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June 1, 2020

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

SENT VIA ELECTRONIC MAIL TO 2020-RFI-Taskforce@cfpb.gov.

Re: Request for Information to Assist the Taskforce on Federal Consumer Financial Law, Docket No. CFPB-2020-0013

Dear Task Force on Consumer Financial Law Members,

Freedom Financial Network ("Freedom") welcomes this opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB" or "the Bureau") Taskforce on Federal Consumer Financial Law's ("the Taskforce") request for information ("RFI") pertaining to the harmonization, modernizing and updating federal consumer financial laws. As a network of companies that has been working alongside consumers struggling with debt for nearly two decades, Freedom appreciates the Taskforce's important responsibility to make recommendations to Director Kraninger regarding ways to improve consumer understanding of markets and products and to address potential conflicts or inconsistencies in existing regulations and guidance.

Freedom was founded in 2002 with the mission to empower everyday Americans to move forward towards a better financial future. While many financial services companies existed to help people get into debt, none were committed to helping consumers get out of debt and learn how to manage their finances in smarter ways. Freedom provides struggling consumers an affordable, responsible way to get out of debt.

Over the last 18 years, Freedom has grown into a financial services leader that provides millions of consumers with successful solutions to address their debt challenges, including debt settlement, debt consolidation loans, and a home equity line of credit. Our more than 2,000 employees have collectively resolved over $10 billion in unsecured consumer debt, helping more than 600,000 financially distressed Americans reduce the burden of overwhelming unsecured debt and avoid personal bankruptcy. We have also originated over $1 billion in low, fixed-rate personal loans to tens of thousands of consumers who consolidate their existing, high-interest rate debts into a more affordable, sustainable solution.

The Taskforce's RFI comes at a critical, unprecedented moment for consumer financial health in the United States. The economic impact of the COVID-19 pandemic has created income uncertainty for tens of millions of Americans just as unsecured consumer debt reached historical highs. As members of the Taskforce will no doubt be familiar, the Federal Reserve recently determined that as many 40% of Americans would not be able to afford an unforeseen expense of $400 without taking on additional debt or liquidating assets.[1] The COVID-19 pandemic will significantly exacerbate this consumer financial health crisis. It is therefore vitally important that Americans have at their disposal as many options as possible to support their financial wellbeing, including tools that help them to address their liabilities.

Debt Settlement

In its RFI, the Taskforce indicates a "special interest" in, among other markets, debt settlement, with an invitation to respondents to provide input regarding whether the market is "fair, transparent, and competitive" or whether debt settlement would "benefit from regulatory changes that could facilitate competition and materially increase consumer welfare." As the leading provider of debt settlement in the United States, Freedom welcomes the opportunity to provide its uniquely informed perspective on this important question.

Debt settlement companies represent financially challenged consumers in negotiating less-than-full-balance settlements of their unsecured debts. The debt settlement industry is regulated both at the state level, by the relevant state regulator(s), and at the federal level by the Federal Trade Commission ("FTC") under the 2010 amendments to the Telemarketing Sales Rule ("TSR").

The FTC rules, which Freedom actively contributed to and supported, provide several important consumer protections that make debt settlement one of the most consumer-centric products in the financial marketplace. Under the TSR amendments, debt settlement providers like Freedom are prohibited from collecting or holding consumer funds for the purposes of administering a debt settlement program. Instead, the TSR amendments require the consumer's funds be deposited in a separate, Federal Deposit Insurance Corporation-insured "dedicated account" controlled at all times by the consumer.

Additionally, companies are prohibited from assessing their customers any fees whatsoever until three conditions have been satisfied: a settlement on an account has been reached; the consumer has accepted the settlement; and the consumer has made a payment to the creditor. Under this so-called "advance fee ban," the TSR amendments provide that debt settlement functions as one of the only products in the financial marketplace whose providers, by federal law, must deliver an acceptable resolution to their customers before they are legally permitted to charge or collect a

[1] Report on the Economic Well-Being of U.S. Households in 2018 - May 2019, Report on the Economic Well-Being of U.S. Households in 2018 - May 2019 (2019). Retrieved from https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm

fee. Moreover, and in direct response to the Taskforce's interest in whether debt settlement provides a "fair, transparent, and competitive" consumer experience, the TSR amendments stipulate that consumers enrolled in debt settlement programs have the right to reject any proposed settlement at any time, for any reason, or to withdraw from their debt settlement program whenever they choose, without any penalty.

The Taskforce also asks in its RFI whether the terms of the services offered in various financial markets, including debt settlement, are "clear, so that consumers can make informed choices." Here, too, the FTC's 2010 TSR amendments provide a regulatory framework that ensures a well-functioning, consumer-centric market. Under the TSR amendments, debt settlement providers are required to clearly disclose to consumers:

- All fees assessed, including how those fees are calculated;
- Any material restrictions, limitations, or conditions on the services being offered;
- A customized, good faith estimate of the length of time it will take, specific to each customer, before the provider can make an offer to each of a consumer's creditors;
- How much money the consumer must save in their dedicated account before the provider can make an offer to a consumer's creditors;
- Consequences associated with failing to make timely payments to creditors; and,
- Consumers' rights regarding their dedicated accounts, including their right to withdraw from a debt settlement program with no penalty.

