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COMMENTS TO THE FEDERAL TRADE COMMISSION
ON THE HANDLING OF CREDIT REPORT DISPUTES

Springboard Nonprofit Consumer Credit Management

and the

Institute for Consumer Financial Education (ICFE)

The undersigned would like to address you on 1) mechanisms for handling consumer credit report disputes, specifically the need to expand the ability of legitimate nonprofits to provide this service to the public, and 2) our experience with the accuracy of consumer credit reports.

Legitimate nonprofits are now able to access credit bureaus system directly whereas most for profit agencies are not. Nonprofit credit counseling agencies such as Springboard are able to obtain credit information about the consumer to properly identify consumer debt and public record information such as bankruptcy, tax liens and other consumer related items. These items are name identifiers, generation identifiers such as Sr, Jr, III, and IV, present or past employer information, and current and past address information. These credit profiles become helpful tools that have enabled companies such as Springboard and many other counseling agencies to do ethical, low cost credit correction in accordance with the laws of the each state we operate in and in which the consumer resides.

Ethical credit correction has often been confused with the unethical and often predatory practice of obtaining credit reports through marginally legitimate means, such as prompting a consumer to request a personal credit report and providing it to the credit correction service, or some illegitimate means such as misrepresentation of the permissible purpose of the credit correction service to the credit bureaus by a third party company.

The actions of unethical companies operating under the 501c3 tax exempt status for Debt Management conferred by the Internal Revenue Service have caused consumer advocates and regulators to prompt legislation that would go as far to preclude us from attending to the legitimate needs of the consumer in the area of credit correction. The possibility of broad and sweeping legislative action to avoid any further credit correction by all companies operating under these auspices would hold disastrous consequences for many thousands of consumers. To create such legislation would be equivalent to the colloquialism of "throwing out the baby with the bath water." In this case, ethical nonprofits are the baby.

Damage has been done to the integrity of the U.S. credit system by the proliferation of for-profit operators who have

achieved considerable results with fraudulent and illegal methods of credit repair such as:

1. "File Segregation", the practice of creating a new consumer file with a different Employer Identification Number.
2. Filing deliberately false disputes.
3. Inundating and overwhelming the credit bureaus with massive amounts of dispute letters on a consumer's behalf to take unfair advantage of the response time rules.

Using these means, legitimate credit items have been removed, and in other cases completely new credit identities have been established for consumers that are in actuality poor credit risks. Ethical credit repair means not doing these mentioned practices. Again, an important resonating issue should be damage that has already been done to the integrity of the U.S. credit system by the proliferation of for-profit operators who have achieved considerable results with fraudulent methods of credit repair.

However, because these companies exist does not mean that credit correction is not a valid and much needed service. Rather, their existence speaks to the large vacuum of credit correction assistance - a vacuum that has been filled with unethical operators. It also speaks to the enormous need on the part of the public for this type of assistance.

Why is a Service That Assists Consumers with Credit Correction Needed?

For those agencies deeply engaged in homeownership and other housing initiatives, credit correction is a much-needed adjunct to the process of consumer credit counseling. Springboard's mission is closely tied to helping consumers achieve the American dream, and encouraging homeownership in general is an important public policy. We provide consumers the help of experienced, trained counselors that have the true success of the client at heart.

The Frequency of Errors on Consumer Credit Reports

Our experience with consumer credit reports over many years confirms the results of the recent Public Interest Research Group (PIRG) study "Mistakes Do Happen: A Look at Errors in Consumer Credit Reports" (www.pirg.org <<http://www.pirg.org>>) in which it was found "one in four credit reports contains errors serious enough to cause consumers to be denied credit, a loan, an apartment or home loan or even a job." In fact, we have seen that the PIRG report understates the occurrence of bankruptcy public record items appearing with still open charge-offs (see section below "Bankruptcy & Open Chargeoffs : A Common But Unrecognized Problem."

This was further verification of the results of the Consumer Federation study in cooperation with the National Credit Reporting Association,

<http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf> This 2002 report was a comprehensive review of the state of consumer credit and the relationship to credit inaccuracies, credit pricing models, and the overall effects of inaccurate negative credit items on a consumer's credit profile. That report concluded that over 41% of credit files had incorrect demographic identifying information, and 20% were missing major credit cards, loans, or mortgages. In total, 70% of reports contained an error of some kind and it's believed that this has been the state of consumer credit reports at the bureau level for years.

One may ask "Why can't consumers just do it themselves?" The answer to this is that often times consumers need help to understand and interact with systems of finance for which they just do not have the training or technical expertise to utilize and yield discernible results. Take for instance the U.S. tax code. Some consumers can and indeed do prepare their own taxes. Some just ask the system to do it for them, often leaving out valuable deductions. Some complete their returns with the aid of software that has cost many millions of dollars to make a user accessible interface. Even then, costly errors occur or valuable deductions are not taken and using software programs like these require a greater than average computer literacy on the part of the consumer. Some consumers hire tax preparation help because of the complications of the tax code are such that no amount of simplicity, software or other avenue can suit their particular needs. This is a direct corollary to the reason that nonprofit credit counseling agencies must be allowed to continue the invaluable role of complete credit counseling services for needful consumers. To take away choices for assistance would be to take the benefits not from the most capable of doing credit correction themselves, but from the most needy portion of our population that is unable to often even comprehend the process by which they are entitled to do so.

