

## Testimony to the Senate Financial Institutions Committee on Senate Bill 226

Kalitha Williams

Good morning, Chairman Hughes, Ranking Member Yuko 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 Senate Bill 226.

There are many consumers struggling in debt, desperately seeking help and financial relief. The for-profit debt settlement industry aggressively markets 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 creditors. 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 adjuster. Some 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.

**The current federal and state regulations governing this industry are working and this legislation is unnecessary and likely harmful to Ohio consumers.** For over 10 years, the Ohio Debt Adjusters Act, has protected consumers from excessive fees from for-profit debt adjusters. Senate Bill 226 would remove these important protections, by lifting fee caps and leaving Ohioans vulnerable to predatory practices and exorbitant fees.

The Federal Trade Commission (FTC) found the industry's previous practice of charging up-front fees (up to 20 percent of the actual debt) to be an unfair practice and has implemented an industry-wide requirement that the adjuster settle at least one debt before receiving payment. This and other consumer protections including fee and adverse credit disclosures are already regulated by the FTC.<sup>i</sup>

In 2004, through the sponsorship of then State Representative Tom Patton, the legislature implemented the Ohio Debt Adjusters Act (ODA) to protect Ohioans from unscrupulous 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. The statute gives the Ohio Attorney General enforcement authority to ensure debt adjusters comply.

**The bill sponsor and proponents testified that for-profit debt settlement companies are not able to operate in Ohio, but this is not the case.** The bill supporters have asserted that the state regulations are only for credit counseling agencies and that federal regulations prohibit them for accepting upfront fees and are in conflict with the ODA. However, according to the summary by the Ohio Legislative Service Commission for a similar bill proposed by the AFCC that would remove fee caps, Ohio Revised Code 4710 references to “debt adjusting” includes for-profit debt settlement services.<sup>ii</sup> Also, Federal Trade Commission rules are not in conflict with the Ohio Debt Adjusters Act. In fact, the FTC stated that states could implement additional protections for consumers including fee caps without any conflict with federal regulations.<sup>iii</sup>

Moreover, there is evidence that debt adjusters are already doing business in Ohio. A quick search of the Ohio Attorney General complaint database finds several debt adjusters operating in Ohio, including Freedom Debt Relief and Century Negotiations, Inc., two members of the Americans for Fair Credit Council. The complaints were minor and most of them were resolved. While debt adjusters are able to provide their services in Ohio, they must do so within the parameters of the Ohio Debt Adjuster’s Act, primarily the fee caps. When they do not, the Ohio Attorney General takes swift action, much like the lawsuit DeWine took against a pair of companies in 2012 (see attached news release).

**The bill sponsor and proponents testified about the limited options available for consumers seeking help with their debt burdens; however there are other options that may have better outcomes for consumers than debt settlement companies. Those options include:**

- 1) Consumers can work directly with creditors to negotiate their debt. In this scenario, all payments go directly to the creditor. Consumers may also be able to receive a hardship interest rate of under 10%, can avoid defaults which lead to lawsuits, and may be able to pay off their debt faster.
- 2) Consumer can also seek the assistance of the National Foundation of Credit Counseling, a national network of nonprofit organizations, many in Ohio, that offer debt management programs. Consumers unable to negotiate with their creditors can work with a counselor who almost immediately negotiates with creditors, rather than waiting until the consumer has saved enough in an escrow account to begin negotiating, an industry practice, which causes defaults.
- 3) Even consumers who file bankruptcy have protections that debt settlement agreements cannot provide. Bankruptcy can protect consumers from lawsuits, which may bombard consumers when they stop making paying their debtors. Also, debts reduced through bankruptcy are not considered taxable income as is the case with debt negotiated through debt settlement companies. Consumers of debt settlement companies often end up filing for bankruptcy after paying hundreds of dollars of fees that could have been used to pay down their debt.

For-profit debt settlement companies claim to have “special relationships” with creditors to help consumers settle debts. However, a survey conducted by the debt collection industry showed that 45% of creditors will not even work with these companies.<sup>iv</sup> Given this, consumers struggling with debt will most likely be better served if they avoid the industry altogether.

