THE LIFE AND DEBT CYCLE

Part Two:

Finding Help for Older Consumers with Credit Card Debt

September 2006

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September 2006

Acknowledgments:

This report was made possible by funding from the Retirement Research Foundation. The views expressed in this report are those of the authors alone and do not necessarily reflect the views of its funders or those who provided editorial review.

The authors thank the following current and former NCLC advocates for providing advice and assistance throughout this project: Carolyn Carter, Svetlana Ladan, and Steve Tripoli. Special thanks to Professor Karen Gross who helped develop the report and provided insights and assistance throughout. The authors also thank all of the advocates, too numerous to name here, who consulted on this report. We especially thank the National Foundation for Credit Counseling and Association of Independent Consumer Credit Counseling Agencies national offices and many of their members for their assistance. We are especially grateful to all of the older consumers who shared their often painful stories with us. To respect their privacy, we do not use their full names in this report, but this work would not have been possible without their contributions.

***National Consumer Law Center** is a non-profit organization with 37 years of working experience in consumer issues, especially those affecting low\-income consumers. NCLC works with and offers training to thousands of legal-service, government and private attorneys, as well as community groups and organizations representing low-income and elderly people. Our legal manuals and consumer guides are standards*

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EXECUTIVE SUMMARY

Older consumers have been increasing their debt loads at a time of life when debt is especially burdensome and fraught with peril. The first report in the National Consumer Law Center's "Life and Debt Cycle" series, "The Implications of Rising Credit Card Debt Among Older Consumers" examined the extent and consequences of credit card borrowing by elders. This report focuses on the types of programs and resources available to help older consumers with credit card problems. These programs are essential to help prevent debt problems and to provide relief to older consumers burdened with credit card debt.

Programs Available Through the Elder Assistance Network

The report includes a survey of state departments on Aging, Area Agencies on Aging (AAAs), state AARP offices, and senior centers to evaluate the types of credit and debt-related services they offer. We also collected information about where the agencies referred consumers if they did not offer in-house assistance.

NCLC contacted agencies in ten states, including three high-density elder population states (Florida, Pennsylvania, West Virginia), four medium density states (Arizona, New York, Michigan, Oregon) and three low-density states (Georgia, Utah and Alaska).

Key results from this survey include:

- The elder assistance network does not offer much financial counseling assistance to elders beyond bill paying. Only a few of the senior centers, AARP offices, and state aging departments had in-house resources to assist older consumers with debt problems.
- The highest percentage of referrals from elder assistance network agencies (37%) was to credit counseling organizations.
- Other referrals broke down as follows: 19% of all referrals were to legal assistance programs, 18% to AARP or AAA agencies, 11% were dead-ends, 8% were to miscellaneous human services agencies, and 6% were to agencies that offered a comprehensive range of counseling and direct services.

Counseling and Direct Assistance

The three main types of assistance available directly through the national network or through referral agencies are bill paying services, credit/budget counseling, and legal assistance.

Bill Paying

The AARP Money Management program, for example, utilizes trained volunteers to assist clients who are having trouble physically paying their bills each month or need representative payees. These services can be extremely useful, but are limited. They are not intended to provide direct counseling or negotiation services.

Credit/Budget Counseling

The high referral rate to credit counseling was striking given the serious problems with the industry in recent years. The report examines the types of services available from reputable credit counseling agencies and whether these services are targeted for older consumers.

The report includes a survey of members of two credit counseling trade associations, The Association of Independent Consumer Credit Counseling Agencies (AICCCA) and the National Foundation for Credit Counseling (NFCC).

Key Results:

- Elders now comprise a significant portion of credit counseling agency clients. The survey found that an average of 20% of the agency's clients were elders (defined as anyone 60 years or older). 87% of survey respondents affirmed that this percentage has increased in the past five years.
- In response to a question about the reasons for increases in elder clients, interest in reverse mortgage counseling was mentioned most often (about 67% of counselors cited this reason) followed by medical bills and increased access to credit cards, cost of living increases, and debt related to helping family members or raising grandchildren.
- Few credit counseling agencies had programs outside of reverse mortgage counseling targeted for older consumers.
- Overall, 26% of the agencies responded that reverse mortgage counseling was the only specialized service they offer for older consumers. 18% listed reverse mortgage counseling and other programs. About 28% stated that they offered elder-focused programs other than reverse mortgage counseling. The remaining programs either responded that they did not offer any elder-specific programs (13%) or left the question blank (15%).

Recommendations to improve credit counseling services for older consumers include:

- Enactment of strong state laws to regulate the abusive practices of counseling agencies.
- The development of programs and outreach efforts that are sensitive to elders' needs.
- Credit and housing counselors should not be the only resources for elders seeking help with debt. Further resources should be developed through senior centers and other non-profit agencies that have direct connections to older consumers.

More specific recommendations for programs include:

- Holistic reverse mortgage counseling and follow-up counseling with consumers who come to the agencies for reverse mortgage counseling.
- Specific counseling and services for medical debt problems, including information about prescription drug assistance.
- Counseling and services, including community education, on elder financial abuse.
- Appropriate delivery methods, including services for homebound consumers.
- Coordinated programs with local legal services.

Legal Assistance

Legal services are an appropriate referral, particularly if the consumer is already in default or facing collection actions. One possible barrier is that many elders referred to free legal services will not meet income eligibility or other guidelines. Beyond these free services, it is difficult to find pro bono or affordable legal services.

In addition, many legal services and pro bono programs have not made consumer law a priority service area. These programs have also been hit with funding cuts and restrictions in recent years that have made it more difficult to take on consumer cases.

Relief From Creditors

The report includes results from a survey of loss mitigation representatives at major credit card companies. Only four of the representatives returned our calls. These four all refused to speak publicly about their company's credit card loss mitigation. They acknowledged that such information was not readily available on their web sites or elsewhere.

Recommendations to improve loss mitigation for consumers include:

- Enhancing flexibility for creditors to develop work-out programs for the most vulnerable consumers, including elders living on fixed incomes.
- Mandating public information about credit card work-out policies.
- Requiring creditors at a minimum to offer principal reduction plans in certain circumstances.
- Strengthening concessions in debt management plans offered through credit counseling agencies.

Prevention and Financial Literacy

Older consumers often get into trouble with credit cards for reasons beyond their control. Additional education and understanding of credit card terms cannot substitute for the need to lower expenses and increase income. However, greater financial literacy can help prevent some consumers from getting into trouble and help those consumers spot problems once they begin.

The need is clear. The average literacy of adults age 65 and older increased between 1992 and 2003, but adults in this age group had the lowest average literacy in 2003 and accounted for the largest percentage of adults with Below Basic prose, document and quantitative literacy in 2003. Among adults 65 and older, 23 percent had below basic prose literacy, 27 percent had below basic document literacy and 34 percent had below basic quantitative literacy.

We recommend that programs that assist older consumers develop a financial education component to their work.

FINDING HELP FOR OLDER CONSUMERS WITH CREDIT CARD DEBT

I. INTRODUCTION

This report is the second of two reports on older consumers and credit card debt. The first report, "The Life and Debt Cycle: The Implications of Rising Credit Card Debt Among Older Consumers" described how older consumers are increasingly struggling with credit card debt. The report highlighted the ways in which credit card company practices exacerbate the precarious financial circumstances of many elders. The recommendations focused on limiting the ways in which consumers can enter the credit card debt trap and ameliorating the consequences for those who experience problems.

These recommendations are not yet adopted, yet many elders are still trapped in debt. While more effective policies are considered, it is critical to develop effective programs to help older consumers avoid problems and offer them targeted assistance and counseling when trouble begins. These issues are explored in detail in this report.

As more consumer-friendly policies develop over time, there will still be consumers who experience problems repaying credit cards. As described in detail in the first report in this series, these problems are often triggered by events beyond the consumer's control, such as disabilities, health crises, and business failures. Older consumers generally have fewer margins for error since they have fewer working years left, if any, to get back on their feet financially. Comprehensive, targeted programs to help these consumers are essential. These programs can help prevent consumers from getting into trouble by teaching them about common pitfalls and helping them understand basic credit card terms. They can also help counsel consumers once problems begin and help them avoid the most devastating consequences of burdensome debt. Legal assistance is also critical so that older consumers can fight back in cases where they have valid defenses and assert other rights, including those provided by fair debt collection laws.

There is an existing network of elder assistance organizations that focuses on helping elders stay as independent as possible as they age. The question explored in this report is whether elder advocates within and without that network place the same priority on financial and debt issues as they do on health, meal delivery, and other essential services. The threats to independence due to debt problems are very real---Older consumers may lose their homes, cars, and savings once they become buried in credit card debt. They often face the emotional effects of dealing with aggressive debt collectors.

The bad news is that these problems are growing worse due to the increased indebtedness of older consumers, as outlined in Part One. The good news is that in many cases these problems can be prevented or alleviated with appropriate interventions that are specifically designed for elders.

II. PROGRAMS AVAILABLE THROUGH THE ELDER ASSISTANCE NETWORK

This report explores the services available to a typical older consumer with credit card debt problems. We designed a survey to assess the types of services available for older consumers and to track whether elder network agencies refer older consumers to these services or to services outside of the network.

