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From Article at GetOutOfDebt.org

October 23, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Telemarketing Sales Rule - Debt Relief Amendments
Matter No. R411001

Dear Secretary Clark:

The Attorneys General of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wyoming ("the States"), submit the following comments on the Proposed Rulemaking to amend the Federal Trade Commission's ("FTC") Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, to address the sale of debt relief services.

I. INTRODUCTION

On August 19, 2009, the FTC published its Notice of Proposed Rulemaking (NPRM)[1] in which it considers amending the TSR to address the sale of debt relief services. The States applaud the FTCs undertaking this rulemaking because, as detailed below, the actions of debt relief companies have resulted in substantial increases in consumer complaints being filed with the States across the country. Further, the severity of the harm complained of by consumers is reflected in the fact that over the past five years, twenty-one states have brought at least 128

[1] R411001 relating to Telemarketing Sales Rule-Debt Relief Amendments, Federal Register, Wednesday, August 19, 2009.

enforcement actions against debt relief companies.

The States' enforcement actions provide ample evidence of the types of unfair and deceptive practices that financially distressed consumers encounter when they seek credit solutions via debt relief services. The primary consumer protection problem areas that have given rise to the States' actions include: (1) unsubstantiated claims of consumer savings; (2) deceptive representations about the length of time necessary to complete a debt relief program; (3) misleading or failing to adequately inform consumers that they will be subject to continued collection efforts, including lawsuits, and that their account balances will increase due to extended nonpayment under the program; (4) deceptive disparagement of consumer credit counseling; (5) deceptive disparagement of bankruptcy as an alternative for debtors; (6) lack of screening and analysis to determine suitability of debt relief programs for individual debtors; (7) the collection of substantial up-front fees so the debt relief company gains even if it fails to perform; (8) lack of transparency and information for consumers as to payment of fees, status of accounts, and communications with creditors; (9) significant delays in active negotiation or engagement with creditors, coupled with prohibitions on direct consumer communications with creditors; and (10), in the case of debt settlement companies, basing savings claims (and settlement fees) not on the original account balance, but on the inflated amount due (including late fees and default rates of interest) at the time of settlement.

The States submit that the wide range of unfair and deceptive practices described herein can be best and most efficiently addressed by taking the well tailored, but comprehensive, approach reflected in the FTC's proposal.

II. THE STATES SUPPORT A BROAD DEFINITION OF DEBT RELIEF SERVICES

Debt relief services, as defined in the proposed rule, include what is commonly referred to as debt management, debt settlement, and debt negotiation.

Consumers who purchase debt management services pay down debts through a monthly payment plan established through agreements with creditors. The debt management service provider typically negotiates a reduction in interest rates, late fees and minimum payments in order to reduce consumers' monthly payments to a manageable amount. Debt management plans are offered by nonprofit consumer credit counseling services throughout the country. In the recent past, a number of for-profit debt management companies engaged in deceptive practices in the marketing and collection of fees for their programs. However, due to action by the States, the FTC, and the Internal Revenue Service, debt management abuses have been greatly reduced.

In contrast to debt management plans in which consumers make monthly payments to creditors, the debt settlement business model generally requires that a consumer stop making regular payments to creditors. Instead, the consumer makes payments directly to the debt settlement company or into a separate account arranged by the settlement company. The consumer

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continues to pay into the account until the debt settlement company believes there are sufficient funds to attempt to negotiate and settle the consumer's debts. Debt settlement companies do not disburse regular payments to consumers' creditors. Presumably, withholding all payments from the creditor increases the company's bargaining position. Almost all debt settlement companies charge a large portion of their fees in advance before they perform any significant services on behalf of the consumer. It is this business model which has been reported to be growing rapidly and has come under increased scrutiny by the media, regulators, consumer advocates, and federal, state and local enforcement agencies.[2]

In March 2005, the National Consumer Law Center ("NCLC") issued a report entitled *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers*. The report raised serious questions as to the value of debt settlement services and demonstrated how the debt settlement industry has harmed consumers. The NCLC concluded that debt settlement companies use "a business model that is inherently harmful to consumers" because consumers are required to pay high fees for debt settlement programs that they are unable to complete, resulting in increased collection efforts and growing debts while their creditors continue to pile on fees and interest accrues. *Id.* at pgs. 1 - 3.[3] The States share the NCLC's concerns regarding the debt settlement business model described above.

