

TRANSCRIPT OF PROCEEDINGS

- - - -

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE COMMERCE COMMITTEE

POINT PARK UNIVERSITY
LAWRENCE HALL, THIRD FLOOR BALLROOM
212 WOOD STREET, PITTSBURGH, PENNSYLVANIA

THURSDAY, MAY 15, 2008

PUBLIC HEARING - HOUSE BILL 2294

BEFORE :

Representative Peter J. Daley, Majority Chair
Representative Mark Longietti
Representative Ted Harhai

ALSO PRESENT :

David Callen, Executive Director
John Scarpato
Destiny Zeiders
Erik Randolph

Reported by: Sarah A. Noroski

TRANSCRIPT OF PROCEEDINGS

- - - -

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NAME

PAGE

Steven Shivak

Doug Miskew

Paul Wentzel

Russell Graves

Stephen Piotrowski

Mark Guimond

- - - -

TRANSCRIPT OF PROCEEDINGS

- - - -

P R O C E E D I N G S

(10:30 o'clock a.m.)

1
2
3 MR. DALEY: Welcome to the House Commerce
4 Committee. I'll call this public hearing to order.
5 My name is Pete Daley. I am the Majority Chairman of
6 the House Commerce Committee, and this hearing today
7 will be on House Bill 2294.

8 Representative Dwight Evans, Chairman of
9 the -- as you may know or may not know is the Chairman
10 of the House Appropriations Committee, and this
11 particular piece of legislation is dealing with
12 licensure of persons providing debt management.

13 We have a very aggressive agenda, and what I
14 would like to do is go down the table starting from my
15 right to my left, and we have other members that are
16 going to be here. We're going to introduce ourselves
17 and start.

18 MR. SCARPATO: My name is John Scarpato.
19 I'm a research analyst for Representative Dick Hess,
20 the Republican Chairman for the Committee.
21 Unfortunately, Representative Hess couldn't be here.
22 He's in Arkansas. He's part of the ALEC Task Force.
23 So he's in Arkansas on business.

24 MS. ZEIDERS: I'm Destiny Zeiders, a
25 research analyst with Representative Peter Daley, the

TRANSCRIPT OF PROCEEDINGS

- - - -

1 House Commerce Committee.

2 MR. CALLEN: My name is Dave Callen. I'm
3 the Executive Director of the Committee. I'm
4 Representative Daley's Chief of Staff.

5 MR. RANDOLPH: My name is Erik Randolph,
6 and I work for State Representative Dwight Evans.

7 MR. LONGIETTI: Mark Longietti, State
8 Representative from Mercer County.

9 MR. DALEY: Our first presenter is Steven
10 Shivak. Steve, did I pronounce that right?

11 MR. SHIVAK: Close enough.

12 MR. DALEY: Shivak. I'm sorry. I've
13 seen you many times, Steve. Executive Director of
14 Pittsburgh Community Reinvestment Group. Please, we
15 have a stenographer that will be taking notes. If you
16 would take your time in your presentation, because we
17 from Western Pennsylvania, as some of you well know,
18 have a tendency to speak rather rapidly. So if we're
19 going too fast, our stenographer will let you know.

20 MR. SHIVAK: Good morning, Chairman Daley
21 and members of the House Commerce Committee, and I
22 thank you for the opportunity to provide testimony
23 regarding the Debt Management Services Act, also known
24 as House Bill 2294.

25 As the Chairman said, my name is Steve Shivak.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 I'm the Executive Director of the Pittsburgh Community
2 Reinvestment Group, otherwise known as PCRG. We are a
3 501(c)(3) nonprofit organization that serves low- to
4 moderate-income communities in Allegheny County.

5 We are here testifying this morning because
6 this bill directly correlates with our of mission of
7 neighborhood stability and equitable access to capital
8 for all people.

9 This is an important piece of legislation in
10 our opinion for the following reasons: Number one,
11 consumers take responsibility for their financial
12 situations. As foreclosures in Pennsylvania increase,
13 consumers look for alternative methods to pay their
14 mortgage and credit card bills versus abandoning
15 responsibility.

16 Second, as the economy slows and enters into a
17 recession, consumers are more likely to suffer job
18 losses that will last longer than three months. As a
19 result, consumers have a greater likelihood of falling
20 behind on their bills and becoming a victim of any
21 number of disreputable individuals claiming the
22 ability to help fix the consumer's finances.

23 And third, requiring companies to be licensed
24 by the Pennsylvania Department of Banking provides
25 confidence to the consumer that the agency they turn

TRANSCRIPT OF PROCEEDINGS

- - - -

1 to will provide the products and services necessary
2 for the consumer to get help with their financial
3 debts and responsibilities.

4 In reviewing the bill, there are only minor
5 suggestions and recommendations that I am here to make
6 this morning. Under Section 4, Nonapplicability, we
7 have a concern with exempting all the attorneys,
8 accountants, and so forth.

9 The reasons I give as an example, if an
10 attorney or accountant -- if they're not practicing in
11 the area of debt management or if they never practiced
12 in the field or haven't practiced for many years, we
13 don't know what confidence they bring to the table.

14 Instead, it would be better to identify the
15 types of attorneys, accountants, et cetera that are
16 actively practicing in that appropriate field and
17 therefore providing value.

18 Under Section 5, Application for Licensure,
19 Subheading Number 1, real simple, just add the fax
20 number. In our organization clients fax us
21 information on a regular basis. It's appropriate to
22 believe that this form of business will also be
23 utilizing a fax machine. In addition, the applicant
24 should be required to list their Employer
25 Identification Number as a method of tracking.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Under the Subheading 11 also under Application
2 for Licensure, allowing six months for employees to
3 become certified is quite generous. This is something
4 a company should be able to complete in a shorter time
5 frame and show us proof of a genuine interest in
6 helping the consumer.

7 Also, simply being certified should not be the
8 end all. How recently the person was certified should
9 be taken into consideration and thus requiring that
10 any certification more than five years old should
11 either, A, become recertified; or B, show proof of
12 continuing education courses since achieving their
13 certification.

14 Under Section 8, Renewal of License, because
15 staff turnover is a regular part of business, the
16 Department of Banking should request an updated list
17 of counselors and their level of certification at the
18 time a company applies for renewal.

19 Under Section 11, the Requirements for
20 Providing Debt Management Services, the thoroughness
21 of this section is of great comfort, that you've
22 obviously put a great amount of thought into this
23 document.

24 The only comments to add are the same for each
25 of the following areas under Subheading Number 4, and

TRANSCRIPT OF PROCEEDINGS

- - - -

1 that's Subheading Number 11, 12, 13, which are
2 disclosure, termination, and refund clause
3 respectively. We believe that all should be in bold
4 print just as item Number 10, impact on credit rating
5 clause, is in bold print. Our fear is if it isn't in
6 bold print, it is something that can be buried pretty
7 easily into a contract.

8 Subheading Number 5, lenders and credit card
9 companies are required to post deposits received on
10 the same day that payment is received or the next
11 morning if payment is received in the afternoon.
12 There is no reason why the same policy does not apply
13 to debt management companies.

14 Finally and I think a lot of what we're here
15 today is this type of service should be restricted to
16 nonprofit organizations. There are too many
17 opportunities that for-profit companies will look to
18 sell fee-for-service products to clients who are
19 already in a vulnerable position. Nonprofits are
20 looking out for the best interest of the consumer, not
21 the shareholder.

22 Overall, the language in House Bill 2294 is
23 very good, and I commend the sponsors of this bill for
24 proactively working to protect our consumers. As the
25 economy continues to slow and foreclosures continue to

TRANSCRIPT OF PROCEEDINGS

- - - -

1 increase, consumers need the additional protection
2 this bill provides without worrying about whether or
3 not a for-profit company will attempt to sell them
4 products and services they neither want nor can
5 afford.

6 At this time I can turn -- at this time I can
7 answer any questions you may have. Otherwise, I thank
8 you very much for your time.

9 MR. DALEY: Thank you, Steve. Are there
10 any questions from the table? David?

11 MR. CALLEN: Steve, thanks for coming.
12 At the very end there, the mention you made of
13 for-profit companies having other products to sell,
14 can you be a little more specific about the kinds of
15 things that you would be talking about?

16 MR. SHIVAK: Sure. Specifically, if I
17 come in to meet with you about solving or resolving
18 the debt issues that I have, what you may offer me is
19 something that instead of just consolidating the debt
20 and paying it off and working it out with the
21 companies that you have relationships with, you might
22 start trying to sell me something; an insurance, for
23 example.

24 "In addition to paying off this debt, we need
25 to sell you insurance that in case something happens

TRANSCRIPT OF PROCEEDINGS

- - - -

1 to you, here is an insurance policy that will cover
2 your debts and make it all go away."

3 That's just one example of other types of
4 products and services that a for-profit may look to
5 sell you, which then goes to provide additional
6 revenues directly towards that company.

7 MR. CALLEN: Thank you, Mr. Chairman.

8 MR. LONGIETTI: I just want to kind of
9 follow up on that a little bit. Do you envision, if
10 this is expanded for for-profit companies, that they
11 will try to direct the consumer potentially into areas
12 other than what you just mentioned; debt
13 consolidation, paying it off, or a negotiated lower
14 amount? Do you see them trying to steer people in a
15 different direction; and if so, what would that
16 direction be?

17 MR. SHIVAK: That's a great question. I
18 guess the easiest way for me to answer that is yes, I
19 do believe that, if you want to call it steering. I
20 think that what we see across all bases when it comes
21 to for-profit entities is they'll create a product
22 that may at the beginning look to be good for the
23 consumer; but ultimately it gets turned around to be
24 best for the company, and by the way it may or may not
25 be good for the consumer.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Specific examples of that, if I may be
2 allowed, in this week's National Mortgage News, the
3 top subprime lenders for 2007, if we went through the
4 list, Countrywide, Option One, First Franklin, and
5 Wells Fargo, they're all for-profit companies that
6 said they have a good product for the consumer. It
7 isn't until years later that the consumer finds out
8 that the product they're actually given benefited the
9 company and put them -- the benefit is actually more
10 given to the company versus the consumer.

11 So the example of that is the adjustable rate
12 mortgages known as 2/28s where the client is in a
13 fixed loan for a period of two years, and then it
14 adjusts. For the client for the first two years, it
15 may look like a good deal; but they don't understand
16 the ramifications after the two years. So while it
17 does provide an initial benefit to the client, long
18 term it puts them in danger.

19 So I would just use that as an example of if
20 you're looking at for-profit companies, first and
21 foremost you're looking at how the return is going to
22 benefit them long term; and in our opinion the
23 customer therefore becomes more second in terms of
24 benefit.

25 MR. LONGIETTI: Are you able to give a

TRANSCRIPT OF PROCEEDINGS

- - - -

1 specific example of a product that a for-profit
2 company might steer someone in? You mentioned the
3 analogy -- and I think it's a good analogy -- with the
4 mortgage companies that sell you an adjustable rate
5 product. Is there a corollary to that in this
6 industry that you envision?

7 MR. SHIVAK: I think some of the people
8 coming after me will give more specifics, but the one
9 that I just gave earlier to Mr. Callen would be an
10 example of the insurance, selling you insurance to
11 make sure that if something were to happen to you,
12 that your payments would still continue. But in the
13 end it's the company that's actually receiving the
14 benefit for the premiums of those, but I'm sure the
15 people coming after me will be able to provide more
16 details.

17 MR. LONGIETTI: Last question. Something
18 I struggle with from time to time. It seems to me
19 that over the years there's been a blurring between a
20 for-profit and a not-for-profit.

21 I understand some of the distinctions, but at
22 times they almost look to operate the same way. I
23 know there's some restrictions on not-for-profit, but
24 at the same time people are being highly compensated.
25 A lot of times the not-for-profit companies have

TRANSCRIPT OF PROCEEDINGS

- - - -

1 incentives.

2 Why do you think there is such a big
3 distinction between for-profit and not-for-profit
4 other than an operating circumstance?

5 MR. SHIVAK: That's a great question. I
6 think the main distinction between profit and
7 nonprofit is at the end of the day, if the nonprofit
8 is not meeting its charter and is not doing what its
9 mission is saying -- nonprofits have to rely on
10 funding from external sources and reinvest those
11 sources into products that they offer, the services
12 they offer, and sometimes in compensation too. So I
13 wouldn't let high compensation of, say, the Executive
14 Director of Red Cross --

15 (Proceedings interrupted.)

- - -

16
17 (The following proceedings were
18 transcribed from audio recording.)

19 MR. DALEY: We'll tape this recording for
20 the public so that you're aware that we'll be taking
21 this and transcribe this. So what we're going to ask
22 you to do is probably speak at this point a little
23 slower than I asked you earlier because of the
24 recording.

25 I think, Steve, we're ready to -- Erik was

TRANSCRIPT OF PROCEEDINGS

- - - -

1 going to ask some questions. That's where we were in
2 the process. By the way we are now back on schedule
3 almost.

4 MR. RANDOLPH: My first question is:
5 Does your organization currently -- does your
6 organization currently offer these debt management
7 services as it is defined by this bill?

8 MR. SHIVAK: No, we do not.

9 MR. RANDOLPH: Just to help me out, can
10 you explain to me how a nonprofit like your nonprofit,
11 where its funding comes from? I mean, do you ever
12 charge anybody fees or, I mean, how you fund it?

13 MR. SHIVAK: The majority of our funding
14 comes as a result of the Community Reinvestment Act,
15 Federal Act of 1977. Are you familiar with that so I
16 don't have to go through -- okay. So as a result of
17 that, of banks putting money back in the communities
18 they operate, about 70 -- about 68 percent of our
19 funding comes from lending institutions.

20 The balance of the funding comes from programs
21 that we offer, such as regulatory speakers series,
22 annual meetings, those type of fee-based --
23 registration, fee-based programs.

24 We also receive foundation dollars as well as
25 a couple of contracts, one with the City for managing

TRANSCRIPT OF PROCEEDINGS

- - - -

1 what's called the land reserve process for vacant or
2 blighted parcels, for neighborhoods, to get and keep
3 out of speculative hands.

4 Also we have a contract with Allegheny County
5 for some of the foreclosure prevention programs that
6 we're doing. So when we see clients in our office
7 that are currently in foreclosure and in danger of
8 losing their homes, there is no charge, no fee for
9 them to see us at all.

10 MR. RANDOLPH: Just a follow-up. Do you
11 plan to offer this service in the future; or if you do
12 have a client that looks like that they would need a
13 debt management service, do you currently refer them?

14 MR. SHIVAK: The answer to the first
15 question is no, we have no plans on offering this
16 service. PCRG has partnered with over 30
17 organizations, nonprofit organizations.

18 So when clients come to us because they're in
19 foreclosure, if they have other issues including debt
20 management, legal, just Life 101 type things, we don't
21 need to establish that expertise because we've already
22 established partnerships with others in the region
23 that do that already.

24 MR. RANDOLPH: So you would refer them?

25 MR. SHIVAK: Yes. I'm sorry. Yes.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. RANDOLPH: You would refer them to --

2 MR. SHIVAK: We create a referral process
3 based on what the need is. If we don't have that
4 expertise or need that expertise, the referral process
5 includes understanding what the expertise of each of
6 our partners are. Also, talking to them in advance
7 about their capacity to handle clients; and if so,
8 then we refer our clients to them for those specific
9 issues.

10 MR. RANDOLPH: Then if you would actually
11 make a referral to a for-profit, you're thinking
12 that -- because you had said that you would think that
13 this should not be for for-profits. But if you have a
14 client coming to you and you do not offer the service
15 but you want to make a referral to another
16 organization, you're feeling that even then you would
17 prefer referring them to a nonprofit as opposed to a
18 for-profit?

19 MR. SHIVAK: We refer to -- that's a
20 great question. On our list of agencies that we
21 partner with -- I'm calling them agencies -- not one
22 of them is a for-profit organization.

