MEMORANDUM

To: Steven Dillingham, Mark Neal
Executive Office for the United States Trustees

From: Travis Plunkett, Consumer Federation of America
Deanne Loonin, National Consumer Law Center
Karen Gross, Professor, New York Law School

Re: Pre-bankruptcy Credit Counseling – Fees

Date: November 4, 2005

At Mr. Neal's suggestion, we are writing you regarding our recent assessment of the fee policies of seven approved providers of pre-bankruptcy budget and credit counseling (by calling each of these agencies and checking their websites), including five agencies that have been approved to offer counseling throughout the country.

None of the agencies we called informed potential clients that they provide services without regard to ability to pay, as required in Section 111(c)(2)(B) of the Bankruptcy Code. In all cases, these agencies informed callers about a mandated fee without stating that the fee could be reduced or waived. The agencies repeated this policy even after callers asked whether there were any reductions available. Only one of the agencies had information on its website that informed potential clients that fee waivers might be available under certain circumstances. As you know, Section 111(c)(2)(D) of the statute clearly requires "full disclosures" to clients regarding program costs.

Without such mandated full disclosure at the time a consumer first contacts an agency, we are concerned that those who genuinely do not have the ability to afford pre-bankruptcy counseling may be needlessly delayed in or, in some cases, completely deterred from receiving mandated pre-bankruptcy counseling, and, ultimately, bankruptcy relief. In such a situation, the flat fee becomes the de facto fee, creating a barrier to entry into the system. Some consumers simply will not schedule an appointment to receive counseling if they are not informed *when they contact the agency* that the fee will be based on their ability to pay, and could be waived entirely. Moreover, if consumers are to compare and contrast potential providers, there needs to be complete transparency of, among other things, the fees to be paid and the standards that are used in determining those fees. The burden should not be on these financially distressed consumers to ask about possible fee waivers and to then negotiate on their own behalf.

We are also concerned that, by not providing "full disclosure" to consumers at the time they contact an agency of the law's requirement regarding ability to pay, agencies may be violating this requirement entirely by encouraging only those who <u>do</u> have the ability to pay the fee to seek the mandated briefing.

Here are our complete findings:

- Every agency contacted by telephone stated that they charged a flat fee for the pre-counseling requirement of $50, except for one agency that charged $30. When pressed as to whether any fee reductions were available, each agency responded that they were not.
- With one exception, applicable websites for these agencies had either no fee information or cited a required fee without indicating that this fee could be reduced in certain circumstances. One agency did state on its website that the fee might be waived if the client received pro-bono legal services or disability income.

In light of this information, we urge the EOUST to take the following steps:

- Immediately require all approved agencies to inform consumers on their websites and at the time the agency is initially contacted that fees may be reduced or waived.
- Require all approved agencies to inform consumers on their websites about the specific criteria for reducing fees or granting a waiver and the documentation that is required to receive such reduction or waiver.
- Develop a publicly available policy on fee reduction and waiver requirements after receiving public comment. The EOUST may well have worked out informal fee reduction or fee waiver criteria with agencies that have been approved to offer pre-bankruptcy counseling. If so, these policies have not been communicated publicly or to the consumers who contact applicable agencies.

As you know from the comments the National Consumer Law Center and the Consumer Federation of America submitted to the EOUST on August 31, 2005 (attached) there are also a number of other crucial implementation concerns that we are following. (Karen Gross has also submitted comments to your office.) We hope to have an ongoing dialogue with you about these issues. We are particularly interested in ensuring that any information about the potential advantages or disadvantages of bankruptcy that is offered by agencies in person, in writing or on their websites be accurate and balanced, and that agencies do not offer legal advice related to bankruptcy. Additionally, several recent issues have arisen, about which we hope to be in touch with you soon, including:

- **Payment methods**. We are particularly concerned that agencies might be requiring potentially expensive payment methods, such as Western Union money transmittals.
- **Approval of agencies that may be in violation of state law**. We are concerned about the possibility that unlicensed agencies may be approved to operate in states that require licensing for credit counseling.
- **Counseling session content**. Among other things, it is important that agency policies regarding the placement of consumers into debt management plans are closely monitored, to ensure that only consumers who are suitable for DMP placement and who freely chose this option are enrolled.