The third type of debt relief business encompassed by the proposed rules is a relatively new breed: the debt negotiation model. These companies often represent that they can negotiate dramatic and immediate interest rate reductions on behalf of consumers and that the re-negotiated credit terms will save the consumers thousands of dollars in a matter of months. Debt negotiation companies further claim that their counselors are specially trained and possess industry-insider knowledge and that consumers will not achieve similar results working directly with their credit card companies. The written agreements between debt negotiation companies and consumers, however, typically disavow the debt negotiation companies' ability or obligation to secure reduced interest rates and merely promise to "show" consumers savings of thousands of

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[2] *See e.g. Debt Settlers Offer Promises but Little Help*, New York Times (Business), April 19, 2009; *Desperate Debtors are Ripe Targets; Promises to Wipe Credit Slate Clean Often Prove Empty*, Chicago Tribune, August 3, 2008; *Look Out for that Lifeline: Debt-Settlement Firms are Doing a Booming Business*, Business Week, March 17, 2008; and *Debt-Relief Firms Attract Complaints*, Wall Street Journal, October 14, 2008.

[3] Similarly, in its April 2005 report entitled "*Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling*," the U.S. Senate Permanent Subcommittee on Investigations concluded that the debt management industry's trend towards for-profit credit counseling agencies that aggressively market their services has led to "increasing consumer complaints about excessive fees, non-existent education, poor service, and generally being left in worse debt than when they initiated their debt management program." *Id.* at pg. 2.

From Articles at GetoutofDebt.org

dollars. After the consumer completes a financial profile, debt negotiation companies typically "show" the promised savings in an accelerated payment schedule. The "savings" are usually based on assumed interest rate reductions and increased monthly payments, which the debt negotiation companies' customers usually cannot afford to pay. Like the debt settlement model, most debt negotiation companies charge all of their fees in advance, before any services are performed on behalf of the consumer. [4]

Any business model that requires cash strapped consumers to pay substantial up-front fees raises significant consumer protection concerns. The States would caution that the history of this industry reflects that it is constantly evolving and all enforcement agencies must be prepared to adapt to the ever-changing landscape of debt relief. As such, any definition encompassing "debt relief" should be as broad as possible to capture any future evolutions of the industry. In that vein, the States submit that the FTC should consider including debt relief "products" in its definition. This would preempt unscrupulous operators from attempting to circumvent TSR requirements that cover only debt relief "services" by offering a debt relief product such as a kit or software program.

While these comments focus primarily on debt settlement, this should not suggest that the States' concerns are limited to that industry. Rather, recent complaints and enforcement actions demonstrate that particularly abusive practices have been found in the debt settlement industry. Given the evolving history of debt relief services however, it should be noted that these same concerns exist throughout all forms of debt relief, and will be present for those to come.

III. CONSUMER COMPLAINTS FILED WITH THE STATES AND ENFORCEMENT ACTIONS TAKEN BY THE STATES REFLECT THAT UNFAIR AND DECEPTIVE ACTIVITY WITHIN THIS INDUSTRY IS WIDESPREAD

The number of complaints the States have received against debt relief companies, particularly debt settlement companies, have consistently been rising and have more than doubled since 2007.[5] Consumers who complained to the States received either minimal or no debt relief after

[4] On September 22, 2009, Minnesota brought actions against three separate debt negotiating companies located in Washington, Florida, and Georgia, each of which charged consumers advance fees of up to $1,995 and promised substantial savings by reducing the consumer's credit card interest rates. However, after paying their fees, complaining consumers realized no savings. These actions are listed in Attachment 1.

