January 10, 2020

Representative Kelly Keisling
Tennesee House of Representatives
425 5th Avenue North
Suite 566, Cordell Hull Bldg.
Nashville, TN 37243

Re: House Bill 1182 - Debt Resolution Services Act

Dear Representative Keisling:

I write on behalf of American Financial Services Association (AFSA)[1] to express our serious concerns with HB 1182, which would establish licensure and related requirements for debt resolution services, commonly referred to as debt settlement companies. The debt settlement industry is growing, and it is paramount that states consider the damaging effect these companies have for consumers and their creditors. As drafted, HB 1182's proposed requirements would not adequately protect consumers from the potential harm posed by these services.

Harm to Consumers

The debt settlement industry inundates consumers with ads promising relief from so-called "crushing" debt, but the debt settlement industry itself is more of a wolf in sheep's clothing, as it typically presents itself as a fiduciary of consumers, when in fact it often poses more harm than good. The process typically leaves borrowers, at the very least, no better off and often much worse off. The potential for harm is so great that the Consumer Financial Protection Bureau (CFPB) warns consumers directly on its website that "debt settlement companies may well leave you further in debt than when you started."

Debt settlement companies disrupt the important relationship that exists between borrowers and creditors by inserting themselves into process and cutting off communication between the two. This disruption creates barriers to any resolution the borrower may already have at their disposal, namely, the ability to work directly with the creditor on a new debt reduction or payment plan without additional charge. Creditors are committed to working with distressed borrowers, as keeping accounts current is in everyone's best interest. Conversely, debt settlement companies

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[1] Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

advise borrowers to stop making payments on their accounts and cease communications with their creditors. This advice increasingly comes to borrowers who are current on their account and have not yet missed a payment.

Advising a borrower to stop making payments leads to significant harm for the consumer, who will now have a credit report reflecting missed payments and higher loan balances. This damage reduces their future options for credit and increases its cost, which says nothing of the late fees and increased interest they will face directly as a result of the missed payments. These costs are in addition to the fees the consumer pays directly to the debt settlement company itself. Accounting for late fees, the higher cost of future credit, fees charged by the settlement company, plus the taxes owed on any debt forgiven, it is easy for the consumer to come out of the process worse off, and it's clear why the CFPB warned of such an outcome.

The National Black Caucus of State Legislators (NBCSL) recently ratified a 2020 policy position on protecting minority communities from debt settlement companies. In it, NBCSL recognizes that stopping payments causes accounts to default and puts consumers in an often worse-off position.

Steps Taken by Regulators

Debt settlement companies have faced some recent scrutiny from federal and state regulators. Abuse is so rampant that the Federal Trade Commission (FTC) has a specific category of enforcement reserved for "Companies and People Banned from Debt Relief." This category includes hundreds of individuals and businesses that have harmed consumers in the process of offering debt settlement or debt resolution services. The CFPB recently settled with the largest debt settlement services provider in the country after the company was caught charging consumers without settling their debts, misleading consumers about the company's fees, and instructing borrowers to expressly mislead their creditors, among other damaging actions. The Colorado attorney general also recently took action against another debt settlement company that was making loans directly to its own debt settlement customers despite the clear and illegal conflict of interest.

Proposed Solutions

Debt settlement companies should be carefully regulated to ensure that the possible harm to consumers is minimized. Any regulatory structure should start with the requirement that such companies be fully licensed and examined by the state. This licensing and examination authority should rest with a regulatory agency familiar with the industry and the harms it poses, rather than one that simply administers licensure. Importantly, debt settlement companies should be prohibited from owning or being in any way financially affiliated with a creditor, because of the attendant and obvious conflicts of interest. Further, the requirements should prohibit any remuneration or referral fees for customers who seek out loans as part of the settlement process, as even informal arrangements could create a similar conflict. Finally, the state should create a formal mechanism for reporting bad industry actors. This mechanism would make it easier for borrowers, creditors, and other companies to root out abuses within the industry.

We respectfully request that you amend HB 1182 to include the fundamental consumer protections we have outlined above, which are necessary to ensure the debt settlement industry is properly regulated. Thank you for your attention to this matter. If you have any questions or if AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 952-922-6500 or dfagre@afsamail.org.

Sincerely,

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