Our findings, followed by detailed recommendations to improve the system, are presented below.

Although there are many agencies that can be considered part of the elder assistance network, we focused on the following: Area Agencies on Aging, State Units on Aging, state AARP offices, and senior centers. We chose these agencies based on our experiences working with older consumers and because these are well-known, national resources. It is important to emphasize that not all of these agencies offer direct services. For example, some focus on policy initiatives. However, we hypothesized that even if the agencies did not offer direct services, they would likely know of relevant referrals in the community.

These agencies and the services they offer are summarized below.

1. Area Agencies on Aging (AAA)

Area Agencies on Aging were established under the Older Americans Act in 1973. According to the National Association of Area Agencies on Aging (N4A), the ultimate goal of the services provided by AAAs is to preserve independent living for elders. To this end, local AAAs offer a range of services, including many that focus on addressing the daily needs of elders who are living in their homes but need assistance, as well as several types of activities and services that can enhance the lives of healthy aging adults. For example, AAAs run programs including Meals-on-Wheels, home health services, congregate meals, energy assistance and home weatherization, elder abuse preventions, and legal assistance services.

N4A also states on its website that it is the duty of Area Agencies on Aging to connect elders with information and referral assistance.[1] If the service that is needed is not available through the local AAA, the referral goes to another agency in the community. One of the stated goals of AAAs is to assist elders and their families by coordinating community resources and helping them "navigate a complex system of services."

N4A administers a toll-free 1-800 assistance line called Eldercare Locator. Elders or caregivers call this number (or utilize the web-based referral system) to find certain types of services in their communities.

2. State Departments on Aging

Each state has a department (or unit) on aging to design and administer elder-specific services, advocate for the rights of elders in the state legislative process, and support elders and their caregivers. They are agents of state governments. States use different titles for these entities, including "department", "unit", "bureau", "commission" or "board."

The National Association of State Units on Aging (NASUA) writes that all state units share the common goal of "providing the opportunities and supports for older persons to live independent, meaningful, productive, dignified lives and maintain close family and community ties."[2] State level units on aging play an important role in the policy-making process, as well as administering state-funded home and community services for older residents.

According to NASUA, state units are responsible not only for the provision of social services, but also for the empowerment of elders and their families by providing them with "credible information" in critical decision-making processes.

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[1] *See* http://www.n4a.org/aboutaaas.cfm.

[2] *See* http://www.nasua.org/StateUnits.cfm.

3. State AARP Offices

The state AARP presence is intended to provide strategic policy-oriented activities that may include building relationships with elected officials, helping draft proposed legislation, and mobilizing the state's older citizens. Additionally, AARP's web site mentions that the state level offices "create and enhance volunteer and community service opportunities…", indicating that they are primarily a mechanism for engaging AARP members and volunteers, rather than providing or connecting them with social or financial services.[3]

4. Senior Centers

According to the Administration on Aging (AOA):

> There is no standard definition or census of the number and types of senior centers in the United States. Estimates of the number of senior centers range from 10,000 to 16,000. Many of these are funded entirely by local non-profit organizations and governments, while others are supported with funds raised by national charitable, voluntary, and religious organizations such as the YMCA, United Way and Catholic Charities. Over 6,000 centers receive some funding support from the Older Americans Act through service contracts for program activities awarded by state and area agencies on aging.
>
> Comprehensive senior centers typically provide nutrition, recreation, social and educational services.[4]

Assistance with Debt and Credit Problems Through the National Elder Assistance Network

Of the four categories of agencies we called, AAAs, state Units on Aging, AARP state offices, and senior centers, only AARP has a program dedicated to financial and debt and credit issues for older consumers. This is AARP's Money Management program, described in detail in section IV. AARP also has extensive financial education information on its web site. The other national agencies did not have any information on their web sites about debt and credit issues or money management.

The AARP Money Management program appears to be very useful in helping consumers primarily with paying bills. This program is likely to help prevent other problems, including financial abuse and "under the radar" debt problems. However, the most troubling result of our survey is that by and large the elder assistance network does not offer much financial counseling assistance to elders beyond bill paying.

With respect to AAA resources, the Manager of Eldercare Locator for the National Association of Area Agencies on Aging, acknowledged that they did not have any specific in-house resources on financial assistance or counseling. The Eldercare Locator generally refers callers to the local Area Agency on Aging and the State Unit on Aging if the call relates to financial assistance. However, depending upon the specifics of the caller's inquiry, the caller may be given additional resource information. For example, if the caller needs financial assistance relating to energy, they may get a referral to the National Energy Assistance (LIHEAP) Clearing House.

The senior centers we called were particularly at a loss as to appropriate in-house or referral programs. To the extent direct referrals were given, most were to credit counseling agencies, as discussed in detail below.

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[3] *See* http://www.aarp.org/about_aarp/aarp_overview/a2003-01-13-aarphistory.html.

[4] Administration on Aging, Aging Internet Information Notes, Empowering Users to Explore Internet Resources: Senior Centers, http://www.aoa.gov/prof/notes/Docs/Senior_Centers.pdf.

The next section explores the extent to which these agencies made appropriate and relevant referrals.

III. THE FULL RANGE OF SERVICES: WHERE ARE OLDER CONSUMERS REFERRED FOR HELP AND WHAT HAPPENS WHEN THEY GET THERE?

Survey Methodology

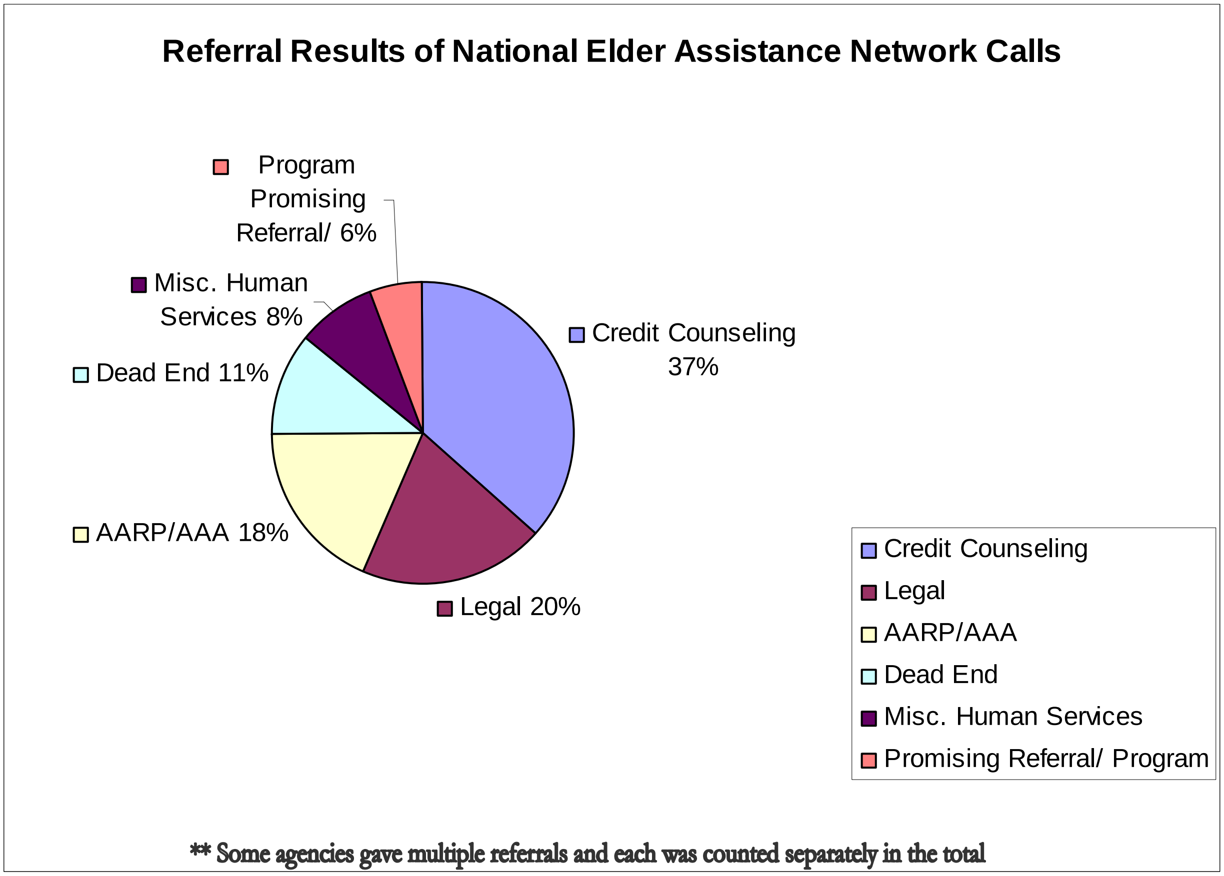
We called AARP offices, state departments on aging, Area Agencies on Aging affiliates and local senior centers in ten states. The ten states represent the top three high-density elder population states, the bottom three elder population density states and four states selected for their geographic diversity from mid-density elder population states. Thereafter, the two most populated cities were chosen as the locations for local senior center calls. Demographic data from the 2000 Census was used to asses and select each location resulting in this sample:

States in Sample

Elder Population Density		
HIGH	MEDIUM	LOW
Florida	Arizona	Georgia
Pennsylvania	New York	Utah
West Virginia	Michigan	Alaska
	Oregon	

In each call the same scenario was given and referrals and conversations were recorded carefully. The investigator said she was friendly with an elder neighbor in her apartment building, that she did not know all of the details but that the elder woman had expressed that she was distressed about credit card bills. The investigator then asked if there were any programs available to help her friend manage the situation. The profile of the hypothetical client in question was an elder woman in her 70's who lived alone in an apartment, did not have any family around to help her, was not suffering form any mental or physical impairments, and was receiving only a very limited fixed income. The investigator said she was seeking phone numbers or names of programs that could be resources for her neighbor.

