inc ($1.78 million) for total of $5.24 million in 2012 as listed in the respective corporate 990 tax returns.

***Defined as a percentage of gross fee revenues of the sample of ten Debtor Education providers. If measured by percent of total bankruptcy filers, ACCESS's share is much higher (at least 20%) since its course fees are much lower than the industry average (including free and $5 courses).

****"Expected" gross revenues are based on the number of bankruptcy filers in the current year multiplied by the average course fee revenues of the prior year. For example, bankruptcy filings fell 8.4% in 2011. As a percentage of 2010 Debtor Education fee revenues ($30.10 million x 8.4%), this reduction in the sample's total course fees of $2.53 million is then subtracted from the total reported fee revenue of 2010 ($30.10 million minus $2.53 million) to yield $27.57 million. In 2011, the difference between the sample's "expected" combined revenues (without ACCESS) of $27.57 million and actual revenues of $27.46 million reflects the modest competitive impact of ACCESS during its start-up in mid-2011.

*****"Net" course fee revenues are defined as total Debtor Education fee revenues (includes fee waivers, uncollected fees) minus total expenses for Debtor Education program operations as reported by individual providers in their federal 990 corporate income tax returns. As discussed in the text, "Net Debtor Ed Income" is calculated separately for the nine nonprofit companies since the losses reported by ACCESS appear to be based on inflated expenses reported by ACCESS in its corporate 990 filing. During its first three years of operation (2010-13), ACCESS reports net operating losses: 2011 (-$0.2 million), 2012 (-$16 million), and 2013 (-$0.2 million).

****** The decline in "Net Income," between 2009 and 2010, is attributed to compositional effects of the sample rather than an absolute decline in this period. This is because Debt Helper did not offer Debtor Education courses in 2009 while Abacus began in late 2009. The only Bankruptcy Education provider that registered an absolute decline in client volume is DECAF—from 5.9 million in 2009 to 4.3 million in 2010.

*******"Net Income" margins are calculated by dividing the total net revenues (Gross Revenues minus total expenses) by the total Gross Program Revenues of the nine other Debtor Education providers.

******ACCESS impact on the "Gross" revenues of the sample of nine other Bankruptcy Education providers is defined as: (a) the difference in the Expected Gross of the total sample (prior year's gross revenues adjusted for change in number of bankruptcy filings) with the actual Gross revenues plus the Gross revenues of ACCESS. For example, the expected Gross revenues for 2012 is $23.75 million: 2011 Gross revenues of $27.96 million minus -13.5% decline in 2012 bankruptcy filing($3.7 million). The difference between "Expected" and "Actual" Gross revenues is $2.18 million ($21.57 million - $23.75 million). Together with ACCESS's 2012 Gross revenues of $2.46 million yields a total impact of $4.64 million in lost Gross revenues for the other nine nonprofit service providers of the sample in 2012. It is even higher when the price discounting pressures of ACCESS are included. For example, one ACCESS marketing campaign offered free courses for 1-3 months.
******ACCESS impact on the "Gross" revenues of the sample of nine other Bankruptcy Education providers is defined as: (a) the difference in the Expected Gross of the total sample (prior year's gross revenues adjusted for change in number of bankruptcy filings) with the actual Gross revenues plus the Gross revenues of ACCESS. For example, the expected Gross revenues of 2012 is $25.11 million ($29.03 million -13.5% decline in 2012 bankruptcy filings) minus actual 2012 Gross Revenues of $24.4 million or 0.71 million. Together with ACCESS's 2012 Gross revenues of $2.46 million yields a total impact of $3.17 in lost Gross revenues for the other nine nonprofit service providers of the sample in 2012.

Table 7

Sample of Ten Nonprofit Credit Counseling Agencies (CCAs):

Outside Counsel Legal Expenses (2010, 2011, 2012)*

NONPROFIT CCA**	YEAR 2010	YEAR 2011	YEAR 2012	TOTAL (2010 -2012)
ACCESS***	-----	$0.73 million	$0.61 million	$1.3 million
Abacus****	$0.33 million	$0.12 million	$0.04 million	$0.5 million
Cricket	$0.33 million	$0.12 million	$0.04 million	$0.5 million
Debt Helper	$0.07 million	$0.05 million	$0.06 million	$0.2 million
DECAF	$0.10 million	$0.08 million	$0.03 million	$0.2 million
Pioneer*****	$0.80 million	$0.55 million	$0.28 million	$1.6 million
Institute for Financial Literacy (IFL)	$0.73 million	$0.86 million	$0.18 million	$1.8 million
InCharge ******	$0.68 million	$0.55 million	$0.28 million	$1.5 million
Allen Credit	$0.33 million	$0.49 million	$0.48 million	$1.3 million
A123 Counseling	$0.19 million	$0.11 million	$0.14 million	$0.4 million
TOTAL:	$3.56 million	$3.66 million	$1.99 million	$9.21 million
ANNUAL AVERAGE	$356,000	$366,000	$199,000	$307,000

Sources: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*Reported legal expenses only include payments for outside legal counsel services. They do not include costs of legal services provided by staff attorneys of the nonprofits and/or their affiliates. Also, they do not include accounting/auditing expenses that are reported separately.