[5] The Better Business Bureau categorizes debt settlement and debt negotiation companies as "Inherently Problematic Businesses." Data provided to the States by the Better Business Bureau shows that, since 2007, among other businesses that have been labeled inherently problematic by the Better Business Bureau, debt settlement and debt negotiation companies have annually generated the most complaints received by the Better Business Bureau.

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paying substantial amounts to debt relief companies. As a result of consumer complaints that are increasing in number and growing in severity, and the growing realization that the debt relief industry is charging consumers large fees for services that are often not provided, both the FTC and the States have taken significant enforcement actions against debt relief companies. Over the past five years, 21 States have brought 128 enforcement actions against 84 debt relief companies for unfair and deceptive trade practices.[6]

Debt settlement companies, in particular, seek to attract consumers by promising to reduce consumers' debts by 50% or more, stop harassing collection calls from debt collectors, and prevent lawsuits. However, consumers who complained to the States relate that collection calls and letters do not stop and, because their creditors are not being paid, their debt situation becomes worse, not better.

> *I signed up for the [company's] program to let them negotiate my credit card debt. They set up a payment plan of $304.43 per month beginning in November. I have been making my payments as scheduled, but [the company] has not contacted any of my creditors to make any arrangements. Late fees and over limit fees continue to build up and I am still getting creditor phone calls. My initial contact with [the company] said that they could reduce or stop the phone calls and that they worked with my creditors to settle the debts for approximately 30% of the balances due. Now all but one of my credit cards has been turned over to collection agencies. Wednesday, February 16, I called [the company] to cancel my enrollment because I just can't continue to make these payments and not have any help with my creditors.*

From Attacks on AccessGetoutofdebt.org

[6] Attached hereto as Attachment 1 is a list highlighting enforcement actions that have been brought by State Attorneys General and the Georgia Governor's Office of Consumer Affairs against debt relief companies. It is not a comprehensive list of all cases filed and also does not include investigations that have not yet been announced to the public, actions taken against industries that perform services similar to debt relief companies (e.g., credit repair, tax relief, mortgage modification, etc.) and actions taken by other regulatory agencies responsible for the regulation of the debt relief industry. For example, the Maryland Commissioner of Financial Regulation has taken regulatory action against eight debt relief companies: *In re Consumer Credit Counseling, South Daytona, FL*; *In re Clear Debt, Inc.*; *In re United Credit Counseling Services*; *In re New Horizon Credit Counseling Services, Inc.*; *In re American Debt Management Services, Inc.*; *In re National Foundation for Debt Management*; *In re Elimadebt Management Systems, Inc.*; and *In re New Horizon Credit Counseling Services, Inc.* Similarly, the Illinois Department of Financial and Professional Regulation has taken action against SDS West Corporation, Inc., U.S. Financial Management, Greenwood Financial Services, iPayDebt, Debt Choice, Debt Relief Foundation, Inc., Clear Breeze Financial Solutions, Clear Your Debt, LLC, Renaissance Debt Solutions and Homeland Financial Services.

GA Consumer (2005).

We became involved with [the company] in February 2005. Since that time the account has grown to $9,010.00 and no creditors have been settled with. We continue to be inundated with phone calls from creditors and have been served with court papers and others are pending.

Since [the company's] personnel did not fully disclose all the facts about the company and their ability or inability to deal with creditors, our debt situation has deteriorated severely. Creditors have advised us that they can deal directly with us to lower interest and minimum payments to facilitate reaching our original goal, to get our debt to a manageable level.

OR Consumer (2005).

A. Debt Settlement Companies Charge and Collect Fees Before Providing Services, and in Many Instances, Without Providing Services.