Survey Results



Top Referral Sources

Credit Counseling (37% of all referrals)

The most common type of referral was to credit counseling agencies. The majority of these referrals were to local credit counselors. However, in a few cases, the referral source suggested that the investigator check the phone book or "Google credit counseling." The most common agency recommended was Consumer Credit Counseling (6). These are generally agencies that are members of the national trade association, National Foundation for Credit Counseling (NFCC). Two referrals were directly to NFCC's national toll-free number.

AARP, AAAs, State Departments on Aging, and local senior centers all made referrals to counselors. The AAA affiliates made the highest percentage of these referrals. 78% of all survey calls to AAA affiliates led to a credit counseling referral. This is compared to 40% of AARP referrals, 24% of senior center referrals and 16% of state Department on Aging referrals.

These results were striking given the serious problems with the credit counseling industry in recent years. Although there are many legitimate, effective credit counseling agencies, there have also been abuses in the industry. One of the most serious abuses is that some credit counseling agencies, which are almost entirely non-profit, operate as for-profit companies in disguise, selling debt management plans rather than providing holistic counseling and education. The fact that most agencies receive substantial funding from creditors can lead to serious conflicts of interest. Since 2004, the IRS has been auditing 63 credit counseling agencies, representing more than half of the revenue in the industry. To date, the audits of 41 organizations, representing more than 40 percent of the revenue in the industry, have been completed. All of the completed audits have resulted in revocation, proposed revocation or other termination of tax-exempt status.[5]

Despite these concerns, our survey clearly shows that credit counselors are the number one referral source from the elder assistance network. We followed up by conducting a separate survey of credit counseling agencies, described in the next section. We also explored whether legitimate credit counseling agencies have programs or services geared specifically for older consumers.

Legal Assistance (19% of all referrals)

These referrals were to free, local legal aid programs. State Departments on Aging made the highest percentage of referrals to legal assistance (37%) while AAA affiliates made the lowest, just 7%. 21% (6 total referrals) of senior center referrals were to legal aid. Of the six occasions where senior centers mentioned legal assistance, two offered to make an appointment with a lawyer at the center.

AARP or AAA service (such as Eldercare Locator) (18% of all referrals)

This category includes referrals to both AARP offices and AAA affiliates. Not surprisingly, AARP offices referred our investigator to AARP resources most often (33% of AARP referrals). However, none of the AAA affiliates referred us to an AARP or AAA resource. Referral rates from senior center and state department on aging were also low, at 16% of all Departments on Aging referrals and 14% of senior center referrals.

As discussed above, the state AARP offices generally focus on policy issues and mobilizing membership. However, many state AARP offices have developed local Money Management programs which assist older consumers with basic bill paying. These are described in greater detail below. It is unclear whether there were few referrals to AARP because of lack of awareness about the Money Management program or because the agencies recognized that our hypothetical older consumer was unlikely to benefit from bill paying services.

Dead-end (11% of all referrals)

The "dead end" category consists of referral sources that were unable to help and unable to offer any other reliable referrals. With the exception of two state calls (one that was answered with just ringing, no voicemail and one that was only a voicemail) these dead-ends were given mostly by senior center staff who found the question outside of their service area and had no referrals to centers with more comprehensive services available. None of the calls to state AARP offices resulted in a dead-end.

Miscellaneous Human Services (8%)

State office personnel or staff at the senior centers gave information about agencies like United Way and Church-based services that were generally intended to guide consumers to financial assistance for overdue bills.

Promising Programs/Assistance (6%)

In only four cases were referrals made to non-credit counseling resources that seemed to fully address the consumer's needs by providing holistic counseling, legal, and financial services. All of these referrals were made by local senior centers.

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[5] Press Release, Internal Revenue Service, IRS Takes New Steps on Credit Counseling Groups Following Widespread Abuse, IR-2006-80 (May 15, 2006), *available at* http://www.irs.gov/newsroom/article/0,,id=156996,00.html.

Two of those referrals were to specific programs and two were to people within certain senior centers or advocacy organizations who were willing to meet with the client and determine what needed to be done to resolve credit card problems. The programs that stood out were:

- **Project SCOPE (Senior Community Outreach Program to the Elderly), New York City:** According to the staff at this program, intensive case management is provided to elders who qualify based on their monthly income. The program, funded by the New York Department of Aging and Department of Health, serves all five boroughs. An all-purpose case manager who assesses the client's needs visits clients at home. The director of one Project Scope program indicated that the contributing factors to the problem would be explored. She said that often clients are suffering from a range of issues that may compound the problem of high interest debt. If the main problem is an income shortfall, assistance in the form of public benefits or grants is pursued. Legal services may be consulted if the client is being harassed by debt collectors. After the debt emergency is settled, clients may participate in ongoing budgeting and financial programs (for which there is one designated coordinator). Bill paying assistance is provided as well as a representative payee program. The financial situation of the client can be monitored by the caseworker so that all bills remain manageable. If the elder can pay a small fee, there are financial planners who are affiliated with the program and can visit clients. In order to obtain homecare services from Project SCOPE, clients must pay between .67¢ and $15.00 per hour for all services. The program is run out of Lenox Hill Neighborhood House, a social service organization on the Upper East Side of Manhattan. A short description of SCOPE is given on their site: http://www.lenoxhill.org/adult.html.
- **Adult Wellbeing Services, Detroit, Michigan:** Adult Wellbeing Services is a community non-profit that serves Southeastern Michigan. Case managers visit clients in their home to assess each elder's needs. There is no income requirement to obtain services. The director of Adult Wellbeing reports that they commonly see older consumers struggling financially. Case managers act as liaisons between clients and the appropriate agency or organization. There are, however, no legal or financial professionals on staff at Adult Wellbeing.

IV. COUNSELING AND DIRECT ASSISTANCE

The three main types of assistance available directly through the national elder assistance network or through referrals are bill paying, credit/budget counseling, and legal assistance. Each is described in greater detail below.

1. Bill Paying/Money Management

Many of the referrals to AARP are routed to AARP's Money Management Program. [6] The Money Management Program (MMP) is administered through 135 Area Agencies on Aging and local government agencies in 20 states. MMP reaches approximately 5,000+ low income elder clients a year.

The program utilizes trained volunteers to assist clients who are having trouble physically paying their bills each month through the Bill Payer Program. When clients have been determined to be incapable of handling their own funds, they are assigned a volunteer who will receive and manage government benefits and tend to the client's finances on their behalf through the Representative Payee Program. Approximately 60% of Money Management services are Bill Payer and 40% are Representative Payee.

[6] *See* http://www.aarpmmp.org/index.cfm.

Although these services can be extremely useful, particularly for consumers with disabilities, the MMP is designed mainly to provide basic bill paying services. According to a local Money Management Program director in Massachusetts, financial counseling is outside the official Money Management function, but some volunteers go above and beyond the program's expectations and take on a counseling role. Some have even done debt negotiations with clients' creditors or gone to small claims court for clients. It is unclear to what extent volunteers receive initial and ongoing training to provide these types of services.

There is another program, Money Management Plus/Project for Financial Independence, administered through the National Endowment for Financial Education (NEFE) that is intended to go beyond the basic services provided by MMP. In collaboration with 11 charitable organizations, including AARP, NEFE connects clients in need of financial planning services with professional support on a pro bono basis. Members of the public who are both members of AARP and meet the income criteria are assigned to volunteer professional financial planners. Clients are referred to the Money Management Plus Program by agencies that administer the Money Management Program. When the needs of the client would be better met by financial planners, elders are given the contact information for Money Management Plus. Only about 10% of clients self-refer to Money Management Plus. There are income criteria, roughly corresponding to poverty thresholds.

The program is still quite new and does not yet appear to have the capacity to serve large volumes of requests. It seems possible that this program will make a significant impact in the future and interest could be generated by promoting the service more heavily among the membership of AARP.

Overall, the AARP and other bill paying services appear to offer useful services for vulnerable older consumers. There are limits to these programs. They do not exist in all areas. They are also heavily dependent on volunteers. In addition, there is a limit to the types of services relatively untrained, nonattorney volunteers can and ultimately should provide.

It is unclear whether the relatively low level of referrals to AARP in our survey was because the sources were unaware of the money management program, the program did not exist in that area, or because the agency making the referral did not believe that bill paying would assist the hypothetical elder in our survey.