No amount of self help books, government pamphlets, or well meaning 30 second public service announcements can

take the place of a well trained certified counselor who has the consumer's interest foremost in mind while at the same time charging a small reasonable payment to insure that this service is available to the next consumer. Consumer choice should not be limited.

Credit correction is an obvious adjacency move around the counseling agencies' core business of credit education and debt management. There is an enormous need on the part of consumers for help in dealing with their credit reports and scores. We have found that many people don't even know the difference between the two. In fact, credit score improvement and credit correction can involve different strategies, although of course there can be overlap. Credit score improvement may involve only strategies of credit account establishment or utilization in accordance with the dynamics of the Fair Isaac Company (FICO) scoring model. Credit correction (done ethically, of course) is the removal of stale items or the correction of misreported items.

Who is Doing Credit Repair Now?

Consumers are continually inundated by various choices for obtaining credit and in recent years, by many choices for getting their credit reports ("free on this website!") and fixing them. Credit repair operators are abundant on the Internet. There are many licensed mortgage brokers that do credit repair under the table as a method to improve the prospects of the successful loan application of their prospective mortgage clients. Some mortgage brokers are obtaining credit under the guise of mortgage credit-related "permissible purpose" and then selling credit correction services as a supplemental income to their businesses. This is in clear violation to their agreements to obtain credit reports from the bureaus and the bureaus aggressively pursue these brokers to stop these practices. The broker would say that he is only doing what the client needs to make them more creditworthy so what trust is being violated? However, some brokers take advantage of some consumer's lack of understanding and these come to light as examples of why brokers should not be involved in the process. They have a direct relationship to a greater monetary reward in the form of commissions on loan procurement.

There are attorneys who have aggressively pursued the market for credit correction services. In many state, attorneys are exempt from credit repair laws, giving them an advantage over other purveyors of this consumer activity. Lexington Law (www.lexingtonlaw.com <<http://www.lexingtonlaw.com/>>) is a large, well established example of this business model. The fees tend to be high in the attorney model. What's commonly done is that the law firm sets the client up on a monthly payment system with a set up fee, the total of which can add up to several hundred dollars.

Nonprofits are also exempt from credit repair laws in many states, yet most of the counseling industry has ignored the public's need here, preferring instead to chase the more lucrative Debt Management Plan business. It must be added that many traditional counseling agencies have been hands off due to the credit granting and bureau interests frowning upon the activity of credit correction. Credit grantors are of course the primary funders of the counseling industry. The nonprofit credit counseling sector is already under fire from consumer advocates and competitors for being in thrall to the interests of creditors and credit bureaus. What's more disturbing is they also charge that regulators and legislators are also in thrall to credit industry interests by promoting certain counselors over others ("Nonprofits in Service to One of America's Most Profitable Industries: A Report on How Creditor Control of the Credit Counseling Industry Hurts Consumers and the Need for Fundamental Reform" posted July 2004 at www.responsiblecredit.com).

What Is To Be Done?

The movement on the part of consumers to take control of their own credit scores/reports will only intensify and counseling agencies can play a positive role by mediating fairness for consumers while protecting the integrity of the U.S. credit system. The escalating crime of identity theft, a complex subject in and of itself, is another reason why this service should not be limited.

Prohibiting counseling services from performing credit correction would give critics of our industry yet more reason to protest that regulators, legislators and the agencies themselves are subservient to the interest of creditors and credit bureaus. The data furnishers and the credit bureaus would be in favor of this, as it would leave them and attorneys as the only entities that would be able to take on consumers' issues with credit correction. This would literally create a system where the creators of the problem could monopolize and profit from providing solutions. Though we have no intention to infer that this would be done, to state another colloquialism, it would be "leaving the fox to tend to the hen house." This would not be good public policy and consumers need more choices. Accredited nonprofit credit counseling agencies are among the best in class as a solution.

Again, good regulation should encourage ethical providers of credit correction who can compete against profiteers, saving consumers money as well as mitigating damage to the U.S. credit system.

The market has spoken and consumers need help resolving and managing their credit issues. Credit report correction and credit score improvement is high on their list of priorities. Credit correction as a valid and a needed service and we request that the FTC undertake efforts to expand the ability of nonprofits to provide this service.

Thank you for your consideration of these issues,

Respectfully,

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And

Paul Richard, RFC
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ADDENDUM: BANKRUPTCY & OPEN CHARGEOFFS - A COMMON BUT UNRECOGNIZED PROBLEM

Statistics show that 3 out of 4 people struggle with serious financial problems for up to 3 years before filing. Most are regular citizens who, unfortunately and for whatever reason, find themselves with more debt than they can repay. They are embarrassed, depressed, scared, and angry about what is happening to them. While there are those that abuse the system, they tend to be the exception than the rule. As consumers emerge from bankruptcy many find numerous tradelines on their credit reports indicating bad debts or charge offs with balances owing. However, in reality the accounts were liquidated via administrative relief and should be updated to zero balances and shown as discharged in bankruptcy. The results of the recent PIRG study "Mistakes Do Happen: A Look at Errors in Consumer Credit Reports" touches on this issue, but just barely. We believe that the PIRG report understates the case of bankruptcy public record items and open charge-offs double dinging credit scores and that this is probably a widespread problem, or worse, that there may be a deliberate dynamic in play that is predatory.