**Sample data is based on these ten Bankruptcy Education providers: Abacus, Access, Cricket, Debt Helper, Debt Education and Certification Foundation (DECAF), Incharge, Institute for Financial Literacy (IFL), Pioneer, Allen Credit, and A123 Credit Counseling. Note, Abacus began offering debtor education courses at end of 2009, Debt Helper in late 2010, and Access in mid-2011. Hence, data includes only nine companies in 2010.

***ACCESS reports legal expenses of $366,137 in 2013. See 990 corporate tax return. Available at http://www.guidestar.org/FinDocuments/2013/273/956/2013-273956519-0a9f9fdb-9.pdf.

****The legal expenses for Abacus do not include the legal expenses for its sister, for-profit company: Sage Financial Education. This is because it is a for-profit company and does not submit a publically available corporate tax return.

*****The legal expenses for Consolidated's "sister" for-profit Debtor Education provider (Start Fresh Today, LLC) are not included. This is because it is a for-profit company and does not submit a publically available corporate tax return.

******The reported legal expenses for InCharge are the combined total of its three "sister" nonprofit companies: InCharge Institute of America Inc., InCharge Debt Solutions, and InCharge Education Foundation Inc.

Appendix A

TOTAL Revenues, Expenses, Labor Compensation Costs:

Sample of Nonprofit Bankruptcy Education Agencies: 2012

(N=10)

	ACCESS	ABACUS*	CRICKET	DEBT HELPER**
Gross Fee Revs***	$2.46 million	$2.80 million	$3.99 million	$2.48 million
Change from 2011	+395.8%	-10.8%	-25.5%	+5.5%
TOTAL Revenues****	$2.46 million	$2.93 million	$4.37 million	$3.20 million
Exec Compensation	$134,400 (5.5%)	$494,198 (17.6%)	$474,925 (11.9%)	$157,500 (6.4%)
Management	-----	----	$50,000 (1.3%)	-----
Customer Service/Operations Staff	----	$757,300 (27.0%)	$1,627,596 (40.8%)	$1,444,311 (58.2%)
Filipino Call Center Expenses (Offshore Workers)	$591,913 (24.0%)	-----	-----	-----
Other Salary/Wages	$239,600 (9.7%)	------	-----	------
Pension/Empl Benefits	$14,500 (0.6%)	$84,374 (3.0%)	$292,326 (7.3%)	$107,535 (4.4%)
Payroll Taxes	$10,838 (0.4%)	$93,815 (3.4%)	$161,245 (4.0%)	$137,756 (5.6%)
SubTotal of EXEC, MGT, & WORKER Expenses	[40.2%]	[51.2%]	[65.3%]	[74.5%]
Office Expenses	$320,119	$40,251	$78,956	$191,719
Occupancy	$73,493	$34,310	$21,841	$198,634
SubTotal	$393,612 (16.0%)	$74,561 (2.7%)	$100,797 (2.5%)	$390,353 (15.7%)
Advertising/ Promotion	$269,423 (10.9%)	$516,974 (18.5%)	$56,830 (1.4%)	$172,964 (7.0%)
Legal	$143,104	$12,670	$78,678	$7,623
Accounting	$18,302	$12,087	$46,665	$6,125

Information Technology (IT)	$713,731 (28.9%)	-----	-----	$7,100 (0.3%)
Insurance	-----	$8,123	$13,246	$40,619
Depreciation	$729	$9,727	$89,904	$24,023
OTHER: Donations	-----	$29,000	-----	-----
Community Serv	-----	----	-----	$49,289
Phone/Telecom	0.0	$33,382	$231,856	-----
Licenses	0.0	$37,492	------	____
Professional	0.0	$87,455	------	-------
CC Bank Fees	-----	-----	$89,455	$78,478
Operating Exp	0.0	-----	$25,503	------
Other Expenses	-----	$26,326	$108,095	$64,526
Total Revenues Minus Expenses	-$161,383	+$617,541	+$528,892	+$435,759

Source: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

*Reported expense data is only for debtor education activities. Other program services such as Debt Management Plans (DMPs), Housing Counseling, and Foreclosure Prevention are reported in the revenues and expenses of Tables 2 and 3.

Appendix A
TOTAL Revenues, Expenses, Labor Compensation Costs:

Sample of Nonprofit Bankruptcy Education Agencies: 2012

(N=10)