2. Credit Counseling

On the positive side, the results of our survey indicate that there may be an existing resource network that could fill much of the unmet need for advice and assistance for elders with credit card problems. A recent study by Consumer Federation of America and American Express also found that the act of seeking counseling is a valuable "early warning" indictor of financial trouble. The researchers concluded that borrowers in trouble could benefit if they receive early assistance from credit counselors.[7]

One major concern, however, is that elders referred to credit counselors or who find counselors on their own may end up as victims of credit counseling agency abuses. Despite their promises of debt relief, there have been problems with agencies exploiting their customers' vulnerabilities and leaving them deeper in financial trouble. [8]

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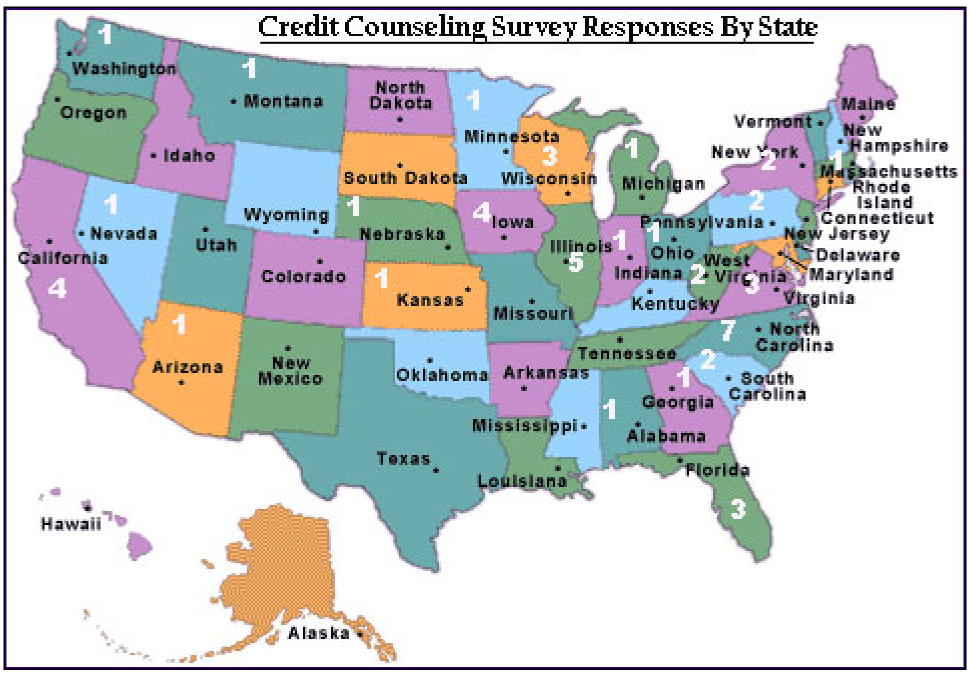
[7] MICHAEL E. STATEN, JOHN M. BARRON, EVALUATING THE EFFECTIVENESS OF CREDIT COUNSELING 2 (May 31, 2006), *available at* http://www.consumerfed.org/pdfs/Credit_Counseling_Report061206.pdf.

[8] See generally NATIONAL CONSUMER LAW CENTER, CONSUMER FEDERATION OF AMERICA, CREDIT COUNSELING IN CRISIS (April 2003), *available at* http://www.nclc.org/action_agenda/credit_counseling/content/creditcounselingreport.pdf.

A number of older consumers we interviewed for our reports tried to get out of debt by using a credit counseling agency's debt management plan. Unfortunately, this strategy backfired as these consumers were taken advantage of by unscrupulous agencies that accepted high fees and set up plans that were unworkable. An 82 year old West Virginia woman described her experience with the now defunct credit counseling agency, AmeriDebt. "That was a real snow job," she says, "they said they wouldn't charge me, but they kept the first month's payment and then charged me $20 a month."

Despite these very serious concerns, many credit counseling agencies are legitimate. It is less clear, however, whether these services are high quality and specifically targeted for older consumers. We conducted a survey of members of two credit counseling trade associations that are generally considered reputable: The Association of Independent Consumer Credit Counseling Agencies (AICCCA)[9] and National Foundation for Credit Counseling (NFCC).[10] Leaders of both organizations approved and promoted this survey to their members. We sent the members the surveys by e-mail. Respondents were encouraged to respond on-line, but paper copies were also made available upon request. A total of 147 agencies were surveyed. 54 counselors responded. 44 of 115 sent to NFCC agencies responded, while 11 of 32 AICCCA members participated, bringing the response rate to about 37%. The sample is geographically diverse as the map below shows. A copy of the survey instrument can be found at Appendix A.



Results of NFCC and AICCCA Survey

Numbers of Elder Clients

Older consumers (defined as 60 and above) comprise a significant portion of credit counseling agency clients. The credit counselors that responded to our survey reported that an average of 20% of their clients are elders. 87% of respondents affirmed that this percentage has

[9] *See* http://www.aiccca.org/.
[10] *See* http://www.nfcc.org/.

increased in the past 5 years. This is significantly higher than the percentage of elders in the general population.

One agency provided NCLC with additional detail, breaking down its elder consumers by age categories. For consumers older than 65, interestingly only about 25% of their clients in 2005 were in the 65-69 age group. Another 25% were 70-74 and 25% were 75-79. The remaining clients were over 80. The high percentage of older "older consumers" seeking counseling is an issue that merits additional study. Nearly 60% of the older consumers in this agency's data base lived alone. The overwhelming majority (just over 60%) were women.

Delivery Method

The vast majority (approximately 70%) of the counselors in the sample conduct more than 50% of their services on a face-to-face basis. Only eleven respondents reported conducting more than 50% of their counseling over the phone. 23 respondents (approximately 43% of the total) reported that they do some counseling via internet. The percentages of clients counseled in this way were small, ranging from 1%-27%. Ten respondents indicated that they did some small portion of their counseling by 'other' means than phone, internet, and face-to-face.

Additional study is needed to determinate whether elder clients are better served by a particular delivery method.[11] The ability to access services remotely by phone or Internet may be useful for older consumers, particularly those with mobility problems. However, targeted, holistic counseling requires that the counselor review a consumer's credit card statements and other documents and provide follow-up services. Phone and Internet delivery is not always set up to meet these requirements.

Many agencies that provide services by phone or Internet rely on a consumer's credit report to gather relevant information. While these reports are very useful, they rarely tell the entire story. For example, not all creditors, including many landlords and utility companies, report information to credit bureaus. The phone counselor must rely on the consumer's self-reported information about creditors that do not report information to bureaus whereas counselors seeing a client in person can review the client's documents. In addition, there may be errors on the credit report that the consumer may not be aware of.

Explanations for Increases in Elder Clients

We asked counselors to give their reasons for increases in elder clients. In a tally of these responses, interest in reverse mortgage counseling was mentioned most often. Medical bills and increased access to credit and credit cards were cited next often. Numerous respondents listed cost of living increases and helping family members or raising grandchildren as well. Though less numerous, increased life expectancy, predatory lending, scams, bankruptcy, property taxes, and utility and transportation costs were all noted as possible causes of the increased number of elder clients seeking counseling.

In response to a question about the most common reasons older consumers call their offices, medical debt was mentioned most often, followed closely by reverse mortgage counseling and credit card issues.

The next set of questions explored the types of programs the agencies have specifically targeted for older consumers.

