

**Credit Counseling  
And the  
Consumer Bankruptcy Process:  
Win; Lose or Draw?**

Bettye J. Banks  
Senior Vice President for Education  
Consumer Credit Counseling Service of Greater Dallas, Inc.

## Introduction

The interest on consumer debt has driven the U. S. economy for years. Since the year 2000 while businesses have cut back on purchases, expansion and hiring in the U.S (not overseas), consumers have not only continued to spend, they have increased spending by astronomical levels. Non-mortgage consumer debt has reached \$2.2 trillion with an additional \$5.5 trillion in mortgage obligations, \* a fluctuating figure. Creative lending programs and products (often predatory) have created new home owners who heretofore would not have qualified for a home loan, and extremely high interest rates (often punitive), late and over limit fees have created a new class of debtor: Those who cannot repay higher and higher debts. Those debtors have limited options. They run the risk of foreclosure on those homes and must suffer the effects of years of negative credit reports causing even greater hardship.

Traditionally, only two resources have provided a line of defense and assisted those troubled debtors: the Debtor Bankruptcy Bar and Consumer Credit Counseling Service. Far from being an adversarial relationship, a significant number of the members of the Bankruptcy Bar and CCCS have enjoyed a complementary relationship. Some attorneys refer to CCCS when bankruptcy is not indicated as the best option for the debtor, and **all** CCCS offices refer troubled debtors with no viable options for a debt management program to attorneys for legal assistance. As a part of counselor training and certification we learn about the bankruptcy option. The Bar and CCCS can and should expand a cooperative relationship.

With the new creditor-driven legislation signed, sealed and delivered, the issue is not whether we should, but that we **MUST** work together on behalf of debtors. The legislation (an unfunded mandate) requires counseling of debtors, pre-bankruptcy. The traditional non-profit 501(c)(3) counseling agencies, have performed the counseling function for over fifty years nationwide under the umbrella of the National Foundation for Credit Counseling (NFCC). New agencies, not affiliated with NFCC have sprung up rapidly under a variety of names not all of which have the best interest of the troubled debtor at heart. Nor do they consider the ultimate interest of the creditors to whom they owe money. When making decisions about partnering with a counseling agency, pick your partner carefully.

We consider every event in life a financial event. Consider that the birth of a new baby for **insured** parents can generate an out-of-pocket expense of \$5,000-\$10,000, depending on the type of coverage the family has. Everything from birth to death creates a financial event. Anyone who has had to suffer the loss of a loved one can attest to that fact. For many consumers the out-of-pocket cost also means the use of plastic because too few have reserve funds to cover that cost. Unsecured debt has skyrocketed. Consumers use credit for a variety of reasons, not all of them wise. In a credit driven world, the cost of credit is a major incentive to manage credit wisely and well.

\*Federal Reserve Bank - Dallas

## **Why Consumers Use Credit.**

Because credit has become a way of life in the United States, and progressively more so in the industrialized, technologically advanced world, consumers worldwide use credit for a variety of reasons. Cash, formerly the most convenient way to do business, has become one of the most unwieldy. It carries inherent risks because it has easy-to-spend face value. Once lost, consumers cannot recover it easily. This makes credit the currency of choice.

### **ACCESSIBILITY**

Many, if not most, businesses allow the purchase of goods and services using credit. Most retailers, restaurants, airlines, car rental agencies and other businesses make the use of credit quite easy for customers. Moreover, credit allows purchases even if the consumer has no ready cash available on a given date. As consumers, we can get what we want, when we want it, **whether we have the money or not**. Credit allows for "float time" between the date we buy and the date we pay.

### **CONVENIENCE**

Some businesses make it extremely difficult to use any means other than credit to access their product or service. Most car rental agencies, airlines, and hotels/motels require a credit card to secure access. Even movie rental companies require some form of credit to access rentals. Those who travel for business reasons almost always arrange for travel services with credit. This does not mean consumers find it impossible to access these services without a credit card; it simply makes it easier and more convenient if the consumer has one.

### **EMERGENCIES**

We cannot always anticipate when an extraordinary expense will occur. Sound reason suggests, however that we should anticipate some cost outside of the norm simply because we live. Certainly we suggest a Contingency Fund to cover any extraordinary costs. A credit card account in good standing seems a reasonable way to access emergency funds. Unexpected (but not unanticipated) medical costs, car repairs, home repairs, appliance replacements or repairs happen every day. Credit can help consumers cover these needs conveniently. A person with good credit can provide for these emergency needs with a few adjustments. Good credit allows for flexibility.