23 Just because of the capacity issues that are
24 there through our agencies, we don't feel the need to
25 go to a profit side; and again just looking at it as

TRANSCRIPT OF PROCEEDINGS

- - - -

1 the reason that the nonprofit was established was to
2 fill and hopefully make the need disappear and then
3 eventually go out of business.

4 A for-profit company is first and foremost
5 beholden to the stakeholders of that company and not
6 necessarily for the client. They've got clients.
7 That's your target market, and that's the market
8 you're going after to make a profit.

9 A nonprofit sees that target audience as the
10 market that needs to be served. So that's the main
11 difference between the profit side and the nonprofit
12 side.

13 And again, because we've got these
14 relationships established, I can't think of any
15 instance and any referrals where we actually need to
16 do a for-profit side because of the nonprofit sector
17 here in western Pennsylvania.

18 MR. RANDOLPH: Thank you.

19 MR. DALEY: John?

20 MR. SCARPATO: In Representative Evans'
21 bill, there are a laundry list of restrictions on debt
22 management services. One of them is that a licensee
23 is not allowed to offer or provide credit insurance to
24 a consumer. Is there -- so that kind of -- that was
25 the main example that you had cited.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. SHIVAK: That was the example I gave.

2 MR. SCARPATO: That was the main example
3 that you had cited. Is there something else that's
4 missing from this list that a licensee should not be
5 allowed to do or -- that would seem to take care of
6 the concern that they would sell credit insurance to
7 somebody.

8 MR. SHIVAK: Honestly, I appreciate your
9 pointing that out, because I overlooked that one.

10 (inaudible) -- side of the companies that
11 are currently more into the service. As I mentioned,
12 PCRG does not practice this side. I would say ask
13 that exact same question of the people that will
14 follow me who may think that allowing for-profit
15 companies to do this would not be a good idea. So I
16 would ask you hold that question to the people after
17 me.

18 MR. DALEY: Any other questions by any
19 members of the dais? If not, thank you very much,
20 Steve, for your attendance today. The next testifier
21 will be Doug Miskew. Doug is the senior vice
22 president for CareOne Services, Inc., Raleigh, North
23 Carolina; and also an assistant EMT that assisted in
24 the efforts a few minutes ago.

25 MR. MISKEW: Thank God the professionals

TRANSCRIPT OF PROCEEDINGS

- - - -

1 showed up. Thank you, Chairman Daley and members of
2 the Committee. My name is Doug Miskew. I'm
3 representing CareOne Services Incorporated, which is
4 based in Columbia, Maryland, headquartered in
5 Columbia, Maryland.

6 MR. DALEY: Can you pull your microphone
7 a little closer, please?

8 MR. MISKEW: Sure. Is that better? We
9 appreciate the opportunity to be here today to testify
10 in support of House Bill 2294, the Debt Management
11 Services Act.

12 CareOne is a taxable for-profit provider of
13 debt management services and operates in 36 states.
14 We cannot operate in the Commonwealth of Pennsylvania
15 because of the way the law is in the state currently.

16 This legislation would level the playing field
17 among providers but also do a very important thing by
18 providing a very sound regulatory structure in which
19 to lay the rules of the road for the industry to
20 operate.

21 We very much support that and have worked in
22 many other states as well to ensure that there is a
23 good regulatory structure that consumers know and
24 understand the service that they're getting from
25 providers, that the industry understands what they

TRANSCRIPT OF PROCEEDINGS

- - - -

1 have to do to comply with those standards so that
2 there is transparency and accountability associated
3 with the provision of this service.

4 Since 2003 CareOne has counseled over 350,000
5 people, a hundred thousand customers, moved 7 million
6 creditor payments on debt management plans between
7 debtors and creditors, sent over \$370 million in
8 payments from debtors to creditors on debt management
9 plans.

10 In all of that time, we've only had 46 folks
11 complain about our service to the Better Business
12 Bureau. So I think the track record of our service
13 and the way we approach sort of the consumer bears out
14 within those numbers.

15 So the notion that somehow just inherently
16 because we're structured as a taxable company that we
17 don't have the best interest of our customers top of
18 mind when we provide this service just doesn't really
19 fit.

20 Frankly, my belief is there are a lot of good
21 nonprofit providers out there. There's no reason
22 there can't be good for-profit providers and that tax
23 status should not be the basis on which this industry
24 is regulated in the Commonwealth.

25 At the core a debt management service is a

TRANSCRIPT OF PROCEEDINGS

- - - -

1 financial service. (inaudible) -- money from debtors
2 and distributing it to their creditors. It's a
3 process that's been around for a long time. It's been
4 mainly provided by the nonprofits set up many years
5 ago by the creditors. It's evolved as -- credit has
6 evolved; and as the evolution of how consumers utilize
7 credit, the industry has evolved along with that.

8 I think there are some distinctions. We look
9 at our customers as folks that we need to be able to
10 assist and be successful on debt management plans, and
11 that certainly does require providing counseling and
12 education in association with that.

13 Many times consumers come to us, and they
14 don't really know how they got in the situation that
15 they're in. They were managing a very high debt load
16 for a long time, and usually something happens.
17 They're temporarily out of work, they have health
18 bills that skyrocket, and they just fall out of
19 balance. They've been living on the edge for a long
20 time.

21 So part of the process of not just helping
22 them through a debt management plan and be able to pay
23 their obligations back to their creditors with
24 favorable terms that they can afford, but it's also to
25 help them understand in the long term how not to get

TRANSCRIPT OF PROCEEDINGS

- - - -

1 back in that situation again; and we take that
2 responsibility seriously in working with our
3 customers.

4 The evolution of this legislation around the
5 country has been happening for the last four, five
6 years. We really are starting to see this be
7 regulated like a financial service and put a good
8 sound structure in place to ensure that there is a
9 level playing field and that there are good rules to
10 follow. I think that's important to have here as
11 well.

12 Fee caps associated with this bill are
13 important. Today there's no fee restrictions in the
14 Commonwealth. So it's hard to know what's being
15 charged. Yeah, it's -- the IRS has standards for the
16 nonprofits, but to kind of seed the regulation of the
17 industry for the consumers here to the IRS in my view
18 is not the best approach for the citizens of the
19 Commonwealth. So adoption of this legislation would
20 be beneficial for the industry and the consumers.

21 We don't take payments from creditors. It's
22 interesting the way we serve our consumers. We charge
23 their fees directly under the fee caps that are
24 provided here. They're very similar to what the fee
25 caps are in the states that we operate. The

TRANSCRIPT OF PROCEEDINGS

- - - -

1 nonprofits to an extent get paid also by the creditors
2 based on the amount of money they return to the
3 creditors.

4 So to think about this certainly is a
5 counseling and educational process to serve these
6 citizens, but the core base of this is a financial
7 product of helping folks repay their creditors.

8 So to that extent we don't see why there
9 should be any distinction between this being a social
10 service provided by nonprofits or not be able to have
11 for-profits be in this industry when it's well
12 regulated.

13 I think there are strong proponents of this.
14 The bonding requirements, the prerequisite for
15 requiring debt management services that you have to
16 have a written agreement, you have to have gone
17 through a budgeting process, you have to have a
18 reasonable expectation that the creditors are going to
19 accept the policies and plans you're putting in place
20 for the consumers, that you have a lot of disclosures
21 about what the consumers are getting into, how this
22 may affect their credit rating, et cetera, those all
23 have to be in there. And those are important to have,
24 and those don't exist today in the Commonwealth.

25 I think we would urge you to move this

TRANSCRIPT OF PROCEEDINGS

- - - -

1 legislation forward, and we're happy to work with you
2 in any way to address any concerns that come up along
3 the way. With that I'll stop and take any questions
4 you have.

5 MR. DALEY: Thank you very much.
6 Representative Longietti?

7 MR. LONGIETTI: Thank you, Mr. Chairman.
8 I'll keep my voice up. Thank you, Mr. Chairman. The
9 analogy was drawn just a little bit ago in regard to
10 the whole subprime mortgage crisis that we're in right
11 now, and I think ticked off was a number of for-profit
12 companies that perhaps steered folks to adjustable
13 rate mortgages that now they're struggling with.

14 I guess what I'm looking for is your response
15 to that analogy and why you believe in this particular
16 area that it would be more beneficial for nonprofits
17 to enter the market in Pennsylvania.

18 MR. MISKEW: I think that you're going to
19 have a lot of good actors out there, and you may have
20 some bad actors. It doesn't matter what their tax
21 status is. In this industry historically a number of
22 the biggest abusers have been nonprofits, and a lot of
23 that has been cleaned up around the country by
24 legislation just like you're considering today.

25 And so I don't -- I just don't buy the notion

TRANSCRIPT OF PROCEEDINGS

- - - -

1 that for some reason a group of companies that are
2 for-profits would for some reason prey on the
3 customers that they have in a different way or treat
4 them in a different way than a nonprofit would.

5 I think that in many states and the
6 Commonwealth you're able to effectively regulate
7 for-profit and nonprofit education and hospitals and
8 utilities and daycare centers, and the distinction
9 about who gets to provide those services is not based
10 on tax status. It's based on the regulatory structure
11 and good examination, ensuring that there's the
12 resources there to police the industry effectively. I
13 think that's what we would like to see in place here
14 in the Commonwealth.

15 MR. LONGIETTI: Can you give us some
16 examples of other products that your company offers
17 other than debt consolidation type services? What are
18 the other products that you provide?

19 MR. MISKEW: We provide debt management
20 plan services. So along with that comes counseling
21 and education associated with the debt management
22 product that we provide. We don't provide other
23 products.

24 It's interesting that in some states -- there
25 are the prohibitions in here which are good obvious

TRANSCRIPT OF PROCEEDINGS

- - - -

1 prohibitions. You don't want to go to any provider in
2 help over the financial situation and have them try to
3 offer to make you a loan or provide you with some sort
4 of insurance. Those prohibitions are good.

5 There are other prohibitions that could be
6 enhanced in here if that's the way the Committee wants
7 to go. We would strongly support those. We offer the
8 same products that most of the nonprofits offer. They
9 sometimes offer more in terms of doing housing
10 counseling and those type of things that we don't do,
11 but we're not trying to bait and switch customers or
12 consumers.

13 There's, for better or worse, a lot of the
14 folks that need help with this debt management plan;
15 and it's a product that's been around for a long time,
16 and that's what we offer to consumers.

17 MR. LONGIETTI: Thank you, Mr. Chairman.

18 MR. DALEY: Erik Randolph?

19 MR. RANDOLPH: Thank you. My questions
20 are going to be actually similar to the one I asked
21 earlier but to you. For your organization what are
22 the main revenues that you have? Do you generate it
23 generally from the fees that you charge, and do the
24 fees sometimes go to the credit companies? Could you
25 just give me a sense?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Also do you receive CRA? Because of CRA do
2 some banks put money into you like for nonprofits or
3 foundation money? Yes or no?

4 MR. MISKEW: No. We are compensated by
5 the fees that the consumers pay for the debt
6 management services solely. We don't receive payments
7 from creditors, which is called fair share. We don't
8 receive fair share payments or other types of grants
9 associated with that.

10 Now, there's nothing wrong with those
11 approaches. In the nonprofit sector they may be
12 providing additional types of services like
13 foreclosure counseling; and so grants associated with
14 that or bankruptcy counseling payments associated with
15 that, that's fine. That's just not what we do. I
16 mean, we pay -- we're paid by the consumer for
17 providing debt management plan services based on the
18 fee structures that are allowable in the states.

19 MR. RANDOLPH: One of the criticisms that
20 was told to me that I heard is that what happens with
21 the for-profit is someone needs some help. They're in
22 over their head; and they would go before, let's say,
23 your company. And the criticism is that maybe the
24 best thing for them is not a debt management service
25 but some other kind of product or some other kind of

TRANSCRIPT OF PROCEEDINGS

- - - -

1 counseling.

2 And the criticism is that the for-profit, if
3 that's all that they do and that's how they make the
4 money and that's what they're going to put them in, so
5 if an individual comes and it's not the best thing for
6 them but they come to your organization, your
7 organization would not necessarily provide them the
8 other counseling, may not even refer them to the right
9 place. But they would just simply say, "You need this
10 service" because that's the service you provide, and I
11 just want to know what your response to that is.

12 MR. MISKEW: I would say that that's
13 certainly not characteristic of the way we approach
14 our customer relationships. It may have been in the
15 past that before there were fee caps associated with
16 this service, that there were abusers in the past that
17 were not for-profits that would charge a large
18 up-front fee. The first month's payment that's
19 supposed to go to your creditor they keep. Then
20 that's a process of just churning over as many people
21 as they can run through these things.

22 Now, if you think about it, when you have a
23 fee structure of a maximum of \$35 or \$10 per creditor,
24 if you put someone on a plan that's not going to be
25 successful, that doesn't have the resources to be able

TRANSCRIPT OF PROCEEDINGS

- - - -

1 to support that plan over time, it's not in our
2 interest. It's not in the consumer's interest either.
3 So to put someone on a plan and make \$35 off of that
4 is not a way to run a successful business in our mind
5 when these plans aren't right for them.

6 Our rate of folks that contact us that enter
7 debt management plans is a little lower than the
8 industry average. It's 27 percent or so of folks that
9 contact us a debt management plan is right for them.
10 That takes in a combination of a lot of factors; their
11 creditor mix, the resources that they're going to have
12 to be able to support the plan over time. Industry
13 average is about 30 percent, I believe, for folks that
14 contact credit counseling/debt management and would
15 qualify for a debt management plan.

16 MR. RANDOLPH: So what do you do with the
17 other 70 percent? If they come in and you tell them,
18 "This service is not for you," what happens?

19 MR. MISKEW: In some cases if they are to
20 the point where a debt management plan -- sometimes a
21 debt management plan won't be helpful to them.
22 They're paying more for the service than they're
23 getting a benefit associated with it.

24 There's a value in that education, because
25 they call looking for that. They're taken through a

TRANSCRIPT OF PROCEEDINGS

- - - -

1 counseling and budgeting process whether they go on a
2 plan or not. So they have a better understanding of
3 the situation they're in and alternatives that they
4 have.

5 Fifty-five percent of our customers are
6 homeowners. To some extent there are other options
7 than debt management plans that they can use to
8 address their unsecured debts, and we can counsel and
9 advise them on that.

10 We're not trying to push people into these
11 plans. We're trying to provide them a financial
12 service and a financial education; and if the debt
13 management plan is right for them, then we have the
14 ability to provide that service to them.

15 MR. RANDOLPH: Do you do advertising, I'm
16 assuming, so people know that you have the services
17 available?

18 MR. MISKEW: Yes, we do.

19 MR. RANDOLPH: The other question is:
20 You said that \$35 is the fee or the cap on the fee.
21 Is that what you had quoted to me for an individual
22 for each plan?

23 MR. MISKEW: Yeah. The fee structures in
24 here on page 11 of the bill, these are pretty
25 consistent with what most of the rest of the states

TRANSCRIPT OF PROCEEDINGS

- - - -

1 approach this as. Sometimes the set-up fee is a
2 little higher. Mark Guimond, who will testify later,
3 may have a better sense of this.

4 It's \$50 for this initial budgeting
5 consultation that you can -- that you can charge to a
6 consumer, and then you have a maximum of \$50 on a
7 monthly basis to manage the debt management plan; but
8 it can't exceed ten times the number of creditors in
9 the agreement for the month. So generally that's
10 going to be -- it will be lower than the \$50 maximum
11 amount.

12 MR. RANDOLPH: I guess there would be
13 enough savings for the individual that it's in their
14 best interest to pay these fees?

15 MR. MISKEW: That's correct. It's a
16 calculation of what are the creditor policies that
17 would provide the benefits to these consumers who are
18 behind on their unsecured debt. So it's matching up.

19 Generally their monthly payment in total is
20 reduced. Their total that they owe to the creditor
21 over time on these plans is less than they would if
22 they were not on these plans.

23 So the provision of the service and the cost
24 of the service, still they come out in most cases very
25 well ahead of where they would be without the debt

TRANSCRIPT OF PROCEEDINGS

- - - -

1 management plan.