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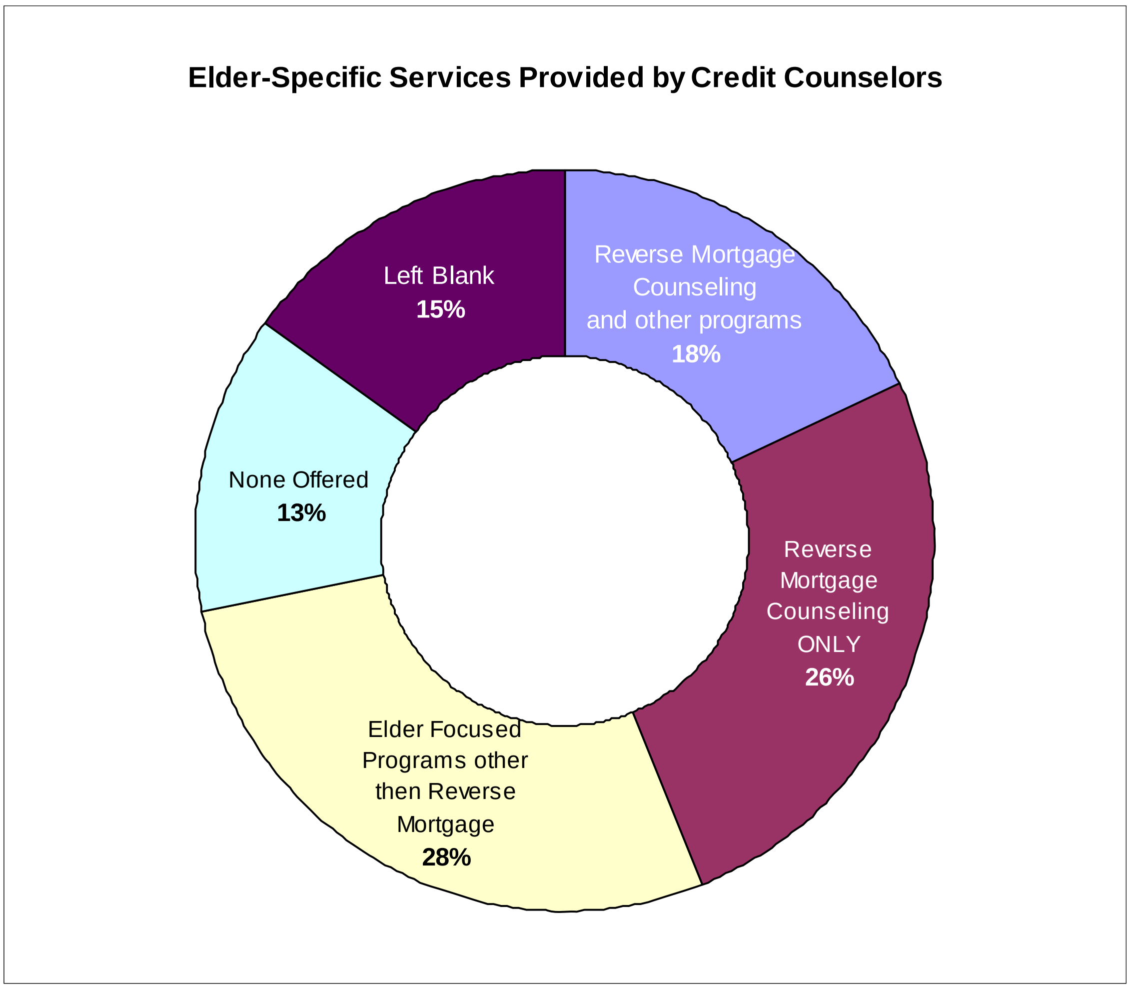
[11] For some preliminary research on this issue, see MICHAEL E. STATEN, JOHN M. BARRON, EVALUATING THE EFFECTIVENESS OF CREDIT COUNSELING 2 (May 31, 2006), *available a*t http://www.consumerfed.org/pdfs/Credit_Counseling_Report061206.pdf.

Current Services Provided by Credit Counselors

Counselors in the sample indicated they had a variety of specialized services for older clients. Some of these answers reveal that counselors are aware of issues that affect elders in particular or that elders are targeted by certain kinds of predators. However, other responses pointed to gaps in the services available to elders through credit counseling.

About 67% of the counselors responded that they are approved to provide reverse mortgage counseling, although only 44% listed reverse mortgage counseling as a current service they provide. Of the programs that offered reverse mortgages, about 58% indicated that reverse mortgage counseling was the ONLY elder-specific service they offered.

Overall, 26% of the agencies responded that reverse mortgage counseling was the only specialized service they offer for older consumers. 18% listed reverse mortgage counseling and other programs. About 28% stated that they offered elder-focused programs other than reverse mortgage counseling. The remaining programs either responded that they did not offer any elder-specific programs (13%) or left the question blank (15%).



These findings indicate that reverse mortgage counseling may provide a good opportunity to work with older consumers more broadly, depending on how these sessions are structured. Counseling by a HUD-approved agency is required for consumers seeking government (FHA) insured reverse mortgages.[12] In a reverse mortgage, the lender gives the homeowner cash based on

[12] More information is available on HUD's web site, http://www.hud.gov/offices/hsg/sfh/hecm/hecmhome.cfm.

the value of the property without an immediate repayment obligation. In general, these products are available only for older homeowners.

The reverse counseling mandate is the reason many older consumers are getting in the doors of counseling agencies. The question is what happens once they are there. As with other types of counseling, there has been little evaluation of the effectiveness of reverse mortgage counseling. Further, there appears to be little government oversight to ensure that counselors are well-trained and continue to keep up with new developments.

As the reverse mortgage industry grows, there is also increased pressure by lenders to get more involved in designing the content of the counseling sessions. This is already a very serious problem in credit counseling. Creditor contributions to the industry and the increased reliance of agencies on these funds create potential conflicts of interest that could arise in the reverse mortgage context as well. If a reverse mortgage lender provides funding to the counselor, it may want something in return such as counseling that is biased toward the advantages of reverse mortgages. In reality, reverse mortgages are not appropriate for everyone.

While more study is needed, counseling programs such as the Consumer Credit Counseling Services of Delaware Valley that provide holistic counseling when older consumers seek information about reverse mortgages are likely to be of the greatest benefit to consumers. CCCS of Delaware Valley, for example, takes at least two hours with consumers, usually at an in-person counseling session. They require consumers to put together a budget and a list of assets and liabilities before the counseling session. At the session, the counselor works with the consumer to assess current and future financial needs and goals. The counselors assists the consumer by providing education and understanding of various reverse mortgage options and other possible alternatives.

Other Programs Targeted for Older Consumers

The agencies that did have elder-targeted programs other than reverse mortgage counseling generally described consumer education programs. These sessions are intended to increase the level of financial literacy generally and help prevent scams and debt problems. As discussed in section VI, prevention and education programs can be useful, but are likely to be most effective when conducted in connection with targeted services.

Not all of the programs described by the survey respondents were education programs. A number of agencies in our survey discussed innovative programs that should be examined and studied, funded and replicated if proven successful.

For example, a counselor from South Carolina reported that she works with a HUD-funded program to assist low income seniors with affordable housing. In North Carolina counselors utilize a framework called 'Senior Financial Care' which offers senior-specific expense management services in clients' homes. One Virginian counselor described a program that seems to mirror AARP's Money Management, assigning a representative payee to clients who are no longer able to manage their own finances for medical reasons. In Oklahoma and Indiana, counselors have the flexibility of providing on-site counseling to clients who are homebound.

We also asked the agencies to provide their ideas about programs that might benefit elders in their service areas. Counselors repeatedly identified medical cost assistance as one essential approach to reduce the debt problems experienced by elder clients. Prescription drug affordability, lack of health coverage and overdue medical bills seem to be at the root of burgeoning elder debt, according to the credit counselors sampled. Additionally, there were several responses that pointed to financial abuse of elders by members of their own family. Many respondents suggested that seniors have access to seminars or support services to provide education and help them identify and cope with the experience of being taken advantage of by trusted family members.

Another strong theme was about loss mitigation and debt forgiveness. Many counselors suggested that creditors should allow older consumers to relieve their debt burdens more easily or be more flexible in repayment terms. These issues are discussed in section V. Several respondents indicated that there needed to be stronger linkages between credit counselors and the community senior services available to clients. Our results show that referral rates to credit counseling are high, but the extent of collaboration between the elder network and credit counselors is unclear. We also found that local senior centers and state departments on aging were the least likely to refer us to a credit counseling agency.

Credit Counseling Recommendations

Regulation of Credit Counselors

There is great potential for the credit counseling network to help financially distressed elders. However, at least two prerequisites must be met. These programs must be legitimate and reputable and second they must develop programs specifically targeted for their older consumer clients.

With respect to the former, we recommend that states enact strong laws to regulate the abusive practices of counseling agencies. Many states already have some type of debt management law, but they vary significantly from state to state.[13] These laws should be separate from laws that address the practices of other types of debt relief companies such as debt settlement companies. In general, we recommend that the credit counseling/debt management laws limit the provision of credit counseling services to bona fide non-profit organizations. The laws should regulate rather than exempt non-profits since so many agencies are for-profit companies in disguise. These consumer protection laws must go hand-in-hand with strong I.R.S. and state enforcement of tax exemption, charity laws.[14] Strong laws are not enough. States must also aggressively enforce these laws.

In addition to enacting stronger laws to regulate the industry and enforcing these laws, it is critical for legitimate agencies to develop programs and outreach efforts that are sensitive to elders' needs. A focus on products and services, such as reverse mortgages, that may benefit elder consumers should also be an integral part of a counseling session for an older consumer.

Many agencies are unable to provide the types of services needed because of lack of funding. To make these shortfalls, most agencies turn to two sources—creditors and clients. There are problems with both. As noted above, there can be very serious conflicts of interest that arise when counselors rely on creditors for funding. For example, will a counselor hesitate in advising a consumer that bankruptcy might be the best solution for her financial problems, knowing that creditors object to this result?

Whether creditors will view the development of a more independent credit counseling sector as sufficiently helpful for their bottom lines has yet to be determined. Ideally, creditors will come to understand that they can benefit from the money credit counselors collect <u>and</u> from the independent counseling and education that credit counselors can provide. Citicorp, for example, changed its funding formula from a DMP fair share formula to a grant formula. Hopefully, this portends such a show of support. Relying on consumers is also a problem since many are already financially strapped and cannot or will not pay substantial fees for services offered.

Many credit counselors have made very committed efforts to diversify their funding sources, but still find it difficult to raise private foundation or government grants. Some have received grants

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[13] For a complete list of state debt management laws, *see* JONATHAN SHELDON, CAROLYN L. CARTER, UNFAIR AND DECEPTIVE ACTS AND PRACTICES §5.1.2.3 (6th ed. 2004 and Supp.).

