

SENATE COMMITTEE ON COMMERCE, SCIENCE AND
TRANSPORTATION
HEARING ON
CONSUMER PROTECTION AND THE CREDIT CRISIS
Thursday, February 26, 2009

WRITTEN TESTIMONY OF BILL HIMPLER
EXECUTIVE VICE PRESIDENT
THE AMERICAN FINANCIAL SERVICES ASSOCIATION



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Chairman Rockefeller, Ranking Member Hutchison and Members of the Committee, good morning. My name is Bill Himpler, and I am the Executive Vice President at the American Financial Services Association (AFSA). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA has provided services to its members for over 90 years. AFSA's 350 member companies include consumer and commercial finance companies, "captive" auto finance companies, credit card issuers, mortgage lenders, industrial banks, and other financial service firms that lend to consumers and small businesses.

Mr. Chairman, AFSA commends you and your colleagues for convening this important hearing to explore what can be done about unscrupulous actors who exploit consumers' fears about their debt obligations, or worse still, the possibility of losing their homes. I appreciate the opportunity to provide testimony to the Members of the Committee on consumer protections for people with distressed finances who are trying to negotiate mitigation strategies so that they can avoid bankruptcy.

Let me state at the outset that AFSA members share Congress' concern about the growing number of consumers who are having difficulty making payments on a variety of debts and organizations that scam consumers with fraudulent credit repair and rescue programs. Not only do such scams affect individual borrowers, but they also affect creditors and the broader market to the extent that, among other things, they promote the removal of accurate and timely information from consumer credit reports. This results in inaccurate assessments of the true

credit standing of consumers, promoting inaction and delay, thereby undermining legitimate efforts to assist consumers in resolving credit difficulties.

We believe instances of these scams can be reduced through four measures: 1) the continued availability of legitimate counseling and hardship plans, 2) consumer education that helps people make wise financial decisions, 3) enhancement of the Federal Trade Commission's initiatives to crack down on bad actors and 4) more widespread enactment of the Uniform Debt-Management Services Act (UDMSA). In the time that I have, I'll touch upon each of these areas.

Credit Counseling and Hardship Plans

Distressed consumers are particularly susceptible to rosy claims of fraudulent credit repair and mortgage rescue organizations. They are lured by too-good-to-be-true claims of easy solutions to tough problems and empty promises of help when they feel overwhelmed. As the Federal Trade Commission has observed, "only time, a conscious effort, and a personal debt repayment plan" can improve a consumer's credit report. Similarly, only time, a conscious effort and commitment to a personal debt repayment plan can resolve a difficult financial situation.

AFSA member companies routinely cooperate with legitimate consumer educators and advocates such as the National Foundation for Credit Counseling (NFCC) and Consumer Credit Counseling Services (CCCS). For example, assistance plans are pre-negotiated between individual creditors and various CCCS organizations. Distressed consumers can easily participate in these plans with little or no negotiation necessary. The consumer simply needs to show eligibility by explaining the source and extent of distress.

Most creditors offer a variety of standardized in-house hardship plans and workout programs to assist troubled consumers in dealing with temporary and permanent situations. These programs require no third-party involvement and no negotiation. As established programs, again, all a consumer has to do is contact his or her creditor, explain his or her situation and ask what options are available. Getting consumers to admit that they are in trouble and make the first

call or engage a creditor's customer service or collections personnel can be problematic. Minimizing this problem requires educating consumers about their options and promoting financial literacy.

Consumer Education

AFSA is a long-time advocate for personal finance education that helps people make informed decisions as well as avoid scams. Today, that need for consumer education is greater than ever before, as products are more complex with variable rate loans, adjustable rate mortgages, credit card loans, various derivatives and the like.

The AFSA Education Foundation has developed an array of financial literacy brochures in English and Spanish in partnerships with other trade organizations, regulator groups and government agencies for use by adult consumers and AFSA members in the areas of vehicle financing, mortgage loans, personal loans, and personal financial management. All of these brochures are provided at no cost to consumers upon request, as well as downloadable online at www.afsaef.org.

Each educational piece includes information on what to do if a person encounters difficulties in meeting financial obligations. First, you should contact your creditor, explain your situation and work out a repayment schedule. Second, if your situation requires addition help, contact a non-profit budget and credit counseling agency, often called a consumer credit counseling service. These agencies can work directly with consumers and their creditors to help resolve debt problems.

