May 30, 2017

Re: H.B. 182 – OPPOSE, unless amended

Dear Representative,

My name is Lori Pollack, and I serve as Executive Director of the Financial Counseling Association of America, a trade association that includes 23 non-profit credit counseling agencies currently serving thousands of low- and moderate-income Ohio residents. I am writing to you today in reference to HB 182, a bill that would allow debt settlement companies to operate in Ohio without any reasonable safeguards to protect financially vulnerable consumers.

All 24 FCAA member agencies are *strongly opposed* to this bill, unless it is amended to cap the fees that debt settlement companies may charge for their services. Given the history of debt settlement in states where fee caps were lifted, giving settlement companies free reign to prey on Ohio's most financially vulnerable residents would be a complete abdication of your responsibilities as legislators. Further, we strongly object to Representative Seitz's testimony, which contained serious inaccuracies about debt management services. The Representative's comments were disturbingly reminiscent of the descriptions of credit counseling typically offered by debt settlement companies.

This committee is asked to take note that 41 state attorneys general cited the "deceptive disparagement of consumer credit counseling" by debt settlement companies.

The FCAA has historically agreed that debt settlement is a viable option for some consumers and that it should continue to be available; however, due to the ongoing potential for abuse of consumers by some debt settlement providers, we are adamantly opposed to any bill that doesn't ensure their protection. Our opposition is based not only on the fact that, when settlement services are left unregulated, consumers save very little, but also on the fact that the marketplace *has not* and *will not* drive settlement companies to reduce consumer fees.

Rather than have you rely on the FCAA's perspective alone, we would point to the following comments on debt settlement practices in Colorado, as recorded by the Colorado Department of Regulatory Agencies in its *2014 Sunset Review: Uniform Debt Management Services Act.* The regulator's report provides ample justification for our opposition to HB 182. I've provided a link to the full report below, but the following excerpts from the Sunset Review clearly demonstrate that settlement fees <u>must</u> be limited.

- *Consumers often completely stop making payments to creditors when they enter into settlement agreements, which results in increased fees and rates. By the time a consumer completes a settlement plan, **debt balances have increased by an average of 18 percent**.*
- *In 2011, the Colorado General Assembly repealed the state's settlement fee cap. Prior to its repeal, Settlement Providers were limited to charging, in aggregate fees, 18% of the total amount of principal debt owed. The General Assembly took this step in response to a change in federal law, (*noted in Senator Seitz's testimony*), which prohibits Settlement Providers from taking advance fees and requires them to*

obtain prior approval from the client before settling a debt. The idea is that Settlement Providers are now paid for performance. ***However, this does not address the fact that, in Colorado, Settlement Providers are charging substantial fees to consumers who are already in serious financial trouble.***

- ***Since the 18 percent fee cap was removed in Colorado, settlement fees have soared as high as 25 percent. This is a 7% increase over the original fee cap.*** *In 2012, Colorado residents paid on average 55% of the principal debt owed to creditors to settle debts, and up to 25% of the total debt owed to Settlement Providers. In total, consumers paid an average of 80% of the original debt owed. On top of that, debts that were forgiven must be reported to the IRS and often constitute taxable income, and this does not take into account the increased balances of any debt that was not forgiven.*

- *For those who settle a portion of their debts, the amount they actually save is further reduced by the growth in any debt that is not settled.* ***According to data reported to the Colorado Department of Law, 74 percent of consumers do not complete a settlement plan in five years****.*

- *This all occurs under the mantle of debt relief or debt forgiveness. When everything is taken into account, most consumers are negatively impacted by working with Settlement Providers, and for those who are successful in settling their debts, the amount of debt relief they obtain is significantly reduced by the fees charged by settlement providers.*

- *Fee caps in some states are set at 10 to 15% of the amount of debt forgiven, not the amount of debt owed. Structuring the fees based on savings would create a financial incentive for Settlement Providers to obtain the best possible settlement for the client, and setting a reasonable fee cap would ensure that debt settlement provides some benefit, taking into account all the costs of a settlement agreement including income tax and the inherent risks of the settlement process.*

I would also like to address just a few of the many, glaring inaccuracies in the testimony previously offered by the proponents of unfettered debt settlement:

- As noted by the State of Colorado, less than 25% of consumers who sign up for debt settlement services complete a settlement plan in 5 years. *Debt settlement companies falsely claim settlement rates of up to 50%.* A 2010 report by the U.S. Government Accountability Office found that fewer than 10% of consumers successfully settled their debts. I have included a summary of that GAO report for your review.