In sum, the 2010 FTC TSR amendments impose meaningful consumer protections on the debt settlement market, including:

1. Requiring that consumers have full control of their funds at all times during their debt settlement experience;
2. Mandating that debt settlement providers cannot assess consumers any fees until they have benefited from the provider's services; and
3. Prescribing significant disclosure requirements that provide consumers with a clear understanding of the terms of a debt settlement program prior to their enrollment in one.

The data overwhelmingly demonstrates the immense consumer benefit that Freedom's debt settlement solution provides to its clients. Freedom settles more than $200 million of consumer debt each month, saving consumers approximately 25%, including Freedom's fees, of the total amount they owe to their unsecured creditors when they enroll in Freedom's program. Compared to alternatives, including making minimum monthly payments which can result in significant account accretion from additional interest and fees, the savings Freedom's debt settlement program offers to consumers is incredibly meaningful. Over the company's nearly 20-year history, Freedom's debt settlement product has provided financially challenged consumers with more than $4 billion in total savings on unsecured debts, providing these consumers an alternative to bankruptcy and an opportunity to regain their financial footing.

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Improving Consumer Protection

The Taskforce asks in its RFI whether markets "might benefit from regulatory changes that could facilitate competition and materially increase consumer welfare." As described above, the debt settlement industry operates under a regulatory regime that decidedly provides for consumer protection and empowerment with regard to the consumer's relationship with their debt settlement provider; however, because a consumer's creditor has no legal requirement to consider an offer to settle a consumer's debt, for some consumers, financial hardships can be prolonged.

To be clear: Freedom has the capacity to settle all of its clients' debts, regardless of the originating creditor, but the process for some settlements is more prolonged because creditors are permitted to simply ignore requests to consider a settlement despite the existence of a stated financial hardship. As a result, consumers may be subject to the imposition of additional creditor fees, interest, and, in some cases, litigation, before their debt can ultimately be settled once the original creditor either exhausts its unilateral efforts to attempt to collect the debt from the consumer directly or sells the debt to a third party. For these consumers, who are enduring loss of income, serious medical issues affecting them or members of their family, or significant life events (like divorce), this kind of creditor behavior often exacerbates the economic and emotional stress associated with their difficult financial position.[2] The Taskforce should therefore consider whether creating a requirement under federal law that creditors must consider, in good faith, an offer on behalf of a customer in verifiable financial hardship to settle their account would materially increase consumer welfare.

Some creditors have argued that such a requirement could threaten their ability to work directly with their customers; however, the typical debt settlement client has approximately $30,000 of total unsecured debt across an average of between seven and eight different accounts from multiple creditors.[3] Given the scope of their debt challenges, most debt settlement customers find it incredibly difficult to undertake time-intensive, complicated, and stressful negotiations with all of their creditors. Moreover, individual creditors are focused on resolving debts for as close to 100% of what they are owed as possible, with little regard for a consumer's ability to service their other debts once that customer has settled their debt with that creditor. Unlike debt settlement companies, which, on average, generate $2.67 of debt reduction for every $1 of fees

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[2] A study released in 2019 by the L. William Seidman Research Institute at Arizona State University determined that both Freedom's current and graduated debt relief clients scored lower on the Perceived Stress Scale – the most widely used instrument for measuring the perception of stress – than consumers in similar financial positions who never enrolled in Freedom's program. The same study determined that graduates and clients of Freedom's debt relief program scored significantly higher on the University of Wisconsin-Madison's Center for Financial Security's Financial Capability Scale than consumers in similar financial positions who never enrolled in Freedom's program. The full study is accessible at: https://seidmaninstitute.com/project/freedom-financial/.

[3] Regan, G. (2018). *Options for Consumers in Crisis: An Updated Economic Analysis of The Debt Settlement Industry*. American Fair Credit Council. Retrieved from https://americanfaircreditcouncil.org/wp-content/uploads/2018.02.05-AFCC-Report-Consumers-in-Crisis.pdf

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assessed,[4] they are not advocating for the consumer during debt negotiations or looking at how to help that consumer resolve their entire debt challenge. Requiring creditors to, at a minimum, consider in good faith a debt settlement client's offer to settle a debt would provide meaningful enhancement to consumer financial wellness at a critical time for many Americans' economic positions.

Conclusion

Freedom commends the Taskforce for its review of the patchwork of consumer financial laws, regulation, and guidance during this incredibly tumultuous period for consumer financial health. As a leading provider of solutions to financially distressed consumers, we underscore the importance for the Taskforce and for the Bureau more broadly to ensure that consumers continue to have access to important products and solutions that can help them to meaningfully address unsecured debt loads that they can no longer afford based on changes to their financial position. Debt settlement has provided a critical lifeline to millions of Americans over the last several years and will likely play an important role for millions more in the months and years ahead as consumers' financial health is negatively impacted by the COVID-19 pandemic. As an industry that has functioned under a federal regulatory framework that provides for substantial consumer protection and disclosures for the last decade, we respectfully urge the Taskforce to consider further empowering consumers to improve their financial wellness by requiring creditors, at a minimum, to consider offers to settle outstanding unsecured debts in good faith.

It is critically important that the CFPB ensure debt settlement continues to be available to consumers, and we appreciate the Taskforce's consideration of our perspective. Thank you once again for the opportunity to respond to this important RFI.

Sincerely,

Michael H. Freedman
General Counsel
Freedom Debt Relief

[4] Dobbie, W. (2020). *Financial Outcomes for Debt Settlement Programs.* Harvard Kennedy School. Retrieved from https://americanfaircreditcouncil.org/wp-content/uploads/Dobbie-Report-05022020-final.pdf.