

**DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES**

FINAL AGENCY ACTION

**REQUEST OF CONSUMER CREDIT COUNSELING SERVICE OF THE MIDWEST,
INC., TO INCREASE FEES CHARGED FOR ITS BUDGET AND CREDIT
COUNSELING AND FOR ITS PERSONAL FINANCIAL MANAGEMENT
INSTRUCTIONAL COURSE**

NO. 0507-CC-00551R, PROVIDER NO. 3421

NO. 0307-DE-00747R, PROVIDER NO. 3421

REVIEW OF DENIAL OF REQUEST

On May 2, 2008, Consumer Credit Counseling Service of the Midwest, Inc. (the "Provider") sought review of the decision dated April 15, 2008, denying its request to increase the fee it charges for budget and credit counseling from \$50 to \$75. On May 5, 2008, the Provider sought review of the decision dated April 15, 2008, denying its request to implement the same fee increase for a personal financial management instructional course. Based on the record before me, I affirm the decisions.¹

I. Course of this Proceeding

On April 25, 2007, the Provider submitted an application for approval as a budget and credit counseling agency (Application No. 0507-CC-00551R), as well as a separate application for approval as a provider of a personal financial management instructional course (Application No. 0307-DE-00747R), in fifteen judicial districts.² By letters dated April 15, 2008, the Provider was informed that the United States Trustees for Regions 3, 8, 9, 10, 13, 20 and 21 had approved both applications, but that the Provider's request to increase the fee it charges for such services from \$50 to \$75 was denied (the "Denial Letters"). The Provider submitted a timely request for review of the Denial Letter with respect to its credit counseling services under 28 C.F.R. § 58.17 on May 2, 2008 (Exhibit 1). The Provider also submitted a timely request for review pursuant to 28 C.F.R. § 58.27 with respect to its personal financial management instructional course³ on

¹ On June 17, 2008, counsel for the Provider consented to an extension of the deadline for the present decision until June 30, 2008.

² The judicial districts in which the Provider sought to offer credit counseling and debtor education are the Middle, Northern, and Southern Districts of Florida; the Southern District of Indiana; the District of Kansas; the Eastern and Western Districts of Kentucky; the Eastern and Western Districts of Missouri; the Northern and Southern Districts of Ohio; the Western District of Pennsylvania; and the Eastern, Middle, and Western Districts of Tennessee.

³ Due to an apparent typographical error, the Request for Review relating to Application No. 0307-DE-00747R is captioned with information pertaining to Application No. 0507-CC-00551R.

May 5, 2008 (Exhibit 2) (collectively, the “Requests for Review”).⁴ Copies of the applicable Denial Letters are attached as exhibits to the Requests for Review. In addition, on May 12, 2008, the Provider submitted a supplemental letter setting forth certain “additional evidence” in support of the Requests for Review (the “Supplemental Letter”) (Exhibit 3).

II. The Denial Letters

The Denial Letters determined that, with respect to each application, the Provider had not demonstrated that its proposed fee was “reasonable” pursuant to 28 C.F.R. §§ 58.15(e) and 58.25(j) for three principal reasons. First, despite several specific requests, the Provider had failed to produce information substantiating its assertion that its cost of providing credit counseling or a personal financial management instructional course exceeded \$75 per person. Denial Letters at 2-3. Second, the Denial Letters found that the Provider currently held cash reserves of greater than 50 percent of its total annual revenues, and that there was no evidence that an increase in fees was necessary to build up further reserves. *Id.* at 4. Third, the Denial Letters concluded that the increased fee was not reasonable in light of an earlier finding that the Provider’s top executives received compensation far in excess of relevant standards published in *The Non-Profit Times*. *Id.*

III. The Requests for Review and Supplemental Letter

In its Requests for Review, the Provider contends that the foregoing determinations of the Denial Letters were each erroneous. First, the Provider asserts that the Denial Letters ignored “substantial evidence which clearly indicates that [the Provider’s] costs in providing budget and credit counseling exceed the \$50 amount which is presumed to be reasonable,” and instead “imposed its own methodology, without resort to any standards such as GAAP or any other recognized benchmark.” Requests for Review at 1. Second, the Provider asserts that its level of reserves are “in line with industry standards, established by the National Foundation of Credit Counseling,” and that the Denial Letters failed to cite any authority or reference in criticizing the amount of the Provider’s reserves. *Id.* at 2. Finally, the Provider cites both the judgment of its own Executive Compensation Committee and section 4958 of the Internal Revenue Code as evidence that the compensation paid to its executives is reasonable.