2 MR. RANDOLPH: So if I would come in to
3 your office and I would say, "I'm in trouble," and you
4 look at it and you say, "You're a client. This would
5 benefit you," when do I actually end up paying?

6 I mean, do I have to pay something right away,
7 or is it only when you -- after you did all the math
8 and you say, "Look, this is what we can offer for
9 you," and then I sign it, and then I go into it? I'm
10 just trying to understand exactly when the money
11 changes hands.

12 MR. MISKEW: Yeah. That's -- it would --
13 in the latter. So to the extent that we do a budget
14 counseling session with you, debt management plan is
15 the right option for you, a calculation is made based
16 on what the creditor policies are related to your
17 situation and what concessions they're willing to
18 provide.

19 Generally the folks that we see average six
20 unsecured creditors on a plan. So you have to match
21 those up to ensure that, number one, the creditors are
22 going to take those plans; number two, that when you
23 put the requirements of each creditor within a plan,
24 you come up with a monthly amount, plus the fee that
25 you're charging them, and make a calculation that

TRANSCRIPT OF PROCEEDINGS

- - - -

1 these folks can actually afford that plan and that
2 service. Then it's billed monthly with the fees that
3 they're paying to -- that are transmitted to their
4 creditors.

5 MR. RANDOLPH: If I would -- if you would
6 tell me that, "This is not a good plan for you," do I
7 pay anything? Is there like an initial fee that you
8 charge customers, or do you only charge them when you
9 enter them into a plan?

10 MR. MISKEW: It's when they're entered
11 into a plan. So some states, I'm not quite -- I can't
12 recall how this -- some states will say you can charge
13 for counseling. You can charge a certain amount. If
14 a person enrolls in a plan, you're not able to charge
15 more than the plan or not. So you couldn't charge
16 them separately for the counseling service and then
17 charge them for enrollment in the DMP.

18 Here it looks to me like it is -- it's -- the
19 \$50 is basically the consultation set-up fee approach
20 for this. So you wouldn't charge them any more than
21 what's allowed within the statute on the plan.

22 MR. RANDOLPH: Thank you, Mr. Chairman.

23 MR. DALEY: Dave Callen?

24 MR. CALLEN: Good morning, Doug. Thank
25 you for coming. I would like to ask you a question

TRANSCRIPT OF PROCEEDINGS

- - - -

1 about the process. Is there any situation in which
2 your organization actually secures write-downs of
3 principal as opposed to repayment plans as distinct
4 from reductions in interest or anything?

5 MR. MISKEW: I think the distinction
6 you're addressing there I think is the distinction
7 between a debt management plan and debt settlement,
8 where a settlement it would be a settlement for less
9 than the principal amount.

10 These are generally reductions in -- the debt
11 management plan is generally a reduction in finance
12 charges and interest and repayment of the principal
13 over a period of months, and so we only do the debt
14 management plan services. We're not a debt settlement
15 provider.

16 MR. CALLEN: Have you had any experience
17 with those organizations? They advertise pretty
18 aggressively.

19 MR. MISKEW: They're out there. I think
20 it would be something that the Committee may want to
21 consider looking at as well, because a lot of the
22 abuses that you hear about seem to be coming on the
23 debt settlement side.

24 There are some model legislation to try to
25 regulate them as well. It's a very different process.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 It's a very -- in many ways debt settlement -- a debt
2 management plan is cooperative with the creditors.

3 The debt settlement plan is usually
4 conflicting most of the time with the creditors'
5 interests. You're negotiating a reduction in the
6 principal amount of that debt.

7 And that's where you see a lot of the abuses,
8 because there's not a lot of regulation around what a
9 person is going to be charged for the debt settlement
10 service. It's confusing. It's hard to understand,
11 because when you see the services advertised, it's
12 hard for a consumer to make a distinction between the
13 two.

14 MR. CALLEN: Thank you, Mr. Chairman.

15 MR. DALEY: Thank you. John?

16 MR. SCARPATO: One of the topics under
17 the, I guess, jurisdiction of this Committee is
18 economic development. So my question was a little
19 different. I was just wondering if this legislation
20 were enacted, do you have any idea -- would you be
21 opening bricks and mortar sites within the
22 Commonwealth, maybe a call center? Would there be any
23 job creation by your company as a result of this
24 legislation? I guess that's what --

25 MR. MISKEW: I don't know and certainly

TRANSCRIPT OF PROCEEDINGS

- - - -

1 wouldn't be able to commit to any answer on that. A
2 lot of our work is virtual. A lot of our counselors
3 are virtually located; and if it would be, it probably
4 wouldn't be a lot of jobs.

5 I don't think this legislation would be an
6 economic development driver from a job creation
7 standpoint. I think it's really more focused on a
8 consumer protection approach for the citizens that
9 need these services.

10 MR. SCARPATO: Thank you, Mr. Chairman.

11 MR. DALEY: Thank you very much, Doug,
12 for your participation in answering questions. Thank
13 you.

14 MR. MISKEW: Great. Thank you, Mr.
15 Chairman.

16 MR. DALEY: The next individual to
17 testify will be Paul Wentzel, Executive Assistant to
18 the Secretary of Banking and the Legislative Liaison
19 for the Department of Banking. Good morning, Paul.

20 MR. WENTZEL: Good morning, Mr. Chairman.
21 Can you hear me okay?

22 MR. DALEY: Yes.

23 MR. WENTZEL: Thanks. Thanks for having
24 the Department here today to discuss House Bill 2294,
25 which would set up the Debt Management Services Act.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Secretary Kaplan asked me to personally give his
2 regrets to you that he couldn't make it today, but he
3 does want to be personally involved in this
4 legislation.

5 This would create a new licensing and
6 regulatory program for the Department for companies
7 that act as intermediaries between consumers and their
8 creditors.

9 As you all know, the Department of Banking
10 regulates depository institutions; banks, savings and
11 loans, savings banks, credit unions, trust companies.
12 We have about 15,000 other licensees that we license
13 and supervise and regulate.

14 All of these licensees are lenders, except for
15 31 money transmitters and about 6 or 700 check
16 cashers, which are people that cash checks for a fee.
17 So licensing and regulation of these debt management
18 services companies would be something completely new
19 and different for us.

20 We're attempting to learn as much as we can
21 about the debt management services industry, and we
22 appreciate the opportunity to be here today to learn,
23 as you are all also.

24 The Department's currently participating in a
25 Joint State Government Commission Task Force on debt

TRANSCRIPT OF PROCEEDINGS

- - - -

1 management services, and there's a few others in the
2 room here that also are participating on that task
3 force.

4 I represent Secretary Kaplan on that
5 Committee, and it's been kind of slow going with the
6 task force as Mr. Callen knows. We've discussed it.
7 I think they're hoping to have a report and draft
8 legislation to the General Assembly by the end of the
9 year; but it might be too late at this stage, because
10 it appears this bill may be moving.

11 I do know that the Committee -- the Joint
12 State Government Commission Committee is using the
13 Uniform Debt Management Services Act as kind of a
14 basis for its deliberations. So there is a uniform
15 statute that's been put together by the Uniform
16 Commissioners on State Laws that currently exists.

17 2294 is a revised version of House Bill 1107,
18 representative Evans' original debt management sort of
19 credit counseling legislation, which has been
20 introduced -- Erik may know, but at least two or three
21 sessions it's been around. I know I've tracked it.
22 It hasn't moved, but it's been at least introduced.

23 And interesting, Mr. Chairman, Senator Brown
24 also has a bill in the Senate on this matter. I don't
25 know if you knew that. So I think it's Senate Bill

TRANSCRIPT OF PROCEEDINGS

- - - -

1 1276.

2 MR. DALEY: Yeah. We knew that.

3 MR. WENTZEL: So sort of tracking you in
4 legislative efforts. Through Mr. Callen's good
5 work -- and we thank him -- the Banking Department had
6 input into the revision of 1107 into the current House
7 Bill 2294.

8 We feel like Representative Evans' staff did a
9 really good job, and we think the bill is a much
10 stronger bill than 1107, and it gives us the tools
11 necessary to I think license and regulate this
12 industry.

13 We do have a couple of recommendations. So I
14 would like to go through them with you. With regard
15 to the surety bond, 2294 has a \$50,000 surety bond;
16 and the bond would go to the benefit of consumers who
17 would be damaged by violations by licensees.

18 The Uniform Debt Management Services Act also
19 requires a surety bond of 50,000 or more depending on
20 the financial condition, business experience of the
21 company, the history of the company, the possible risk
22 to consumers.

23 That's all good, but we'd rather recommend
24 that licensees be required to obtain and maintain --
25 obtain and maintain a penal bond in the amount of a

TRANSCRIPT OF PROCEEDINGS

- - - -

1 hundred thousand dollars. You may recall that this is
2 the bond that's required for mortgage brokers that
3 take advance fees. So we have some experience in that
4 area.

5 We found the penal bond to be preferable to
6 the surety bond for Pennsylvania consumers. Under the
7 penal bond, the damaged consumer files a complaint
8 directly with the Department of Banking, and the
9 Department of Banking files a complaint with the
10 company that has damaged -- files a complaint with the
11 Department against the company that's damaged the
12 consumer through a violation of the act. The
13 Department's required to adjudicate that matter or
14 that complaint, and the damaged consumer is reimbursed
15 for losses from the bond if appropriate.

16 What we found with the surety bond is a court
17 is required to adjudicate the matter for the aggrieved
18 consumer, and a judgment is filed if appropriate. Our
19 experience is this takes a very long time, and we've
20 seen it take years.

21 For this reason several years ago we asked the
22 General Assembly to change the bonding requirement in
23 the first mortgage act to a penal bond as opposed to
24 the surety bond, and that's worked a lot better for us
25 with consumers.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 License fees, which is always a big area for
2 us -- and I've had this conversation with Mr. Randolph
3 a few weeks ago, but 2294 increases the Department's
4 annual licensing fee from the \$200 in 1107 to \$1,000
5 for the initial licensing fee and \$5,000 for the
6 license renewal.

7 We don't think that even \$1,000 generates
8 enough revenue to operate an effective licensing and
9 regulatory program for the debt management services
10 industry.

11 We know there are eight consumer credit
12 counseling services, and we think they do debt
13 management business in Pennsylvania. We have no idea
14 how many not-for-profit debt management service
15 companies would enter the business in Pennsylvania if
16 the bill's enacted.

17 But if there was as many as 22, that would
18 only generate about \$30,000 in revenue for the
19 Department during the first year and then 15,000
20 thereafter, truly not enough for us to run an
21 effective licensing and regulatory program.

22 We license money transmitters, as I mentioned
23 earlier, which are companies that -- there's 31 of
24 those. So that's our other smaller licensing program,
25 and there's 31 of those, as I said. They issue

TRANSCRIPT OF PROCEEDINGS

- - - -

1 traveler's checks and issue money orders and transmit
2 money electronically.

3 The statutory fee for them is \$2,000, which
4 was established in 1990, hasn't been changed. We
5 tried to get it changed. We haven't been able to. So
6 we think that they're a little bit more under par with
7 the debt management companies. So we suggest an
8 initial licensing fee of \$3,000 for a debt management
9 services company with an annual renewal fee of 1,500.

10 Tangible net worth, we're suggesting the
11 Committee may want to explore a tangible net worth or
12 capital requirement for licensees, because we found
13 that it indicates that a licensee is serious about the
14 business they want to be in and has the wherewithal to
15 get involved in this business.

16 I admit that the Uniform Debt Management Act
17 does not have a capital requirement in it. However,
18 we have net worth requirements in many of our
19 licensing laws.

20 For example, mortgage bankers are required to
21 have \$250,000 in tangible net worth; mortgage loan
22 correspondents, 100,000; consumer discount companies
23 like Beneficial and Household, 75,000 in permanent
24 capital. Money transmitters who handle a lot of
25 money, they have a \$500,000 capital requirement.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 We're not suggesting even at that level but maybe some
2 level of capital requirement just so it shows that the
3 company is serious about being in this business.

4 Contract history background checks, which
5 we've discussed a lot in the mortgage industry. We
6 think the bill needs to have a little bit more
7 specific language on that so the Department can
8 receive criminal history records from federal, state,
9 local, or foreign government entities regarding the
10 applicant for licensure or licensee or a person
11 related to the business of the applicant or licensee;
12 and the cost of that is passed on to the licensee.

13 This requirement is contained in Representative
14 Daley's House Bill 2179, the mortgage licensure bill.

15 So I think we need a little bit more specific
16 language in 2294 to that effect, although one of the
17 other mortgage license reform bills contains authority
18 for the Department to do criminal history background
19 checks on most of its licensees. So that may provide
20 that authority.

21 As sort of a minor area but something that's
22 important to our staff is an annual report
23 requirement. All departmental licensed mortgage
24 lending and brokering entities are required to file an
25 annual report to the Department dealing with their

TRANSCRIPT OF PROCEEDINGS

- - - -

1 activities during the prior licensing year.

2 This report is used as an off-site examination
3 tool to monitor the activities of licensees between
4 exams. It's really useful for us. In a way it's good
5 for the industry because it indicates we may not have
6 to examine them as often as we would normally. So we
7 would just recommend that the bill be amended to
8 require an annual report of the licensees, debt
9 management service licensees.

10 Another minor area is most of our licensing
11 statutes authorize the Department to deny or restrict
12 the license of the applicant, has outstanding debt
13 with the Commonwealth, owes taxes, whatever; and we
14 think that that language should be contained in 2294.

15 Other business, there was some talk about
16 that. Some of our licensing statutes require
17 licensees to provide the Department with prior written
18 notification before conducting any other business
19 other than in the mortgage act, the mortgage loan
20 business.

21 This allows us to be aware of other activities
22 of the licensed entity or its affiliates. So we
23 recommend that House Bill 2294 contain a similar
24 provision for debt management service companies.

25 I don't know if you're following along, but I

TRANSCRIPT OF PROCEEDINGS

- - - -

1 have final adjudications in there. You can tell that
2 Secretary Kaplan is on the case, because when we were
3 going through this last evening, he told me that I
4 didn't have this quite right, that we want to be able
5 to publish more than final orders or final
6 adjudications like we do in the mortgage legislation.

7 So we'd like to be able to make public any
8 order to show cause or any action by the Department
9 against a licensee so that the public is informed. We
10 put it on our Web site. We can talk to the press
11 about it when we do have a licensee that violates the
12 statute, and we think that protects consumers and
13 makes them aware of the bad guys that are out there.

14 Violation and penalty language, we think it
15 needs to be strengthened in 2294. A person performing
16 debt management services without a license or who
17 commits an action which would be subject to licensee
18 suspension, revocation, or nonrenewal should face a
19 fine by the Department of up to \$10,000 per offense
20 instead of the \$1,000 that's in House Bill 2294.

21 That would be the same for a licensee, or
22 anyone associated with a licensed debt management
23 services company should be subject to a fine of up to
24 \$10,000 for each offense, same language as in House
25 Bill 2179, the mortgage reform legislation.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Then one sort of unusual situation that I
2 think needs a little bit more focus by the lawyers.
3 There's an act called the Credit Services Act. I
4 don't know if you're familiar with it.

5 It's kind of an unusual and little-known
6 statute that was enacted in 1992. But it defines a
7 credit organization as a person that improves a
8 consumer's credit record, history, or rating, obtains
9 an extension of credit -- that doesn't mean additional
10 money. It means extending the loan or the credit --
11 or provides related advice or assistance in this area.

12 A credit service organization is required to
13 obtain a surety bond or establish a trust account that
14 would be available to reimburse the damaged consumer.
15 This is a statute that has a whole bunch of stuff in
16 it. It has provisions on advance fee loan brokers and
17 loan brokers that fall outside of the coverage of our
18 mortgage acts and second mortgage act and consumer
19 discount company.

20 We think that this credit -- the provisions in
21 the Credit Service Act that relate to the credit
22 service organizations probably conflict with House
23 Bill 2294's provision. So if you decide to move
24 forward with House Bill 2294, you should probably
25 consider repealing those provisions in the Credit

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Services Act. That's all I have.

