Testimony Opposing HB 173

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I am a senior staff attorney with the Ohio Poverty Law Center, a statewide legal aid advocacy organization. OPLC works with the regional Ohio legal aid programs to advocate on behalf of low income Ohioans. I am here today to testify in opposition to HB 173.

Ohio does not need this legislation. Ohio consumers are best protected from potential abuses by debt settlement companies by the combination of the current Ohio Debt Adjustors Act, Chapter 4710 of the Ohio Revised Code, and the FTC Telemarketing Sales Rule. The Legislative Services Commission's analysis of this bill makes it clear that without the exemption proposed by HB 173, debt settlement services as defined "would otherwise likely fall under the definition of debt adjusting." If any amendments to current Ohio law are necessary, the Poverty Law Center suggests amending 4710.01 to clarify that all types of debt relief services, as defined in the Federal Trade Commission's Telemarketing Sales Rule, whatever variation in the business model, are covered by the Debt Adjustor Act. This could be easily done by adopting the definition of debt relief services from the FTC rule. The combination of fee caps, insurance requirements and CSPA protections of Ohio's law, and the scope of the FTC rule, currently protects Ohio consumers from most current and future abusive practices of this industry.

This is the third time this industry has asked Ohio to exempt for-profit debt settlement companies from the fee caps Ohio set in 2004. There are no more compelling reasons for Ohio to pass this legislation now than there have been in the past three years.

At the heart of the debt settlement industry is a flawed business model. The business model requires consumers to stop paying on their debts and instead save money in an escrow account to accumulate a lump sum with which to negotiate settlements with creditors. For debtors who have been struggling along, paying the minimum payments on their credit card debt, stopping payments to creditors puts them in default. The cycle of collection will now begin, and enrollment in a debt settlement plan will do nothing to stop that cycle. First, if the original creditor has not done so, the third party collector or debt buyer will place a trade line on the debtor's credit report, and then commence collection activities. The collection activities include repeated phone calls, letters, threats to sue, collection suits, and post-judgment collection. For debtors who were already in default at enrollment, a debt settlement plan will do nothing to interrupt or protect them from this collection cycle.

Consumers with $50,000 to $80,000 yearly incomes, the consumers targeted by debt settlement companies, are highly collectible because they are very likely to have wages that will be subject to garnishment, or other assets to attach. Once post judgment attachments or garnishments begin, households will not have the resources to set aside money in escrow, dooming the debt settlement plan to failure.

Second, the bill excludes debt settlement companies from Ohio's existing fee limitations in 4710.02. Ohio's current Debt Adjustor Act was enacted in 2004 for the purpose of cracking down on unscrupulous for-profit credit counseling services, placing caps on fees and charges. These caps should remain in place to continue to protect Ohio consumers under all possible for-profit debt relief agency business models.

The FTC specifically discussed the issues of fee caps in its supplementary information with the Final Rule, and declined to set fee limits because the FTC did not believe that it had the authority under the Telemarketing Act to regulate fees. The FTC stated that any decision to set fees should be made through a legislative process, and acknowledges that a number of states had already acted to set fee caps. Ohio was one of the states that took a proactive approach to curtail the excessive fees being charged by debt adjustors. I have included the full discussion of fee caps from the final rule commentary so you can get a complete picture of the FTC's rationale.

Third, this bill stripes away the enforcement power of the Ohio Attorney General. The Debt Adjustor's Act has been an effective enforcement tool used by the Ohio Attorney General to protect Ohio debtors from predatory debt settlement companies. The FTC acknowledged the role of state law enforcement agencies in policing this industry. The most effective actions to protect consumers from the abusive practices of this industry have been the combination of state and federal law enforcement actions. All of the recent enforcement actions I am aware of involve charging consumers illegal fees in some way. Since many of the companies operate as large out of state call centers, the most powerful way to protect Ohio consumers is through actions by the Ohio Attorney General, either in cooperation with the association of states' attorneys general (NAAG), or in cooperation with the FTC and/or the Consumer Financial Protection Bureau. Although the bill gives individual consumers a right of action under the Ohio Consumer Sales practices Act, no individual consumer has the means or resources to pursue out of state companies. The Attorney General has tools and resources to address widespread abuses.

In addition, I have concerns about the language in the bill that gives consumers a cause of action for "any material, nontechnical failure to comply with any provisions of sections 4710.20 to 4710.32…" As a consumer advocate and lawyer representing customers of these companies, I am not sure exactly what that means. This language is a loophole that directs claims into nonproductive arguments about "technical" violations. If a requirement is in the law, then it is not "technical" or immaterial.