The Provider’s Supplemental Letter attaches a letter from the Chief Financial Officer of the Provider, which sets forth additional information regarding the Provider’s cost of providing services, as well as a spreadsheet generated by the Provider’s Executive Compensation Committee setting out the executive salaries paid by certain comparable organizations.

⁴ Although governed by separate provisions of the Code of Federal Regulations, the text of the two Requests for Review are virtually identical, as are the two decisions from which an appeal is taken. In addition, as described below, the legal standards applicable to the Requests for Review are not materially different from one another.

IV. Standard of Review

In conducting this review, I must consider the following factors:

1. Does the denial as to the Provider's request to increase the fee charged for budget and credit counseling and for its personal financial management instructional course constitute an appropriate exercise of discretion?
2. Are the denials as to the Provider's request to increase such fees supported by the record?

28 C.F.R. §§ 58.17(i), 58.27(i).

V. Analysis

A. Duties of the United States Trustee

Under 11 U.S.C. § 111(b), United States Trustees approve providers of budget and credit counseling that individual debtors must receive prior to filing for bankruptcy, as well personal financial management instructional courses that individual debtors must complete before receiving a discharge. See 11 U.S.C. §§ 109(h), 727(a)(11), 1141(d)(3), 1328(g). Providers and courses approved by the United States Trustees are included on a list maintained and made publicly available by the clerks of the United States Bankruptcy Courts. See 11 U.S.C. § 111(a)(2).

B. Criteria for Approval of Credit Counseling Agency and Personal Financial Management Instructional Course

Several criteria for approval of a credit counseling agency and a personal financial management instructional course are set forth in 11 U.S.C. § 111(c) and 28 C.F.R. §§ 58.15 and 58.25. Among other criteria, section 111(c)(2)(B) provides that a nonprofit budget and credit counseling agency or a personal financial management instructional course shall be approved by the United States Trustee only if the fee charged is "reasonable." Similarly, 28 C.F.R. § 58.15(e) and 28 C.F.R. § 58.25(i) each provide that any fees charged for credit counseling or personal financial management instructional courses must be "reasonable." Pursuant to 11 U.S.C. § 111(b)(4), the Provider bears the burden of demonstrating that it satisfies, and will continue to satisfy, the standards set forth under section 111.

C. Provider's Failure to Substantiate its Cost of Providing Services

The Provider bases its requests to charge an increased fee principally on its contention that its "cost in providing counseling greatly exceeds the \$75 fee" it has requested. See Letter from [redacted] to J. Patrick Bradley, dated February 4, 2008. (Exhibit 4). The calculation of the Provider's actual cost of service, however, appears to be complicated by at least two

factors. First, in addition to the bankruptcy-related services presently at issue, the Provider appears to offer additional forms of counseling for which it receives compensation. These other services, however, appear to share personnel and resources with the credit counseling and personal financial management instructional course at issue. See Letter from [redacted] to J. Patrick Bradley, dated February 28, 2008 (Exhibit 5). Second, at least some of the Provider's credit counseling and personal financial management courses are offered through the Internet or through group sessions, rather than through individual face-to-face counseling sessions. See Letter from J. Patrick Bradley to [redacted], dated February 22, 2008 (Exhibit 6).