2 MR. DALEY: Thank you.

3 MR. WENTZEL: The bill's in pretty good
4 shape. There's been a lot of good work done on it.

5 MR. DALEY: Thank you, Paul. John?
6 David?

7 MR. CALLEN: Thanks for coming, Paul.
8 There's a lot of worthwhile stuff that will be
9 improvements to the bill. I just had one question.
10 The issue about tangible net worth, since we're
11 talking about both for-profit and nonprofit
12 organizations, I understand how that works easily with
13 a for-profit entity. I'm not sure how that would work
14 with a nonprofit entity.

15 MR. WENTZEL: Yeah, I know. That's a
16 good question. I thought you might ask that, and
17 Secretary Kaplan and I actually discussed that last
18 night. We haven't quite figured that out, whether
19 there should be -- I don't know that you could have
20 legislation that would say for-profits have to have it
21 and nonprofits don't.

22 MR. CALLEN: No. I don't think you
23 could.

24 MR. WENTZEL: I don't think -- you just
25 couldn't do that. But it's something we thought

TRANSCRIPT OF PROCEEDINGS

- - - -

1 should be discussed because it shows that you have
2 wherewithal, that you have the ability to be in this
3 business; and it works for other licensees, but I
4 frankly don't know how it would work for a nonprofit.
5 It's something to be discussed. Maybe the nonprofits
6 can tell us.

7 We wouldn't suggest that it would be at the
8 level that our other licensees have it, but just that
9 there be some money in the company -- shown that's in
10 the company to show they have wherewithal and the
11 ability to be in this business.

12 MR. CALLEN: Okay. Thank you, Mr.
13 Chairman.

14 MR. RANDOLPH: Thank you. I had the same
15 kind of question, but I have a follow-up to it for the
16 tangible net worth. Can you explain exactly how that
17 works now for the organizations that you do require
18 tangible net worth? What are you counting as tangible
19 net worth?

20 MR. WENTZEL: Cash or securities
21 normally. It's actually money that's in the company
22 that's permanent, is there, that we can see it every
23 time we go in to examine.

24 MR. RANDOLPH: So it's fairly liquid?
25 We're not looking at any hard assets of anything as

TRANSCRIPT OF PROCEEDINGS

- - - -

1 far as physical ability --

2 MR. WENTZEL: Right.

3 MR. RANDOLPH: -- or anything like that?

4 MR. WENTZEL: At one time we did; but we
5 don't now in the case of the mortgage entities,
6 because we want it to be there in case the company has
7 financial problems, that it would be available to
8 consumers possibly.

9 MR. RANDOLPH: If I understood the
10 previous testimony correctly, that they may not
11 necessarily have always a physical presence here in
12 the state, that some they would do outside of the
13 state so that they may provide -- they might provide
14 the service, but the actual debt management services
15 is being operated out of state. I'm just curious how
16 that might work that if it's in North Carolina, for
17 example --

18 (Audio recording disrupted.)

19 MR. WENTZEL: -- mortgage company or the
20 finance company, see what's going on there, look at
21 the books. We do allow companies to keep records
22 outside of the state, centralize it, and our examiners
23 go there and look at the records, where we do allow
24 them to bring them into the state to be -- if they
25 don't want us to come out and look at them, but that's

TRANSCRIPT OF PROCEEDINGS

- - - -

1 kind of an issue. So it's something we'd have to
2 think about.

3 But I don't know that -- I didn't know that
4 this business was done completely without offices in
5 the state. So that's something we just weren't
6 actually aware of. We have to learn more about that
7 and how we would handle that if the legislation
8 passes.

9 MR. DALEY: Thank you, Paul.

10 MR. WENTZEL: Okay. Thanks.

11 MR. DALEY: Thank you, Paul. Our next
12 testifier is Russell Graves. Without objection, I
13 will forgo the break that's scheduled for 11:40. If
14 anyone wishes to take a break, Sandy has indicated the
15 bathrooms are out of this room to the right stairwell
16 and the hall, go to the fourth floor, run down the
17 street, go across -- the fourth floor ladies' and
18 men's room to the right of the room at the top of the
19 stairs.

20 So our next testifier is Russell Graves.
21 Russell is the Executive Director of Consumer Credit &
22 Budget Counseling. Marmora, New Jersey?

23 MR. GRAVES: Yes. We call it the shore.
24 We're down by Atlantic City.

25 MR. DALEY: Welcome to the home of the

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Pittsburgh Penguins.

2 MR. GRAVES: Thank you very much.

3 MR. DALEY: I know you probably cheer for
4 the Flyers.

5 MR. GRAVES: I actually was born in a
6 place called New York, and I've got this affinity for
7 some of the New York teams.

8 MR. DALEY: Well, we took care of them.

9 MR. GRAVES: I know. It's good. I have
10 no problem with that. I'm Russell Graves. I'm the
11 Executive Director of Consumer Credit & Budget
12 Counseling, which is a small nonprofit agency
13 501(c)(3) in Southern New Jersey.

14 We are licensed from Maine down to Georgia.
15 We do some business with the shore birds we call them.
16 They come in from Pennsylvania with some Pennsylvania
17 residents. Our mission is to educate individuals and
18 families, to give them the credit counseling they
19 need.

20 And I'm here to support the provisions of
21 House Bill 2294, especially the ones for consumer
22 protection, the education requirement, the
23 certification requirement and opening the market to
24 allow additional providers to service the clients in
25 the Commonwealth.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 We are -- we started about ten years ago.
2 It's a family-run business. When I started, it was my
3 mother, my father, my brother, sisters. We have
4 expanded beyond that. We've got now multilingual
5 counselors.

6 All of our counselors are certified. All of
7 our customer service reps are certified. Everybody is
8 certified counselors. Our certification does require
9 additional continuing education to be continued to
10 certify.

11 We are also a HUD housing counselor and
12 including foreclosure prevention, and we know how that
13 is beginning to affect the northeast and how it's
14 affecting all of our homeowners. In fact, I go out
15 with the Department of Banking in New Jersey to do
16 homeownership preservation, foreclosure prevention,
17 delinquency prevention as well.

18 In addition, we are also approved by the U.S.
19 Department of Justice to provide bankruptcy
20 counseling. In that aspect we do the before, the
21 pre-filing counseling, and the post-filing counseling
22 pre-discharge.

23 When we do that counseling, what we do is we
24 basically look at the alternatives to bankruptcy,
25 whether it be showing the client how to do it

TRANSCRIPT OF PROCEEDINGS

- - - -

1 themselves, whether it be something like credit
2 counseling, whether it be loan modifications, going in
3 and trying to get that done, whether it be even debt
4 settlement.

5 We don't recommend debt settlement on any
6 stretch -- by any stretch of the imagination, but it
7 is out there for certain clients and may be an
8 alternative. And the Department of Justice would like
9 us to list all of the alternatives, and that's part of
10 our counseling for credit counseling as well as the
11 bankruptcy counseling.

12 We are also accredited by the Council on
13 Accreditation, which is COA, which is an accrediting
14 body which accredits all different types of nonprofit
15 agencies.

16 Under Pennsylvania law, credit counseling
17 exempt -- an agency is exempt by your law, your debt
18 pooling law, but it only -- it limits it to a specific
19 group of individuals, primarily 501(c)(3) tax-exempt
20 organizations.

21 And my concern is for the consumers in
22 Pennsylvania that the ability and the availability of
23 501(c)(3) tax-exempt organizations won't exist going
24 forward, or it may exist on a very limited basis.

25 I'm sure you've heard in the news how the IRS

TRANSCRIPT OF PROCEEDINGS

- - - -

1 has come out and went after the top 50 percent of the
2 industry. And of the top 50 percent of the industry,
3 63 agencies, they've completed 47; and they don't have
4 resolutions except on two that would allow them to
5 continue to operate as a 501(c)(3). That's a little
6 scary when the top half of the industry did not get
7 and has not yet been approved for 501(c)(3)
8 continuation.

9 Last week the IRS disclosed that it had
10 completed only 49 audits to date and only two agencies
11 survived. Okay? So it's clear that the industry is
12 going to face revocations that could leave
13 Pennsylvania without 501(c)(3)s to do this business,
14 and we need to get -- for the consumers here, we need
15 to get a level playing field. We need to bring them
16 in.

17 I would equate it to even banking. In banking
18 you have for-profit banks. You also have nonprofit
19 credit unions. You have a choice. If you want to go
20 to the credit union, you may get favorable rates. If
21 you come to a nonprofit credit counseling, you may get
22 favorable rates. It just -- it's up to the consumer
23 to decide.

24 I do applaud inclusion of the thorough review
25 of the agency's qualifications through a licensing.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 I'm a little concerned about being a nonprofit with
2 this net worth statement that I heard earlier. Our
3 net worth is very low. We're nonprofit. We reinvest
4 all of our money back into our business and reinvest
5 it to assisting clients. I think it makes sense for
6 Pennsylvania, and I applaud you. Thank you.

7 MR. DALEY: Thank you very much, Russell.
8 John?

9 MR. SCARPATO: No.

10 MR. DALEY: Destiny? Dave?

11 MR. CALLEN: Mr. Graves, thank you for
12 coming.

13 MR. GRAVES: You're welcome.

14 MR. CALLEN: A couple of questions. One,
15 I have to ask you because you opened up the door here,
16 have you been subject to the audit yet?

17 MR. GRAVES: I have -- actually the IRS
18 came in. The typical audit has taken about three
19 months for most people. Mine took a day and a half.
20 They came in. They looked at us, looked at our
21 records, looked at everything else; and they have not
22 completed or made any recommendations at all. I fully
23 intend to walk away with my 501(c)(3), and I'm sure I
24 will.

25 MR. CALLEN: Just had to ask.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. GRAVES: Absolutely.

2 MR. CALLEN: The debt settlement service,
3 how do you conduct that?

4 MR. GRAVES: Debt management service?

5 MR. CALLEN: Yeah. You say that you do
6 offer the settlement service as well as debt
7 management.

8 MR. GRAVES: No. When I say debt
9 settlement, I said that in reference to the bankruptcy
10 counseling. The U.S. Trustee, EOUST, which is the
11 Trustee's office, and Congress asked for nonprofit
12 agencies to provide budget and credit counseling.

13 And one of the tasks they gave us to do was to
14 give the clients who are trying to or who may file for
15 bankruptcy the alternatives out there. Some of the
16 alternatives, like I said, are -- bankruptcy is one
17 alternative. They already discussed that, but also
18 credit counseling is an alternative. Debt settlement
19 may be an alternative. It's not one that I recommend.
20 We do not provide it.

21 MR. CALLEN: You don't provide it. Okay.

22 MR. GRAVES: We don't provide it. Maybe
23 loan consolidation, getting a second on their
24 mortgage. We discuss those things with all of our
25 clients. We found that close to 97 percent of the

TRANSCRIPT OF PROCEEDINGS

- - - -

1 people who come to our office for bankruptcy
2 counseling continue on through to bankruptcy.

3 Whether or not those alternatives are closing
4 the barn door after the horses have left, I think
5 that's probably what it amounts to; but at least we
6 give them some ideas on the different things.

7 Post bankruptcy, after the bankruptcy, we also
8 give them the tools they need to go forward to avoid
9 bankruptcy in the future.

10 MR. CALLEN: You're in New Jersey. Does
11 New Jersey have a comparable regulatory scheme --

12 MR. GRAVES: Yes, we do.

13 MR. CALLEN: -- like what we're
14 proposing?

15 MR. GRAVES: We have two laws, one on
16 credit counseling and one on debt management providing
17 or debt pooling. Yes.

18 MR. CALLEN: Do you have any idea how
19 recent --

20 MR. GRAVES: That's a really old one.
21 There's a new one in New York. Maine recently updated
22 theirs. I'm licensed in Maine.

23 MR. CALLEN: Thank you, Mr. Chairman.

24 MR. DALEY: Representative Mark
25 Longietti?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. LONGIETTI: Thank you. Thank you for
2 your testimony.

3 MR. GRAVES: Thank you.

4 MR. LONGIETTI: Number one, just to
5 clarify, I think I heard you say that your
6 organization is nonprofit, 501(c)(3).

7 MR. GRAVES: Yes, sir.

8 MR. LONGIETTI: But at the same time you
9 do advocate the provision in this bill that would open
10 it up for for-profit companies.

11 MR. GRAVES: Absolutely, as a consumer
12 protection. As a nonprofit, I have to think of the
13 consumer first. I don't want to think of my business
14 first. I want to think of the consumer first. And
15 opening it up to availability and opening the door up
16 to everybody to provide the same service, to provide
17 the needed service I think is a good idea.

18 MR. LONGIETTI: We were having a little
19 side bar discussion here. Are you able to shed light
20 on what basis the IRS is revoking in some cases
21 501(c)(3) status of some of the nonprofits that are
22 operating in this arena?

23 MR. GRAVES: I can provide a little bit.
24 I know that Mark Guimond can provide additional
25 information as well as the representative from AADMO.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 It had to do with how debt management programs -- the
2 IRS doesn't view debt management programs themselves
3 as a nonprofit educational activity.

4 So the IRS has already said debt management
5 programs are a commercial activity. So what you're
6 trying to do is license debt management services. So
7 this is perhaps a commercial activity. That's at
8 least what the IRS has stated.

9 MR. LONGIETTI: So it sounds like in your
10 case you may be on more solid footing than some of the
11 other organizations because you offer a broader
12 educational service? For example, you talked about
13 the bankruptcy consulting.

14 MR. GRAVES: Exactly. I have very little
15 fear of losing my 501(c)(3). I am doing bankruptcy
16 counseling. I am doing credit counseling. I am doing
17 housing counseling, foreclosure counseling, all the
18 different full service.

19 As an agency we have decided that's what we
20 want to do. We don't want to just stick to debt
21 management. We want to do complete financial
22 assistance and education.

23 That's why we go out to the area high schools
24 and teach the area high schools at the freshman and
25 sophomore and senior level how to manage money at that

TRANSCRIPT OF PROCEEDINGS

- - - -

1 point.

2 MR. LONGIETTI: My background as a lawyer
3 tells me it's that educational component that is an
4 emphasis in a 501(c)(3) status.

5 MR. GRAVES: Absolutely.

6 MR. LONGIETTI: Thank you. Thank you,
7 Mr. Chairman.

8 MR. DALEY: Thank you, Representative
9 Longietti. Thank you, Mr. Graves. Thank you for
10 coming from Atlantic City.

11 MR. GRAVES: Thank you.

12 MR. DALEY: Maybe you can tell some of us
13 in Pittsburgh how to set up a casino. Our next
14 testifier is Stephen J. Piotrowski. Did I get that
15 right?

16 MR. PIOTROWSKI: Perfect.

17 MR. DALEY: Piotrowski or Piotrowski?

18 MR. PIOTROWSKI: Piotrowski.

19 MR. DALEY: Piotrowski?

20 MR. PIOTROWSKI: Yes.

21 MR. DALEY: Stephen is the President and
22 CEO of Advantage Credit Counseling Services of
23 Pittsburgh, spelled wrong, Pennsylvania.

24 MR. PIOTROWSKI: Thank you for allowing
25 me to testify regarding the bill that's in front of

TRANSCRIPT OF PROCEEDINGS

- - - -

1 the Committee. My name is Stephen J. Piotrowski, and
2 I am the President and CEO of Advantage Credit
3 Counseling Service, also known as Consumer Credit
4 Counseling Service of Western Pennsylvania.

5 I am here also on behalf of Consumer Credit
6 Counseling Service of Delaware Valley and Consumer
7 Credit Counseling Service of Northeastern
8 Pennsylvania.

9 We would like to thank you for the opportunity
10 to provide testimony on this very important
11 legislation. Our collective agencies served nearly
12 134,000 consumers last year in some capacity.

13 I, along with my colleagues from around the
14 state, feel very strongly that only nonprofit
15 organizations should be permitted to perform debt
16 management services in Pennsylvania. Therefore, I
17 feel that the bill being considered should not be
18 enacted; or if enacted, be limited to the licensing of
19 nonprofit corporations.

