

May 1, 2019

The Hon. Kathy Kraninger
Comment Intake
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: *Request for Information Regarding Consumer Credit Card Market*
Docket No. CFPB-2019-0002

Dear Director Kraninger:

The American Financial Services Association (AFSA)¹ appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (CFPB) request for information (RFI) on the credit card market. Section 502(a) of the CARD Act requires the Bureau to conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market every two years. To inform that review, section 502(b) instructs the CFPB to seek public comment.

At the outset, we urge the CFPB to move cautiously in changing the regulatory landscape at a time when the payments system is adopting new technologies. Credit cards are rapidly becoming part of mobile wallets and other forms of digital commerce. Payments are no longer restricted to a physical card, computer, or mobile phone. Growing consumer use of connected devices, personal assistants with voice activation, and other, yet to be launched technologies, will change the consumer market.

These emerging technologies will have a global, transnational impact and so we believe the CFPB should move cautiously and allow financial institutions maximum flexibility to respond to ever-evolving challenges.

While the CFPB identifies specific topics of interest in the RFI, it also encourages commenters to address any other aspects of the consumer credit card market that they consider would be of interest or concern to the CFPB. Regarding the overall credit card market, AFSA believes that it is working well for consumers and card issuers. Additional regulation for card issuers is not needed at this time.

However, regulation in another area may be necessary.

The RFI poses the following question:

“(c) The Adequacy of Protections Against Unfair or Deceptive Acts or Practices Relating to Credit Card Plans [—] What unfair, deceptive, or abusive acts and practices exist in the credit card market? How prevalent are these acts and practices and what effect do they have? How might any such conduct be prevented and at what cost?”

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

While not specific to the CARD Act, there is a growing pervasive unfair and deceptive practice affecting credit cardholders who are behind on their payments.

This issue, which affects unsecured creditors (both card issuers and others), along with their customers, is the growth of the debt settlement market. That issue is the focus of our letter.

Debt settlement companies, also called “debt relief” or “debt adjusting” companies, claim they can settle a consumer’s debt with a significant reduction in the amount owed to a creditor or debt collector. Debt settlement companies typically encourage consumers to stop paying their creditors. They charge exorbitant fees, even though consumers can often work with creditors directly for settlements and workouts without these fees. One of the larger debt settlement companies explains the debt settlement process on its website as follows:

“You will convince your creditor that you are in a financial crisis by defaulting on your payments intentionally. While waiting for them to take notice, you will put aside money to grow as your settlement fund. When the time is right (around 6 months or so), you will negotiate with your creditors by asking them to let you pay only a portion of your debts. You will reason that your only other option is bankruptcy. If they agree, you will pay the agreed amount and the rest of your debts will be forgiven.”²

The CFPB warns consumers about debt settlement companies on its website:

“Debt settlement may well leave you deeper in debt than you were when you started. Most debt settlement companies will ask you to stop paying your debts in order to get creditors to negotiate and to collect the funds required for a settlement. This can have a negative effect on your credit score and may result in the creditor or debt collector filing a lawsuit while you are collecting settlement funds. And if you stop making payments on a credit card, late fees and interest will be added to the debt each month. If you exceed your credit limit, additional fees and charges may apply. This can cause your original debt to increase.”³

Moreover, unless a debt settlement company settles all or almost all of a consumer’s debts, the built-up penalties and fees on the unsettled debts may be more than the savings the borrower can get in settlements. Consumers are unlikely to understand that.

We commend the CFPB, along with the Federal Trade Commission (FTC), for the actions they have already taken in this area. The agencies have brought many law enforcement actions against bogus credit-related service providers and they partnered with states to bring hundreds of additional lawsuits. Most recently, the CFPB released a blog post encouraging consumers to contact their credit card companies when they have hit a rough spot.⁴ The blog post emphasized that credit card companies generally do not have special offers available to debt settlement firms, so consumers are paying a debt settlement company for work they could do themselves. We support the CFPB and FTC as they continue to root out bad actors and educate consumers.