In its February 28, 2008, letter, the Provider submitted information which purported to set forth the actual per-session cost incurred by the Provider in its Miami and Kansas City offices. Those offices appear to have been offered for review based on the Provider's contention that those offices were the highest-cost and lowest-cost, respectively, of its 10 counseling departments. Under the analysis set forth in the Provider's February 28, 2008, letter, the average cost per counseling session was \$132.50 in Miami and \$83.30 in Kansas City. See Exhibit 5 at 2-3. As subsequently explained by the Provider, this methodology presumed that its costs were identical for each type of counseling service offered, except that no costs were allocated to group or Internet counseling sessions. See Supplemental Letter at 1-2.

The Denial Letters determined that the foregoing information was insufficient to demonstrate that the Provider's actual cost-per-service was greater than the \$50 currently charged. Most importantly, the information submitted by the Provider does not attempt to allocate costs between the bankruptcy-related services presently at issue and other types of revenue-generating activities performed by the Provider. The Provider appears to defend this omission on the grounds that its average cost of delivering service is the same for credit counseling and debtor education as it is for its non-bankruptcy related services, based on the fact that all of such services take the same amount of time and are performed by the same employees. See Supplemental Letter, Exhibit A at 1.

At the same time, however, the Provider acknowledges that the actual cost of providing service depends on whether the counseling session or education is provided through a one-on-one session, a group session, or an Internet course. See *Id.* at 2. If this is the case, however, then the costs of the Provider's bankruptcy and non-bankruptcy services would be comparable only if the distribution of individual, group, and Internet sessions were identical among bankruptcy and non-bankruptcy services. Because the Provider's data does not indicate the breakdown of how its services are delivered, it is impossible to verify the Provider's claim that its costs per client are the same among all types of services it offers. Therefore, I find that the Provider has not met its burden of demonstrating that its cost of providing credit counseling and its personal financial management instructional course exceeds the \$50 per client that it currently charges.

D. The Provider's Reserves

The decision to deny approval of a fee increase is also supported by the results of the review of the Provider's finances, which indicate that the Provider has consistently maintained a

high level of cash reserves (\$6.3 million) relative to total operating revenue. In addition, based on the Provider's tax return information, it appears that the Provider's revenues and operating expenses rose approximately in tandem between the years 2004 and 2006. See Denial Letters at 4. Significantly, although the Provider argues that the amount of the reserves it currently holds are in line with industry standards, see Request for Review at 1, it does not identify any need to increase those reserves, nor does it allege that its cash reserves are presently declining. Accordingly, I find that the Denial Letters' analysis of the Provider's reserves supports the decision to deny the proposed fee increase.

E. Executive Compensation

Lastly, the Denial Letters explained that the proposed fee increase was found to be unreasonable in part based on the determination that the Provider's executives were receiving compensation "far in excess of the relevant standards published in *The Non-Profit Times*." Denial Letters at 4. In its Requests for Review, the Provider does not dispute the Denial Letters' factual analysis of *The Non-Profit Times* standards, but criticizes the Denial Letters for relying on *The Non-Profit Times* as its "sole standard." Request for Review at 2. However, the only contrary analysis offered by the Provider of its executives' compensation is a spreadsheet apparently prepared by the Provider's Executive Compensation Committee, which purports to set forth the compensation of top executives at similar agencies. See Supplemental Letter, Exhibit B. Other than reciting job titles and basic statistics about the revenue of the organizations compared, however, the Provider's spreadsheet recites virtually no information about the backgrounds of the individuals or their duties, making it impossible to determine whether such a comparison is meaningful. In addition, although the Provider cites to compensation standards under section 4958 of the Internal Revenue Code, it offers no discussion of how such standards apply to its own compensation practices. As such, the Supplemental Letter fails to rebut the Denial Letter's findings regarding the Provider's executive compensation.

VI. CONCLUSION

Based on my review of the record, I affirm the denial of the Provider's requests to increase its fee charged for budget and credit counseling and for its personal financial management instructional course from \$50 to \$75 pursuant to 28 C.F.R. §§ 58.15(e) and 58.25(j). For the reasons set forth herein, the denial of the foregoing requests is supported by the record and is an appropriate exercise of discretion.

The foregoing conclusions and decisions constitute final agency action in this matter.

Dated: June 20th, 2008


Clifford J. White III
Director
Executive Office for United States Trustees