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

by email to: comments@uniformlaws.org

Date: March 17, 2011

Re: Revised Uniform Debt Management Services Act

Consumers Union received your invitation to comment on the proposed revisions to the Uniform Debt Management Services Act (UDMSA) on March 15, with comments due on March 18. We ask the National Conference of Commissioners on Uniform State Laws to retain the "savings-based" fee approach in the proposed revisions to the UDMSA, but to reduce the percentage of savings that can go to fees from 30% to 15%. We recommend other changes to ensure that the fee cap is not evaded through so-called "voluntary contributions" or through fees earned on installment plans that fail, and therefore fail to release the debt. **In addition, we ask the NCCUSL to direct its Commissioners to vigorously oppose bills offered by industry which purport to be based on the UDMSA but deviate from the savings fee approach.**

Consumers Union endorses these key steps with respect to debt settlement fees –

Tie the timing of debt settlement fees to results. This is already required by the FTC rule for many sales settings, and the proposed UDMSA revisions also take this approach.

Limit the method of debt settlement fee calculation to 15% of the savings from actual, completed settlements. The proposed UDMSA revisions would instead permit 30% of savings as the allowable fee.

Permit settlement-triggered savings fees be earned only when a settlement actually eliminates a debt, not when the consumer is simply placed into a new installment plan. The proposed UDMSA revisions do not yet accomplish this.

Prohibit voluntary contributions, which could undermine the fee cap. The proposed revised UDMSA would permit those contributions without limit as to the amount 30 days after completion or termination of a debt settlement plan.

Items 1 and 2: Timing and allowable method of calculating fees.

The FTC rule addresses the timing of the earning of fees, and the proposed revised UDMSA would set forth that rule as a state law requirement applicable without the exceptions inherent in the structure of the FTC's telephone 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. This would ensure that consumers only pay debt settlement fees when they in fact receive a benefit in the form of a completed settlement that eliminates a debt. This change would involve revising section 23(d)(4)(A) to reduce the allowable percentage of the savings that may be charged as a fee from 30% to 15%.

Item 3: No fee for failed installment settlements.

We recommend that settlement-triggered savings fees be earned only when a settlement actually eliminates a debt, not when the consumer is simply placed into a new installment plan. The proposed revised UDMSA instead permits the settlement fee to be earned proportionally as installments are paid. However, if a consumer is unable to make all required installment payments, the settlement will fail and the consumer will owe the full unsettled debt amount, minus any payments made. Since a failed installment settlement will not yield a reduction in debt for the consumer it also should not yield a fee to the debt settlement company. Making the recommended change would remove an incentive to place consumers into unrealistic installment plans that they cannot complete. Section 23(d)(2) and (d)(4) should be revised to require that the debt settlement provider cannot charge a fee until the consumer has paid the settlement *in full* and the debt has been released.

Item 4: Prohibit "voluntary contributions" which increase the revenue from debt settlement to more than the statutory fee cap.

The proposed revisions to the UDMSA permit a debt settlement company to receive voluntary contributions, without limit as to the amount for those contributions made 30 or more days after termination of a debt settlement program. We are concerned that a request

for voluntary contributions could be used to evade statutory fee caps. Section 24 should be amended to prohibit voluntary contributions.

Other items.

We also note that the proposed revised UDMSA addresses lead generators. While limited in scope, this addition is helpful.

Recommendations:

We ask the NCCUSL to take these five steps with the proposed revised UDMSA:

Retain the "savings fee only" approach, based on the amount of the original principal debt" as the sole approach to debt settlement fees.

Reduce the allowable savings fee cap from 30% of savings to 15% of savings.

Require that the savings fee be earned only on completed settlements which release the debt. Fees should not be earned, even in part, or partially completed installment settlement plans.

Modify section 24 to ban "voluntary contributions."

Direct its Uniform Law Commissioners to stop accepting non-uniform amendments which deviate from the savings fee approach built into the proposed revised UDMSA.

Our final recommendation is as important as our key recommendation about reducing the allowable fees in the UDMSA to 15% of savings. In a number of states over the past several years, the debt settlement industry has offered a bill containing fundamentally different fee caps than permitted by the current UDMSA, and then claimed that the bill was still the uniform bill. The state Uniform Law Commissioners have not been active in opposing those measures. In at least one state that we are aware of, a uniform law commissioner has quite recently been actively seeking to add a fee approach to a state bill which is not contained in the proposed revised UDMSA.

The credibility of the uniform law process is compromised when the Commissioners trade away the key protections of uniform law bills in the legislative process. We respectfully ask the NCCUSL and its legislative staff to advise or direct its Commissioners to *oppose* any additions to its UDMSA which would permit any form of fee for debt settlement other than the savings fee approach in the proposed revised UDMSA, which ties the fee to a set percentage of the actual savings. As already noted, we are also asking the NCCUSL to reduce that percentage from 30% to 15% and to eliminate the potential loopholes for installment settlements and for voluntary contributions.

Very truly yours,

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