[14] *See, e.g.*, David Lander and Deanne Loonin, *Restoring 'Nonprofitness' and 'Quality' to the Credit Counseling Industry*, NORTON BANKRUPTCY LAW ADVISER (April 2005).

to engage in housing counseling. The lack of diversified funding should be an area of concern for credit counselors. The I.R.S. has been quite clear that organizations are not non-profit if they rely exclusively on client fees and creditor payments.[15] Yet this is the prevalent business model in place today. The more these organizations truly act like charities, the more likely it is that they will be able to enlist public support and private donations.

Targeted Services for Older Consumers

With respect to services for older consumers, credit counseling agencies must develop programs that effectively suit elders' unique needs. Recommendations include:

- Holistic reverse mortgage counseling and follow-up counseling with consumers who come to the agencies for reverse mortgage counseling.
- Specific counseling and services for medical debt problems, including information about prescription drug assistance.
- Counseling and services, including community education, on elder financial abuse.
- Appropriate delivery methods, including services for homebound consumers, and
- Coordinated programs with local legal services.

In addition, credit and housing counselors should not be the only resources for elders seeking help with debt. Further resources should be developed through senior centers and other non-profit agencies that have direct connections to seniors. It was striking in our survey that only a few of the senior centers, AARP offices, and state aging departments had in-house resources to assist older consumers with debt problems. Relying on credit counseling agencies to provide these services is effective only if there are reliable resources in their areas and only if the agencies are able to provide elder-targeted services at affordable costs.

3. Legal Assistance

(19% of All Referrals)

Legal services is an appropriate referral, particularly if the consumer is already in default or facing collection actions. Additional study is needed to evaluate the effectiveness of these referrals. One possible barrier is that many elders referred to free legal services will not meet income eligibility or other guidelines. Beyond these free services, it is difficult to find pro bono or affordable legal services.

In addition, many legal services and pro bono programs have not made consumer law a priority service area. These programs have also been hit with funding cuts and restrictions in recent years that have made it more difficult to take on consumer cases. The federal Administration on Aging supports a network of legal services providers assisting older clients. Surveys of these providers generally indicate a high demand for credit, debt, and consumer services. Yet, many of these programs are unable to or choose not to handle these cases.

It is troubling that only two senior centers in our survey offered in-house legal appointments for our hypothetical client. However, this is a small sample. Additional study is needed to assess the accessibility and availability of legal assistance for older consumers and whether these services offer help with debt and credit problems.

The need for free and affordable legal services should be met not only with greater funding, but with increased training for legal services providers and enhanced coordination between elder

[15] *Id.*

advocates and attorneys. This is critical because there is no substitute for direct legal representation in many cases. Counselors, for example, can help by providing advice and education to elders in consumer trouble. However, they are generally not lawyers and should not be engaging in practices that constitute the practice of law. In addition, to the extent counselors are funded by creditors, they are often unable to offer the type of objective legal counsel that is necessary to explore all possible defenses to debt repayment or bankruptcy when appropriate.

For example, many of the elder consumers we interviewed did not have any assets or income that could be attached by creditors in their states. Although most of these consumers still wanted to try to repay their debts, the reality is that they could stop paying, focus on necessary expenses, and not suffer adverse consequences. Trained legal advisors are in the best position to help a consumer understand what it means to be "collection proof" and to determine, based on state exemptions, whether she has property or income that could be vulnerable. These lawyers are also trained to counsel clients on the possible consequences of not paying debts, including how to directly address debt collection harassment.

Self-help materials and legal clinics can fill in some of the gaps left by limited legal assistance resources. In fact, many of the legal services programs funded by the Administration on Aging and other sources are hotlines. It is essential to evaluate these programs and follow up with elder clients to see whether they understand the advice given and are able to follow through. As noted above, there is no substitute for direct legal representation in many cases.

Anecdotally, we know that there are many legal aid programs for older clients. However, no agencies in our survey referred us to a specific elder-oriented legal assistance program. It may be that there were no such clinics in the areas we called. This is unlikely. Alternatively, they may have been unaware of existing services. Additional study is needed to determine whether this is due to insufficient outreach, lack of resources, or other factors that impede coordination.

CONCLUSION

The overall pieces of the assistance puzzle exist. There are programs such as AARP's Money Management Program that help older consumers pay their bills each month. There are legal services programs that assist elders facing debt collection harassment or debt collection lawsuits. There are legitimate, reputable credit counselors that offer a range of useful services. The problem is that all of these pieces do not often exist in the same location. For example, one city might have a strong AARP Money Management Program, but will lack a quality credit counselor and legal services program. Second, the various networks do not necessarily know about each other and coordinate with each other.

Only a small fraction of the referrals in our survey were to programs that appeared to offer a range of services, including bill paying, counseling, services for home-bound elders, and legal assistance.

V. RELIEF FROM CREDITORS

Instead of pushing consumers harder when they start getting behind on credit cards, creditors could offer programs to help resuscitate financially distressed borrowers. This is what occurs fairly routinely in the mortgage industry. Consumers that get behind on mortgages often have access to workout options such as extensions in loan terms and reduction of principal.

In an effort to find out more information about credit card company loss workout programs, we called loss mitigation representatives at MBNA, HSBC, Capital One, Discover, J.P.Morgan/Chase, Citi, and American Express. Only four of the representatives returned our calls. These four all refused to speak publicly about their company's credit card loss mitigation. They acknowledged that such information was not readily available on their web sites or elsewhere. They told us that they would discuss this information with customers only. Every situation is different, according to these representatives, and they claimed to have a wide array of programs to fit customer needs. One creditor specially said that they would not release the information because they did not wish to reveal trade secrets.

In response to the concern about raising consumer expectations about the types of "deals" they could get, we asked each representative why they could not just provide general information. We noted that holders of mortgage debt provide such information. One creditor explained that secured debt loss mitigation is much different because the creditor has collateral. In addition, each creditor said that loss mitigation in the mortgage context is more highly regulated. Although all of the representatives said that they try to be flexible, those who would speak at all about the topic acknowledged that if the balance is too high, there is usually nothing they can do to help the consumer.

Based on interviews with clients and advocates and other reports, it does appear that creditors will offer settlements in some cases. The usual creditor line is that they are willing to work with people in financial difficulty because they want to retain their customers.[16]

However, they usually require a fairly sizable lump sum. Many creditors claim that banking regulator safety and soundness guidelines prevent them from offering more flexible programs. In fact, federal regulators have developed guidelines that set some restrictions in order to preserve safety and soundness of the financial system. Some creditors have cited this lack of flexibility as a key impediment to setting up work-outs with consumers.[17]

The sample letters below indicate the large lump sum payments often required and the short time period. These letters were sent to older consumers interviewed for this report. The letter from CCB Credit Services, for example, sent to one of the elders we interviewed requires a payment of about 65% of the debt within 20 days. Capital Management sent out a settlement offer for about 55% of the amount owed, one half to be paid within ten days and the second half ten days later.

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[16] See, e.g., Kathleen Day and Caroline E. Mayer, *Credit Card Penalties, Fees Bury Debtors,* WASHINGTON. POST, March 6, 2005 at A01.

[17] See, e.g., Letter from American Bankers Association, to Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision Re: Credit Card Lending-Account Management and Loss Allowance Guidance (September 23, 2002), *available at* **http://www.aba.com/NR/rdonlyres/DC65CE12-B1C7-11D4-AB4A-00508B95258D/26583/CreditCardLendingGuidancefinalcmt9230993.pdf.**

726 Exchange Street, Suite 700
Buffalo, New York 14210

ADDRESS SERVICE REQUESTED

#BWNJTHB ****AUTO**ALL FOR AADC 250
#0069503134#

CAPITAL MANAGEMENT SERVICES, INC
726 Exchange Street - Suite 700, Buffalo, NY 14210
Office Hours: M-Th 8 a.m. - 11 p.m. ET
Fri 8 a.m. - 10 p.m., Sat 8 a.m. - 4 p.m. ET
Sun 9 a.m. - 1 p.m. ET
Toll Free: 1-800-294-9961, Fax: (716) 852-1620

Previous Creditor: HID-PROJECT LINE
Current Creditor: Cavalry Portfolio Services, LLC
Account #
Balance: $16971.59

Dear R

This letter serves as confirmation that as duly authorized representatives of Cavalry Portfolio Services, LLC, Capital Management Services, Inc. has agreed to accept less than the full balance due, as settlement on the above-mentioned account.

This settlement shall be in the total amount of $9,334.38. One-half of $9,334.38, in the amount of $4,667.19 is due in this office 10 days from receipt of this letter; and the remaining settlement balance in the amount of $4,667.19 is due in this office 10 days following the first payment.

Upon clearance of sufficient funds, our records will be updated to reflect that the above account has been satisfied.

You may send the settlement payment to Capital Management Services, Inc. at 726 Exchange Street, Suite 700, Buffalo, NY 14210. Our representatives are trained to offer assistance regarding this obligation. For account inquiries, you may contact Capital Management Services, Inc. by calling 1-800-294-9961 Mon. through Thurs. 8 am to 11 pm ET, Fri. 8 am to 10 pm ET, Sat. 8 am to 4 pm ET or Sun. 9 am to 1 pm ET. You may also make payments online at: www.cms-collect.com.