- **A 2009 letter to the FTC, signed by 41 state attorneys general, noted the "deceptive disparagement of consumer credit counseling" by debt settlement companies.** Settlement proponents have suggested that only 25% of consumers completed what they called "steep," high-fee credit counseling plans. In fact, our member agencies report completion rates ranging between 35% and 61%, and all of them waive a significant portion of their fees for consumers.

- Representative Seitz's testimony suggested that credit counseling is the more expensive option, beyond the reach of consumers. In fact, the monthly fees paid to non-profit agencies average just $25, less than the state's allowed maximum because we routinely waive or reduce fees for distressed consumers. The Representative also testified that the average debt settlement client is a college grad who earns $70,000 per year, an amount that wouldn't qualify them for a non-profit counseling service. In fact, the typical Ohio credit counseling client makes just $52,000 per year. Our plans are the more affordable option. Furthermore, the laws in several states also not only require extensive budget counseling, but that we document the affordability of any plan that may be offered. Debt settlement

companies do not conduct a review of the consumer's budget, nor do they confirm that the consumer can complete a settlement plan.

While the FTC's Telemarketing Sales Rule (TSR) provides for an advance fee ban, it has been circumvented or violated by a number of debt settlement companies, including the Mission Settlement Agency[1], which was sued by the CFPB in 2013. Worse, some settlement companies are currently arranging high interest rate loans for their clients, allowing them to settle debts in the short term, but to continue repaying the settlement company for years into the future. Debt settlement providers would have this committee believe that the TSR alone is sufficient to protect consumers, but that is completely untrue. The FCC could not impose fee limitations and has indicated that it left those decisions up to individual states. It did not indicate in any way that such restrictions are unwarranted, as settlement proponents have suggested. In its current form, HB 182 would exempt debt settlement companies abiding by the Telemarketing Sales Rule from any fee regulations whatsoever, an outcome that would be both unconscionable and unjustifiable.

In light of Minnesota's and Colorado's experiences regulating the debt settlement industry, I strongly urge you to amend HB 182 to include debt settlement fee caps that would *protect the savings of Ohio consumers*. This can be accomplished by establishing limits that tie settlement fees to successful outcomes, capping fees at a percentage of the amount *actually* saved when compared with the debt at enrollment. That is a reasonable requirement, but is not called for in the current version of HB 182.

I would welcome the opportunity to participate in further discussions on this matter and/or to participate in any working group you might convene to produce a more effective and protective piece of legislation.

Respectfully,

Lori Pollack

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Colorado's full 2014 Sunset Review can be found here:
http://hermes.cde.state.co.us/drupal/islandora/object/co:14148/datastream/OBJ/view

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[1] At the time, Mission was a member of the American Fair Credit Council. While we support the AFCC's efforts to promote the best practices of the debt settlement industry and would not hold the AFCC accountable for the behavior of a rogue member, the CFPB's lawsuit underscores the fact that the states and the federal government must erect additional protections for consumers.

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This is the fee section of the Minnesota debt settlement statute, which includes reasonable fee caps.

332B.09 FEES; WITHDRAWAL OF CREDITORS; NOTIFICATION TO DEBTOR OF SETTLEMENT OFFER.

Subdivision 1. **Choice of fee structure.** A debt settlement services provider may calculate fees on a percentage of debt basis or on a percentage of savings basis. The fee structure shall be clearly disclosed and explained in the debt settlement services agreement.

Subd. 2. **Calculation of fees.** The total amount of the fees claimed, demanded, charged, collected, or received under a debt settlement services agreement shall be:

(1) for fees calculated on a percentage of debt basis, no greater than 15 percent of the aggregate debt; and

(2) for fees calculated on a percentage of savings basis, no greater than 30 percent of the savings actually negotiated by the debt settlement services provider. The savings shall be calculated as the difference between the aggregate debt that is stated in the debt settlement services agreement at the time of its execution and the total amount that the debtor actually pays to settle all the debts included in the debt settlement services agreement, provided that only savings resulting from concessions actually negotiated by the debt settlement services provider may be counted.