20 Advantage CCS was established in 1968 as a
21 nonprofit corporation. For the past 40 years it has
22 provided comprehensive budget and credit counseling
23 services to individuals and families of western and
24 central Pennsylvania who are in a financial crisis at
25 our local offices and over the phone.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 The agency's counterparts in northeastern and
2 eastern Pennsylvania also have served consumers for
3 extended periods and provide similar services.

4 As you consider whether this legislation and
5 the inclusion of for-profit organizations is a
6 positive step for Pennsylvania residents, I believe
7 it's important that you understand more about the
8 consumers who typically seek credit counseling and
9 their financial conditions.

10 The average consumer seeking help has
11 household income of \$40,900 and owes \$24,200 to nine
12 different credit card companies or other secured
13 creditors. Payments on these accounts alone total
14 about 18 percent of their gross monthly income.

15 Many are behind with their payments and
16 getting continual collection calls. Late and
17 over-limit fees add as much as \$80 to each credit card
18 balance per month. Interest rates of 25 percent or
19 more are common.

20 In addition to being overextended with credit,
21 many of these consumers' financial situations are
22 compounded by divorce or separation, medical problems,
23 addictions to alcohol, gambling, or drugs or reduced
24 income due to unemployment or underemployment.

25 These consumers often make poor financial

TRANSCRIPT OF PROCEEDINGS

- - - -

1 decisions because they lack financial education and
2 often don't understand the consequences of their
3 choices until it's too late.

4 For instance, it is not uncommon to see
5 consumers in financial crisis paying their credit
6 cards and letting their mortgage or utilities go. Why
7 would they do that? Because they are getting
8 bombarded both at home and at work with collection
9 calls from the credit card companies.

10 In short, many pay whoever yells the loudest
11 and puts the most pressure on them. Needless to say,
12 many of these consumers are desperate and therefore
13 vulnerable.

14 As you consider this legislation, I think it's
15 important that you understand how our collective
16 agencies serve these consumers. First and foremost,
17 we serve every consumer that contacts us. This
18 includes answering frequent calls from consumers who
19 have questions about things such as their credit
20 report and score, providing referrals to other sources
21 such as energy assistance and food programs, and
22 providing budget and credit counseling sessions.

23 Our agencies also provide numerous education
24 programs to the consumers who utilize our services as
25 well as to the public at large. Last year our

TRANSCRIPT OF PROCEEDINGS

- - - -

1 collective agencies' Web sites were visited more than
2 257,000 times.

3 Consumers who participate in the budgeting and
4 credit counseling sessions provided by our collective
5 agencies learn about the various options they have for
6 dealing with their debts. Additionally, they learn
7 how to employ elementary financial techniques and are
8 encouraged to make wiser financial choices.

9 During the counseling session, a certified
10 counselor works with the client to develop a
11 comprehensive income and expense statement. This
12 analysis is used as the basis for making
13 recommendations to the client that best serves his or
14 her financial needs.

15 Recommendations may include increasing income
16 or decreasing expenses; applying for state and federal
17 mortgage rescue loans; utilizing other community,
18 state, and national resources; seeking legal counsel;
19 or utilizing the agency's debt management program.

20 In addition to recommendations, the session
21 includes education on the recommendations that are
22 made, such as ways to increase income or decrease
23 expenses, the pros and cons of using home equity to
24 resolve a financial problem, and specific referrals to
25 other nonprofit or government resources.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 When appropriate the agency may also recommend
2 a client to consider an agency-sponsored debt
3 management program. This program includes all of the
4 client's unsecured creditors' accounts. The plan is
5 managed by the credit counseling agency. Most
6 national, regional, and local credit granting
7 organizations agree to participate in this plan.

8 These creditors typically grant their
9 customers concessions which include ending collection
10 activity, re-aging their delinquent customer accounts
11 after receiving three consecutive payments through the
12 plan, waiving late and over-limit fees, and reducing
13 the interest rate on the account.

14 This plan is designed to pay the balances owed
15 to participating creditors within 60 months. The
16 consumer makes one payment to the credit counseling
17 agency, which in turn distributes the payments to the
18 participating creditors.

19 Last year our combined agencies provided
20 comprehensive holistic credit counseling to 35,621
21 consumers. Of that group 3,355 consumers enrolled
22 into a debt management plan.

23 Our agencies also employ the latest technology
24 standards and operations to benefit our clients and
25 consumers. This includes automatic fund withdrawal

TRANSCRIPT OF PROCEEDINGS

- - - -

1 from clients' checking accounts, electronic
2 disbursements to creditors, toll-free phone numbers,
3 and client access to their account information through
4 an on-line VeriSign secured client service center.
5 Our agencies continually upgrade our technology to
6 provide our clients with the most efficient service
7 possible.

8 As you all know, there are major differences
9 between nonprofit organizations and for-profit
10 enterprises. For-profit enterprises must answer to
11 their owners and are primarily motivated to make a
12 profit for their owners. They are interested in
13 serving those of your constituents who can pay their
14 fees.

15 Nonprofits are intended to first and foremost
16 benefit the public interest. Nonprofit agencies such
17 as ours put the consumer, your constituent, first.
18 Last year more than 50 percent of the people our
19 agencies served collectively received the help free of
20 charge.

21 As you consider this legislation, I think it's
22 important for you to consider additional differences
23 between what a nonprofit and for-profit credit
24 counseling agency would offer the consumer they serve.

25 First our agencies do not charge any fee for

TRANSCRIPT OF PROCEEDINGS

- - - -

1 credit counseling, and we know that it costs our
2 agencies more than \$50 to provide this counseling
3 service to each client.

4 It is unlikely that a for-profit agency would
5 spend the necessary time with each consumer to develop
6 a comprehensive understanding of their financial
7 problems or to develop solutions specifically tailored
8 to that individual for \$50 as provided in the proposed
9 legislation.

10 Therefore, the for-profit entity would likely
11 structure its business around revenue generators such
12 as a debt management plan, fees for referrals to
13 mortgage brokers, and debt settlement.

14 A debt management plan is not always in the
15 consumers' best interest. The current housing crisis
16 demonstrates well that home equity loans used to pay
17 unsecured debts are rarely in consumers' best
18 interest. Also a debt settlement plan can negatively
19 impact a consumer's credit report for years.

20 The question I ask you to consider is: Will a
21 for-profit agency, driven to make a profit on every
22 client it serves, act in the client's best interest
23 even if it means making nothing or in fact losing
24 money servicing that person?

25 While the proposed legislation states that a

TRANSCRIPT OF PROCEEDINGS

- - - -

1 financial analysis must be conducted that includes a
2 determination that the consumer will benefit from the
3 debt management services, the fact that many creditors
4 grant the concession of reducing the interest rates is
5 a benefit. Therefore, it could be argued that a debt
6 management plan is always a benefit, but is it in the
7 best interest of the client?

8 Completing an income and expense analysis
9 solely for the purpose of determining whether a debt
10 management plan is a benefit fails to address the root
11 cause of the consumer's financial problem and fails to
12 deliver any meaningful solutions if the plan isn't
13 viable.

14 In the 1990s some unscrupulous nonprofit
15 organizations entered into the credit counseling
16 industry with a for-profit motive. After countless
17 consumer complaints to State Attorney Generals, the
18 Federal Trade Commission, and federal legislators, the
19 IRS began investigations for the purpose of
20 eliminating essentially for-profit entities operating
21 under the guise of a 501(c)(3) credit counseling
22 agency.

23 So you may better understand my concerns, I
24 would like to read some passages from the Executive
25 Summary of the U.S. Permanent Subcommittee on

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Investigations titled, "Profiteering in a Nonprofit
2 Industry: Abusive Practices in Credit Counseling."

3 The summary concludes, "The social need for
4 better financial education is one of the primary
5 reasons why credit counseling has long been recognized
6 as a charitable and educational activity worthy of
7 tax-exempt status.

8 "Over the past several years however, credit
9 counseling has undergone significant changes. The
10 activities of some new entrants have resulted in
11 increasing consumer complaints about excessive fees,
12 nonexistent education, poor service, and generally
13 being left in worse debt than when they initiated
14 their debt management program."

15 The investigation included testimony from two
16 former counselors of Ameridebt and Cambridge. Both
17 testified about the sales techniques they were
18 instructed to practice in order to convince
19 debt-ridden consumers to sign on to a debt management
20 plan rather than offering financial education and
21 counseling.

22 This type of abuse was what prompted the IRS
23 to conduct investigations as well. The IRS found that
24 many new entries into the credit counseling industry
25 mirrored the actions of Ameridebt and Cambridge.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 These agencies were selling debt management plans with
2 little or no counseling and education being provided
3 to consumers.

4 The IRS provided Congress with input for
5 enforceable changes to the IRS code for credit
6 counseling organizations. Nonprofit credit counseling
7 agencies are required to adhere to strict IRS
8 regulations.

9 Federal legislation recently overhauled the
10 IRS code through what is known as H.R. 4. These
11 requirements now ensure that the for-profit motive is
12 not the driver to put a client into a debt management
13 plan.

14 Nonprofit credit counseling agencies must
15 abide by the following rules: Provide credit
16 counseling tailored to the needs and circumstances of
17 the client; may not make loans to its clients other
18 than loans with no fees or interest; may not negotiate
19 loans on behalf of clients; may not engage in credit
20 repair activities or charge a separate fee for credit
21 repair activities outside of what is part of credit
22 counseling services.

23 May not refuse to provide credit counseling
24 services due to a consumer's inability to pay or a
25 consumer's ineligibility or unwillingness to enroll

TRANSCRIPT OF PROCEEDINGS

- - - -

1 into a debt management plan; may only charge
2 reasonable fees for service; may not, unless allowed
3 by state law, base fees on a percentage of a client's
4 debt, DMP payments, or savings from enrolling in a
5 DMP.

6 Must have a governing body that represents the
7 broad interests of the public, has no more than 20
8 percent representation by employees of the agency or
9 others benefiting from the agency's activities not
10 including creditors, and has no more than 49 percent
11 representation of individuals who may benefit
12 financially from the agency's activities. This is a
13 very important part of what we're trying to present
14 today.

15 May not owe more than 35 percent interest in a
16 for-profit trade or business that lends money, repairs
17 credit, provides DMP services, or provides payment
18 processing or similar services; may not pay or receive
19 referral fees and may not solicit contributions from
20 clients during the initial session or while the client
21 is receiving services, again a very important
22 restriction.

23 We have provided to you documents that support
24 all of these changes to the IRS code for an
25 organization to be a legitimate credit counseling

TRANSCRIPT OF PROCEEDINGS

- - - -

1 agency/debt management provider with the true focus on
2 the consumer first.

3 The documents are the IRS regulation 501(q);
4 the report by the Permanent Subcommittee on
5 Investigations titled, "Profiteering in a Nonprofit
6 Industry: Abusive Practices in Credit Counseling";
7 the federal legislation outlining the rules for good
8 credit counseling agencies; the technical explanation
9 of H.R. 4; the Credit Counseling Compliance project;
10 and the IRS legal description of a credit counseling
11 agency that primarily furthers educational purposes.

12 As you read in this reference material, the
13 federal legislation was enacted in response to the
14 unscrupulous actions of for-profit companies fronting
15 as nonprofits. The IRS continues to work to revoke
16 the 501(c)(3) status of organizations that operate as
17 for-profit entities under the mask of nonprofits.

18 As I stated earlier, Advantage CCS and its two
19 Pennsylvania counterparts provide counseling based on
20 clients' specific needs. Counseling services are
21 free. A typical counseling session takes between 60
22 and 90 minutes to complete.

23 During the session counselors work with
24 clients to get a picture of their total financial
25 situation. This includes determining income and

TRANSCRIPT OF PROCEEDINGS

- - - -

1 expenses, secured and unsecured debts, and assets and
2 liabilities.

3 First counselors ask probing questions to
4 determine the type and extent of the financial
5 problem. They then determine gross and net monthly
6 income as well as monthly expenses.

7 For the majority of the clients, this is the
8 first time they have given much thought to what they
9 spend on meals out, gifts, lottery tickets, and other
10 variable expenses.

11 Counselors pull and review credit reports or
12 clients' statements to determine liabilities. After
13 comparing monthly income with expenses and monthly
14 debt obligations, it's not uncommon for clients to
15 find they have a shortfall.

16 During the second phase of the counseling
17 session, counselors will assist individuals in
18 developing a balanced monthly spending plan.
19 Counselors recommend ways to increase income, cut back
20 on expenses, and even restructure some of the debts.

21 Counseling sessions encompass some or all of
22 the following depending on each client's specific
23 situation: A, determination of nature and extent of
24 financial problem. B, development of an income and
25 expense plan. C, education on basic money management

TRANSCRIPT OF PROCEEDINGS

- - - -

1 techniques and how to live within one's means. D,
2 options and alternatives for dealing with a mortgage,
3 utility, and/or property tax delinquency.

4 E, options and alternatives for dealing with
5 delinquencies on student loans, car loans, and/or
6 income taxes. F, options and alternatives for dealing
7 with unsecured debts. G, education on the
8 consequences of not prioritizing housing expenses and
9 other essential obligations.

10 H, intervention with a client's mortgage
11 lender, landlord, or utility company as necessary in
12 order to prevent foreclosure, eviction, or utility
13 termination.

14 I, intervention with a client's unsecured
15 creditors through a formal debt management program
16 when appropriate in order to provide structure and a
17 means of getting out of debt within a five-year time
18 period. And finally, referrals to local, state,
19 national resources that may further assist the client
20 with housing, financial, and general well-being
21 issues.

22 At the conclusion of every counseling session,
23 clients receive a detailed income and expense analysis
24 as well as a comprehensive written action plan that
25 outlines steps that they may take to regain control of

TRANSCRIPT OF PROCEEDINGS

- - - -

1 their finances and make better informed financial
2 decisions.

3 Can and will a for-profit credit counseling
4 agency do all of this, or will they use forceful sales
5 tactics to compel a consumer into enrolling into a
6 debt management plan; or because a for-profit is not
7 required to follow the same rules as a nonprofit, will
8 they get a referral fee for clients they send to a
9 mortgage broker; or will they get a referral fee for
10 recommending a debt settlement company or providing
11 debt settlement themselves?

12 Consumers who are in a financial crisis are
13 very vulnerable and receptive to anything they're
14 promised to alleviate the emotional turmoil they are
15 experiencing.

16 To truly serve these consumers' needs, an
17 organization's mission and focus must be on counseling
18 and education. For a for-profit credit counseling
19 organization to stay in business, its mission and
20 focus must be on selling every client a product or
21 service that may or may not be in their best interest.

22 The current mortgage foreclosure crisis
23 clearly demonstrates that many consumers lack the
24 financial literacy skills to make wise financial
25 decisions. The foreclosure crisis also demonstrates

TRANSCRIPT OF PROCEEDINGS

- - - -

1 that many respected mortgage companies were willing
2 and able to sell these consumers products they knew
3 were not in their best interest.

4 Pennsylvania has regulated the work of debt
5 management services through its debt pooling statutes
6 since at least the late 1930s. Currently this statute
7 is located at Title 18, Section 7312.

8 It was most recently amended last December to
9 further define who could conduct the business of debt
10 pooling. Only lawyers, better business bureaus, legal
11 aid societies, welfare agencies who act without
12 compensation or profit, and organizations exempt from
13 taxation under 501(c)(3) of the Internal Revenue Code
14 can legally conduct debt pooling in Pennsylvania.

15 As stated prior, the federal government
16 regulates the credit counseling industry by denying
17 tax exemption to nonprofit counseling service agencies
18 who fail to comply with very strict requirements
19 designed to stop abuse among credit counseling
20 agencies, the most significant abuse being the private
21 benefit that is contrary to the public benefit
22 resulting from the credit counseling agency's
23 operations.

24 This proposed legislation would effectively
25 repeal the current debt pooling statute and open the

TRANSCRIPT OF PROCEEDINGS

- - - -

1 doors to rampant abuse among for-profit businesses in
2 the credit counseling industry.

