



## Less Than Full Balance DMPs and Other New Alternatives for Consumers – A Panel Discussion

Association of Independent Consumer Credit  
Counseling Agencies  
16<sup>th</sup> Mid-Winter Conference  
January 23, 2009, 1:15 – 2:00 pm  
The Palms South Beach, Miami, Florida

Moderator  
Jonathan L. Pompan, *Esq.*  
Venable LLP, Washington, D.C.



## Panel Participants

- John Fisher, Take Charge America
- James McCarter, HSBC
- Todd Ossenfort, Pioneer Credit Counseling
- Cindy Ferraro, Novadebt



## Key Issues with Less than Full Balance Payments

- IRS Emphasis on Counseling and Education
- Federal Bankruptcy Law
  - EOUST Rules
- Federal Banking Law / Creditor Issues
- Consumer Protection Issues
- State Debt Adjusting Laws
- and more.....



# 11 U.S.C. 502(k) – Bankruptcy Law (June 2005)

(k)

- (1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if--
  - (A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;
  - (B) the offer of the debtor under subparagraph (A)--
    - (i) was made at least 60 days before the date of the filing of the petition; and
    - (ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and
    - (C) no part of the debt under the alternative repayment schedule is nondischargeable.
- (2) The debtor shall have the burden of proving, by clear and convincing evidence, that--
  - (A) the creditor unreasonably refused to consider the debtor's proposal; and
  - (B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).



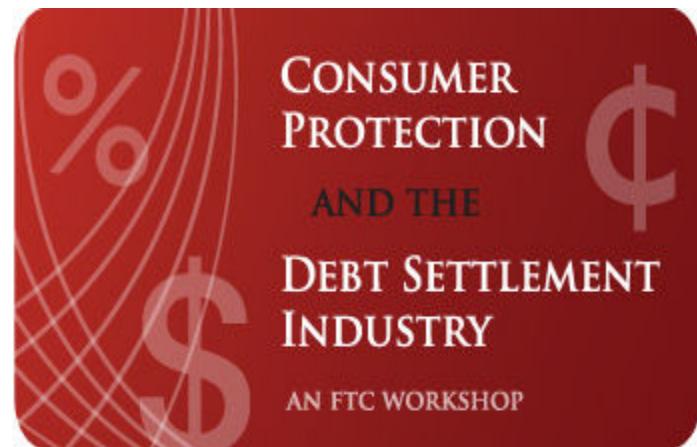
## 11 U.S.C. 502(k) – Bankruptcy Law (June 2005)

- The basics -
  - The court, at the request of a debtor and after a hearing may reduce a claim filed by a debtor up to 20%, if –
    - Unsecured
    - Creditor unreasonably refused to negotiate a reasonable alternative payment schedule.
    - Approved nonprofit credit counseling agency.
    - Offer was made 60 days before the filing of the petition.
    - For at least 60% of the debt over a reasonable period, not to exceed original loan.
    - No part is dischargeable.
- Debtor must carry the burden of proof.



# Federal Trade Commission Workshop: Sept. 25, 2008

- **Panel 1: Overview of the For-Profit Debt Settlement Industry: Understanding the Origins of the Industry**
- **Panel 2: The For-Profit Debt Settlement Industry Today: Perspectives on Current Industry Trends and Practices**
- **Panel 3: Protecting the Consumer: a Discussion of Consumer Protection Challenges Facing the For-Profit Debt Settlement Industry**
- **Panel 4: The Future of the For-Profit Debt Settlement Industry: Where Will the Industry Go from Here**



## *What's next?*

Post-workshop comments and papers may be submitted on or before December 1, 2008.



# Request to allow new pilot repayment program concessions.

- Oct. 29, 2008 request made to the Office of the federal Comptroller of the Currency by the Financial Services Roundtable and Consumer Federation of America.
  - Notable credit card banks have agreed to a temporary pilot program with credit counseling agencies in which lenders would forgive as much as 40% of the amount consumers owe, allowing them to pay back the remainder over time.
  - The amount of debt to be forgiven would be determined case by case, depending on the borrower's financial condition.
- Lenders argue they are not able to offer repayment plans that reduce the amount of principal owed and borrowers to repay the balance over a period of several years.
- “From a public policy perspective, the test could lead to the creation of a sound alternative for consumers to costly for-profit third-party debt settlement firms, some of which have been under scrutiny by the Federal Trade Commission and state Attorneys General for deceptive and unfair practices. ”



## OCC Response to Request...

Nov. 12, 2008 – “The Office of the Comptroller of the Currency responded today to a request that it approve a new workout program for troubled credit card borrowers. In its response, the agency **noted that while the OCC strongly encourages national banks to work with distressed borrowers, the agency cannot approve a plan that defers the timely recognition of losses, since that would compromise the transparency and integrity of a bank’s financial reports and could lead to a loss of public confidence in the banking system.**” (emphasis added).

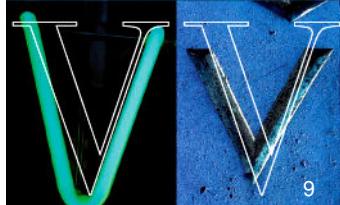
Source: <http://www.occ.gov/ftp/release/2008-132a.pdf>.



VENABLE<sup>®</sup>  
LLP



What's next?



## Thank you to our panelists and for your questions.

Jonathan L. Pompan, Esq.

[jl.pompan@venable.com](mailto:jl.pompan@venable.com)

(202) 344-4383

Venable LLP

575 7<sup>th</sup> Street, N.W.

Washington, DC 20004

[www.Venable.com](http://www.Venable.com)

To view Venable's index of articles and PowerPoint presentations on credit counseling industry legal topics, see [www.Venable.com/ccds/publications](http://www.Venable.com/ccds/publications)

