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DMB Financial Testimony Regarding Raised Bill 362

Matt Guthrie of DMB Financial provides the following testimony:

The fee cap imposed by RB 362 will hamper companies' ability to provide quality services to consumers. With the prohibition of advance fees, the focus of any legislation should be to support the consumers' success in debt settlement programs as opposed to trying to save a little money since the consumer always gets to decide what is best for him or her. Pushing the cost of the service down too low will affect the quality of services and impede the success of consumers in the program.

1. Given the protections of the FTC Rule prohibiting advance fees, a fee cap is not in the best interests of the consumer.

   a. Cheaper is not better.

      Healthcare services are a prime example of the struggle between cost and quality. The two, cost and quality, are directly proportionate. If one is decreased, the other likewise decreases. Pushing down the price of the service means that quality suffers. Many other services are similar. Would you hire a doctor solely based on price? Would you choose the cheapest lawyer to represent you? Services are not widgets that share the same character or quality across the board. Debt settlement services are likewise a service, the quality of which is built on staff, relationships and experience. Hiring minimum wage workers will not get the job done. As such, setting a fee cap as proposed in the draft bill mandates a lower level of services, if any service at all.

   c. Consumers want better quality services and will pay for them.

      The demographic data reveals that debt settlement consumers are educated and have had a good income. Data from one of AFCC's largest members indicate that approximately 60% of debt settlement consumers have some college education and the average household income nationwide for those consumers is approximately $73,000. A focus group of debt settlement consumers revealed that they expect to both pay for and receive high quality services. Especially when they do not have to pay for the services until after the result (a good settlement) is obtained, they can demand quality. Taking away the ability to provide quality services by way of a fee cap despite the consumer's willingness to pay, guts the debt settlement program and its usefulness to the consumer.

d. Consumers will benefit by paying for better quality services.

Allowing companies to charge fairly for quality services means that more consumers can have access to the services and more consumers will be successful in the programs. Companies can afford to service those with lower debts and who will pay less in fees. Companies will also offer more support services such as more frequent client contact, more substantive services like financial education, and invest in a greater number and in more experienced negotiators, all of which increase the likelihood of success in the program. On the flip side a barebones company may be run like a school district subject to budget cuts: much higher student to teacher ratios, less personal attention to individual needs, and kids who do not keep up on their own drop out as there are no resources to help them. Unreasonably low fee caps also mean that only those with very large amounts of debt who will pay larger fees will be serviced.

2. Consumers will benefit significantly from debt settlement services even when paying fees greater than that proposed in RB 362.

a. Debt settlement is a more labor intensive and costly service to provide and should be permitted to charge more than nonprofit credit counseling, not less.

Debt management/credit counseling and debt settlement are two different services albeit both in the debt relief industry. Since debt settlement is a much more costly service to provide, the fees need to be greater to compensate for this extra expense. RB 362 does the reverse and as such does not allow sufficient fees to sustain operations for debt settlement providers.

Debt settlement is a much more labor intensive service than debt management in large part because debt management plans are prearranged, set payment plans that primarily involve making monthly payments. Debt management can be highly automated with the use of electronic payment systems. Debt settlement plans are very individualized plans involving individually negotiated deals with circumstances that change constantly throughout the plan. CareOne, who is not a member of AFCC but is a company that performs both debt management and debt settlement, states that it takes more than four times as much work to perform debt settlement. AFCC further knows of debt management providers who hire one-tenth of the staff required to administer debt settlement plans for the same number of clients. Additionally, at least with respect to nonprofit providers, credit counselors receive "fair share" subsidy payments from creditors.

Further, debt settlement providers often provide significant services to individuals who end up not paying for those services. Providers will have provided significant customer service, financial education, counseling and negotiation services without being paid. Individuals may cancel from programs at any time and reject settlement offers even if such offers are reasonable.

The benefit that consumers can receive from debt settlement services are significantly greater than credit counseling thus warranting a higher fee as well. In addition the consumer always gets to evaluate whether the fees are worth it before accepting any settlement offer. If he or she decides it is not worth it, he or she can reject the settlement offer and/or cancel the agreement with the provider.

3. There is no "one-size-fits-all" solution for debt relief. Debt settlement is a good and appropriate option for a significant number of consumers.

Bankruptcy lawyers argue that there is no need for debt settlement because bankruptcy is a better option. Nonprofit credit counseling groups have argued that there is no need for debt settlement because doing it yourself or credit counseling is a better option. However, academics, regulators and finance experts have all agreed that there are many consumers who will not get out of debt without some reduction in principal which nonprofit credit counselors do not offer. Bankruptcy is well accepted as the option of last resort. Most importantly, consumers demand debt settlement services. Below are some testimonials from consumers who looked into other options and decided debt settlement was best for them:

Lucida[1]
Upon your companies advice I looked into Consumer Credit Counseling and decided that it simply would take too long and I would not be able to afford those kinds of payments. By going through your debt settlement program I have learned to recognize my finances and put myself on a budget. I really feel that you have helped me out not just now but for the rest of my life."

Mary[2]
"Bankruptcy was not the answer . . . I feel the fees have been more than fair because of the settlements I have received already.

Brian[3]
I attempted to call the credit card companies to see if they would work with me on some type of payment plan so that I could get caught up with all the late payments and extra fees that they tacked on my balance. They would not work with me at all. The settlement on my largest debt so far exceeded my expectations . . . . Keep in mind this

[1] Excerpt from testimonial - Source: Quality Survey Services (QSS) 2009 Survey, an independent third-party survey company.
[2] *Id.*
[3] *Id.*

was the same creditor that would not talk to me at the beginning. There is no way I could do this by myself.

III. Conclusion

In closing, debt settlement services, as regulated by the new FTC Rule prohibiting advance fees, is an effective and needed debt relief for consumers. The prohibition against advance fees as set out in the FTC Rule provides substantial consumer protection. Forcing fees for such services to be too low means that the service will not be provided/offered or the service will not be of good quality. These fees limit consumer choice when the prohibition against advance fees provides significant protection and shifts the risk of the service to the provider. Under these circumstances, the consumer should be allowed to choose what level of service he or she desires and should be permitted to pay for a service that has a higher likelihood of success when such payment is contingent upon a successful result.

Respectfully submitted,
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