We also want to bring to your attention the fine work of the Federal Trade Commission (FTC) in developing an excellent series of simple, informative pamphlets. These pamphlets:

- Educate consumers on how to help themselves (again, third party involvement is not necessary, even if occasionally helpful);
- Explain consumers' rights; and
- Describe how various financial products and credit reports operate.

The pamphlets also directly warn consumers about scams - specifically advising them on how to spot scams and how to avoid becoming victims of them. These resources are freely available from the FTC on its Web site and can be printed and distributed as educational handouts and pamphlets by various organizations. Equipping consumers with the information they need to obtain legitimate help and avoid becoming victims is clearly the most effective method of preventing harm to consumers.

Enhancement of Ongoing FTC Initiatives

Nonetheless, because some consumers cannot resist promises of easy solutions, effective enforcement must also continue. AFSA fully supports government efforts to crack down on fraudulent consumer assistance scams, and lauds the FTC's work in this area.

A prime example is the FTC's "Operation Clean Sweep," announced last October, which cracked down on 33 "credit repair" organizations. The FTC partnered with 24 state agencies in 22 states to pursue organizations engaging in activities such as (i) claiming the ability to permanently remove negative information from consumers' credit reports, even when the information is accurate and not obsolete, (ii) requiring advance payment for credit repair services, and (iii) failing to provide mandated federal and state notices. "Operation Clean Sweep" sought to enjoin these fraudulent and illegal practices, prohibit further violations and force these organizations to pay reparation to consumers and forfeit ill-gotten gains. Other similar efforts were announced before and after this particular operation.

The FTC has also pursued mortgage foreclosure "rescue" companies which have falsely claimed the ability to stop foreclosure in return for a fee. In many instances, these "rescue" companies promised a refund of all fees if unsuccessful in avoiding foreclosure. This rarely happened. Instead, consumers were put in a worse financial position, deprived of options and made to suffer avoidable injury to their credit standing because of delays in starting negotiations and poor or nonexistent follow-through with negotiations when begun. The FTC's actions have sought to prohibit further deceptive behavior and to compel such companies to pay consumer redress and forfeit fraudulently obtained funds.

AFSA has supported the FTC in these efforts. In September 2008, the FTC held a workshop entitled, *Consumer Protection and the Debt Settlement Industry*, to explore the growth of the for-profit debt settlement industry and to analyze how its model is affecting consumers and businesses. AFSA submitted two comment letters in response to the FTC's request. In the first letter, we noted that many debt settlement companies actually do harm to both consumers and creditors by engaging in questionable practices, abusing the Fair Credit Reporting Act, abusing the power given to them by consumers, perpetrating fraud, delaying in remitting payment, engaging in deceitful actions, and facilitating false complaints.

AFSA staff attended the workshop and learned that the FTC was looking for specific information from lenders on debt settlement companies. In response, we submitted a follow-up letter, which is included as part of this testimony. During discussions with its members, AFSA learned that debt settlement companies often block or discourage consumer communication with the lender. However, in many cases the debt settlement company cannot be contacted and no further communication is received from them. Thus, the lenders are left without a means to resolve the outstanding debt.

One of AFSA's members noted that, with the exception of one debt settlement company, once customers got involved with a debt settlement company, generally one of two things will happen: (1) They realize that their credit is being affected and the debt settlement company is not doing anything but taking their money and they will start making payments again; or (2) the lender never hears from the customer again and the account is written off to bad debt.

Greater Enactment of the UDMSA

In addition to the measures I've discussed so far, AFSA believes that the states should be encouraged to enact the Uniform Debt-Management Services Act (UDMSA), which was promulgated by the Uniform Law Commissioners. It provides the states with a comprehensive act governing these services that will mean national administration of debt counseling and management in a fair and effective way. UDMSA also provides fairer and better services to

debtors. Four states have, to date, adopted the UDMSA. In March 2008, several important amendments were made to the Act; with these amendments, up to 20 states are expected to introduce the act in 2009.

In closing, AFSA believes the availability of legitimate credit counseling services and consumer education can reduce incidents of scams targeting vulnerable consumers. We believe that the FTC, in conjunction with state law enforcement officials, is best equipped to address the need to protect consumers against these unscrupulous actors. AFSA supports allocating additional resources for the FTC to continue its enforcement actions, such as Operation Clean Sweep. In addition, we encourage the FTC to utilize its authority to promulgate a trade rule against deceptive and misleading ads that promise “secret programs” that will reduce consumer obligations by 60 to 80 percent.

Thank you, Mr. Chairman. I would be happy to answer any questions.