May 22, 2020

The Honorable Buffy Wicks
1303 Tenth Street
State Capitol, Room 5160
Sacramento, CA 95814

Re: Assembly Bill 2524

Dear Assembly Member Wicks:

We write on behalf of the American Financial Services Association (AFSA)[1] and the California Financial Services Association (CFSA) regarding AB 2524, which would take important steps to rein in the debt settlement services industry. The debt settlement industry is growing, and we applaud you for considering the damaging effect these companies have for consumers and legitimate creditors alike. As amended, AB 2524's proposed requirements would enact important protections for consumers from the potential harm posed by these services. We also believe additional requirements are necessary to prevent some of the common industry abuses we see on a daily basis.

The debt settlement industry inundates consumers with ads promising relief from so-called "crushing" debt, but the debt settlement industry itself is 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 should be carefully regulated to ensure that the possible harm to consumers is minimized, starting 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. For these reasons, we support AB 2524's provisions requiring that providers of debt settlement services be licensed and regulated by the Department of Business Oversight.

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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.

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 always 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. Because of the harm posed to consumers, we applaud the expanded disclosure requirements in Section 12 of the bill, particularly the disclosure that the debtor is still required to pay all bills unless the creditor states otherwise. Coupled with the disclosure regarding the potential harm a debtor may face from collection, lawsuits, garnishment and negative credit reporting, these new disclosures will help ensure that debtors are aware of the risks of stopping payments.

Debt settlement services come with significant costs for debtors. 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 the process often puts consumers in a worse-off position. Because of these costs, we believe the bill's provision capping fees at five percent of the savings from a completed settlement is an important consumer protection.

Additional Proposed Solutions

While the bill already includes important protections, we believe additional requirements would further benefit consumers. 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 with remuneration paid to a debt settlement company 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 believe the fundamental consumer protections we have outlined above will ensure the debt settlement industry is properly regulated. Thank you for your attention to this matter. If you have any questions or if CFSA or AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me either of us at your convenience.

Sincerely,

Scott Govenar

Scott Govenar
Governmental Advocates, Inc.
1127 11th St. Suite 400
Sacramento, CA 95814
(916) 807-4407
sgovenar@govadv.com

Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517
952-922-6500 direct
dfagre@afsamail.org