**Other government entities and consumer protection organizations have found problems with the industry.** The Office of the Comptroller of the Currency, a national bank regulator, stated that debt settlement “is not a legitimate method of satisfying debts.”<sup>v</sup> In 2012, the New York City Department of Consumer Affairs conducted its own investigation and called debt settlement “the single greatest consumer fraud of the year.”<sup>vi</sup> The Consumer Financial Protection Bureau has brought several actions against debt settlement companies for illegally charging up-front fees<sup>vii</sup> and making false claims to consumers.<sup>viii</sup>

During proponent testimony, it was suggested that that fee caps were not helpful for consumers and that AFCC had collaborated with consumer groups and state legislatures to lift them. I have reached out to consumer advocates in our state and at the national level and none of us are aware of any instance in which consumer organizations have worked to remove fee caps. In fact, where such proposals have been suggested, they have been explicitly opposed by consumer protection groups and rejected by legislatures in states such as Georgia, Washington, Connecticut, and Louisiana. Moreover, in Colorado, which removed its fee cap in 2011, the regulatory agency recommended restoring a fee cap in 2015. The outcomes from Colorado data showed negative outcomes for consumers, such as the fact that more than half the consumers who entered the program did not complete it—and in fact terminated within two years.<sup>ix,x</sup> Their data show the flawed nature of the debt settlement business model. It simply does not work for the vast majority of people. The fee limits that Ohio already has in place are a necessary protection to curb some of the worst abuses by for-profit debt settlement companies. Moreover, some states outright banned for-profit debt settlement, and have kept it that way.<sup>xi</sup>

**We ask that you protect Ohio consumers and oppose Senate Bill 226.** Passing this legislation will hurt the financial stability of Ohio working families and drive borrowers deeper into debt. 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.*

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

<sup>ii</sup> The Ohio Legislative Commission analysis of SB 251, a similar bill proposed by the AFCC which would have excluded for-profit debt settlement services from analysis of SB 226, a similar bill proposed by the DEB Settlement Services. The DEB Settlement Services would otherwise likely fall under the definition of debt adjusting, and therefore would be subject to the

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Debt Adjusting Law requirements.” See page 6, <http://www.lsc.state.oh.us/analyses129/s0251-i-129.pdf>

<sup>iii</sup> Telemarketing Sales Rule, 16 CFR Part 312, at 85-86 (Aug. 10, 2010), available at <http://www.ftc.gov/os/2010/07/R411001finalrule.pdf>

<sup>iv</sup> Inside ARM Debt Settlement Survey: How Creditors and Collectors Utilize the Debt Settlement Industry to Increase Collections, January 2013. InsideARM.com

<sup>v</sup> 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).

<sup>vi</sup> Department of Consumer Affairs Launches Investigation Into Debt Settlement Companies. See [http://www.nyc.gov/html/dca/html/pr2011/pr\\_080911.shtml](http://www.nyc.gov/html/dca/html/pr2011/pr_080911.shtml)

<sup>vii</sup> Press Release: “CFPB Takes action Against Two Companies for Charging Illegal Debt-Relief Fees” (May 7, 2013), available at <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-two-companies-for-charging-illegal-debt-relief-fees/> .

<sup>viii</sup> Press Release “CFPB Sues World Law Group for Charging Illegal Fees and Making False Promises in Debt-Relief Scheme” (September 15, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-sues-world-law-group-for-charging-illegal-fees-and-making-false-promises-in-debt-relief-scheme/>

<sup>ix</sup> Colorado Department of Regulatory Agencies 2014 Sunset Review: Colorado Uniform Debt-Management Services Act (October 2014) available at [http://www.leg.state.co.us/CLICS/CLICS2015A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/b77886c524bc845087257df0006f3e3b/\\$FILE/15SenateJud0218AttachD.pdf](http://www.leg.state.co.us/CLICS/CLICS2015A/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/b77886c524bc845087257df0006f3e3b/$FILE/15SenateJud0218AttachD.pdf)

<sup>x</sup> State of Colorado Department of Law 2014 Annual Report: Colorado Uniform Debt-Management Services Act (2014), available at <http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/2014%20DM%20ANNUAL%20REPORT%20-%20FINAL.pdf>

<sup>xi</sup> National Conference of State Legislatures state-by-state analysis of debt settlement statutes and regulations, available at <http://www.ncsl.org/research/financial-services-and-commerce/credit-counseling-debt-managem983and-settlem983.aspx>