### **VALIDATION OF PERSONAL CHARACTER**

One of the oldest definitions of the word credit is "One's good name." How others perceive a borrower determines the good name of that borrower. Until the growth of big consumer debt in the 1970's and 1980's, lenders limited most financial credit/lending decisions to persons they knew or about whom they had reliable second-hand (referral) knowledge. For many years having debt was not considered a sign of good character. Now the record of orderly payments and the debt-to-income ratio comprise the dominant factors in determining financial character. A person who has debt, but pays as proscribed by the creditor can be considered to have good character.

### **SOCIAL ACCEPTABILITY**

Whereas debt was formerly not considered a sign of good character and not socially acceptable, in today's world, credit makes the financial process much more convenient. Employers access credit bureau records when making hiring decisions, because financial responsibility serves as an indicator of overall responsibility. A person who has a poor financial history can expect to meet challenges on a daily basis in acquiring new credit, new

employment, or acquiring or renewing insurance. Credit is not only socially acceptable; but also is socially required.

### **ENHANCED LIFESTYLE**

While an enhanced lifestyle can be a positive factor when consumers use credit wisely, living a lifestyle they can neither afford nor support represents one of the poorest uses of our credit dollar. Certainly, the purchase of labor saving and convenience items make our lives easier, but the excess use of credit by the unwise and imprudent consumer causes concern. Charge-offs, collections and bankruptcies cause prices and interest rates to increase for us all. The unwise and imprudent use of credit often triggers many Debt Management Programs and bankruptcy filings.

### **WIN**

Good, bad or indifferent, the counseling component of the process stands. Now we must find a way to make it work.

### **Credit counseling agencies bring a host of "WIN" options to the process.**

- We are accustomed to developing full disclosure budgets for troubled debtors. We know and recognize the hidden costs, spending patterns and acquired assets that cause financial crises.
- Through our affiliation with the National Foundation for Credit Counseling, which has over fifty years of credibility. CCCS of Greater Dallas, Inc. offers over thirty years of debtor assistance in Dallas and our affiliate offices in four states; we have gained the trust and confidence of both the debtor and creditor communities.
- We are a U.S. Department of Housing and Urban Affairs approved housing counseling agency. As such, we help facilitate the homebuyer process through our first time buyer class "So You Want To Be A Home Owner", the follow-up program to help sustain homeownership "It's Your House" and ongoing counseling and education to assist troubled mortgagors in resolving delinquencies and avoiding default or foreclosure using all available loss mitigation tools.
- Within the last 15 years, most CCCS agencies have developed relationships with the three major credit repositories that allow us to access credit bureau files of counselees. This effectively eliminates the issue of un-filed debts and non-disclosure by debtors. We document and verify debts using the tri-merged credit reports.
- Counselors can look at the reports, understand what appears and assist the debtor in disputing any error on the credit report. (If it's not your client's debt, he/she doesn't have to pay it! We can help with the dispute process.) Then the counselor and the attorney can KNOW that any debt included in the bankruptcy is a valid one.
- This means both the counselor and the attorney can rest assured when certifying the debts they can do so with confidence. This process should address any due diligence issues that arise.
- Counselors can assist the debtor in filling out the required forms necessary to complete the process. Most large counseling agencies have agency counseling forms on a proprietary computer system, but can help with the "nuts and bolts" of getting forms

and schedules filled out accurately and completely, particularly the creditors mailing matrix. We often know the correct mailing address better than the consumers because of the delinquent status of accounts.

- We offer significant counseling and consumer education options to any consumer, not just the troubled debtor seeking assistance. Through our Life-Event Counseling and the ongoing education presentations and programs (see attached), we offer life-changing help and hope to debtors.
- Counselors can take the time to speak to troubled debtors that attorneys often have neither the time nor the inclination to take. It's what we do!

## **LOSE**

### **Consumer forced into chapter 13.**

Consumer story I:

When I was full-time counselor, a young couple deeply in debt because of \$248,000 in medical bills from the birth of premature twins came to me for counseling. They were little more than children themselves. He was 21 and she was 19. Barely adults but having reached the age of majority, they wanted to pay the debt because the medical staff, doctors and hospital had literally saved the lives of their babies. She could not work outside the home because she had to pay special attention to the babies, and he was making little more than minimum wage. Neither had post-secondary school degrees. Of course I referred this family to an attorney for assistance. I had contacted the hospital, and they had agreed to take anything the couple could pay, but realistically they could expect never to pay off this debt, barring some fantastic windfall. (This was before even the hope of a lottery win!)

Perhaps the new legislation would not have forced this couple into a repayment plan that they could not possibly repay, because most of his income went to serve their current living expenses, and they had no additional debt. Clearly any means test would have rendered them eligible to file. Other troubled debtors might not have been so lucky. Excessive medical debt to a family with income barely meeting area medians might have forced that family into a Chapter 13 no matter the hardship.

