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Emily White
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On House Bill 131
House Financial Institutions Committee
Opponent Testimony

Chairman Jordan, Vice Chairman Hillyer, Ranking Member Smith, and Members of the House Financial Institutions Committee:

My name is Emily White, I am an attorney with the Dann Law Firm where I represent consumers and student loan borrowers. Prior to joining the Dann Law Firm, I represented low income consumers as an attorney with the Legal Aid Society of Cleveland and I have also authored a chapter on Student Loan Law in Baldwin's Ohio Consumer Law.

While House Bill 131 would bring additional clarity to the definition of debt adjuster, it also eliminates an important substantive consumer protection, the cap on fees charged by debt adjusters imposed by current law.

The debt adjustment industry has a history of unscrupulous individuals and companies charging excessive fees and making misleading promises to desperate consumers hoping to avoid collections or bankruptcy. Some debt adjustment programs have made misleading claims about their ability to negotiate with creditors for more favorable terms or debt relief, failed to make payments on behalf of consumers, and charged excessive fees for their services. To be sure, there are some legitimate non-profits and other entities helping consumers manage their debts and budget. However, there are also many predatory operators who have evaded consumer protection laws by claiming that their services are exempt from regulation.

House Bill 131 would update the definition of debt adjuster to cover not only debt management, but also entities and individuals engaged in the business of offering debt reduction, elimination, or repayment plans. The revised definition would eliminate a

potential loophole from coverage and bring the definition of debt adjustment in line with the 2010 amendments in the Federal Trade Commission's Telemarketing Sales Rule.

Unfortunately, HB 181 would eliminate some important protections for Ohio consumers. Currently, the law imposes a sensible cap on fees that can be charged by debt adjusters for initial consultation and for debt adjustment services. HB 181 would exempt from fee caps any debt adjuster who is "operating in compliance with federal regulations" including the FTC's Telemarketing Sales Rule. However, unlike the state statute, federal law only regulates the disclosure of fees, and imposes no substantive limits on the fees a debt adjuster may charge. Under the new exemption proposed by HB 181, a debt adjuster could theoretically charge unlimited fees to desperate consumers, so long as the fees were disclosed.

Removing the cap on fees charged by debt settlement providers would provide consumers with no benefit, while exposing them to great financial risk at too high a price. Debt settlement has been aptly described as a high stakes game of chicken, or a fire walk for consumers. The proposed bill would remove the existing cap on fees, which would make the game both riskier and more costly for Ohio consumers.

The FTC rules are necessary but not sufficient. In fact, the FTC rules contemplate concurrent enforcement and complementary regulation by state regulators. 16 CFR 310.7(b). Only state regulations can reign in the exorbitant fees charged by debt settlement companies. Proponents have suggested that the FTC rules require conspicuous disclosure of how much money a consumer can expect to save through debt settlement. While this information would certainly be useful, it is not actually required by the FTC rule. Also, because each individual's circumstances will vary so much, it is likely impossible to provide consumers with the information necessary to determine how much savings could be obtained. This number will vary by the type of debt, whether the creditor is willing to settle, how many debts are settled, how much interest and fees accrues before negotiations commence, and whether the consumer can complete the program. The truth is, based on the only reliable non-industry produced data that exists, very few consumers can realistically expect to see a benefit. Data from the Colorado Attorney General from the first year the FTC rule was in effect showed that fewer than 8% of borrowers actually settled all debts after a year in a debt settlement program, while more than half failed to complete the program.[1]

[1] Center for Responsible Lending, The State of Lending in America & its Impact on U.S. Households, available at http://www.responsiblelending.org/state-of-lending/reports/12-Debt-Settlement.pdf

Consumers targeted by debt settlement companies need the protection of state law. People facing unmanageable debt are particularly vulnerable to aggressive marketing tactics and inflated promises of relief, and are unable to adequately judge the relative benefits and risks of debt settlement as compared with other options. The existing cap on fees increases the value (if any) of the service to consumers, and any increase in the fees charged would result in diminishing marginal returns for consumers. By encouraging debtors not to pay their debts for months or years while money accrues for settlement, the debt settlement industry exposes consumers to collections calls, damage to credit, and debt collection lawsuits. In the meantime, late fees and interest on the debts continue to accrue. These are the very things most consumers are looking to debt settlement to avoid. Raising the cap on fees will only postpone the time it takes for consumers to build enough funds to commence negotiations and obtain debt relief.

In sum, Ohio consumers would be best protected maintaining current state limits on fees that may be charged by debt adjusters.