² National Debt Relief. *Beginner’s Guide To Debt Relief Part 1*. August 25, 2013. Available at www.nationaldebtrelief.com/beginners-guide-to-debt-relief-part-1-get-out-of-debt/

³ Consumer Financial Protection Bureau, *Ask CFPB, What are debt settlement/debt relief services and should I use them?* Available at: <https://www.consumerfinance.gov/ask-cfpb/what-are-debt-settlementdebt-relief-services-and-should-i-use-them-en-1457/>

⁴ Consumer Financial Protection Bureau, *Need Help with Your Credit Card Debt? Start with Your Credit Card Company!* April 3, 2019. Available at: <https://www.consumerfinance.gov/about-us/blog/need-help-your-credit-card-debt-start-your-credit-card-company/>

However, despite these important efforts, debt settlement companies continue to market to consumers, even consumers who have the ability to repay their debts. They encourage consumers to stop paying creditors and to manufacture hardships. Because debt settlement programs often ask — or encourage — consumers to stop sending payments directly to their creditors, there is a negative impact on their credit reports. Creditors are limited in their ability to work directly with many of these consumers because the debt settlement company (and/or borrower) will often send a cease-and-desist letter and use the power-of-attorney or other authorization to direct all correspondence from the creditor to the debt settlement company. Recently, debt settlement companies have begun offering their own partner-bank sponsored loan as part of the settlement process, which seems of doubtful benefit to consumers.

Debt settlement services may come from an attorney or a law firm. These law firms are not subject to state licensing to collect debt and substantive debt collection regulations, even if the state regulates debt settlement companies. States have a confusing mix of laws addressing debt settlement companies, with some states having none at all. In many states, debt settlement companies are regulated under debt management and consumer credit counseling statutes that are not designed to address the debt settlement business model or provide adequate protections for consumers. The states also face challenges for regulation and enforcement of existing laws due to online marketing and services, which further blur the lines of the states' jurisdictional powers.

No comprehensive federal law addresses debt settlement companies, though the FTC and CFPB have enforcement authority. The latest development in federal law was the 2010 amendment to the Telemarketing Sales Rule⁵ prohibiting debt settlement companies that engage in telemarketing from charging advance fees.

Debt settlement companies promise consumers more than they can deliver, and it is not clear to consumers that these companies are offering no better service than the consumer could achieve by working directly with the creditor. AFSA asks that the CFPB take a closer look at how debt settlement companies harm consumers and consider writing rules that will protect consumers from ending up deeper in debt after working with a debt settlement company. For example, the CFPB could consider mandating that debt settlement companies provide disclosures to consumers that ensure consumers are well-advised of relevant attendant risks.

More specifically, rules could include, but not be limited to, the following:

- Consumer-facing communications shall not encourage consumers to cease paying debts or to file bankruptcy.
- Consumer-facing communications shall state that consumers may be able to work directly with creditors to resolve their hardships.
- Consumer-facing communications shall state creditors are required to report accurate information regarding a consumer's account to credit reporting agencies and that failure to pay creditors on time may result in negative credit reporting.
- Attorneys shall be subject to the rules.
- Fees shall be specified in a written agreement before consumer debt settlement company commences work on a consumer's account.
- The written agreement the consumer signs should advise the consumer that the debt settlement company's actions on behalf of the consumer may affect the consumer's relationship with the consumer's creditors.

⁵ 16 C.F.R. Part 310 (FTC Rule)

- Consumers shall be provided copies of all correspondence, in any form, sent to consumers' creditors, contemporaneously with the correspondence being sent.
- All correspondence, in any form, sent to creditors shall include the consumer's accurate contact information, including address and telephone number.
- Debt settlement companies should be required to explain the specific results it requesting of creditors, *e.g.*, reduction in amount owed, removal of tradeline (consumer account information) from the consumer's credit report.
- Limit the fee charged to consumers to an amount the CFPB believes is reasonable.

These are just a few suggestions that may lead to some transparency for consumers on the effect of debt settlement companies' actions.

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We look forward to our continued work with the CFPB in this area. If you have any questions, please do not hesitate to contact me by phone at 202-776-7300 or e-mail at cwinslow@afsamail.org.

Sincerely,



Celia Winslow

Vice President, Legal & Regulatory Affairs
American Financial Services Association