Southern California has hundreds of thousands of filers and Springboard Non-Profit Consumer Credit Management has seen many credit report cases reflecting bankruptcy with open chargeoffs. Bankruptcy filers are naturally prospects for high-interest loans and although we cannot quantify this segment of consumers numerically, there appear to be a large number who have "double dinged" credit scores due to both the public record and the open charge-off remaining on the credit reports. The bankruptcy alone will cast the filer into an undesirable rate tier.

Credit bureaus are provided with the bankruptcy exhibits to assist with updating of the credit report, in turn they contact the creditors to facilitate the corrections. Consumers may have accounts appearing on their credit report(s) with balances long after these accounts were discharged in bankruptcy. Some accounts may not have been updated on the credit reports and indicate open balances and/or additional derogatory ratings. This misrepresentation of information may further negatively impact those reviewing the consumer's credit report as well as their FICO score. The accounts that are not updated have the potential to re-punish the score further, as the public record/bankruptcy itself already impacts the score.

Relisting (updating) the accounts to reflect a zero balance and as discharged in bankruptcy will accurately update their report and usually raises the client's credit score. The following may be some other "factors within factors" that lower a credit score when there has been inaccurate reporting of accounts discharged in bankruptcy:

- * Additional tradelines appearing as seriously delinquent
- * In collections
- * Number of accounts delinquent
- * High amounts owed on accounts (that were discharged)
- * Proportion of "balances" to credit limits on revolving accounts are high (Another possible factor

and inadvertent impact that should be studied is how much the "open chargeoff with balance" raises the "utilization" factor. Under the FICO model higher utilization makes a score go down)

When institutions do not update the charge-off balance as discharged it's twice as devastating to the consumer's credit rating and many consumers are unaware their credit score is being damaged even more by misrepresentation of bad

debt discharged in bankruptcy. Note: "twice" is just an estimate - none of us are able to predict the exact mathematical impact in the FICO model.

Since so much in our lives depends upon our credit history, everybody has a big stake in making sure they are accurate. This situation can be common with creditors who stop working an account when a bankruptcy is filed but fail to update the tradeline when the bankruptcy is actually discharged by the court. Without this update/re-listing the charge off ("9") and/or high balances owing will hurt a credit score that is already damaged from the public record entry item that goes on the credit report. Without the update/re-list on the creditor tradeline portion of the credit report it appears that the debt was not included in the bankruptcy and/or that there is new bad credit after the bankruptcy (another kiss of death).

A debt discharged in bankruptcy would have to be charged off by the creditor as they have to write the debt off their books as uncollectable. To report the tradeline with a balance owing is misleading. The "charge-off with balances owing" part of the notation has to be deleted since the debt was discharged in bankruptcy. When a debt is discharged in bankruptcy, the updated credit reports display a narrative indicating the creditor's name, account number, and "discharged in bankruptcy" with no "9" or balance owing. When this update/relist does not happen it may not be due to a credit bureau error but due to inaccurate reporting by the data furnisher.

Some creditors deliberately do not do this updating because: 1) they can still wrangle payments out of consumers who don't know better, or 2) they deliberately want to cause as much damage as possible on the filer's credit report. A third reason is undoubtedly just plain negligence on the part of data furnishers. For example, a consumer gets collection calls because filers have not been scrubbed from the lists of debtors that are sold all over the place to debt buyers - there's a whole secondary market for charged off debt. No matter what the reason, it's illegal and the public is largely unaware of what's happening.

It is against the law (bankruptcy code) for creditors to collect on debts discharged in bankruptcy, however, without the update by the creditor on their internal records and/or recalling accounts that have been sent to collection and/or on the credit reports, there are situations where consumers have unknowingly had their credit scores punished further and who have even paid a debt that was already discharged in bankruptcy just to clear up a balance so they can get a mortgage loan.

One might ask: "why focus on this issue since having just the bankruptcy on one's record will prevent you from getting any sort of loan?" This is no longer true. There are mortgage loan programs out there for people one year out of bankruptcy (e.g., the Freddie-backed Lease Purchase Program), so inaccurate post-bankruptcy reporting can make a difference. In the case of the Freddie program, one can enter the program just one year out of bankruptcy, but you have to have a score of 620 after a certain amount of time.

Summary: Our experience shows that post-bankruptcy reporting errors and snafus are common. Bankruptcy attorneys will validate this too. When institutions do not update the charge off balance as discharged it's twice as devastating to the consumer's credit rating. Many consumers are unaware their credit score is being further damaged by misrepresentation of bad debt discharged in bankruptcy.

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