Debt settlement firms may require consumers to pay fees from 14 to 20 percent of the total debt enrolled in the program before any negotiations with creditors occur. At the same time, consumers stop paying their creditors. As a result, their balances grow due to late fees and higher interest rates and their creditworthiness deteriorates. Moreover, advance fees impede the purported goal of the debt settlement firms to accumulate sufficient funds to pay off unsecured debts with a lump sum payment. The States frequently receive complaints from consumers stating they paid thousands of dollars to debt settlement companies, but have not obtained any settlements and in some cases are being sued by creditors. In addition, some consumers report that their creditors have obtained judgments and their wages are being garnished.

We were told that they would reduce our credit card debt. They took all their money ($6,500.00) before they did anything. They kept $6,500.00 for the settlement of three accounts which they didn't settle. They told us to quit paying the credit card bills which we did and that has cost us at least $1,200.00 in interest. They did not get in touch with the credit card companies and we were called from 8:00 a.m. to 9 p.m. every day, even after we sent the letter they provided to the credit card companies. We had to go to court and still owe all the money on one credit card. They didn't even help us when we received the summons. We are retired and on a fixed income. Please do what you can for us.

IL Consumers (2008).

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It is often at this point that complaining consumers decide to cancel their agreement with the debt settlement company, only to be told that the significant fees they paid are non-refundable. Since the consumers were already in financial distress when they enrolled, they can ill afford to lose thousands of dollars in fees, incur increased balances, see their creditworthiness eroded, and in some cases defend themselves in court.

B. Debt Settlement Companies May Mislead Consumers About the Likelihood of A Settlement.

Although debt settlement companies market their services by touting their past successes, often their claims are unsubstantiated. For example, in one recent case it was alleged that over 80% of the debts enrolled with a debt settlement company were not settled.[7] In another action, a Frederick, Maryland debt settlement company could not substantiate its claim that it could reduce consumers' debts by as much as 70%.[8] In its report, the NCLC, citing a Robb Evans & Associates, LLC report, found that one national debt settlement company had only 1.4% of its customers complete their debt settlement plan.[9] Consumer complaints received by the States also tell a different story:

> *I contacted [the company] regarding debt settlement. I was told that phone calls from creditors would stop, as well as being told they could get a debt in my name and my soon to be ex-wife converted to my name only for divorce settlement purposes. After paying in excess of $3000, creditors still were calling, and the only option was to make other settlement arrangements. My account is currently cancelled and I am seeking a full refund. They are offering 30%, saying they have performed work on the account, and the issues with the creditor calls was my fault.*
>
> MO Consumer (2005).

The States have had the same difficulties experienced by the FTC and consumer advocates in obtaining reliable statistics from the debt settlement industry to substantiate its claimed success rates. At times, when the States have requested data concerning the settlement rates advertised by debt relief companies, that data has not been forthcoming.[10] In January 2008, the State of

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[7] *See State of Texas v. CSA-Credit Solutions of America, Inc.*, Cause No. D-1-GV-09-000417, 261ST District Court, Travis County.

[8] *See State of Maryland v. Law Offices of Richard A. Brennan* - (Press Release) - http://www.oag.state.md.us/ Press/2007/101907.htm.

[9] *See* NCLC, *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers* (March 2005), p. 5, citing Robb Evans and Associates, LLC, "*Report of Temporary Receiver*, May 3, 2004-May 14, 2004, First Report to Court.

[10] Excuses offered by settlement agencies are either that such data does not exist or that the debt settlement industry is a relatively new industry and has not yet had time to accumulate sufficient and reliable data concerning success rates. This raises a separate concern, which is that if the settlement industry lacks reliable data to substantiate its advertised success rates, then why are

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Maryland was provided a report from The Association of Settlement Companies (TASC) that reported industry completion rates ranging from 35% to 60%. *See* The Association of Settlement Companies, *Preliminary Study* (January 2008), p. 1, attached hereto as Attachment 2.[11] The reliability of the statistics reported by TASC is questionable because: (i) the Report is characterized as “Preliminary” with no “Final” report having been provided; (ii) the Report does not explain how the survey was conducted, what percentage of the industry TASC represents, and how many TASC members participated; and (iii) some of the participants in the study included in their “completion rates” accounts where only 50% to 80% of the consumers’ debts were actually settled.