3 Any business that submits a completed
4 application for license under this act, submits the
5 \$1,000 filing fee, and otherwise meets the
6 requirements for licensure which are not onerous will
7 be taking the money of consumers free of the
8 additional restrictions that are placed on nonprofit
9 organizations exempt from the tax under 501(q).

10 Our counselors have heard from many consumers
11 who have been taken advantage of by for-profit
12 companies. These consumers have told our counselors
13 that their first two or three payments went to the
14 company, not towards paying down their debt. Our
15 counselors say these payments can total anywhere from
16 \$300 to \$2,500.

17 In the meantime the consumers' accounts go
18 delinquent, and some are sold to collection agencies.
19 Our counselors say by the time these consumers contact
20 our agency for help, the situation is too far gone;
21 and consumers end up working with attorneys, losing
22 property, or filing for bankruptcy.

23 Competition is a healthy force in the
24 marketplace. As with so many areas of commerce and
25 services that each of you deal with in your capacity

TRANSCRIPT OF PROCEEDINGS

- - - -

1 as State Representatives, I believe the key to good
2 competition is to have an equal playing field. One
3 competitor should not be more regulated than the other
4 player.

5 Currently this bill provides an unfair
6 advantage to the for-profit debt management providers.
7 We advise that you consider holding for-profit
8 companies to the same standards set forth by the IRS
9 that nonprofit credit counseling agencies operate
10 under. These standards are absent from the
11 legislation.

12 Finally, as you consider this bill and the
13 information that I have provided today, there is one
14 more area that the bill must address. Who will
15 enforce compliance and how?

16 To ensure that there is an equal playing field
17 for nonprofits and for-profits, strong compliance
18 measures must be enacted. For nonprofit agencies, the
19 compliance and enforcement exists with the IRS.

20 The next question is: Who will pay for the
21 enforcement of the new regulations? Is it fair of you
22 to ask existing nonprofits to pay more than they're
23 paying today to allow for-profits to be legal in
24 Pennsylvania considering the way we provide to the
25 truly needy and the poor of Pennsylvania?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 In summary, I, along with my colleagues, very
2 strongly believe and therefore urge the legislature
3 that only nonprofit organizations should be permitted
4 to do debt pooling and provide debt management
5 services and credit counseling services in
6 Pennsylvania. Thank you.

7 MR. DALEY: Thank you, Mr. Piotrowski. I
8 would like to acknowledge the presence of
9 Representative Ted Harhai from Westmoreland and
10 Fayette Counties who has joined us. Questions?
11 Representative Longietti?

12 MR. LONGIETTI: Thank you, Mr. Chairman.
13 Thank you for your testimony. Appreciate it.

14 MR. PIOTROWSKI: Thank you.

15 MR. LONGIETTI: Couple questions. One,
16 towards the end of your remarks you talked about some
17 of these for-profit companies that can charge anywhere
18 from 300 the \$2,500 and take some of the initial
19 payments.

20 Tell me if I'm wrong, but under this bill that
21 would be restricted, would it not, now to -- I think
22 we heard testimony earlier from Mr. Wentzel that in
23 the aggregate it would be \$50 a month, \$10 per
24 creditor. Am I understanding that correctly from your
25 perspective?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. PIOTROWSKI: May I elaborate a
2 little?

3 MR. LONGIETTI: Sure.

4 MR. PIOTROWSKI: The debt management
5 program is a byproduct of the complete counseling
6 process. When this industry started many years ago,
7 the credit counseling is the core of the purpose of
8 the creditors offering the debt management plan.

9 The creditors do not expect the debt
10 management program to be offered to more than those
11 that truly benefit from that program. It was removed
12 as a separate product by the nonprofits acting as
13 for-profits back in the '90s, and it has now moved in
14 to being a product that people want to do exclusively,
15 as you heard earlier.

16 Now, there's more to this regarding referrals,
17 because it's okay to have a debt management plan. But
18 when you're in a for-profit mode -- if I was running
19 this agency as a for-profit entity, my whole objective
20 would be to find two things.

21 The first one would be to find people who have
22 an ability to pay. In essence they're overtop, but
23 they have a job; and they have sufficient money that
24 if we could do something with, they're going to pay.
25 So the first thing I'm going to look at is can they go

TRANSCRIPT OF PROCEEDINGS

- - - -

1 in a debt management plan.

2 So I'm not even going to look at their secured
3 debts and those things. First thing I'm going to look
4 at is their unsecured debts and say, "If I give them a
5 plan, does it make them -- will they have interest in
6 coming with my organization?" So I can do that under
7 the regulations under this bill right now.

8 But the important thing is that I have a lead
9 now, and there's other products and services that
10 for-profits can refer organizations to and get a fee
11 back for referral that we cannot do.

12 Nonprofits are restricted under IRS
13 regulations under 501(q) that we cannot get referral
14 fees back. So even though we can only put 28 percent
15 or less of the people on to a debt management plan,
16 those that we cannot help but get can get help
17 elsewhere, we turn them to the Yellow Pages.

18 We turn them to local organizations, nonprofit
19 organizations that can refer them to other
20 organizations. So we're not in the business of trying
21 to make a referral fee off of people who do not
22 qualify for debt management plans. So there's a web
23 effect.

24 If you go back and read the Ameridebt and the
25 Cambridge information, you will see that for-profits

TRANSCRIPT OF PROCEEDINGS

- - - -

1 set up a web effect. I'm not saying that there's
2 anything wrong with doing that, because in many
3 businesses referral fees are appropriate. You make
4 the money. You pay the taxes.

5 But what I'm saying is in vulnerable
6 situations where the debt management plan was a
7 byproduct of the complete counseling session, I think
8 it's going to put the Pennsylvania folks at risk if we
9 break it out of the nonprofit world and make it a
10 for-profit commodity. That's my --

11 MR. LONGIETTI: I understand that point.
12 You made that point earlier about your view on
13 referral fees. But at least the fees that are charged
14 for debt management, at least in this particular bill
15 does it not take care of that particular concern
16 because it limits what those fees can be?

17 MR. PIOTROWSKI: That's true. I agree
18 with you on that. It does.

19 MR. LONGIETTI: What about -- we heard
20 earlier, the gentleman that represents the company
21 based in Raleigh, North Carolina, I thought he
22 testified that only about 27 percent of the folks that
23 contact his company do they actually put into a debt
24 management program.

25 How do you respond to that? Because if I'm

TRANSCRIPT OF PROCEEDINGS

- - - -

1 hearing you correctly, one of the concerns is, well,
2 these for-profit companies, as long as these people
3 have a job and they have some money, they're going to
4 pretty much direct them into this product and not
5 provide them with other services that they ought to.
6 Their figures, 70 percent of the people they're
7 turning away and saying, "No, this isn't for you."

8 MR. PIOTROWSKI: Again, I can't speak for
9 the gentleman. All I can say is they're not putting
10 them into a debt management plan. I don't know what
11 else they're doing with them. I don't know what kind
12 of referral structures they have, what kind of other
13 businesses that they may have an ownership in. I
14 don't know any of that.

15 All I know is that from my perspective, a
16 for-profit has an opportunity to set up many different
17 referral networks that the IRS has restricted
18 nonprofits, because the IRS has viewed the credit
19 counseling/debt management to be a public service and
20 that it should stay under the 501(c)(3) if we're tax
21 exempt provided we do it according to these additional
22 requirements.

23 So the IRS has looked at this process, and
24 they have said, "If you're not complying based upon
25 these requirements," -- if you don't have a board --

TRANSCRIPT OF PROCEEDINGS

- - - -

1 my organization has a board of 24. Twenty-three of
2 those folks are community folks that do this free, as
3 a volunteer. They oversee what I do. I'm watched
4 very closely.

5 So I have public interest. The organization's
6 mission is public interest. So we are restricted. We
7 cannot refer people for a fee to any other
8 organization. For-profits are open to that. They can
9 do that as long as they pay taxes on what they earn.

10 The big question is: Is that referral in the
11 best interest of the individual, and how would you
12 folks regulate that? I don't know. I know the IRS
13 does it by saying, "If we see that happening, we're
14 going to revoke your 501(c)(3) status."

15 MR. LONGIETTI: Sure, and I understand
16 your point. I respect what your agency does. I think
17 it's very valuable. I'm a strong believer in
18 financial literacy and trying to educate people so
19 that they don't fall into these traps in the future.

20 But isn't the IRS -- what they're really
21 saying is they're not a regulator of for-profit
22 businesses necessarily, and they're just saying,
23 "Look, if you want the advantage of a 501(c)(3)
24 status, then these are the requirements that you're
25 going to have to follow, because we just don't hand

TRANSCRIPT OF PROCEEDINGS

- - - -

1 out 501(c)(3) tax-exempt status to anyone. There are
2 rules and regulations on who we hand that out to."

3 I guess the for-profit businesses have certain
4 advantages, and the nonprofit businesses have certain
5 advantages by virtue of the 501(c)(3) status, and
6 they're different in that regard.

7 I'm not sure -- I haven't made up my mind, but
8 what this bill would do is open it up so that both can
9 compete in the marketplace. One has a certain
10 advantage on the one hand. One has a certain
11 advantage on the other hand.

12 I guess part of my question is: How do you
13 respond to your predecessor that testified who felt
14 that if this isn't opened up, there might not be
15 enough players in the marketplace because of the
16 stringent rules that the IRS is imposing on the
17 not-for-profits?

18 MR. PIOTROWSKI: I would look at -- and I
19 think you asked the question earlier of the fellow
20 from New Jersey -- what's causing the IRS to revoke
21 the 501(c)(3)s? What's the driving force behind
22 what's causing the 501(c)(3)s to be revoked?

23 Now, you have to look -- I'm sorry. You need
24 to look at the 501(c)(3) as the total entity as to
25 what it does. It's an educational driven

TRANSCRIPT OF PROCEEDINGS

- - - -

1 organization. So education is the core of what we do.

2 There's multiple things we do under the
3 education umbrella. We do community education. We do
4 lunch educations for workers regarding financial
5 literacy. We do credit --

6 (Audio recording disrupted.)

7 MR. PIOTROWSKI: -- is on the client, not
8 on the betterment of my income or anyone's income in
9 the organization or any of the directors, board of
10 directors of the organization. So the focus is on
11 serving the client first and foremost, agency second.

12 Clear, understanding advertisements. If we
13 advertise our services, it's clear what we do. We do
14 not go for individuals that owe more than \$2,000 to
15 credit card companies. We do not go to individuals
16 that owe more then \$10,000 to credit card companies.
17 We advertise our service as open to anyone who has a
18 financial crisis in their world. Please call us
19 because that client is first.

20 What we're trying to regulate here today is a
21 byproduct of the true purpose of what we're talking
22 about, and that's credit counseling and financial
23 education.

24 Debt management service is a byproduct of
25 that. As we stated, maybe a third or less of the

TRANSCRIPT OF PROCEEDINGS

- - - -

1 people fit into that. But if I advertise and I say,
2 "Are the creditors calling you? Are you frustrated
3 with the calls? Are you getting them at work? I can
4 provide you help. Call me. In 15 minutes I will tell
5 you whether I can help you or not." And at the very
6 end I say, "Only call me if you owe more than \$2,000."

7 You won't hear that in any of our
8 advertisements, because that's not our purpose. So
9 when a for-profit comes into the business, they're
10 focusing in on only the people, as I stated in my
11 testimony, who are able to pay for their services.

12 So I can't speak for anyone else that
13 presented today. I can only speak for what I do and
14 what I've read and seen and what the IRS has found.
15 So here we are today. Many organizations are losing
16 their 501(c)(3) status. They are here today to say to
17 you they're no different than we are. They can do the
18 same thing we do, but the IRS is saying, "But you
19 can't do it under the nonprofit status because we
20 believe it's really not in the best interest to hold
21 that 501(c)(3)." So, I mean, that's -- I think to
22 encompass both is important.

23 MR. LONGIETTI: Thank you, Mr. Chairman.
24 Thank you.

25 MR. DALEY: Erik, do you have a question?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. RANDOLPH: I do. Just to be clear,
2 you currently now offer debt management services as
3 defined by the bill to your clients?

4 MR. PIOTROWSKI: Yes, we do.

5 MR. RANDOLPH: And do you charge a fee
6 currently for that service?

7 MR. PIOTROWSKI: We do charge a fee for
8 those who either -- wish to pay us. We do not require
9 a fee to be paid. We ask for the fee. If a person
10 chooses not to pay us, we will still service them
11 whether they pay us or not.

12 MR. RANDOLPH: Like the gentleman who
13 testified first, where does your funding come from?
14 Does it come from donations from banks or CRA or --

15 MR. PIOTROWSKI: Our funding comes from
16 various sources. We obtain government grants for
17 doing different services. We're HUD certified. We're
18 also involved in the current foreclosure mitigation
19 counseling process. So we get funding there.

20 We get funding from the state for PHFA
21 programs. We get funding from some foundations, and
22 then we get funding from the client themselves through
23 the fee. And then we get funding from creditors,
24 either as a grant or as a fair share payment. So our
25 funding comes from various sources.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. RANDOLPH: What percentage of your
2 total revenue would you say comes from the fees that
3 you might collect from the debt management services?

4 MR. PIOTROWSKI: I believe about right
5 around 20 percent comes from that part of it.

6 MR. RANDOLPH: Is your organization
7 against the bill in general or just the part about
8 allowing the for-profits?

9 MR. PIOTROWSKI: We're against allowing
10 the for-profits. We would add amendments to the bill
11 on other issues. We have no problem being licensed in
12 the State of Pennsylvania to do the work that we do.
13 Again we believe the licensing should be fully
14 encompassing of credit counseling as defined by the
15 IRS. That's what we believe.

16 MR. RANDOLPH: The way I read House Bill
17 2294 is that we're regulating just a debt management
18 service. We're not regulating the entire credit
19 counseling.

20 MR. PIOTROWSKI: That's correct.

21 MR. RANDOLPH: I think that if I
22 understood your testimony, you -- are you viewing this
23 as it's going to be a foot in the door for these
24 companies to come into the credit? Because we're not
25 saying that -- the legislation is not saying that they

TRANSCRIPT OF PROCEEDINGS

- - - -

1 can do credit counseling. We're just simply
2 regulating the one service.

3 I'm just trying to understand, because I kind
4 of heard from your testimony that you didn't want them
5 involved in doing any credit counseling; but this bill
6 doesn't really regulate them as credit counselors.

7 MR. PIOTROWSKI: There's a disconnect
8 between credit counseling and debt management
9 services, and the disconnect is where that decision is
10 made.

11 The historical way that a debt management plan
12 was provided to an individual was through a
13 complete -- after undergoing a complete credit
14 counseling session, similar to bankruptcy today. To
15 go into bankruptcy and have an attorney file
16 bankruptcy for you, you have to go through a
17 pre-bankruptcy counseling session.

18 So the purpose of the credit counseling
19 session is to help the individual or couple understand
20 their complete financial status and the decisions that
21 got them to where they're at.

22 Then based upon that information, various
23 things can happen and various recommendations can be
24 made, one of them being the debt management plan. The
25 connection is right there.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 We believe that to offer a debt management
2 plan to someone, you need to go through that complete
3 credit counseling session the way it's defined and
4 practiced today by the good nonprofits that aren't
5 having their 501(c)(3)s revoked.

6 A debt analysis -- if I just look at your
7 unsecured debts and your credit card debts, I can say
8 to you, "Based upon who your creditor is, based upon
9 their concessions, based upon the amount of money you
10 owe, I could reduce your payment by 10 percent, 20
11 percent, maybe 30 percent. Does that sound good for
12 you? Okay. If that sounds good for you, I'll put you
13 on a plan."

14 Now, I'm not taking the step to understand
15 your holistic situation to see is this plan really
16 viable for you and have you -- do you have the
17 wherewithal to stay in this for five years? That's
18 the difference, and that's the connection that we're
19 trying to present to you.