The consumer protections in this bill merely duplicate, but do not expand, the consumer protections contained in the FTC Telemarketing rule. While I am not opposed to codifying federal regulations in Ohio statutes, we should not do so under the guise of consumer protection, while at the same time removing the important protection of capping fees.

Finally, the bill sponsors have expressed concerns about the number of Ohioans struggling with debt, and want to make the services of for-profit debt settlement companies available to Ohioans as a choice for help with managing debt. These companies can do business in Ohio now – nothing prohibits them from doing business here, so long as they comply with the Debt Adjustors Act.

Before taking for-profit debt settlement companies out of the reach of the Debt Adjustors Act, I ask you to consider the realities of debt, income and self-sufficiency in Ohio.

The latest study released by researchers using U.S. Census Bureau data shows that while households do continue to be burdened by debt, the average debt due to credit cards decreased from 2000 to 2011.[i] In addition, the Federal Reserve Bank of New York reports that for the first quarter of 2013, outstanding household debt decreased by 1.0% overall, driven largely by decreases in household and credit card balances.[ii] According to TransUnion's update for the first quarter of 2013, U.S. consumers are doing better at reducing their credit card balances and paying on time, as the average total card debt per borrower is down to $4,878. The average debt is down 4.8 percent from the fourth quarter of 2012 ($5,122) and down 1.7 percent from a year ago ($4,962).[iii]

Nevertheless, I have no doubt that many households are burdened by double digit credit card debt. But we need to look closely at who is incurring and carrying this debt. Recent studies indicate that middle income families age 50 and older are carrying more credit card debt that younger people. These households are acquiring debt, not because they are unable to manage money and are making imprudent credit decisions but because many of them are using their cards as a plastic safety net for basic living expenses. They are carrying medical, dental, and prescription expenses on their cards. And they are taking on credit card debt as a way to help other struggling family members.

The major debts currently burdening households are secured debt (home and auto loan debt), medical debt and student loan debt. Debt settlement companies do not provide services to address these types of debt.

(I am attached or included links to the studies I am citing to my testimony for your information and reference.)

So, there may be consumers who use their credit cards irresponsibly, but for many more people, credit card debt is a reflection of difficult economic times, job loss, or underemployment. These families are not going to be helped by debt settlement plans. The sponsor indicted that the debt settlement industry targets families with incomes between $50 and $70 thousand per year. If you look at the poverty guidelines, for a family of four, that income range is between 250 and 300% of the poverty level. If you read the latest study released by the Ohio Association of Community Action Agencies on The Self Sufficiency Standard for Ohio 2013 and crunch some numbers, you will see that basic needs in Ohio cost 23% more than they did in 2007.[iv]

Lastly, industry studies do not clearly discuss or disclose the true consumer costs of a debt settlement plan. Industry studies discuss the value of services for every dollar of fees charged to the customer and fail to mention forgiven debt as taxable income. Using industry information, here is an example of how that translates into actual costs:

> Enroll $26,000 of debt into a debt settlement program, and over the life of the program, this debt will increase approximately 20%, to a balance of $31,200. The company settles this for $15,000. The consumer pays about $6,000 in fees. The consumer also gains taxable income of $16,200, for which the creditor will issue a 1099C. For a married couple with a yearly income of $70,000, no dependents, filing a joint tax return, taking standard deductions and exemptions, they will incur an additional tax liability of approximately $2,400.[v]
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> $15,000 payment to creditor for negotiated settlement + $6,000 fee + $2,400 tax liability = $23,400

In conclusion, I urge this committee not to create a safe harbor for debt settlement companies in Ohio by exempting these companies from the current statutory scheme. The only possible rationale for this legislation, since the vast majority of debt settlement companies are covered by, and must comply with, the FTC Telemarketing Sales Rule, is to get debt settlement companies out from under the current fee caps on debt adjustor services. Ohio consumers will not benefit from this exemption, and I urge this committee to just say "no" to this legislation.