### **Lawyers run risk if debt not certified.**

Our ability to access, read and counsel troubled debtors on budgeting skills, general credit information, credit repair and credit reports brings another benefit to the bankruptcy bar. We are set up to take whatever time needed to assist a borrower. To quote one long-time counselor we will pursue a problem to a dead-end! We can assist the debtor to read, recognize and verify which accounts appearing on the credit report truly are debts they owe, help them to dispute any inaccuracies and with permission provide the results of any activity to the attorney of record.

### **Attorneys' perception of CCCS interfering with the client/attorney relationship.**

Nothing could be further from the truth. While our counselors have many years of experience in assisting troubled debtors in resolving financial problems, CCCS of Greater Dallas, Inc. does not employ a full time attorney in these matters. We do not now, nor have we ever,

attempted either to practice law or to give legal advice. We refer to legal assistance when indicated. The relationship between the debtor and the attorney remains firm. The sole function of the counselor is to assist the debtor by exploring options and possibilities, setting up a Debt Management Plan (DMP) if indicated, but always deferring to the legal expertise of the attorney. We do have confidentiality concerns, but with the consumers written permission can share results and outcomes with the attorney.

## **DRAW**

**The Means Test.** This could (and should) have been a continuing part of the process all along. Any consumer with the ability to pay *should pay* any just debts.

### **Consumer Story II:**

A counselor in one of our local offices, which was downstairs from a law office, received a referral from the lawyer upstairs. The reason for the referral was the ability of the debtor to pay all debts in full. The consumer had more than adequate income to service the debts. He simply did not want to pay them. He stated to the counselor, " I don't know why he sent me down here, I have no intention of paying these. If he won't do it, I'll just go to someone who will." A means test would have effectively precluded this consumer from filing an un-needed bankruptcy.

**Debtor Must Pay For Counseling.** CCCS is a non-profit agency, but we still have to pay Atmos Energy, SBC Communications and any other service provider we employ.

We don't get a utility discount because we run a non-profit operation. Any service or product we use or buy costs us money. Credit Repositories also do not forfeit any revenue because the entity pulling a report is a non-profit. Administrators, counselors and support staff, as paid employees receive salaries. While many of the services we provide are free, some tasks require a cost on our behalf that we must pass on to the service recipient. The troubled debtor must pay the attorney, anyway. The cost associated with credit counseling is minimal while the benefit is substantial. The bottom line: When you pull a credit report, you pay.

The debtor has to absorb a portion of the cost incurred in servicing the need of that debtor.

### **Mandatory Counseling**

While the new legislation requires mandatory counseling, it does **not** require mandatory Debt Management Programs. Counseling serves to determine feasibility of a DMP. The debtor still makes the decision voluntarily whether to file a chapter 13 or make use of a DMP.

Counseling agencies have existing staff to accommodate the anticipated increase in counseling demand. We are prepared to increase staff as demand increases if necessary.

## **Query**

If a debtor has already visited with a Certified Consumer Credit Counselor and the counselor has referred that debtor to legal assistance, must the debtor submit to counseling again?

Probably not. As long as the debtor has the forms generated as a result of the counseling activity and can document that the agency was unable to initiate a debt management plan, the prior counseling should suffice. I cannot speak for the court, but the reasonableness factor should contraindicate an additional counseling session.

## **Conclusion**

Credit counseling and legal counsel should not work at loggerheads. This does not promote the best interest of the debtors we both serve. Nor does it serve the interest of the legal community and the credit counseling industry. Even the interest of the credit community must be considered because anything that affects them affects us all in a credit driven society. CCCS of Greater Dallas, Inc. looks forward to working with more members of the legal community. We have a job in front of us and working together we can do it well. The issue of win/lose should not exist. The whole process should be **WIN/WIN** for all involved.

The National Foundation for Consumer Credit and its member agencies stand ready to provide professional counseling and education to facilitate the process. We take nothing away from the legal community and indeed bring significant benefit to you, your clients and the industry. Allow us to work side by side with you in the best interest of debtors throughout America.

## **Contact information:**

The National Foundation for Credit Counseling  
801 Roeder Road, Suite 900  
Silver Spring, MD 20910  
Susan Keating, Executive Director

301-589-5600            Main  
800-388-2227            Toll-free client referrals

Consumer Credit Counseling Service of Greater Dallas  
8737 King George Drive, Suite 200  
Dallas, Texas 75235-2273  
D. Christopher Dugan, President

214-638-2227            Main number  
866-881-2227            Toll-free Counseling and Education

Website:

[www.cccs.net](http://www.cccs.net)  
[education@www.cccs.net](mailto:education@www.cccs.net)  
[www.consumercollege.org](http://www.consumercollege.org)  
[www.annualcreditreport.com](http://www.annualcreditreport.com)

Respectfully Submitted:

Bettye J. Banks  
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