March 17, 2011

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
E-mail: comments@uniformlaws.org

Re: Proposed Amendments to the Uniform Debt-Management Services Act

Dear Commissioners:

Thank you for the opportunity to comment on the proposed rules regarding debt relief companies. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices.[1] At this time, CRL is commenting only upon the proposal regarding the allowable fees, and does not comment on the remainder of the Uniform Debt-Management Services Act ("UDMSA" or "the Act").[2] Based on our analysis of available information, industry-provided data and other conservative assumptions regarding debt settlement, we cannot support the Commission's proposed rule that would allow providers to charge up to 30% of the amount saved from any settlement, as such fees cause harm to consumers who enroll in debt settlement.

Consumers Lose In Debt Settlement With The 30% Savings Fee Proposed

Using conservative data and assumptions, CRL has developed a cost-benefit analysis that finds that families are much better off working directly with their creditors or a non-profit credit counselor than they are hiring a debt settlement firm to negotiate for them.[3] The debt settlement model forces a costly growth in the debt load before it is paid down. For this reason, a majority of debt settlement clients find themselves more burdened by debt than they were to begin with. In other words, for-profit debt settlement is typically a net harm, as compared to easily accessible alternatives.

CRL compared the typical outcome of a debtor working directly with their creditors to enrolling in a debt settlement plan with fee structures ranging from 15-50 percent of net savings. We found that the typical debtor was significantly worse off at these fee levels, including at the 30% level proposed by the Commission.

In fact, as reflected in the table below, the typical household—even with a fee capped at 15 percent of the net savings from settlements—will not come out ahead and will only have the possibility of breaking even **if at least four of five of their debts are settled**, something that is rare. Data provided to the Federal Trade Commission by industry trade group TASC revealed that at least two-thirds of debt settlement customers have fewer debts settled (while 40% have no debts settled at all).[4]

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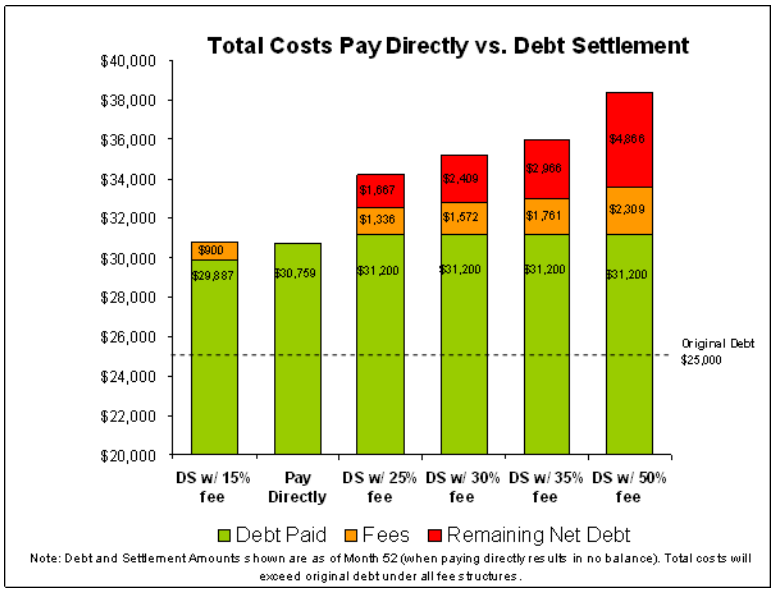

Based upon this data, the Commission would need to set total fees at no more than 15 percent of the debt savings (measured against the original enrolled amount) for families just to have a chance of the having this service make economic sense.[5]

As such, CRL questions the basis for the Commission's proposal of 30% as an appropriate fee, and whether there is any evidence to support that such a fee is beneficial *to the majority of consumers*. Recall that the industry has admitted that to require a debt settlement company to meet a standard that a "majority (at least 50 percent) of its clients successfully complete its program and obtain a reduction in debt that is significant and exceeds the fees charged by the company, … requires an unrealistic measure of programs' success rate."[6] Indeed, the industry's own data showed that 40% of consumers had no debt settled at all.[7]

Any Fee Must Be Based Upon Settlement Savings And Not On The Amount Of Enrolled Debt

To the extent that the debt settlement industry is authorized to do business, regulation of the fees that they may charge must require that fees be based upon a percentage of the settlement savings achieved for consumers (calculated as the difference between the enrolled amount and the settlement amount), and not based on the amount of enrolled debt.