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[i] http://www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf

[ii] http://www.newyorkfed.org/research/national_economy/householdcredit/DistrictReport_Q12013.pdf

[iii] http://www.responsiblelending.org/tools-resources/headlines/TransUnion-Late-Payment-Rate-on-U-S-Credit-Cards-Fell-in-1Q-as-Borrowers-Tackled-Holiday-Debt.html

[iv] http://www.selfsufficiencystandard.org/docs/OH13SSS_web.pdf

v http://americanfaircreditcouncil.org/listing/options_for_consumers_in_crisis.pdf

Basic needs in Ohio cost 23% more than in ’07

By Catherine Candisky

The Columbus Dispatch Wednesday June 5, 2013 6:17 AM

Income vs. expenses

A new analysis commissioned by the Ohio Association of Community Action Agencies calculates how much money Ohioans need to earn to meet their family's basic needs. The amounts vary by county and by family size. Most of the people working in the state's 10 most-common occupations don't earn enough to support two children in Franklin County.

OCCUPATION	NUMBER OF EMPLOYEES	HOURLY MEDIAN WAGE	ANNUAL MEDIAN WAGE	PERCENTAGE OF SELF-SUFFICIENCY STANDARD
All workers	**4,977,910**	**$15.90**	**$33,077**	**65%**
Retail salespeople	154,670	$9.63	$20,032	39%
Food-preparation and serving workers	147,230	$8.71	$18,111	36%
Registered nurses	**124,790**	**$29.17**	**$60,666**	**119%**
Cashiers	119,150	$8.95	$18,111	37%
Office clerks	102,160	$13.17	$27,399	54%
Laborers and freight-stock workers	96,840	$10.97	$22,818	45%
Waiters	83,850	$8.75	$18,195	36%
Janitors and cleaners	80,420	$10.79	$22,438	44%
Customer-service representatives	77,930	$14.63	$30,438	60%
Nursing aides, orderlies and attendants	75,180	$11.40	$23,705	47%
Self-sufficiency standard standard for one adult, one preschooler and one school-age child in Franklin County.		**$24.09**	**$50,885**	**100%**

Self-sufficiency standards

Here's how much it takes to meet basic needs in Franklin County:

MONTHLY COSTS	ADULT	ADULT + PRESCHOOLER+ SCHOOL-AGE	ADULT + INFANT+ PRESCHOOLER+ SCHOOL-AGE	2 ADULTS + PRESCHOOLER SCHOOL-AGE
Housing	$608	$791	$1,020	$791
Child care	$0	$1,360	$2,260	$1,360
Food	$225	$511	$602	$702
Transportation	$262	$270	$270	$510
Health care	$152	$366	$375	$425
Miscellaneous	$125	$330	$453	$379
Taxes	$286	$880	$1,337	$924
Income tax credit	$0	$0	$0	$0
Child-care tax credit	$0	-$100	-$100	-$100
Child tax credit	$0	-$167	-$250	-$167
Total	**$1,656**	**$4,240**	**$5,966**	**$4,824**
SELF-SUFFICIENCY WAGES				
Hourly	$9.41	$24.09	$33.90	$13.70 per adult
Annual	$19,871	$50,885	$71,596	$57,887

Source: The Self-Sufficiency Standard for Ohio 2013 report

THE COLUMBUS DISPATCH

Enlarge Image

The average Ohio family didn’t have to lose a job or home to feel squeezed by the Great Recession.

Since the recession hit in December 2007, the cost of basic needs — food, housing, child care, transportation and health care — have soared 23 percent, while the median income in Ohio over the past five years increased only 2 percent, according to a new report.

“It tells you how much of a squeeze everyone is feeling regardless of their income,” said Diana M. Pearce, who did the analysis, the Self-Sufficiency Standard for Ohio 2013, commissioned by the Ohio Association of Community Action Agencies.

“We’ve seen one of the highest rates of increased costs, (while) the jobs that are coming back aren’t paying enough.”

The report found that in Franklin County a family of four — two adults with an infant and preschooler — needs an annual income of $62,722 to cover the necessities without government or private assistance. That’s each parent working full-time earning $14.86 an hour to pay for their basic needs and taxes with $76 a month for savings.

A single mother with a preschooler would need to earn $18.76 an hour for the $39,614 a year needed to support her family. That’s $24,000 more than the 45-year-old federal poverty guidelines suggest she would need.

“There’s no lattes, no take-out or restaurant meals factored, just the basics,” said Pearce, director of the Center for Women’s Welfare at the University of Washington.

Colleen Stoker of the Ohio Association of Community Action Agencies said she hopes state lawmakers consider how much a family needs to be self-sufficient as they consider expanding the state Medicaid program, raising the minimum wage and giving financial incentives to companies pledging to create jobs in Ohio.