Should you wish to discuss the manner in which your account has been handled, please call Capital Management Services, Inc. Compliance Department at 1-800-519-2687.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

PLEASE DETACH COUPON & RETURN WITH YOUR PAYMENT
1 of 2
Capital Management Account Number: 0
Reference Number: (
Payment Amount: $4,667.19
Mail Payment to:
Capital Management Services, Inc
726 Exchange Street, Suite 700
Buffalo, NY 14210

PLEASE DETACH COUPON & RETURN WITH YOUR PAYMENT
2 of 2
Capital Management Account Number: (
Reference Number:
Payment Amount: $4,667.19
Mail Payment to:
Capital Management Services, Inc
726 Exchange Street, Suite 700
Buffalo, NY 14210

P.O. BOX 272
SPRINGFIELD, IL 62705-0272

ADDRESS SERVICE REQUESTED

02/03/04	5
CREDITOR	
ERIN FINANCIAL SERVICES	
TOTAL AMOUNT DUE	$3,335.78
SETTLEMENT OFFER	$2,168.26

AN5340-2M-0

CCB CREDIT SERVICES, INC.
P.O. BOX 272
SPRINGFIELD, IL 62705-0272

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT
(MAKE SURE ADDRESS SHOWS THROUGH WINDOW)

We have been authorized to offer you an opportunity to "SETTLE YOUR ACCOUNT". However, we must have your payment within the next 20 days.

To take advantage of this most generous offer, you must return this notice with a check or money order for the settlement amount in the envelope we have provided.

If you wish to discuss alternative arrangements, please call us immediately.

Total Amount Due:

Settlement Offer: $2,168.26

Please be advised that the above listed creditor is required to file information returns with the IRS (Form 1099-C) for any indebtedness of $600.00 or more which is forgiven. You will receive a copy of the information return form. You are encouraged to speak with your tax advisor if you have any questions about your tax obligations.

THIS COMMUNICATION IS FROM A DEBT COLLECTION AGENCY. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

DATE	ACCOUNT NO.	FILE #
02/03/04		

CREDITOR
ERIN FINANCIAL SERVICES

AMOUNT	$3,335.78
VARIOUS OTHER ACCOUNTS	
OTHER CHARGES	
TOTAL AMOUNT DUE	$3,335.78

[illegible]
AV
[illegible] -3209

CCB CREDIT SERVICES, INC.
1045 OUTER PARK DRIVE
SPRINGFIELD, IL 62704
(217) 787-0963
(800) 755-5249

A key problem, as noted above, is that safety and soundness guidelines may prevent creditors from offering consumers sufficient flexibility. Yet, during extraordinary crises such as Hurricane Katrina, creditors have agreed to and have been encouraged to put aside these restrictions, at least for a time. Some creditors have also advocated for greater flexibility. This issue is critical and should be explored. For example, flexibility could be allowed to assist elders living on fixed incomes in addition to other vulnerable and financially distressed consumers. Most critically, creditors must be pushed to consider reductions of principal and other work-outs that are truly likely to work out.

Presumably to fill the void, there are for-profit companies that sell "debt settlement" services. These debt settlement or debt negotiation companies are very problematic.

There is generally nothing wrong with consumers attempting to settle a debt if this makes sense for them. The problem is that debt settlement companies solicit and work with consumers who do not yet have lump sums to make settlements. Negotiation and settlement services are different from debt management mainly because the debt settlement agencies do not send regular monthly payments to creditors. Instead these companies generally maintain funds in separate accounts, holding the money until the company believe it can settle debts for less than the full amount owed.

The main problems with debt settlement are: 1) The consumers targeted by debt settlement companies are generally the least likely to benefit; 2) Very few consumers ever complete a debt settlement program. In the meantime, consumers in debt settlement programs continue to face collection efforts. Their debts also continue to grow as creditors pile on fees and interest accrues; 3) Debt settlement fees are so high that the consumers do no end up saving much in the "reserve accounts"; 4) It is unclear what if any professional services most debt settlement companies offer to assist debtors.[18] There are also potential tax consequences if debts are written off.

Creditor-Sponsored Debt Management Plans

While creditor workouts in-house are kept very secretive, it is more commonly known that creditors offer debt management plan work-outs through credit counseling agencies. Through debt management plans (also called DMPs), consumers send the credit counseling agency a monthly payment, which the agency then distributes to creditors. In return, creditors usually agree to waive fees and reduce interest rates. The creditor will often agree to re-age the account as well. These plans are particularly important given the high level of referrals in our survey to credit counseling agencies.

The problem is that DMPs, as currently constituted, are only useful for some consumers. Creditors call the shots when it comes to concessions offered through DMPs. They rarely reduce the amount of principal that consumers owe them, never as part of a DMP. Agencies really have only three concessions to offer that creditors will allow. First, creditors can "re-age" a credit card account of a consumer who enters a DMP. Most creditors will re-age an account once a year or twice in five years, the maximum allowed by federal financial service regulators. Another concession that issuers generally grant is to waive or reduce fees, such as fees for late payments or for exceeding the allowable credit limit.

Many creditors will also reduce interest rates. These policies vary tremendously and in general, creditors have cut back on interest rate reductions in recent years. Some companies, such as

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[18] See generally Deanne Loonin, National Consumer Law Center, An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers (March 2005), *available at* http://www.nclc.org/action_agenda/credit_counseling/content/DebtSettleFINALREPORT.pdf; *See also* In re Sinnot, 845 A. 2d 373 (Vt. 2004) (Describing the lack of actual work performed by a law firm offering debt settlement services).

MBNA and Discover, apply a wide range of concessions depending on the risk profile of the consumer. Credit counselors also report that some creditors, such as Wells Fargo, may not reduce rates at all for variable accounts.

Because of inconsistent and reduced concessions, it appears that only consumers with considerable disposable income left over each month are able to get out of debt through DMPs. It is difficult to find conclusive data on the effectiveness of DMPs. [19] Most agencies do not release information on their retention rates, although a 1999 NFCC memo cited by Consumer Reports found that just 21% of their clients completed DMPs while about the same percentage left to self-administer debt payments.[20] In 2001, the National Foundation for Credit Counseling reported completion rates of about 26% with about 20% leaving for self-administration.[21] The high failure rate in DMPs is undoubtedly influenced by the limited concessions that creditors offer to consumers who enter credit counseling. If consumers cannot significantly lower the amount that they owe, they are more likely to fail in completing a three to five-year DMP.

If the goal is to allow some consumers to repay debts outside of bankruptcy, consumers must be given meaningful options to do so. A 1999 nationwide survey of credit counseling agencies by Visa found that one-third of those who dropped out of DMPs (34.3 percent) said they would have stayed on if creditors had waived or reduced additional interest or fees. Close to half of the clients who dropped off a DMP (41.8 percent) had either filed or were going to file bankruptcy. Nearly half of these consumers said they would have been able to stay out of court with improvements in the DMP process.[22]

Loss Mitigation Recommendations

1. Creditors should be given some additional flexibility to develop work-out programs for the most vulnerable consumers, including elders living on fixed incomes.

2. Credit card companies should be required to publicize general work-out policies.

3. Current work-out plans through credit counseling and outside of credit counseling do not do nearly enough to help consumers get out of trouble. At a minimum, creditors should be required to offer principal reduction plans in certain circumstances. One strategy is to expand on the provision in the 2005 bankruptcy amendments which allows debtors to attempt to negotiate a reasonable alternative repayment schedule through an approved nonprofit credit counseling agency. If the creditor unreasonably refuses to negotiate such a schedule, a debtor who later files bankruptcy, perhaps as a result of the creditor's unreasonableness, may ask the court to reduce the creditor's claim by 20 percent. This section is clearly premised on the assumption that creditors must do more to offer viable alternatives to bankruptcy.

It is unclear, however, whether credit counseling agencies are proposing principal reduction plans to creditors. Credit counseling agencies may be reluctant to do so because they rely on creditor funding, which in some cases is based on the numbers of submitted plans that are approved. To address this issue, creditors should develop funding programs for credit counseling that are not tied to DMP performance. In addition, credit counseling agencies need to act first and foremost on behalf of their consumer clients. This includes developing and proposing plans that go

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[19] For preliminary research in this areas, see MICHAEL E. STATEN, JOHN M. BARRON, EVALUATING THE EFFECTIVENESS OF CREDIT COUNSELING 2 (May 31, 2006), *available a*t http://www.consumerfed.org/pdfs/Credit_Counseling_Report061206.pdf.

[20] *Pushed Off the Financial Cliff*, CONSUMER REPORTS, July 2001.

[21] Statistics provided with permission from the National Foundation for Credit Counseling. Data is derived from the 2001 Member Activity Report, p. 25.

