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March 18, 2011

VIA E-MAIL (comments@uniformlaws.org)

National Conference of Commissioners on Uniform State Laws
Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

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

Dear Madams and Sirs:

On behalf of its low-income clients, Legal Services of New Jersey (LSNJ) submits these comments on the amendments that the Conference recently proposed to its Uniform Debt-Management Services Act. LSNJ generally supports the comments submitted by Consumers Union, and provides additional comments below addressing two overarching points that are of primary importance to New Jersey consumers. We note, however, that LSNJ first learned of the proposed amendments from a NCCUSL communication dated March 15, 2011, and there has not been sufficient time for a more detailed review of the proposed amendments.

1. UDMSA Should Not Recommend that States Permit For-Profit Debt Settlement Companies

For-profit debt settlement companies have compiled a frightening, industry-wide record of deception and abuse that is extensively documented in recent federal and state government investigations. *See, e.g.,* United States Government Accountability Office, *Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risks to Consumers* (April 22, 2010) (crediting "allegations of fraud, deception and other questionable activities that involve hundreds of thousands of consumers"); Federal Trade Commission, *Telemarketing Sales Rule; Final Rule*, 75 Fed. Reg. 48,458 (Aug. 10, 2010) ("[A] large proportion of consumers who enter into a debt settlement plan do not attain results close to those commonly represented. . . . [I]n a large percentage of cases, consumers are unable to continue making payments while their debts remain undiminished and drop out of the program, usually forfeiting all the payments they made towards the provider's fees."). For-profit debt settlement companies are presently prohibited from doing business in New Jersey, and for that reason are able to do far less damage to New Jersey's low-income consumers than would otherwise be the case.[1]

In addition, recent developments – particularly the recent amendments to the FTC's Telemarketing Sales Rule – strongly counsel against a quick decision on whether to allow for-profit debt settlement companies to do business in states such as New Jersey. There is still no

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[1] New Jersey's Debt Adjusters Act, N.J.S.A. 17:16G-1, *et seq.*, provides critical, and generally effective, consumer protections against debt settlement abuses in New Jersey. The Debt Adjusters Act requires that any person engaging in debt adjustment activities must be "a nonprofit social service agency or a nonprofit credit counseling agency" licensed by the Department of Banking, or an exempt provider such as a New Jersey-licensed attorney. *See* N.J.S.A. 17:16G-1(c), -2(a) and (b). Acting as a debt adjuster without a license is a criminal violation, N.J.S.A. 2C:21-19(f), and also gives rise to civil penalties and, in most circumstances, private remedies under the Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq*., and other consumer protection laws. In addition, under the Debt Adjusters Act, payments received from consumers must be promptly disbursed to creditors, and fees for debt adjustment services are limited to one percent of a consumer's income, with a maximum of $25 per month. *See* N.J.A.C. 3:25-1.2(a)(1).

credible evidence of the existence of non-abusive for-profit debt settlement practices. This may change in the future – but that remains to be seen. LSNJ recommends that the best course would be to wait until the FTC advance fee rule has been in effect for enough time to determine whether debt settlement practices have sufficiently improved to warrant a significant change in the law in states like New Jersey law.

Moreover, there is no evidence of unmet demand for debt settlement services in New Jersey, aside from the generalized, self-serving claims of debt settlement companies themselves. To the contrary, the demographic for debt settlement as an economically sensible strategy is very small. A consumer must have excess income or available assets, but not enough income to make a debt management a better alternative, *and* must prefer the debt settlement route to a much less expensive and generally more effective bankruptcy filing (an option that for-profit debt settlement companies do not adequately present to their customers). There are alternative ways to meet this small demand that do not entail debt settlement companies that charge fees that can reach $10,000 and more. Creditors readily acknowledge that consumers can get debt settlement terms for themselves that are the same as those available to debt settlement companies, *without* paying additional fees. We are also aware of New Jersey bankruptcy practitioners who can and do provide debt settlement services, consistent with their exemption from the Debt Adjusters Act, N.J.S.A. 17:16G-1(a)(2)(a), for clients who wish to pay a paralegal at his or her hourly rate – a much more reasonable proposition than the percentage-based fees imposed by for-profit debt settlement companies. To the extent debt settlement companies claim to engage in a large volume of business nationwide (based on their own calculations), the most sensible explanation is that this is the result of their extensive deceptive advertising campaigns, rather than an indication that their services are actually better than non-profit debt management plans,

bankruptcy, self-help that costs nothing, and other alternatives that are more favorable for virtually all consumers.

One strength of UDMSA in its current form is that it recognizes that prohibiting for-profit debt settlement companies is a sensible choice for states to make, and includes alternative versions of three key provisions – sections 4, 5, and 9 – one version prohibiting for-profits, and the other allowing them. Sections 4, 5, and 9 of UDMSA should continue to reflect both policy options.

2. If For-Profit Entities Are Permitted, Fees For Debt Settlement Services Should Be Capped at 15% of Savings, as Provided By Statute in Illinois and Recommended in the Current Draft of the New Jersey Law Revision Commission's UDMSA Proposal

The FTC's recent amendments to its Telemarketing Sales Rule, including the advance fee prohibition effective October 27, 2010, will benefit to consumers nationwide. The FTC rule, however, addresses only the timing of the earning of fees – and the proposed UDMSA amendments would set forth that rule as a state law requirement applicable without the exceptions inherent in the structure of the Telemarketing Sales Rule. This is useful, but addressing the timing of fees is only one third of the equation – the method of calculating the allowable fee, and the level of the fee cap are also very important.

Because the FTC rule is only a timing rule, it does not tie the size of the fee to the amount of the savings, or even stop the fee from exceeding the savings from the settlement. The proposed revised UDMSA appropriately takes a "savings based" approach to debt settlement fees, but sets the cap too high, at 30% of the savings from each settlement.

We urge you to amend the UDMSA to cap any and all fees at 15% of the savings, collectable only after the settlement has been paid in full and releases the debt. This would better align the interests of the company with the interests of the consumer, who after all wants to save

money. Illinois recently adopted a 15% fee standard by statute, and the New Jersey Law Revision Commission, in the most recent draft of its UDMSA proposal for New Jersey (available at www.lawrev.state.nj.us/udmsa/dmsanjDTR020711.pdf, section 15(h)), also adopts a savings-based fee cap of 15%:

> A provider offering debt-management services to settle an individual's debts with creditors for less than the full principal amount of the debt may charge a fee not to exceed 15% of the amount saved. The amount saved is the difference between the principal amount of debt owed at the time the debt was enrolled in the plan and the amount actually paid to a creditor to satisfy the debt.

The recommended change would involve revising section 23(d)(4)(A) of UDMSA to reduce the allowable percentage of the savings that may be charged as a fee from 30% to 15%.

LSNJ thanks the Conference for the opportunity to comment on this important issue for New Jersey's low-income consumers.

Very truly yours,

LEGAL SERVICES OF NEW JERSEY, INC.

By: _____
David McMillin