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Fighting Together for Economic Justice

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Senate Commerce Committee
New Jersey State Senate
Trenton, New Jersey

Re: Opposition to S-2989 (legalizing certain for-profit debt adjusters)

Dear Committee Members:

My name is Andrew Pizor, and I am a Staff Attorney at the National Consumer Law Center (NCLC), a non-profit organization that focuses on protecting low-income and elderly consumers. Thank you for the opportunity to submit this letter.

We urge you to oppose S-2989, which would legalize certain for-profit debt adjusters. For-profit debt adjustment (also known as debt settlement) is bad for consumers and hurts honest businesses. Bankruptcy attorneys, non-profit credit counselors, and self-help are much better alternatives.

The debt adjustment industry leads consumers to believe that they can negotiate reduced payoffs on unsecured debts. But the truth is, those are hollow promises made to desperate consumers. Debt adjusters can't live up to their promises.

The Debt Adjustment Model

Lots of fees: Consumers agree to pay a fee calculated as a percentage of the debt enrolled with the debt adjuster, charged upon settlement. As each debt is settled, it is paid from a special third-party bank account, which charges an additional fee. All these fees come out of the consumer's savings.

Adjusters encourage consumers to stop paying their debts: Because creditors are unlikely to settle debts that are current, the debt adjuster encourages the consumer to default on any debts they are still paying.

Years of debt collection calls: Before the adjuster settles any debts, consumers are required to make monthly payments into the special bank account until they accumulate enough to pay the adjuster's fees and anticipated settlements. This takes several years. And during this time, debt collectors continue to call and may even sue.

How the Debt Adjustment Model Hurts Consumers and Creditors

No incentive to negotiate a good deal for consumers: Because the fee is based on the *original* amount of debt, the adjuster gets paid the same regardless of the quality of the settlement. Whether the adjuster saves the consumer $1 or $1000, the fee is the same. So there is little incentive to negotiate a good deal for the consumer.

Using an adjuster actually *makes it harder to settle debts*: The adjuster's fee comes out of the consumer's available funds, so the consumer has less to offer creditors, making settlements harder to achieve. Creditors want the most money they can get for a debt, and having an adjuster in the middle doesn't change that calculus.

Following the adjuster's advice does more harm than good: Encouraging consumers to default on their debts hurts honest creditors,[1] adds black marks to the consumer's credit report, adds to the number of collections calls the consumer will receive, and increases the risk that the consumer will be sued.[2] Adjusters also discourage communication with creditors. This deprives consumer of help, such as payment plans, from creditors.[3]

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[1] It may even be tortious intentional interference with a contractual relationship. Chase Bank has successfully sued a number of debt adjusters for telling customers to stop paying their credit card bills. *See, e.g.,* Chase Bank USA N.A. v. Consumer L. Ctr. of DelRay Beach LLC, 2015 WL 4556650, at *4 (D. Del. July 29, 2015); Chase Bank USA, N.A. v. Allegro L., LLC, 2013 WL 3149461 (E.D.N.Y. June 19, 2013).

[2] Consumer Fin. Prot. Bureau, The Consumer Credit Market 166 (Aug. 2019), *available at* https://files.consumerfinance.gov. *See, e.g.,* Duran v. J. Hass Grp. L.L.C., 2012 WL 3233818 (E.D.N.Y. June 8, 2012) (alleging consumer was told to stop paying creditors; consumer was later sued by creditor).

[3] According to the American Financial Services Ass'n, "[d]ebt settlement companies can, ironically, work as a roadblock to a consumer settling his or her debt." AFSA, *Debt Settlement Companies* at 2 (2019).

The adjuster model leaves consumers worse off: Few consumers who retain debt adjusters settle all their debts,[4] and the debts that can't be settled don't go away. Instead, unsettled debts end-up even bigger, with more interest and late charges. This reduces or even wipes out the value of any savings from settled debts, especially after paying the debt adjuster's fees, the special account manager's fees, and taxes on the forgiven debt. Many consumers drop out,[5] worse off than when they started.[6]

Consumers Have Better Options

Debt adjusters have no real expertise: If a creditor is willing to settle a debt, it will offer its customer the same or a better deal than it would offer a debt adjuster.[7]

Non-profit debt management resources are available: Consumers can get a low-cost debt management plan from a non-profit credit counseling agency.

Bankruptcy is a better option for most debt adjustment customers: Bankruptcy is faster, cheaper, and more reliable.

- When a consumer files bankruptcy, debt collectors must *immediately* stop calling.[8]
- Creditors cannot ignore bankruptcy. They must participate in the process, unlike debt adjustment.
- Bankruptcy is court supervised, so consumers are protected from abuse.
- Chapter 7 bankruptcy eliminates most unsecured debts, usually within 6 months, saving consumers more money than debt adjustment and years faster.

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[4] According to industry statistics, only 16% had settled all their debts after 2 years; and only 29% after 5 years. Will S. Dobbie, Financial Outcomes for Debt Settlement Programs, Estimates for 2011-2020 at App'x I (Jan. 15, 2021).

[5] *See* Leslie Parrish, A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households, 18 Cityscape: A Journal of Policy Development and Research 55, 58 (2016).

[6] *See* Nat'l Consumer Law Ctr, *Federal Deception Law* § 10.2.2.2 (collecting court decisions noting that debtor tried debt relief before filing bankruptcy).

[7] Consumer Fin. Prot. Bureau, *supra,* at 166–167.

[8] When a consumer files a bankruptcy petition, there is an automatic stay that puts a halt to all collection efforts. The consumer gets immediate relief.

- Chapter 13 is a court-supervised version of debt adjustment. It's more effective, and safer for the consumer.
- Bankruptcy is usually less expensive than debt adjustment. For example, the typical debt adjuster would charge $6,000-$10,000 to settle $30,000 of debt. But the base fee for a chapter 13 bankruptcy in New Jersey is 4,750. A chapter 7 usually costs less and is the best option for most people considering debt adjustment.

If a consumer consults with a bankruptcy attorney and decides not to file, most bankruptcy attorneys can still help settle troublesome debts, but will charge much less than debt adjusters.

The problems and abuses in the debt adjustment industry have been well-documented for decades.[9] We urge you to protect New Jersey consumers by voting against S2989.

Respectfully submitted,
/s/ Andrew G. Pizor

[9] *See, e.g.,* Claire Johnson Raba, Desiree Nguyen Orth, Unsettling: No relief in debt settlement (Mar. 2021), available at https://www.lowincomeconsumers.org/; N.Y. City Bar, Profiteering Form Financial Distress: An Examination of the Debt Settlement Industry (2012), available at https://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf; GAO, Debt Settlement: Fraudulent, Abusive and Deceptive Practices Pose Risk to Consumers (GAO-10-59-593T 2010).