Subd. 3. **Collection of fees.** A debt settlement services provider may not impose or collect any payment pursuant to a debt settlement services agreement before the debt settlement service provider has fully performed all of the following:

(1) the debt settlement services contained in the agreement; and

(2) any additional services the debt settlement services provider has agreed to perform.

If more than one debt is the subject of the debt settlement services agreement, a debt settlement services provider may only charge or collect that proportion of total fees allowable under this section that equals the proportion of the aggregate debt the individual settled debt represents.

Subd. 4. **Fees exclusive.** No fees, charges, assessments, or any other compensation may be claimed, demanded, charged, collected, or received other than the fees allowed under this section. Any fees collected in excess of those allowed under this section must be immediately returned to the debtor.

The full MN debt settlement statute can be found here:
https://www.revisor.leg.state.mn.us/statutes/?id=332B

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Here is the summary of the GAO's report on debt settlement. While many of the abusive practices are believed to have been reduced by the Telemarketing Sales Rule, they have not been eliminated. Because financially vulnerable consumers regularly access these services, state governments must also enact legislation to ensure that effective consumer protections are in place.

As consumer debt has risen to historic levels, a growing number of for-profit debt settlement companies have emerged. These companies say they will negotiate with consumers' creditors to accept a lump sum settlement for 40 to 60 cents on the dollar for amounts owed on credit cards and other unsecured debt. However, there have been allegations that some debt settlement companies engage in fraudulent, abusive, or deceptive practices that leave consumers in worse financial condition. For example, it has been alleged that they commonly charge fees in advance of settling debts or without providing any services at all, a practice on which the Federal Trade Commission (FTC) recently announced a proposed ban due to its harm to consumers. The Committee asked for an investigation of these issues. As a result, GAO attempted to (1) determine through covert testing whether these allegations are accurate; and, if so, (2) determine whether they are widespread, citing specific closed cases. To achieve these objectives, GAO conducted covert testing by calling 20 companies while posing as fictitious consumers; made overt, unannounced site visits to several companies called; interviewed industry stakeholders; and reviewed information on federal and state legal actions. GAO did not use the services of the companies it called or attempt to verify the facts regarding all of the allegations it found.

GAO's investigation found that some debt settlement companies engage in fraudulent, deceptive, and abusive practices that pose a risk to consumers. Seventeen of the 20 companies GAO called while posing as fictitious consumers say they collect fees before settling consumer debts--a practice FTC has labeled as harmful and proposed banning--while only 1 company said it collects most fees after it successfully settles consumer debt. (GAO was unable to obtain fee information from 2 companies.) In several cases, companies stated that monthly payments would go entirely to fees for up to 4 months before any money would be reserved to settle consumer debt. Nearly all of the companies advised GAO's fictitious consumers to stop paying their creditors, including accounts that were still current. GAO also found that some debt settlement companies provided fraudulent, deceptive, or questionable information to its fictitious consumers, such as claiming unusually high success rates for their programs--as high as 100 percent. **FTC and state investigations have typically found that less than 10 percent of consumers successfully complete these programs.** Other companies made claims linking their services to government programs and offering to pay $100 to consumers if they could not get them out of debt in 24 hours. GAO found the experiences of its fictitious consumers to be consistent with widespread complaints and charges made by federal and state investigators on behalf of real consumers against debt settlement companies engaged in fraudulent, abusive, or deceptive practices. Allegations identified by GAO involve hundreds of thousands of consumers across the country. Federal and state agencies have taken a growing number of legal actions against these companies in recent years. From these legal actions, GAO identified consumers who experienced tremendous financial damage from entering into a debt settlement program. For example, a North Carolina woman and her husband fell deeper into debt, filed for bankruptcy in an attempt to save their home from foreclosure, and took second jobs as janitors after paying $11,000 to two Florida companies for debt settlement services they never delivered. Another couple, from New York, was counted as a success story by an Arizona company even though the fees it charged plus the settled balance actually totaled more than 140 percent of what they originally owed.