Only a fee based on savings can even come close to aligning the interests of the provider and the consumer. By contrast, a fee that is based upon the amount of enrolled debt presents numerous perverse incentives for the provider.

- **Low Quality/Value Settlements.** With a percentage-of-enrolled-debt fee, the provider is guaranteed a set fee regardless of the quality of the settlement, thereby incentivizing quick, low savings settlements so that the company can get paid quickly.[8]

- **Enrolling Debt Unlikely To Be Settled.** A percentage-of-enrolled-debt fee provides an incentive for providers to include as much debt as possible in the program (even if they know through experience that the creditor will not engage with debt settlement

providers) because doing so would increase the fees paid for other settlements.

- **Fees Higher Than Savings.** Under a percentage-of-enrolled-debt fee structure, a provider may be paid a fee that is larger than the savings to the consumer from the settlement.

Conclusion

Because there is no evidence to support that debt settlement benefits consumer when charging a 30% settlement fee and CRL research shows that even where a fee is set at 15%, only a small percentage of consumers even have a chance of benefitting, CRL opposes the harmful fee structure proposed by the Commission.

Sincerely,

/s/ *Caryn Becker*

Caryn Becker, Policy Counsel
Center for Responsible Lending

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[1] CRL is an affiliate of Self-Help, a nonprofit community development financial institution that consists of a credit union and a non-profit loan fund. For close to thirty years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans to low-income and minority families who otherwise might not have been able to get affordable home loans. In total, Self-Help has provided over $5 billion of financing to 55,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America. Self-Help's lending record includes an extensive secondary market program, which encourages other lenders to make sustainable loans to borrowers with blemished credit.

[2] By our silence on, CRL is not expressing approval of the remainder of the UDMSA. We reserve the option to comment on other aspects of the Act at a later time.

[3] CRL's research is based upon the following basic assumptions: five debts of $5,000 each with 4 of 5 debts settled at 45% (the average settlement percentage reported by TASC), interest rates of 29.99% for those in debt settlement versus 9.99% for those who pay directly (under hardship program with the creditor), and fixed payments of 2.4% of the debt monthly under either. CRL is preparing a more detailed research report examining consumer outcomes in debt settlement that will be released this year, and we will share that report with the Commission when completed.

[4] Letter from the Association of Settlement Companies (TASC) to the Federal Trade Commission, commenting on the FTC's proposed amendments to the Telemarketing Sales Rule on the marketing of debt relief services at 9-11 (Oct. 26, 2009) [hereinafter "TASC Letter"], available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00202.pdf.

[5] It is important to note that CRL's cost-benefit analysis does not account for the other significant costs of debt settlement such as credit impairment, tax obligations from forgiven debt, collection activity, lawsuits and wage garnishments, all of which would be unlikely if the borrower works directly with his or he creditors.

[6] Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers at 13 (U.S. Gov't Accountabilty Office Rep. No. GAO-10-593T Apr. 22, 2010), available at http://www.gao.gov/new.items/d10593t.pdf.

[7] See TASC Letter at 9-11.

[8] Cf. Letter from Freedom Debt Relief to the Federal Trade Commission, commenting on the FTC's proposed amendments to the Telemarketing Sales Rule on the marketing of debt relief services at 15-16 (Oct. 26, 2009) (arguing that an advance fee ban would incentivize debt settlement companies to settle debts in a way that would maximize revenues and not in a way that would maximize customer benefit), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00204.pdf. Freedom Debt Relief is one of the nation's largest debt settlement providers. The Co-Founder of Freedom Debt Relief, Andrew Housser, is also on the executive board of the industry trade group TASC.