

Testimony to the House Financial Institutions, Housing and Urban Development Committee on House Bill 173

Kalitha Williams

Good afternoon, Chairman Adams, Ranking Member Boyce and members of the committee. My name is Kalitha Williams and I am the policy liaison for asset building at Policy Matters Ohio, a nonprofit, nonpartisan organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. My work centers on household financial stability and consumer protection issues in Ohio. I also convene Ohio CASH, a statewide coalition of organizations focused on improving the financial and economic conditions for low- and moderate-income families and communities in the state. Thank you for the opportunity to testify today regarding House Bill 173.

There are many consumers struggling with debt, people who are desperately seeking help and financial relief. The for-profit debt settlement industry aggressively markets its services to those struggling financially and promotes its services as a way for consumers to clear their debts. Once the consumer engages in a plan, the debt adjuster insists that the consumer stop making debt payments and fund an escrow account to be used to negotiate with the debtors. Unfortunately, while the escrow account is growing, compounding late fees, higher interest rates, and finance charges continue to increase the amounts of the original, unpaid debts. In many cases, consumers go into default, finding themselves in worse shape than before they involved the debt adjuster. Many end up filing for bankruptcy, the very thing they were trying to avoid. In short, few consumers actually complete the program but many pay thousands of dollars in fees, and accrue more debt than before they engaged the debt settlement company.

As this committee considers HB 173, it is important that you understand that existing federal and state regulations governing this industry are working, rendering this proposed legislation unnecessary and even harmful to Ohio consumers. With this testimony I hope to outline how existing regulations are providing protection for Ohio consumers, and why this committee should reject this legislation.

At the federal level, the Federal Trade Commission (FTC) found the industry's previous practice of charging up-front fees (as much as 20 percent of the debt) to be an unfair practice and has implemented an industry-wide requirement that adjusters settle at least one debt before receiving payment.ⁱ

At the state level, the Ohio Debt Adjusters Act protects Ohioans from for-profit debt settlement companies. The law prohibits debt adjusters from accepting more than \$75 for initial consultation fees, charging more than \$100 annually in consultation fees or contributions, or

collecting more than 8.5 percent of the amount paid by the debtor each month or \$30, whichever is greater. By lifting the fee caps and leaving Ohioans vulnerable to predatory practices and exorbitant charges, House Bill 173 would exclude out-of-state debt settlement companies from protections already in Ohio law. While the bill's sponsors testified that the industry is not subject to the Ohio Debt Adjusters Act, the proposed legislation very clearly excludes the industry from the regulation on lines 21 and 22.

Ohio Attorney General Mike DeWine and his office have used the Ohio Debt Adjuster's Act to protect consumers from debt settlement companies that prey on consumers. In 2012, the attorney general sued a group of debt settlement companies using the Ohio statute (see attached news release). The proposed legislation would remove the authority of the attorney general to protect Ohio consumers.

The bill sponsors testified about the limited options available for consumers seeking help with their debt burdens, but other options may provide better outcomes for consumers than debt settlement companies typically do. Those options include:

- Consumers working directly with creditors to negotiate their debt payments. Rather than paying a third party, this approach directs all the money to the creditor and to reducing the consumer's debt. Consumers may also be able to receive a hardship interest rate of under 10 percent, avoid debt defaults that lead to lawsuits, and pay off their debt faster;
- Through the National Foundation of Credit Counseling, a network of nonprofit organizations that offer debt management programs, consumers can work with a counselor who negotiates their debt with creditors. This approach avoids the for-profit industry practice of waiting until the consumer has saved enough money in an escrow account to begin negotiating the debt, a practice that often causes debt defaults;
- Bankruptcy can protect consumers from lawsuits that begin when they stop paying their debtors, a shelter that debt settlement agreements cannot provide. In addition, debts reduced through bankruptcy are not considered taxable income, unlike resolutions negotiated through debt settlement companies.

The industry has acknowledged to the FTC that fewer than 35 percent of consumers settle at least 70 percent of their debt in three years in a debt-settlement program.ⁱⁱ A survey conducted by the debt collection industry showed that 45 percent of creditors will not even work with debt settlement companies.ⁱⁱⁱ Given these realities, consumers struggling with debt will most likely be better served if they avoid the debt settlement industry altogether.

Other government entities and consumer protection organizations have found problems with the industry.

- This year, legislation similar to HB 173 has been introduced in other states including Georgia, Hawaii, and Louisiana, and has been rejected;
- The Office of the Comptroller of the Currency, a national bank regulator, stated that debt settlement "is not a legitimate method of satisfying debts";^{iv}
- In 2012, the New York City Department of Consumer Affairs conducted its own investigation of the industry and called debt settlement "the single greatest consumer fraud of the year";^v

- The Better Business Bureau rates the debt settlement industry as “inherently problematic” and has received complaints in all 50 States^{vi}, including nearly 300 complaints against American Fair Credit Council member companies that can be found by searching the Better Business Bureau website.^{vii}

We ask that you protect Ohio consumers and oppose HB 173. Passing this legislation will hurt the financial stability of Ohio working families, drive borrowers deeper into debt, and increase risks of bankruptcy. Many member organizations of Ohio CASH are direct service providers and some have worked with consumers who have tried this program; they have told us that these practices leave consumers in worse financial shape rather than improving their outlook. Ohioans need real solutions to support their financial stability, not industries that take advantage of their economic challenges.

Mr. Chairman, thank you for allowing me to testify on this legislation. I am happy to answer any questions that you or any of the other members of the committee may have.

*Policy Matters Ohio is a nonprofit, non-partisan research institute
with offices in Cleveland and Columbus.*

ⁱFederal Register / Vol. 75, No. 153 (Aug. 10, 2010) at 48478, available at <http://www.ftc.gov/os/2010/07/100810tsrdebtreliefamendments.pdf>.

ⁱⁱ Letter of Andrew Houser of The Association of Settlement Companies (American Fair Credit Council) to the Federal Trade Commission (Mar. 8, 2010), available at <http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00334.pdf> at 2 (describing the result of TASC’s survey of its members, including the 14 of its 20 largest members).

ⁱⁱⁱ Inside ARM Debt Settlement Survey: How Creditors and Collectors Utilize the Debt Settlement Industry to Increase Collections, January 2013. InsideARM.com

^{iv} See Office of the Comptroller of the Currency, U.S. Department of the Treasury, “Answers about Debt Elimination and Fraudulent Schemes” available at <http://helpwithmybank.gov/get-answers/credit/debt-elimination-and-fraudulent-schemes/faq-credit-debt-elim-fraud-schemes-02.html> (last visited February 23, 2011).

^v Department of Consumer Affairs Launches Investigation Into Debt Settlement Companies. See http://www.nyc.gov/html/dca/html/pr2011/pr_080911.shtml.

^{vi} The Better Business Bureau provided data to state attorneys general showing that, since 2007, debt settlement and debt negotiation companies have annually generated the most complaints received by the Bureau. The Better Business Bureau has concluded that the debt settlement industry is an “Inherently Problematic Business.” See Comments of the National Association of Attorneys General to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 at n.5 and text (Oct. 23, 2009, available at <http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00192.pdf>).

^{vii} This information was collected conducting a search on the Better Business Bureau national consumer complaints database.