[22] "Credit Counseling Debt Management Plan Analysis", Visa U.S.A. Inc., January 1999. A representative sample of 481 consumers who dropped off a DMP was surveyed.

beyond the standard DMPs. If agencies are unable to do so because they fear losing creditor funding, they are no longer acting as true charitable non-profits and should not be allowed to maintain tax-exempt, non-profit status.

4. Creditors should be pressured to offer more significant concessions in DMPs. As noted in #3, creditor funding for counseling agencies should not be tied to DMP performance.

5. When working with credit counselors, creditors must ensure that they are working only with reputable agencies.

6. There are many remedies available to challenge the abusive practices of debt settlement companies. Law enforcement, state regulators, and private consumers should enforce these remedies and crack down on offenders.

VI. PREVENTION AND FINANCIAL LITERACY

The first report, "The Life and Debt Cycle Part One: The Implications of Rising Credit Card Debt Among Older Consumers" emphasized the importance of improving older consumer's understanding of the complex credit market. Researchers in general have found widespread financial illiteracy among older Americans. Women, minorities and those without college degrees are particularly at risk.[23]

Older consumers often get into trouble with credit cards for reasons beyond their control. Additional education and understanding of credit card terms cannot substitute for the need to lower expenses and increase income. However, greater financial literacy can help prevent some consumers from getting into trouble and help those consumers spot problems once they begin.

The need is clear. The average literacy of adults age 65 and older increased between 1992 and 2003, but adults in this age group had the lowest average literacy in 2003 and accounted for the largest percentage of adults with Below Basic prose, document and quantitative literacy in 2003. Among adults 65 and older, 23 percent had below basic prose literacy, 27 percent had below basic document literacy and 34 percent had below basic quantitative literacy.[24]

We recommend that programs that assist older consumers develop a financial education component to their work. The Elder Law Clinic at St. John's Law School in Queens, New York, for example, has created a financial literacy program to complement their legal work. They have also begun working with psychologists and other trained counselors to help older consumers address emotional and psychological issues related to spending and finances.

Financial literacy training and education is important for all consumers. Retirement planning, for example, should be taught when consumers are young so that tomorrow's older consumers are better prepared. This is especially critical now that consumers are required to take on more responsibility for their retirement planning.

It is also important to understand what types of education interventions are most appropriate for elders. A lot of money is poured into producing brochures, videos and web sites, but very little into evaluating what works. For example, Dr. Denise Park recently testified to Congress about her research on the aging mind. She focused not only on why elders may be more

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[23] See, e.g., ANNAMARIA LUSARDI AND OLIVIA S. MITCHELL, FINANCIAL LITERACY AND PLANNING: IMPLICATIONS FOR RETIREMENT WELLBEING, UNIVERSITY OF MICHIGAN RETIREMENT RESEARCH CENTER WORKING PAPER 2005-108 (December 2005), *available at* http://www.mrrc.isr.umich.edu/publications/papers/pdf/wp108.pdf.

[24] NATIONAL CENTER FOR EDUCATION STATISTICS, NATIONAL ASSESSMENT OF ADULT LITERACY: A FIRST LOOK AT THE LITERACY OF AMERICA'S ADULTS IN THE 21ST CENTURY, NCES 2006-470 (Dec. 15, 2005), *available at* http://nces.ed.gov/NAAL/PDF/2006470.PDF.

susceptible to false business claims, but also how warnings and education that are meant to prevent victimization may actually have the opposite effect.[25]

More research is needed but based on Dr. Park's research, several lessons have emerged. First, it is important to present warnings in a positive way. (e.g. "Do this" rather than "Never do this.").[26] It is also important to present information as clearly as possible. Many consumer education brochures, for example, are extremely dense and often printed in very small type. It is simply not enough to print millions of brochures. These brochures must be informed by ongoing research that sheds light on how elders perceive and respond to these messages. There is also evidence that brochures and other information is more likely to lead to changes in behavior if there is a one-on-one component to the education or peer follow-up.[27]

Most important, financial education must be about more than just printing pamphlets. As AARP has emphasized, financial education must be thorough and strategic, taking advantage of "so-called teachable moments."[28] To date, the studies of the effectiveness of financial literacy training show mixed results. The key finding is that improved financial behavior does not necessarily follow from increased financial information.[29]

Eight traits in particular have been isolated as effective and engaging:

- A skilled facilitator
- Well planned training tied to behavior objectives with a focus on application
- Content relevant to the audience
- Education based on and reflective of the principles of adult learning
- Training that balances the diverse realities of multiple learners
- An adult-oriented and accessible location.
- A schedule that is respectful of the needs of the audience, and
- Training that includes evaluation.[30]

AARP and others have also noted that financial literacy without a genuine shift in social habits and mores is unlikely to work. Low savings rates and high household debt is unsustainable in the long-term. A national campaign is needed to help consumers understand how to use credit effectively and to avoid the dangerous consequences of over-indebtedness. At the same time, abusive creditor practices, as discussed in detail in the first report, must be stopped. Many

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[25] *Consumer Fraud and the Aging Mind*, *U.S. Senate Special Committee on Aging* (July 27, 2005) (statement of Denise C. Park, Ph.D), *available at* http://aging.senate.gov/public/_files/hr147dp.pdf.
[26] *Id.* at 3.
[27] *See, e.g., Testimony of Anthony R. Pratkanis, U.S. Senate Special Committee on Aging*, (July 27, 2005), *available at* http://aging.senate.gov/public/_files/hr147ap.pdf (Discussing peer counseling as an effective tool in fighting economic fraud crimes).
[28] See Nancy LeaMond, AARP, National Strategies for Addressing Financial Literacy, Speech at The U.S.-U.K. Dialogue on Pensions in Washington, DC (July 2005), *available at* http://www.aarp.org/research/press-center/speeches/financial_literacy.html.
[29] See, e.g., Sandra Braunstein and Carolyn Welch, Federal Reserve Board, *Financial Literacy: An Overview of Practice, Research, and Policy*, FEDERAL RESERVE BULLETIN, November 2002, available at http://www.federalreserve.gov/pubs/bulletin/2002/1102lead.pdf.
[30] LOIS A. VITT, GWEN M. REICHBACH, JAMIE L. KENT, JURG K. SIEGENTHALER, AARP, GOODBYE TO COMPLACENCY: FINANCIAL LITERACY EDUCATION IN THE U.S. 2000-2005 11 (2005), *available at* http://assets.aarp.org/www.aarp.org_/articles/GAP/GoodbyetoComplacency.pdf.

responsible, well-educated consumers get into trouble. This is often due to unexpected life traumas. It is at these points that credit card fees and penalties hit hard and consumers often cannot escape.

CONCLUSION

The existing elder assistance network is only beginning to recognize the ways in which debt burdens threaten older consumers' independence and well-being. In some areas of the country, agencies have developed innovate programs to help older consumers understand finances and debt and to provide assistance for those who get into trouble. Unfortunately, this report shows that comprehensive debt and credit-related programs for older consumers are more of the exception than the rule.

In many cases, agencies in the elder assistance network do not purport to offer debt and credit-related services. This is not necessarily a concern since every agency cannot handle every type of problems or provide every kind of service imaginable. The more troubling result of our survey is that even if these agencies do not offer direct services, they are often unaware of appropriate referrals. To the extent referrals are made, they are most often to traditional credit counseling organizations. As discussed throughout this report, this result signals the great potential for credit counseling agencies to step up and develop programs that target the needs of older consumers. Many have already done so.

Creativity, coordination and innovation is essential as we move forward and build programs that help older consumers throughout the debt cycle. There is no one single type of agency that can meet these needs. However, each can do more to recognize these problems, develop programs to address them, and coordinate with other agencies and services in their communities. There are programs scattered throughout the country that have begun to do this. In some cases, intervention is fairly straightforward and cost-efficient. Others, such as sending case managers with training in debt and credit issues to homebound elders are more costly. As we highlighted in our first report, there is too much at stake not to try.

Appendix A: Credit Counselor Survey

Credit Counselor Survey

Exit this survey >>

Thank you for taking the time to answer the questions on this short survey. We appreciate your input.

1. (Optional Identifying Information)
Your Name and Title:

2. (Optional Identifying Information)
Name of Agency:

3. (Optional Identifying Information)
E-mail:

4. I am a member of (choose all that apply):

- [ ] NFCC
- [ ] AICCCA
- [ ] Other

5. In which state is your main office located?

6. Estimate the percentage of your clients (including those you counsel by phone, face-to-face, and internet) who are 60 years or older:

7. Do you believe that this percentage has increased over the past five years?

- [ ] Yes
- [ ] No
- [ ] If so, why?

8. Please estimate the number of all clients (as defined above) you counsel annually:

9. Estimate the percentage of your counseling services delivered by:

Phone

Face-to-Face

Internet

Other

10. What are the three most common reasons why older consumers call your office?

1.
2.
3.

11. Do you offer any particular programs or services specifically for oder consumers? If so, please describe them.

12. Do you provide housing as well as credit counseling?

Yes No

13. Are you approved to provide reverse mortgage counseling?

Yes No

14. Please use the space below to provide your suggestions for programs or policies that would help elders with debt problems. Please describe if you are already offering these services or if these are changes you would like to see in the future.

Thanks for completing the survey!

Done >>