20 The IRS has made that connection, and that's
21 why so many people are being eliminated from the
22 501(c)(3) status. We have not. We've been -- we're
23 in a good spot because we do the work education first.

24 I have no problem being regulated on how we
25 administer a DMP plan. That's fine. The agency does

TRANSCRIPT OF PROCEEDINGS

- - - -

1 it well, and we'll meet whatever requirements you put
2 in front of us.

3 But we're having a problem with, A, splitting
4 out separate from the whole credit counseling process;
5 and second, putting the financial burden on us. I
6 mean, I heard the representative from the State
7 Banking Department saying, you know, \$3,000 is
8 reasonable. Well, for a nonprofit that's a lot of
9 money, you know.

10 So we have some concerns, but we have no
11 problem being regulated under debt management. What
12 we're really driving at is the separation between
13 credit counseling and debt management. That linkage
14 needs to be there. That's the important parts of what
15 we're doing here.

16 MR. RANDOLPH: I apologize for one final
17 question. I feel like I have to ask it. So I
18 apologize to start. Do you see that if you would
19 allow for-profits to come in, because it does
20 represent 20 percent of your revenue you said for
21 these fees, do you feel like that that might hurt your
22 organizations financially because if they start coming
23 in and have competition for these management debt
24 management services? Is that part of your overall
25 testimony? That's my final question. Thank you.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. PIOTROWSKI: Let me say from a
2 financial perspective I have been the CEO of this
3 agency for the last six years. We have been dealing
4 with competition in the State of Pennsylvania, and
5 just go to the phone book and look at who's
6 advertising in the phone book, in the Yellow Pages.

7 We have been dealing with folks for a very
8 long time, and our revenue stream has been squeezed.
9 So do I have a concern about longevity of our
10 organization? Absolutely. Absolutely, because the
11 industry is changing.

12 But I'm not here speaking about restricting
13 competition. In fact, I would welcome them into the
14 playing field if you folks would give -- if you would
15 equal it with the same regulatory requirements we have
16 and force them onto the for-profits.

17 So all of the things that are in 501(q) that
18 the IRS has said, "This is what's done. This is what
19 is good for a credit counseling/debt management
20 provider," they didn't separate credit counseling and
21 debt management. They put it together, and I'm
22 driving for you folks to take a look at what are those
23 requirements and equal the playing field, because we
24 cannot get out of them.

25 If we want to say a 501(c)(3) and have the

TRANSCRIPT OF PROCEEDINGS

- - - -

1 best interest of the community at hand, we must comply
2 with them. That's the direction of my board to me,
3 and that's what I'm doing.

4 I'm asking you folks to consider equaling the
5 playing field. In essence, if a for-profit wants to
6 come into Pennsylvania to do the same thing that we
7 do, make sure they do it and they're under the same
8 requirements. That's all I'm asking for. Let the
9 survivor come out of it, however it works out, but
10 that's what I'm asking.

11 MR. DALEY: Thank you, Stephen. I
12 appreciate your testimony. Any other questions?
13 John?

14 MR. SCARPATO: Representative Longietti
15 pointed out that a lot of the requirements that you're
16 facing are to keep that 501(c)(3) status, to meet
17 those.

18 Are you suggesting that a for-profit company
19 should have to meet the qualifications that a
20 nonprofit 501(c)(3) would meet with the IRS, or are
21 there specific things that are consumer protections
22 that should be in there rather than -- rather than
23 that would be in there more as a virtue -- that are
24 there for the IRS more as a virtue of protecting the
25 nonprofit status and making sure that a nonprofit is

TRANSCRIPT OF PROCEEDINGS

- - - -

1 acting accordingly and not hiding a for-profit motive
2 in a 501(c)(3) like some of these other companies that
3 you referred to?

4 MR. PIOTROWSKI: I believe as you read
5 the investigation documentation and when you look at
6 the information that's provided, the regulations that
7 were put in place for a 501(c)(3) credit counseling
8 agency is reflective of protections for the consumer,
9 not requirements for the IRS to regulate us.

10 There are things that they feel are in the
11 best interest of the consumers coming for service to
12 the 501(c)(3) like a board that only has 20 percent of
13 its makeup of people who work for the organization. I
14 don't own the organization. I only work for it. So
15 if I'm on the board -- and then anyone who financially
16 benefits from the organization.

17 So if we have an agreement with an
18 organization to provide -- like with the utility, to
19 help them with their low income customer assistance
20 program and one of our board members happens to work
21 for that utility, we consider that person an
22 interested party.

23 So our 20 percent number of our board makeup
24 goes with anyone that ties any kind of revenue that
25 may come back to the organization. Even though it's a

TRANSCRIPT OF PROCEEDINGS

- - - -

1 handshake deal, we consider that as part of the 20
2 percent.

3 So that's in the best interest of the consumer
4 that there's not a for-profit or a self-interest at
5 the board leadership. Those restrictions are put on
6 us for the consumer's best interest, the general
7 public. They're not put on us just to meet IRS
8 regulations. They were in there because of
9 investigation.

10 MR. SCARPATO: That's what I was getting
11 on. You have a requirement for a board to prevent a
12 conflict of interest. If you're nonprofit, you're
13 getting tax benefits. If you're -- these for-profit
14 guys are not going to get federal tax benefits that we
15 have to protect them from making a profit. They're
16 going to pay tax on what they profit from.

17 What I'm asking is: Are there specific
18 consumer protections -- like there's a list of -- I
19 referred earlier to a list of consumer restrictions on
20 debt management agencies. Are there certain
21 activities that you would prohibit or anything like
22 that, not so much because the -- some of those
23 regulations and restrictions that you referred to are
24 designed to prevent you from making a profit where
25 they would just pay tax on their profit.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. PIOTROWSKI: One is may not pay or
2 receive referral fees and may not solicit
3 contributions from a client during the initial session
4 or while the client is receiving services.

5 So once we take the client on or while we're
6 talking to the client, we cannot refer that client --
7 say the client looks like a great bankruptcy
8 candidate. There are many organizations that have
9 referral networks with bankruptcy attorneys where they
10 get referral fees paid back to them of a hundred
11 dollars or more to refer that client. If that client
12 files bankruptcy, they get a hundred bucks. That's
13 the kind of things that go on here.

14 Debt settlement companies, I find an
15 individual in my for-profit company that would benefit
16 from a debt settlement. I send that person over to a
17 debt settlement company. They send me back a hundred
18 dollars.

19 I find somebody that has a margin on their
20 mortgage. Say they're at a 95 percent mortgage right
21 now, they're mortgaged out at 95 percent, but they
22 can -- I have an organization that can give them a
23 mortgage of 105 percent. I send them over. They get
24 that mortgage. I get \$300 back.

25 MR. DALEY: John, thank you very much.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. PIOTROWSKI: That's the --

2 MR. DALEY: Excuse me, sir. I don't mean
3 to interrupt you. The testimony went 50 minutes. I
4 appreciate -- you're really in-depth, and I appreciate
5 the questions. John, maybe you can ask Mr. Piotrowski
6 after. I want to try to move on, and I appreciate
7 your testimony. Thank you very much.

8 MR. PIOTROWSKI: Thank you.

9 MR. DALEY: If anybody else has questions
10 for Mr. Piotrowski, please see him before we leave.
11 The next person to testify will be Mark Guimond. Did
12 I pronounce that right, Mark?

13 MR. GUIMOND: Just go with Mark. That's
14 fine.

15 MR. DALEY: How do you say it?

16 MR. GUIMOND: It's Guimond, like diamond.

17 MR. DALEY: Guimond like diamond without
18 an A. Executive Director of the American Association
19 of Debt Management Organizations from Kingwood, Texas.
20 Mark Guimond, it's a pleasure. Thank you for your
21 testimony.

22 MR. GUIMOND: Thank you, Mr. Chairman.
23 I'm pleased to be here. The American Association of
24 Debt Management Organizations is the largest trade
25 association for the credit counseling industry.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 We represent the entire credit counseling
2 industry, not just particular segments. Our
3 membership is 501(c)(3)s, nonprofits, and for-profits
4 organizations. The vast majority of my members,
5 probably 99 percent plus, are in fact 501(c)(3)
6 organizations; but I can speak for the entire
7 industry, not just a particular limited segment.

8 Since I'm here today, I wanted to bring
9 representation from some of my members who could not
10 make it. We do have a national membership, but
11 included as a separate handout you'll find letters
12 from several of our members in support of this bill.
13 I would like to point out at the outset that each of
14 these letters in support of House Bill 2294 is from a
15 501(c)(3) organization.

16 I have two additional letters that I'll submit
17 to the Committee staff for the record later on that I
18 received somewhere between this morning and this exact
19 moment. So I don't have copies of them for you; but
20 if you would like them, I will make those available
21 for the record.

22 I think at the outset I'm going to deviate
23 from -- I'm not going to read my written testimony, so
24 don't get scared. This bill regulates --

25 MR. DALEY: Actually we weren't getting

TRANSCRIPT OF PROCEEDINGS

- - - -

1 scared. We weren't afraid.

2 MR. GUIMOND: Okay. This bill regulates
3 debt management services. It does not regulate credit
4 counseling. The definition in this bill is about the
5 receiving and disbursing of funds on a periodic basis
6 to creditors.

7 This is not about credit counseling. This is
8 specifically for agencies that fall within that
9 definition and the requirements that are placed upon
10 those agencies in that definition.

11 One of the requirements that I think is
12 essential in this discussion is that an agency
13 regardless of its tax status is going to have to put a
14 consumer through a budget analysis, and they're going
15 to have to make sure -- and the quote in this is the
16 word benefit. The consumer is going to have to
17 benefit from the DMP, which is the regulated element
18 in the definition.

19 One of the things relevant at this point is
20 this is currently really an unregulated market for the
21 501(c)(3)s. There's no fee caps. There's no
22 guarantees of conduct. That's no oversight.
23 501(c)(3)s are free to do as they choose.

24 A previous witness had indicated the nightmare
25 of Ameridebt and Cambridge that was cited in the PSI

TRANSCRIPT OF PROCEEDINGS

- - - -

1 report in the U.S. Senate several years ago. I think
2 the first thing to do is point out that both of those
3 agencies that are cited were 501(c)(3) organizations.
4 They were not-for-profit companies. They were
5 501(c)(3)s, and in fact Cambridge is still today a
6 501(c)(3) organization. It did not have its tax
7 status revoked.

8 So even though it operated as a for-profit
9 guise and was cited by the Senate as being a bad
10 actor, in fact they are still in existence today, and
11 they are licensed in many, many states.

12 The PSI report, as well I think we're talking
13 about ancient history. That came out in 2004, and it
14 was looking back at several years of data going back
15 to about 1999.

16 The PSI report is relevant four years ago.
17 Since that time the law has changed. Congress enacted
18 H.R. 4, the Pension Protection Act, which corrected
19 many of the alleged abuses by those agencies. So
20 while the PSI report is interesting, it's history.
21 It's really ancient history in terms of what the law
22 is as of today.

23 Tax-exempt credit counseling is really on its
24 way out. The trend in the States recently has been
25 removal of the 501(c)(3) tax requirement in Delaware,

TRANSCRIPT OF PROCEEDINGS

- - - -

1 Maine, North Carolina, Kansas, Rhode Island, Virginia,
2 and Texas.

3 Just this year alone the 501(c)(3) requirement
4 was removed from the law in Idaho and Maryland, and I
5 think we need to look at why this is happening.
6 There's a line I like to use and it's about von
7 Clausewitz and the book On War. It's so oft quoted
8 and so little read.

9 I provided to the Committee staff 350 pages
10 plus of IRS denials for the credit counseling industry
11 and the reason that those denials were occurring, and
12 those closely mirror the revocations that have
13 occurred as well.

14 The previous witness indicated out of the
15 initial 63, 49 of those have been audited and 47 of
16 those did not make it. Only 2 out of those 49 passed
17 through.

18 Credit counseling was established in the
19 1960s, in 1965 and 1969, under two revenue rulings.
20 That's it. So the way consumer credit was 40 plus
21 years ago is not the same way it is today.

22 Historically people would go in. They'd sit
23 down with a counselor. They'd talk about their bills.
24 These weren't credit card bills. These were
25 mortgages. These were rents. These were leases.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 These were capital products, appliances, cars; and
2 they tried to figure out some kind of payment plan.

3 Today we have a situation where a person may
4 have five, six, ten credit cards. It's a completely
5 different situation. It's not necessarily the
6 education and sitting down and counseling but trying
7 to figure out a payment restructure plan that's
8 relevant.

9 If you look at the reasons that the IRS is
10 revoking tax status, private benefit to creditors is
11 probably the number one. The benefit given back to
12 the creditors by receiving their money is not a
13 taxable -- or tax-exempt function. It is not
14 charitable, and it is not educational. It is a
15 private benefit to the creditors, and that has been
16 routinely cited in all of the revocations and the
17 denials.

18 In fact, the U.S. Tax Court put an opinion in
19 February, February 5th of this year, just a couple
20 months ago; and they cited as one of the reasons for
21 the denial of 501(c)(3) tax status was the benefit to
22 creditors.

23 The IRS is also looking at the functionality
24 of credit counseling agencies in the modern world.
25 They're advertising. They're receiving significant

TRANSCRIPT OF PROCEEDINGS

- - - -

1 money from DMPs.

2 It's also interesting that the IRS has cited
3 that the reduction of debt -- or the reduction of
4 interest rates for a consumer are not tax-exempt
5 purposes.

6 In terms of the advertising, the IRS has said
7 that counseling is operating like a commercial
8 enterprise. They're advertising. They're using the
9 Web, all of these other things. It's interesting that
10 the previous witness has a vice president on his staff
11 for advertising and marketing. Sounds like any
12 commercial enterprise to me. A for-profit would
13 certainly have the same thing.

14 In terms of board representation, the private
15 benefit to creditors in control, he stated that he has
16 23 board members. He is one of the board members. He
17 also has two board members from PNC Bank, not one, but
18 two board members sitting there. That's ten percent
19 of the board from one particular bank.

20 So I don't think we can look at it and say
21 that creditors aren't controlling the interest.
22 They're trying to get their private benefit, and that
23 is what the IRS is looking at.

24 In terms of the profiteering of the for-profit
25 industry, we have been presented with no evidence

TRANSCRIPT OF PROCEEDINGS

- - - -

1 whatsoever -- not one scintilla of evidence has been
2 given saying that this in fact is the case or will be
3 the case. It's conjecture at best.

4 If you look at the states that have opened up
5 the last couple years and allowed for-profit credit
6 counseling, the enforcement actions that have come out
7 are no greater or no less for for-profit than they are
8 for anybody else.

9 In fact, most of the agencies that are going
10 in on a for-profit basis are becoming licensed. They
11 have trust accounts, bonds, certified counselors. The
12 protections that are in this legislation are in other
13 states. And when an agency has to go in and have
14 oversight and regulation, they're not a bad actor.

15 One of the ideas that we're going to push
16 consumers into DMPs by virtue of the profit motive, I
17 think the fee caps pretty much clear that up. But
18 this establishes as a matter of law in this bill that
19 we have to show that there is a benefit for somebody
20 going in there; and that has to be a discernible
21 benefit, not conjecture as well.

22 So in terms of the oversight, the regulators
23 would have the authority to look at an agency and
24 saying, "Are they funneling consumers into the DMPs
25 improperly, or are they doing what they should be?"

TRANSCRIPT OF PROCEEDINGS

- - - -

1 And the enforcement methodology is the important
2 factor that's there, and that is not existing under
3 the current law.

4 As we have seen in every other state, it's the
5 enforcement ability of the state to go in and look at
6 an agency's operations to determine whether or not
7 they're operating properly.

8 There were a few questions thrown around
9 regarding counselor certification, things like that.
10 And continuing education, we do support that. There
11 was a lot of discussion about referral fees and how
12 for-profit agencies are going to push consumers into
13 other venues by virtue of a referral fee.

