

## LEGAL SERVICES OF NEW JERSEY

### **Key Substantive Points in Response to the NJLRC Draft Final Report on the Proposed New Jersey Debt-Management Services Act dated October 11, 2011**

#### **1. The Commission Should Not Recommend Legislation Legalizing Inherently Problematic For-Profit Debt Settlement Companies in New Jersey**

- New Jersey has strong existing consumer protections, and consumers facing debt difficulties can find the services they need from
  - Non-profit consumer credit counseling agencies, and
  - Consumer bankruptcy attorneys – some of whom provide debt settlement on fair terms to a small number of clients.
- No evidence has emerged of widespread for-profit debt settlement services being provided in compliance with the FTC advance fee rule in the 11+ months since the rule became effective. Rather, reports of business practices that attempt to make an end-run around the new FTC rule are common.
- The demographic for debt settlement as an economically sensible strategy is very small. A consumer must have excess income or available assets, but not enough income to make a debt management a better alternative, *and* must prefer the debt settlement route to a much less expensive and generally more effective bankruptcy filing.

#### **2. If the Commission Does Decide to Recommend a Version of the UDMSA, Three Consumer Protections Are Absolutely Critical**

- **Debt Settlement Fees Should be Limited to 15% of Actual Savings Based on the Amount of the Debt at Enrollment**
  - This is the level set by statute in Illinois, and strongly recommended to the Commission by Consumers Union.
  - As shown by the Center for Responsible Lending analysis provided to the Commission, this is the maximum fee at which even a small percentage of consumers can avoid substantial economic harm.

- The record before the Commission includes evidence that a for-profit debt settlement company has already applied to do business under the Illinois statute adopting this fee cap, and that a for-profit debt settlement company has advocated that California adopt this fee cap by statute.
- This change can be accomplished by changing “20%” to “15%” in section 15(i) of the Draft Final Report
- **The FTC Advance Fee Rule Should Apply Across the Board.**
  - The Draft Final Report provides for this, if it is amended so that its substantive consumer protections apply to all attorneys, as recommended below.
- ***All Attorneys Should Be Subject to Substantive Consumer Protections Governing Debt Settlement Practices***
  - Out-of-state debt settlement companies already engage in the practice of “retaining” New Jersey attorneys in an effort to evade existing legal requirements. In LSNJ’s experience, in these circumstances the New Jersey attorneys provide no legal services to the “client.”
  - Application of consumer protection rules to such attorneys should not depend on whether they “regularly” purport to engage in debt settlement activities – such an exception would amount to a significant loophole through which debt settlement companies could continue to evade New Jersey’s consumer protections.
  - The potential for abuse of any attorney exemption is further illustrated by enforcement actions recently taken by the Illinois Attorney General and Department of Financial & Professional Regulation against a Chicago-based debt settlement firm allegedly masquerading as a law firm called “Legal Helpers,” which “does not provide legal representation to consumers or otherwise act in an attorney capacity.”
  - This change can be accomplished by deleting the first sentence of section 3(b) of the Draft Final Report.