



March 7, 2023

The Honorable Julia C. Howard  
16 W. Jones St.  
Raleigh, NC 27601

Dear Representative Howard:

Thank you once again for meeting with us last week and affording the American Fair Credit Council (“AFCC”) the opportunity to share more information about the debt resolution industry and the important work our member companies do on behalf of consumers throughout North Carolina. We appreciate your assurances that your intent is not to make debt resolution unavailable to North Carolinians, and reiterate our willingness to work with you as you consider legislation that would impact our industry and, more importantly, the tens of thousands of North Carolina consumers our member companies support each year.

As we shared with you during our meeting, debt resolution companies work with consumers experiencing financial hardship across the country, including in North Carolina, to negotiate less-than-full-balance settlements with their unsecured creditors. Collectively, our member companies settle more than \$3 billion in unsecured consumer debt originated by any unsecured creditor annually throughout the United States. Importantly, and as we discussed during our meeting, our industry is distinct from non-profit credit counseling, which is currently regulated under North Carolina statute. Unlike debt resolution, credit counseling services, which can provide a pathway to financial stability for some, but not all, consumers, do not reduce a consumer’s total unsecured debt. Instead, these services may provide for a longer repayment time horizon, and, in some cases, reduced interest rates. Debt resolution, by contrast, reduces a consumer’s total unsecured debt by, on average, more than 30%, including fees.<sup>1</sup>

Debt resolution has been tightly regulated at the federal level since October 2010, when the Federal Trade Commission (“FTC”) passed rules implementing a regulatory regime for the industry. Included among the significant consumer protections enacted by the FTC a decade ago is a prohibition on the collection of any compensation by debt resolution providers of any sort unless and until: (1) the provider negotiates a settlement, (2) the settlement is accepted by the consumer and (3) the consumer subsequently ratifies his/her acceptance by making a payment to the consumer’s creditor. The consumer may choose to reject the settlement, in which case the provider cannot bill or collect any portion of its compensation. The FTC rules further prohibit debt resolution providers from any and all contact with consumer funds: at all times, the consumer controls all funds committed to their debt resolution program. These federal rules do not apply to credit counseling services, which, as we will discuss shortly, is an important consideration with regard to the legislation you have recently re-introduced.

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<sup>1</sup> Regan, G. J. (2021, February). Options for Consumers in Crisis: An Updated Analysis of the Debt Settlement Industry. Retrieved from <https://americanfaircreditcouncil.org/wp-content/uploads/2020.12.31-AFCC-Report-v.1.19.21.pdf>.

You requested last week that we provide, in writing, a summary of the provisions of your debt resolution legislation that would, if enacted into law, prohibit our member companies from being able to operate in North Carolina and serve North Carolina consumers. While there are several elements of the bill that would challenge debt resolution companies' ability to support North Carolina consumers, we provide herein a summary of just those provisions of the legislation that would unambiguously prohibit our industry from operating in North Carolina.

The first are the proposed additions in the legislation of §75-151 and §75-152 to Article 56 of Chapter 14 of the General Statutes, which we copy here:

***“§75-151. Debt adjusting and debt settlement prohibited.***

*No person, directly or through affiliates, shall engage in, offer to engage in, or attempt to engage in debt adjusting or debt settlement.*

***§75-152. Debt adjusting and debt settlement a misdemeanor.***

*Any person who engages in, offers to engage in, or attempts to engage in debt adjusting or debt settlement is guilty of a Class 2 misdemeanor.”*

To state the obvious, these provisions would, if enacted into law, make it a crime for debt resolution companies to offer their services to North Carolinians.

Second, the legislation's proposed addition of §75-155 to Article 56 of Chapter 14 of the General Statutes, which would void existing debt adjusting or debt settlement contracts “as against public policy” would immediately force debt resolution companies to break their contracts with North Carolina consumers. The immediate cessation of debt resolution services would likely result in the disruption of previously negotiated settlements, potentially exposing tens of thousands of North Carolina consumers to significant adverse economic consequences. Enactment of this provision of the legislation into law would put these North Carolinians at the mercy of their creditors and would almost assuredly force thousands of consumers across the state to pursue filing for personal bankruptcy, which can be ruinous to a consumer's credit and employment opportunities for up to a decade.

Third, the amendments to Article 56 of Chapter 14 of the General Statutes included in the legislation under proposed §75-154(7)(c) and §75-154(7)(d) are in direct contradiction to the federal rules promulgated by the FTC in 2010 (referenced above) and underscore the important distinctions between debt resolution and credit counseling services. As we shared during our meeting last week, debt resolution companies are prohibited under the FTC rules from holding or controlling consumer funds at any time. It is therefore unlawful under federal regulations for debt resolution companies to “disburse the debtor's funds to creditors pursuant to a debt management plan that the debtor has agreed to in writing” as §75-154(7)(c) of the proposed legislation would require. Such a requirement is only appropriate for credit counseling providers, who do, in fact, hold consumer funds and who disburse those funds to creditors on behalf of the consumers with whom they work.

Finally, the provisions related to fees in proposed §75-154(7)(d) are appropriate for credit counseling providers, who are not subject to the FTC's 2010 regulations. These restrictions would,

if enacted, make it impossible for debt resolution companies to operate lawfully in North Carolina. This section of the proposed legislation would require debt resolution companies to charge no fee or a fee “not to exceed forty dollars (\$40.00) for origination or setup of a debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan to not exceed forty dollars (\$40) per month.” As we discussed last week, and as we outlined above, the FTC’s 2010 regulations prohibit debt resolution companies from collecting *any* fee until: (1) the provider negotiates a settlement, (2) the settlement is accepted by the consumer and (3) the consumer subsequently ratifies his/her acceptance by making a payment to the consumer’s creditor. As a result, both origination and monthly fees, while appropriate for credit counseling providers, may not be lawfully collected by debt resolution providers under FTC rules. Enactment of these provisions into law would both undermine the consumer protections the FTC established in 2010 and would effectively prohibit debt resolution companies from working with consumers in North Carolina.

Once again, thank you for meeting with us last week and for your interest in finding a legislative path forward that would allow the AFCC’s member companies to continue working alongside North Carolina consumers while providing for additional consumer protections.

Sincerely,



Steven Boms  
Legislative Director  
American Fair Credit Council