14 Twenty-eight states currently prohibit any
15 kind of a referral fee for an agency providing
16 services to a consumer. We would support 100 percent
17 the inclusion of a measure that says no referral fees
18 can be paid for pushing somebody into other services.
19 That is consistent with your neighbors all around you
20 in the other states, and we'd support that as well.

21 There was one question too, would the consumer
22 (sic) act in the best interest of the client. I don't
23 think you can realistically look at a credit
24 counseling agency or a debt management service that's
25 going to put somebody into a debt management plan. If

TRANSCRIPT OF PROCEEDINGS

- - - -

1 it's not going to work for them, the agency is
2 certainly not going to receive their funding over
3 time.

4 The amount of money and the amount of time
5 that it takes to put somebody through a budget
6 analysis, a good budget analysis and make a
7 determination of benefit as required under here is
8 probably going to even out on the cost of the revenue
9 they receive from the consumer.

10 So there's not inherently this windfall that's
11 going to come from signing somebody into a DMP. I
12 think it's kind of a red herring at this point, and I
13 just don't see the profit motivation that's there at a
14 \$50 cap.

15 We made recommendations in my written
16 testimony for I think very technical changes that we'd
17 like to see. At this point in time we did a poll of
18 our membership. With the recommendations that we put
19 forward, I don't think there's any that are
20 controversial or should be. Eighty-six percent of our
21 membership supports this bill. So we have a vast
22 majority there supporting this legislation with
23 amendments.

24 Given the late hour of the day, I would like
25 to take questions and wrap me up if you need to.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. DALEY: We appreciate your coming up
2 from Texas. We'll start down with John.

3 MR. SCARPATO: In the interest of time,
4 I'll pass.

5 MR. DALEY: No. That's okay. With all
6 due fairness to the gentleman who made the travel, I
7 think we need to take the time. If you have any
8 questions, please.

9 MR. SCARPATO: So you said a number of
10 states do prohibit referral fees?

11 MR. GUIMOND: Most of the states that
12 have a licensing structure in place do prohibit it.
13 There's the Uniform Act that was mentioned earlier.
14 That has a prohibition on it.

15 There's really no reason to funnel somebody
16 into a program that's inappropriate and receive
17 funding for that. Clearly that's there, but the state
18 laws -- the bulk of the state laws that have a
19 licensing mechanism in place do have that as a
20 specific prohibition. Yes. We'd support that.

21 MR. SCARPATO: Thank you, Mr. Chairman.

22 MR. DALEY: Dave Callen?

23 MR. CALLEN: Mr. Guimond, beginning with
24 your recommendations, which I don't have a page number
25 on here, but it says -- makes the following

TRANSCRIPT OF PROCEEDINGS

- - - -

1 recommendations, first, second. I'm just not
2 understanding one of those requiring an agency to make
3 changes in payment plans, schedules. Is that
4 referring to the idea that there's a tie between a fee
5 per account? So if an account drops off because of
6 repayment, there would have to be a recalculation of
7 the payments?

8 MR. GUIMOND: Yes. I think the provision
9 you're speaking of is the fee calculation of \$10 per
10 creditor per month?

11 MR. CALLEN: Right.

12 MR. GUIMOND: The DMP would be
13 established with a baseline payment amount, and the
14 amount would be going to creditors. If a creditor
15 were to drop off, then that would have to be
16 recalculated. Then that could change the amount that
17 was going to have to go to the creditors.

18 That could also change the written agreement
19 terms. On day one you have the written agreement
20 saying this is the payment amount and it's going to go
21 to these creditors, because it requires in the act a
22 good-faith estimate of the scheduled payments and a
23 disbursement schedule.

24 If that were to change, it could cause a
25 situation where you'd have to have an entirely new

TRANSCRIPT OF PROCEEDINGS

- - - -

1 written agreement to coincide with the change in the
2 payment structure.

3 MR. CALLEN: Is it very likely to happen
4 since all creditors would sort of be on an equal track
5 to get paid off at the same time?

6 MR. GUIMOND: I would say since we are
7 dealing with the black letter of the law, it would be
8 the law. A new written agreement would have to be
9 established if there was a change in that payment
10 plan.

11 Some states do require -- Arizona, for
12 example, requires a recalculation every single year.
13 That does a lot of times cause the -- not a
14 re-negotiation but a re-establishment of an agreement
15 to coincide with that new payment schedule.

16 If I had my way on that particular provision,
17 there's two approaches I would take, either make it a
18 flat maximum on a monthly basis or a percentage of the
19 payment or get rid of the per creditor basis.

20 I'm uncomfortable with the term creditor. I'd
21 rather have it to be account. About 85 percent of the
22 consumer credit in this country is carried by the top
23 five creditors.

24 You may have five cards. They may be private
25 branded. They may be private labeled. They may be

TRANSCRIPT OF PROCEEDINGS

- - - -

1 certain retail, whatever. You have five different
2 credit accounts; in fact, three or four of those may
3 be with a single creditor.

4 So if the agency has the workload and
5 obligation to deal with all of those accounts, in fact
6 they may be only compensated for one particular
7 creditor, and that can cut into the ability to serve.

8 MR. CALLEN: Okay. Noted. One other
9 question. "We are also bringing to your attention on
10 page 8, line 2 credit that a counseling agency must,
11 quotes, discuss a budget analysis with the consumer";
12 and you suggest substituting review the analysis.

13 MR. GUIMOND: Yes.

14 MR. CALLEN: Are you suggesting that
15 there not be any live conversation between a counselor
16 and a counselee?

17 MR. GUIMOND: It's beneficial, but it's
18 not a reflection of reality. Good agencies, bad
19 agencies, whatever, everybody is adopting
20 technologies. You may have a purely e-mail based
21 analysis and review of someone. There's not a
22 discussion there. I think to -- again dealing with
23 the black letter of the law, discuss to me is rather
24 ambiguous to me and broad --

25 MR. CALLEN: I think the intention was an

TRANSCRIPT OF PROCEEDINGS

- - - -

1 oral conversation.

2 MR. GUIMOND: I don't know that an oral
3 conversation is always necessary. I mean, it could be
4 achieved through e-mails and similar devices,
5 communication means.

6 A lot of folks have on-line help right now
7 where you can go and receive assistance with consumer
8 services or products, and you never deal with a live
9 person by phone or by voice. You deal with them
10 electronically, and the communication methodology is
11 there.

12 I just think as we adapt to changes in
13 technology, that we should have the ability to have
14 that as an option. I don't think we want to reduce
15 the ability of somebody to actually talk to a live
16 person and receive counseling. But if that's not
17 necessarily the way to go, why limit what the law says
18 when in fact the law could be adapted to things down
19 the road? This law may not change for another 30
20 years. We don't know. There may be huge advances in
21 technology we'd see in ten, twenty years. Live
22 conversations may be moot.

23 MR. CALLEN: Thank you, Mr. Chairman.

24 MR. DALEY: Thank you, Dave. Erik, Erik
25 Randolph?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 MR. RANDOLPH: Thank you. Previously we
2 had the representative from the Department of Banking
3 testify that he said that the fees are not sufficient
4 for what they believe they would need to operate an
5 effective supervision of the industry. Then we also
6 had -- the person immediately testifying before you
7 had said that he believed that the fees were high
8 enough for nonprofits.

9 I understand that you believe that you should
10 allow both for-profits and nonprofits provide for this
11 service, if I understand your testimony. Would you be
12 in favor of a two-tier fee system perhaps where
13 nonprofits have one fee and then for-profits have a
14 higher fee?

15 MR. GUIMOND: Fees from the consumer?

16 MR. RANDOLPH: The fees -- I'm talking
17 about the licensing fees.

18 MR. GUIMOND: What we're talking about is
19 a level playing field, regardless of tax status. And
20 while a for-profit company may be making a profit, the
21 tax-exempt agency is subsidized by the taxpayer and
22 doesn't pay taxes.

23 I think it should be -- the licensing fee
24 needs to be reflective of the work done by the
25 regulator in examining the agency, reviewing its

TRANSCRIPT OF PROCEEDINGS

- - - -

1 books, doing background investigations, making sure
2 the I's are dotted and the T's are crossed.

3 That burden on the agency may not be minimal
4 on a tax-exempt or a nonprofit. I think the amount of
5 work, the obligation that goes into it for the
6 regulatory capacity should be the determinant of the
7 fee. I don't think it should be tiered to tax --

8 MR. RANDOLPH: The other -- if I
9 understand the main objection to allowing for-profits
10 is that we're separating out just one product for
11 helping people with credit problems where first they
12 should have more or less a comprehensive credit
13 counseling available to them where they look at the
14 entire picture, and then only after that should they
15 then -- if this would be in their best interest, do we
16 push them into a debt management service.

17 So the fear is that people may not be getting
18 the counseling that they really, truly need if I
19 understand the main objection, and I just want to know
20 what your response to that would be or is.

21 MR. GUIMOND: I think we need to look at
22 what the actual language says. The bill requires an
23 analysis, and I don't think you can get to an analysis
24 without actually doing -- we've talked about the
25 holistic approach.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 You need to truly evaluate somebody's income
2 and expenses and their financial situation, what
3 caused them to get into financial distress and where
4 they are. You need to do a reality check. That's the
5 analysis. If the analysis is not done, you can't make
6 a determination that says there will in fact be a
7 benefit, and determination and benefit are both used
8 in the bill.

9 I would say -- this may be a regulatory
10 aspect. Is the amount of analysis that's going into
11 the decision to put somebody in a DMP proper and just?
12 If it's simply funneling somebody into a DMP, the
13 regulator would be able to say, "No. We're not going
14 to abide by that. We're going to suspend the license
15 or revoke the licensing." But the methodology going
16 into it though, the law says there has to be an
17 analysis.

18 MR. RANDOLPH: If I understood the
19 previous testimony, there's a difference in the two
20 types of analysis. If I understood the testimony, it
21 was that what the nonprofit credit counseling does is
22 that it's more like a comprehensive evaluation and
23 then a full range of products or recommendations for
24 that individual.

25 But I thought that the analysis that this is

TRANSCRIPT OF PROCEEDINGS

- - - -

1 is more strictly to whether or not you would benefit
2 from this one product, and I wasn't -- I thought the
3 previous testimony was saying that these are two
4 different things, that the kind of analysis that we
5 would have done generally when you go in to say, "Hey,
6 I have credit problems" is a different character than
7 this kind of analysis. If I'm wrong, let me know.

8 MR. GUIMOND: I think -- I don't think
9 you can do the analysis without having a full
10 evaluation. If that needs to be clarified as a
11 measure in the bill, we'd support that.

12 We believe that somebody needs to go and have
13 a review of their situation. And if you look at
14 bankruptcy reform, it requires the budget analysis,
15 how somebody got into financial distress and their
16 financial condition.

17 We can certainly draft language to mirror
18 that. I think though that leaving a little vague --
19 we want everybody to go in, if they're evaluated, to
20 decide whether the DMP is beneficial, and that's what
21 this does.

22 If somebody is not in the position where the
23 DMP is beneficial, we should have them diverted to
24 other resources if that's housing, counseling, or
25 energy assistance, earned income tax credit. Whatever

TRANSCRIPT OF PROCEEDINGS

- - - -

1 X happens to be, if that's the appropriate venue, move
2 them over to there rather than the DMP. But I think
3 the language takes that step to push somebody, yes,
4 we're going to go to the DMP or not, and there is a
5 bright-line test there.

6 MR. RANDOLPH: Is it the practice that
7 someone comes into a for-profit -- is it the practice
8 then that you do this analysis and then you come back
9 and you say, "You know, it's really not in your best
10 interest," is it the practice then to say, "You should
11 go to a nonprofit credit counseling agent?" Is that
12 the practice?

13 MR. GUIMOND: No. No. And I looked at
14 the states where there's a licensing mechanism for
15 for-profit agencies. The obligations on the
16 for-profit and nonprofit aren't exactly the same. So
17 you're not going to take somebody in a for-profit
18 situation and say, "DMP is not appropriate. Go to a
19 nonprofit."

20 If the DMP is not appropriate, it's not
21 appropriate for anybody. You have to factor in the
22 relationship with the creditors, what the creditors
23 are having as an expectation. Is this in the best
24 benefit of the consumer; and if not, where can we
25 direct them?

TRANSCRIPT OF PROCEEDINGS

- - - -

1 But no. You wouldn't take somebody who goes
2 to a for-profit and direct them to a nonprofit, and as
3 a matter of law I think you should structure a way so
4 that the analysis that's done is the same for
5 everybody regardless of tax status, that it should
6 be -- there should be that thorough review.

7 MR. RANDOLPH: Do you actually have an
8 example or do you have like a format or some kind of
9 description of the kind of analysis that explains to
10 us what the analysis is that would be done? Is that
11 something that could be provided to the Committee?

12 MR. GUIMOND: I could get you that. I
13 could also get you samples from the other state laws
14 and their requirements. I can get you some of the IRS
15 interpretations on what is adequate or inadequate
16 education in the process of credit counseling.

17 MR. RANDOLPH: All right. Thank you, Mr.
18 Chairman.

19 MR. DALEY: Representative Longietti?

20 MR. LONGIETTI: Just briefly, just to
21 piggy-back on that, the language of the statute talks
22 about -- we have been saying the word best interest,
23 but actually there has to be a benefit to the
24 consumer, which could be significant in distinction.

25 The argument was made, "Well, sure. There's

TRANSCRIPT OF PROCEEDINGS

- - - -

1 always a benefit to the person. We're going to lower
2 your interest rate and lower your monthly payment."
3 How do you respond to that, that that's not a very
4 onerous requirement?

5 MR. GUIMOND: The DMP is not always going
6 to do that though. There's not always going to be an
7 interest rate reduction. There is not always going to
8 be the reduction in payment.

9 It has to be -- the creditor is going to make
10 a determination about whether the consumer is in need
11 of that. The agency is going to help put them in a
12 DMP, but ultimately the creditor decides whether or
13 not those concessions will in fact go to a consumer.
14 Creditors on a regular basis say, "No. We're not
15 going to give concession to consumers at all." So
16 there is no benefit in the DMP.

17 Part of the analysis too I believe in
18 determining suitability of the DMP is the ability to
19 pay. Can somebody in fact go into a DMP, make the
20 proposed payments, and complete the plan to relieve
21 their financial distress and get out of debt? If
22 somebody comes in and the DMP is not going to do that
23 for them, there is no benefit.

24 I think the catch-all for this though is in
25 the regulation. Many states currently regulate credit

TRANSCRIPT OF PROCEEDINGS

- - - -

1 counseling on a widespread basis. Auditors go in.
2 New York, for example, will send an auditor into your
3 shop for several weeks at a time. They'll review your
4 records. They'll sit there and talk to your
5 counselors. Maryland does the same thing.

6 Kansas, they'll go through and actually make a
7 determination about whether the process is good and
8 whether the consumers going into DMPs need to be
9 there. So I think the regulatory oversight is the
10 important factor that piggy-backs on top of the term
11 benefit.

12 MR. LONGIETTI: Thank you, Mr. Chairman.

13 MR. DALEY: Thank you, Representative
14 Longietti. Thank you, Mark, for your testimony. This
15 concludes the hearing.

16 We do have written testimony that's been
17 submitted by Frank Pinto, President and CEO of
18 Pennsylvania Association of Community Bankers; Bob
19 Levy, Executive Director/Legislative Counsel, MBA of
20 Pennsylvania; and Peter Schneider, assistant --
21 Supervising Attorney, Community Legal Services of
22 Philadelphia; collaborative written testimony from
23 Travis Plunkett, Legislative Director for the Consumer
24 Federation of America; and Deanne Loonin, staff
25 attorney, National Consumer Law Center.

TRANSCRIPT OF PROCEEDINGS

- - - -

1 This Commerce Committee is adjourned. Thank
2 you.

3 (Whereupon, the hearing was adjourned.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS

- - - -

1

2

3

C E R T I F I C A T E

4

5

6

7

8

9

10

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction and that this transcript is a true and accurate record to the best of my ability.

11

12

13

BY: _____

14

Sarah A. Noroski

15

16

17

18

19

20

21

22

23

24

25