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March 18, 2011

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

Re: Revised Uniform Debt-Management Services Act

The National Consumer Law Center submits the following comments on behalf of its low-income clients in response to the Conference's recent request for comments on the proposed revisions to the Uniform Debt-Management Services Act (UDMSA).

NCLC remains deeply concerned that the UDMSA does not adequately protect consumers from abusive debt settlement and debt management practices. We previously explained our concerns in our March 2006 comments, which are attached to this letter as Appendix I. More recently, the Federal Trade Commission and the Government Accountability Office have investigated debt-settlement practices and documented the continued existence of misconduct and abuse by debt-settlement providers. While some of NCCUSL's proposed changes to the UDMSA will improve protections for consumers, the changes do not go far enough and, in some regards, represent a step backwards.

We are especially concerned by NCCUSL's decision to abandon the possibility that states may elect to bar for-profit entities from providing debt-management services. The suggestion that any controversy over for-profit debt management (including debt settlement) has abated[1] is patently false. The evidence gathered by the FTC and GAO, as well as numerous enforcement actions by state authorities, clearly show problems with for-profit debt management. The Center for Responsible Lending's analysis of for-profit debt settlement shows that consumers are unlikely to receive a net benefit and are generally better-off working directly with their creditors.[2]

For these reasons, NCLC reaffirms its previous recommendation to ban for-profit entities from providing debt-management services. Debt-management services should only be provided by carefully regulated and bona fide non-profit organizations.

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[1] *See* Memo to Observers from UDMSA Reporter Regarding Proposed Revisions and Request for Comments at 3 (Feb. 8, 2011), *available at* www.law.upenn.edu/bll/archives/ulc/UCDC/2011feb8_memo.pdf.

[2] *See* Comments submitted by Center for Responsible Lending regarding Proposed Amendments to Uniform Debt-Management Services Act, dated Mar. 17, 2011.

Nevertheless, to the extent that the UDMSA continues to permit for-profit debt management, we ask NCCUSL 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 that purport to be based on the UDMSA but deviate from the savings-fee approach.

We recommend the following with respect to 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 that 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 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.

The credibility of the uniform law process is compromised when the Commissioners trade away the key protections of uniform laws with their own 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 voluntary contributions.

Respectfully Submitted,

/s Andrew G. Pizor

Andrew G. Pizor
Staff Attorney
National Consumer Law Center (on behalf of our low-income clients)

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Appendix I

NATIONAL CONSUMER LAW CENTER INC

Consumer Federation of America

Comments on the National Conference of Commissioners on Uniform State Laws (NCCUSL) Uniform Debt Management Services Act

March 2006

The National Consumer Law Center, on behalf of its low-income consumer clients, and Consumer Federation of America oppose the NCCUSL Uniform Debt Management Services Act unless provisions regulating debt settlement services are removed or dramatically amended.

Our key concerns are:

1. The Act regulates debt settlement as a valid type of debt management service. We believe that this legitimizes a business that is very dangerous for consumers.

2. The Act gives states the option of allowing for-profit firms to offer debt management and debt settlement services, undermining recent steps by the I.R.S and some states to root out abuses in the credit counseling industry.

These concerns are described in greater detail below.

Debt Settlement

The regulatory framework for debt settlement in the NCCUSL Act is inappropriate and weak. Although there are many new requirements that would be imposed on debt settlement companies, it does not prohibit the most serious abuses in the debt settlement industry, such as charging excessive fees to settle debts or requiring or encouraging consumers to establish escrow accounts that settlement firms control or monitor. In short, the NCCUSL law legitimizes a business model that is dangerous for consumers.

Debt settlement can be a legitimate debt management tool for consumers who have funds to put toward settling debts. However, for-profit debt settlement businesses do not target these consumers. Instead, they focus on consumers who do not have funds to settle debts, requiring them to pay hefty fees while supposedly saving money to eventually pay off debts through agreements to be negotiated by the companies. While this process is going on, the consumers are not paying their debts and are generally facing collection, even lawsuits. In addition, interest and fees are accruing.

A summary of the main concerns with this business model can be found in a March 2005 investigative report by the National Consumer Law Center. The report is available on-line at http://www.nclc.org/action_agenda/credit_counseling/content/DebtSettleFINALREPORT.pdf.

In addition, the Federal Trade Commission and Attorneys General offices have brought several enforcement actions against debt settlement firms for unfair and deceptive practices in recent years.

Regulation of debt settlement companies should be separate from regulation of credit counselors/debt management providers. Including these two very different industries in the same statutory framework is confusing, complicated and ultimately difficult to administer. Throughout the NCCUSL process, consumer groups consistently recommended that the Committee adopt a different regulatory model for these separate industries. The Committee did not accept our recommendations even though the debt settlement industry has repeatedly refused to provide useful, public information about the track record and performance of their businesses.

Regulation should also prohibit abusive practices that are at the heart of the debt settlement business model, such as:

- Activities by non-attorneys that violate attorney licensing laws (unauthorized practice of law)
- Excessive fees
- Failing to provide an accounting of the services to be provided and the cost of such services
- Requiring consumers to delegate financial authority to the debt settlement companies, usually by signing powers of attorney
- False advertising or promises about the merits of debt settlement, including misleading information about how quickly debts can be paid off
- False or misleading comparisons between the cost of debt settlement plans and other types of debt relief

Non-Profit Limits

The NCCUSL Act allows states to decide whether to require that debt management and debt settlement companies be non-profit organizations. We urge states to choose the non-profit option. If states make this choice, passage of the NCCUSL Act with respect to traditional debt management will significantly improve consumer protections in most states. However, policymakers should understand that the law contemplates an extensive registration process that will be effective only as long as adequate resources are devoted to oversight and enforcement.

Limiting the industry to non-profit organizations is not about restricting competition, as many profit-oriented members of the industry argue. Instead, it is intended to ensure that credit counseling and debt relief services are truly educational and to prevent profiteering and poor-quality counseling. Only a true non-profit can be counted on to provide quality counseling and educational services and to act in the best interests of consumers.

Industry representatives claim that non-profit status has become meaningless due to abuses. This statement is both ironic, given that this abuse has been propagated in some cases by some of the same firms that are now promoting for-profit counseling, and untrue. While there has been widespread abuse of non-profit status, the I.R.S. is now taking this problem very seriously and is cracking down on offenders. Aggressive enforcement of non-profit laws and regulations is beginning to filter out the unscrupulous agencies.

Non-profit status is not a guarantee that an agency will provide holistic, consumer-centered, quality services, but it is a critical prerequisite that, along with careful oversight of various counseling and business practices, will go a long way toward protecting consumers.