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Mr. Donald S. Clark, Secretary
Federal Trade Commission
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Telemarketing Sales Rule - Debt Relief Amendments - R411001

Dear Secretary Clark:

Debt settlement companies have been found to cause significant harm to consumers, undermining New York City's efforts to support the financial security of those with low incomes. To curb widespread risky, harmful and deceptive practices, strong regulatory action is warranted. As it finalizes its amendments to the Telemarketing Sales Rule, **the New York City Department of Consumer Affairs (DCA) urges the Commission to adopt the prohibition on advance fees charged by debt settlement companies.**

The New York City Department of Consumer Affairs (DCA) is the largest municipal consumer protection agency in the country. To ensure a fair and vibrant marketplace for consumers and businesses, DCA licenses 71,000 businesses in 57 different industries, including debt collection agencies; mediates thousands of individual consumer complaints annually; educates consumers and businesses through press releases, press conferences, educational materials, community outreach and public hearings; and works with other city, state and federal law enforcement agencies to protect consumers from deceptive practices. The Department enforces the City's consumer protection law and other laws that prohibit deceptive acts and misleading marketing practices. DCA's Office of Financial Empowerment (OFE) is the first local government initiative in the nation aimed expressly at educating, empowering, and protecting those with low incomes, so they can build assets and make the most of their financial resources. To share lessons learned and advocate jointly for national policy reforms, New York City founded and co-chairs the Cities for Financial Empowerment (CFE) coalition, a group of ten city governments working to improve financial services for households with low incomes.

DCA's position on this matter is informed by its broad and varied experience, which includes regulating a variety of entities involved in debt-related industries, mediating consumer complaints about debt collectors, providing consumers with financial counseling, and studying consumer financial services behavior. Numerous stories in the press, an investigation by the Government Accountability Office, and countless state and federal enforcement efforts have documented the range of harms caused to consumer by abusive debt relief services, in particular among debt settlement companies. These include charging exorbitant upfront fees without delivering the promised results, as well as engaging in practices that result in consumers' outstanding debts skyrocketing without achieving relief, lasting harm to consumers' credit scores, and legal judgments and collection

activities, among countless other issues. In fact, New York City has already seen striking numbers of consumer debt cases in civil courts. In 2008, 618,528 cases were filed in the New York City Civil Courts, and consumer debt litigations constituted between 40 and 60 percent of filings.¹

Consumers in New York City are bombarded with advertising from debt relief companies. We have found meeting with community advocates and working with the court system that consumers Citywide are falling prey to these lures. These pernicious practices are particularly troubling given that New York City residents can avail themselves of free, safe and effective financial counseling; the City's Financial Empowerment Centers provide debt relief help to thousands of New Yorkers each year for free, many of whom come to our centers after losing thousands to debt settlement businesses.

To be effective in curbing debt settlement abuses, the Commission's final debt relief services regulations must prohibit advance fees.

As the Commission correctly states in the notice of proposed rulemaking, "...collecting up-front fees for debt relief services causes substantial injury to consumers."² In many cases, state attorneys general have alleged that no more than one percent of consumers successfully settle their debts³; even the industry's own figures show that less than 34 percent of clients obtain a settlement in three years.⁴ Despite these low rates of success, debt settlement companies charge exorbitant fees, as high as 30 percent of the debt enrolled, before a consumer receives any of the advertised results.⁵ The numerous consumers who don't get what they paid for end up substantially worse off than they were prior to enrolling in settlement plans. To sufficiently curb the substantial injury caused by untenable settlement agreements, it is imperative that the Commission prohibits debt settlement companies from collecting any fee other than a nominal enrollment fee until a consumer's debt is fully discharged by the creditor.

Industry arguments that advance fees are needed to cover their costs of operations and to ensure consumers pay the settlement fee once results are achieved are unfounded, and any hint of legitimacy in such claims is overwhelmingly outweighed by the harm caused to consumers by such fees. The use of escrow accounts in the settlement model provides a reasonable mechanism to assure payments are received if a settlement is actually reached. The assertion that upfront fees are necessary for the businesses to maintain cash flow is an obvious ruse, as a properly capitalized firm that actually intends to settle a consumer's debts could readily adapt to perform services without collecting fees upfront. In fact, the feasibility of operating

¹ "Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases," Appleseed and Jones Day, 2010.

² Federal Register, Vol. 24, No. 159, April 19, 2009. P 42006.

³ See, e.g., "Attorney General Cuomo Sues Debt Settlement Companies for Deceiving and Harming Consumers", Press Release, May 19, 2009.

http://www.oag.state.ny.us/media_center/2009/may/may19b_09.html

⁴ The Association of Settlement Companies, Letter to the Federal Trade Commission regarding "Telemarketing Sales Rule – Debt Relief Amendments –R411001," October 26, 2009.

⁵ Testimony of Travis Plunkett, on behalf of CFA, NCLC and U.S. PIRG before the Senate Committee on Commerce, Science, and Transportation , February 26, 2009.

without upfront fees has been supported by the American Coalition of Companies Organized to Reduce Debt, an industry organization.⁶

Prohibitions against collecting advance fees for debt settlement are already in place in several states, and advance fee bans have been implemented in other contexts. For example, North Carolina prohibits debt settlement firms from charging fees (other than a \$40 initial fee) until services are fully rendered.⁷ In addition, legislation that recently passed both houses of the legislature in Illinois also bans upfront fees, aside from a one-time \$50 set-up fee.⁸ Advance fees are also banned in a number of other contexts. For example, credit repair organizations,⁹ as well as mortgage brokers and other lenders “guarantying” extensions of credit,¹⁰ are currently banned from charging advance fees. The Commission also proposed banning advanced fees charged by mortgage assistance relief services, a measure DCA strongly supports.¹¹

In the proposed rules, the Commission correctly recognized the pernicious effects of advance fees in the context of debt relief services and correctly proposed banning such charges. In finalizing its rules, DCA urges the Commission not to fall victim to deceptive claims by an industry whose frauds have destroyed the financial stability of millions of Americans. Advance fee bans have been implemented elsewhere and are a fundamental protection needed to stop debt settlement companies from continuing to drain wealth from our communities by defrauding consumers. As federal regulatory reform legislation is being finalized in Congress, the Commission has an opportunity to demonstrate the reality of swift, strong federal regulatory action to protect consumers and ensure a fair, vibrant marketplace.

Respectfully submitted,

Jonathan Mintz
Commissioner

⁶ The American Coalition of Companies Organized to Reduce Debt, Letter to the Federal Trade Commission regarding “Telemarketing Sales Rule – Debt Relief Amendments –R411001,” October 9, 2009.

⁷ N.C. Gen. Stat. § 14-423

⁸ IL HB4781, 2010.

⁹ 15 U.S.C. § 1679b(b)

¹⁰ 16 C.F.R. 310.4(a)(2)-(a)(4)

¹¹ The New York City Department of Consumer Affairs, Comments to the Federal Trade Commission regarding “Mortgage Assistance Relief Services Rulemaking - Rule No. R911003,” March 29, 2010.