Sent via Email (comments@uniformlaws.org)
March 18, 2011

Uniform Law Commission
ATTN: Standby Committee on Uniform Debt-Management Services Act

Re: Opposition to Fee Cap in Proposed Amendments to the UDMSA

Dear Distinguished Committee Members,

Please accept this comment to the proposed amendments to the Uniform Debt-Management Services Act ("UDMSA") on behalf of Century Negotiations, Inc. ("CNI"). CNI is a debt negotiation company located outside of Pittsburgh, Pennsylvania. We have been in business since 2003 and are currently servicing in excess of 13,000 clients.

We have only recently learned that the Uniform Law Commission ("ULC") intends to amend the UDMSA in a way that will severely curtail the fees debt negotiation companies ("DNC") are permitted to collect from consumers. Specifically, it is our understanding that the ULC has proposed amendments to the UDMSA that would limit such fees to 30% of what a DNC saves a consumer. Obviously, such a strict limit on both the amount of fees permissible under the amended UDMSA and the method used to calculate such fees (i.e. only the contingency method) goes far beyond the restrictions set out in the recently enacted Debt Relief Amendments to the Telephone Sales Rule promulgated by the Federal Trade Commission ("FTC Rule").

While the FTC Rule impacts all aspects of providing debt negotiation services to consumers, one of its primary tenets is the ban on "advance fees" and only allowing debt negotiation providers to collect a fee only after a consumer's debt is settled. The permissible fee under the FTC Rule may be based either on a percentage of savings realized by the consumer or on a proportional basis in relation to the overall debt enrolled by the consumer onto the debt negotiation program. In addition, the FTC rule imposes no cap on the fees that a DNC may charge; instead leaving caps up to the free market and to the states.

The FTC, in its 2+ years of investigating the industry, meeting with interested parties and promulgating the FTC Rule, explicitly agreed there is a need for more than a one-size-fits all approach to calculating DNC program fees. There are several issues with limiting fee algorithms to a contingency fee only approach and I anticipate you will continue to be apprised of such issues from the industry and other groups at large. For example, mandating that DNC fees be calculated as a percentage of savings will hurt consumers by limiting available debt relief options. Numerous DNCs have testified on both a federal and state level that if their fee was limited to 30% of savings, such a restriction would result in the DNCs going out of business, which would harm not only potential clients but their current clients.

In addition, prior to the FTC Rule, consumers could execute a blanket authorization in advance for a DNC to accept a settlement below a specific percentage on the consumer's behalf. However, the FTC Rule mandates that consumers explicitly authorize each and every settlement. As such, consumers have full

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and ultimate discretion on the amount and timing of each settlement. Some consumers that have the funds available decide to accept high percentage settlements (e.g. 80%) solely to resolve the account. Such a settlement may often be higher than what a DNC's experience indicates it could obtain for a client with that particular creditor. In such an event, despite the work performed by the DNC, the client can essentially choose to have the DNC settle the account for almost no fee to the DNC.

For example, assume a consumer enrolls a debt account for $800. At the average rate of accretion, which is in the neighborhood of 22%, the account's balance at the time of settlement may be $976. If a consumer agrees to accept an 80% settlement, the permissible fee to the DNC under the proposed UDMSA amendments would be $5.76, despite the DNC spending several hours of time negotiating the settlement and incurring the costs associated with the same. No company can stay in business if the fees it may charge are less than what it costs the company to provide a service.

Another fundamental issue is the fact that many consumers want to know the amount of fees they will be charged prior to entering onto a program. The FTC recognized this point when promulgating the FTC Rule. The FTC Rule allows a fee to be collected after settling a particular debt provided the fee is of the same proportion to the total fee as the debt settled is to the total debt. So, for example, if a consumer enrolls two $5,000 debts onto a program and the DNC's total fee is 20% of the enrolled debt, the DNC could collect $1,000 after settling each account. A huge benefit of this proportionate fee model is that a consumer, prior to enrolling onto the program, will know exactly what the fee will be associated with resolving such consumer's unsecured debt. This certainty is completely absent in the case of the fee algorithm proposed by the ULC in the proposed amendments to the UDMSA.

Limiting fees algorithms to a one-size-fits all model instead of allowing consumers the choice of competing fee models is harmful to consumers and to the industry. CNI urges the Committee and the ULC to arrive at the same conclusion and: 1) remove the 30% of savings fee cap; and 2) permit DNCs to offer programs using fee algorithms in accordance with the FTC Rule- specifically allow fees to be collected on a proportionate or contingency basis.

Should an opportunity present itself for a representative of CNI to participate in the ULC or Committee's decision making process beyond simply submitting this comment, we would greatly appreciate such opportunity.

Very truly yours,

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