Expanding eligibility for subsidized health care will benefit working-poor families, and good-paying jobs would help them achieve self-sufficiency, Stoker said.

The analysis found that of the 10 most-common occupations in Ohio — accounting for 21 percent of all workers — the only one that meets the self-sufficiency standard is registered nurses, who have a median annual wage of about $60,000. The others, including retail sales, food-service workers and health-care aides, pay far less.

For instance, the 119,000 Ohioans working as cashiers earn a median wage of $8.95 an hour — that’s 42 percent of what an adult with two children would need to cover basic needs.

Nowhere in Ohio can a single person get by while earning the state’s $7.85-an-hour minimum wage, the report concluded. In Franklin County, an individual would need to earn $9.41.

The analysis breaks down housing, child care and other costs in each of Ohio's 88 counties for individuals and single-parent and two-parent families with various combinations of infants, preschoolers, school-age and teenage children.

The largest cost increase in Ohio between 2008 and 2013 was in Van Wert County, where a family of two adults with a preschooler and school-age child needs $51,192 a year to be self-sufficient, up 43 percent.

Costs have risen at a much-slower clip in Delaware County, yet it remains among the most-expensive places to live in Ohio. The same household would need $57,661 a year. Costs are lowest — $46,796 — in the Appalachian counties of Jackson and Vinton.

"People are really being squeezed between rising costs and stagnated wages," Pearce said. "Everyone knows health care is going up, but so is housing and food. People are having to make really hard choices."

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In the Red: Older Americans and Credit Card Debt

Amy Traub
Dēmos

AARP's Public Policy Institute informs and stimulates public debate on the issues we face as we age. Through research, analysis and dialogue with the nation's leading experts, PPI promotes development of sound, creative policies to address our common need for economic security, health care, and quality of life.

The views expressed herein are for information, debate, and discussion, and do not necessarily represent official policies of AARP.

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AARP Public Policy Institute
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http://www.aarp.org/ppi

Executive Summary

Middle-income Americans age 50 and older carry more credit card debt, on average, than younger people, according to new analysis of Dēmos' 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households.[1] The results are based on a nationally representative sample of 997 American households that carried credit card debt for three months or more.[2] The research examines how the recession, its aftermath, and implementation of new consumer credit card protections have affected the relationship between Americans and credit card debt, with a focus on differences by age bracket.

Key Findings

Among middle-income households carrying credit card debt for three months or more:

- Older Americans now have higher overall credit card debt than younger people—a reversal of the trend Dēmos found in its 2008 survey: Americans age 50+ have an average combined balance of $8,278 on all of their cards in 2012, compared with $6,258 for the under-50 population.
- Half of Americans age 50+ carry medical expenses on their credit cards, with an average of $893, compared with $746 among younger households; prescription medications and dental expenses were the highest contributors for the 50+ population.
- Forty-nine percent of Americans age 50+ report that car repairs contributed to their credit card debt, and 38 percent report that home repairs contributed.
- Thirty-four percent of Americans age 50+ use credit cards to pay for basic living expenses such as rent or mortgage payments, groceries, utilities, or insurance because they do not have enough money in their checking or savings accounts.
- Older Americans are significantly less likely than younger people to run up credit card debt purchasing nonessential goods and services.
- Nearly one-quarter of people age 50+ say that job loss contributed to their credit card debt; 15 percent report that it was the single biggest contributor.
- Eighteen percent of people age 50 to 64—people who are nearing retirement—report that they drew on retirement funds to pay off credit card debt.
- Older Americans are more likely to take on credit card debt in an effort to assist other family members: About 23 percent of people age 50+ report that money given to, or used to pay the debts of relatives added to the balance on their credit cards, compared to just 11 percent of those under age 50.

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[1] Throughout this report we will use the term *middle-income* to refer to the respondents in this study, since 95 percent of the people in the study were middle income.

[2] Credit cards include bank, store, and gas credit cards on which the entire balance is not required to be paid off by the end of the month.

- Sixteen percent of Americans age 50+ used their home equity to pay down credit card debt in the past year by refinancing, obtaining a second mortgage, or taking out a home equity loan.
- The 2009 Credit Card Accountability, Responsibility, and Disclosure (CARD) Act appears to have influenced the way consumers manage their credit card debt by helping them to pay down balances faster and avoid late fees and over-the-limit fees.
- This report suggests that credit card debt among older Americans is primarily a reflection of difficult economic times, not a lack of personal financial responsibility.