	DECAF	INCHARGE****	IFL*****	PIONEER
Gross Fee Revs***	$3.88 million -27.0%	$5.24 million -15.9%	$1.47 million -34.8%	$1.97 million -26.2%
TOTAL Revenues	$3.91 million	$27.33 million	$1.62 million	$2.31 million
Exec Compensation	$681,633 (17.6%)	$572,816 (10.9%)	$254,927 (17.3%)	$468,375 (23.8%)
Management	-----	-----	-----	-----
Customer Service/ Operations Staff	$1,445,698 (37.3%)	$2,121,952 (40.5%)	$511,145 (34.8%)	$709,801 (36.0%)
Filipino Call Center Exp (Offshore Workers)	-----	-----	-----	____
Other Salary/Wages	-----	------	-----	------
Pension/Empl Benefits	$395,889 (10.2%)	$312,993 (6.0%)	$36,539 (2.5%)	$59,046 (3.0%)
Payroll Taxes	$145,906 (3.8%)	$194,346 (3.7%)	$66,144 (4.5%)	$92,465 (4.7%)
SubTotal of EXEC, MGT, & WORKER Expenses	[68.8%]	[61.1%]	[59.1%]	[57.8%]
Office Expenses	$511,593	$7,731	$75,222	$186,444
Occupancy	$124,069	$192,302	$65,826	$254,689
SubTotal	$141,048 (20.0%)	$200,033 (3.8%)	$141,048 (9.6%)	$441,133 (22.4%)
Advertising/ Promotion	$661,601 (17.1%)	$00.0 (0.0%)	$7,290 (5.0%)	$264,356 (13.4%)
Legal	$33,710	$31,372	$47,299	$119,922
Accounting	$19,443	6,024	$12,000	$12,137
Information Technology (IT)	$90,076 (2.3%)	$168,140 (4.9%)******	$15,697 (1.1%)	$33,127 (1.7%)
Insurance	$12,289	$46,416	$9,778	$8,801

Depreciation	$148,278	$9,734	$35,031	$110,761
OTHER: *Pro Bono* Exp	------	-----	$50,950	$39,721
Community Serv	-----	-----	-----	-----
Education Services	-----	$281,155	-----	-----
Public Awareness	-----	$346,805	-----	-----
Phone/Telecom	-----	-----	------	$14,618
CC Bank Fees	------	------	$36,042	$22,064
Internet	-----	-----	-----	$6,300
Software	-----	-----	-----	$9,916
Licenses	-----	-----	------	-----
Professional	-----	-----	------	-------
Operating Exp	-----	-----	------	------
Overhead Expenses	-----	$833,290	------	-----
Conferences Travel/	$66,311	$73,356		
Certifications	$27,468			
Membership Dues/Fees	$45,165			
Participants' Educational Materials	$85,259	-----	$337,890	-----
Other Expenses/ Miscellaneous	$13,444	$45,726	$27,924	$1,156
Total Revenues Minus Expenses	-$619,790	-$568,462	-$71,805	-$107,720

Source: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations

****InCharge reports debtor education revenues and expenses from its InCharge Education Foundation and InCharge Debt Solutions. For 2011 and 2012, the total includes combined debtor education revenues/expenses from both companies.

*****

******The reported IT expenses of $168,140 includes costs for its other financial counseling and education products and services (eg, DMPs) provided by InCharge Debt Solutions. Hence, the IT expenses are more accurately estimated as a proportion of its gross program revenues of $20.3 million in 2012 or 0.008% .

Appendix A

TOTAL Revenues, Expenses, Labor Compensation Costs:

Sample of Nonprofit Bankruptcy Education Agencies: 2012

(N=10)

	ALLEN CREDIT	A123 CREDIT
Gross Fee Revs***	$0.57 million -51.2%	$0.611 million -26.5%
TOTAL Revenues	$0.73 million	$0.611 million
Exec Compensation	$71,737 (12.6%)	$202,442 (33.1%)
Management	-----	-----
Customer Service/ Operations Staff	$196,238 (34.4%)	$246,725 (40.4%)
Filipino Call Center Expenses (Offshore Workers)	$180,057 (31.6%)	-----
Other Salary/Wages	-----	------
Pension/Empl Benefits	$18,403 (3.1%)	$54,764 (9.0%)
Payroll Taxes	$24,572 (4.4%)	$30,822 (5.1%)
SubTotal of EXEC, MGT, & WORKER Expenses	[85.8%]	[87.5%]
Office Expenses	$32,625	$5,616
Occupancy	$44,615	$25,388
SubTotal	$77,240 (13.5%)	$31,004 (5.2%)
Advertising/ Promotion	$1,580 (0.3%)	$19,374 (3.1%)
Legal	-----	-----
Accounting	$6,067	------

Information Technology (IT)	-----	------
Insurance	$20,392	$7,999
Depreciation	$100,084	------
OTHER: *Pro Bono* Exp	-----	-----
Community Serv	-----	----
Ed Services	-----	-----
Public Awareness	-----	-----
Debtor Course Fee Waivers		-----
Phone/Telecom	$22,429	$14,618
CC Bank Fees	$15,202	$22,064
Interest Charges	$60,129	-----
Internet	-----	$6,300
Software	-----	$9,916
Licenses	-----	$54,215
Professional	-----	-----
Operating Exp	------	-----
Overhead Expenses	-----	-----
Supplies	-----	-----
Contract Services	$6,006	------
Other Expenses	$5,394	$29,392
Miscellaneous	-----	------
Total Revenues Minus Expenses	-$99,553	-$107,720

Source: Annual Nonprofit (990) Corporate Income Tax returns submitted to Internal Revenue Service, www.guidestar.org/organizations.

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