The settlement rates reported by TASC are contrary to what the States have seen repeatedly in the enforcement actions they have taken and in the consumer complaints they have received - which is that settling multiple debts can be a long process and consumers, faced with high fees for the service, growing debts, and increased collection efforts from their creditors, realistically should never have been offered the debt settlement service to begin with. Moreover, at the FTC’s 2008 workshop entitled “Consumer Protection and the Debt Settlement Industry,” representatives of the American Bankers Association and American Express reported that consumers are paying debt settlement companies excessive fees unnecessarily, since most consumers can settle their debts on their own by contacting their credit card issuers directly.

C. Debt Settlement Companies May Mislead Consumers About The Settlement Process And Its Adverse Effect On Their Credit Rating.

In complaints to the States, consumers report that their experiences with debt settlement companies do not match the representations made by advertising and telemarketing by sales representatives.

> *There is a clear discrepancy between the representative’s statements, the agreement, and what actually happens. The fact of the matter is Company X represented one thing and did another. Instead of providing debt relief, Company X takes your money, prevents communication with the creditor, and allows the consumer’s credit score to be negatively effected. Regardless of whether any settlement negotiation occurs, by the time it does damage is already done.*
>
> IL Consumer (2006).

The States, through their investigations and enforcement actions, have found that, through advertising and telemarketing, consumers may be led to believe debt settlement is a relatively risk free process with little or no negative consequences, when in fact consumers risk growing debt, deteriorating credit scores, collection actions, and lawsuits that may lead to judgments and wage garnishments. Typical of such advertising are the claims contained on the web site of a company recently investigated by the State of Texas, which stated: “You’ll avoid bankruptcy,

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these claims being made?

[11] This appears to be the same report that was provided to the FTC in 2007, and which is reported in footnote 104 of the Notice of Proposed Rulemaking.

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put an end to harassing phone calls from creditors, and allow your credit score to dramatically improve."[12]

IV. THE STATES' RECOMMENDATIONS REGARDING THE PROPOSED RULE

A. Prohibiting the Charging of Advance Fees Will Prevent the Substantial Monetary Losses Complained of By Consumers and is Consistent With State And Federal Precedent.

As detailed in the preceding discussion, many of the consumer complaints received by the States allege that many consumers enroll in a debt relief program, pay thousands of dollars in up-front fees but were unable to have any of their debts settled.

The fundamental principle behind a ban on advance fees is clear - it will simply require debt relief companies to render promised services before collecting their fees. Currently, there is minimal incentive for debt relief companies charging up-front fees to perform services because they collect these substantial fees regardless of whether they negotiate anything for the consumer, succeed in settling any of the consumer's debts for a reduced amount, or take any action at all on behalf of the consumer. Further, the value of the service that a debt settlement company offers a consumer is speculative because, at the time that the company enrolls a consumer and collects an initial fee and obligates the consumer to pay other fees, the company does not know what terms, if any, it will be able to negotiate on behalf of the consumer. In a worse case scenario, the company collects the up-front fee and then - by virtue of either circumstance or design - shuts its doors.

It is well recognized that due to a variety of marketplace factors, the debt relief industry has grown exponentially and in the current economic climate and will continue to do so.[13] The States are concerned that the current regulatory regime - in which collection of substantial up-front fees is not prohibited - is such that increasing numbers of unscrupulous operators will flock to this industry.[14] Moreover, the low set up costs, when coupled with the large fees that can be made, often leads to the promotion of debt settlement as a cheap business opportunity that is easy to enter.[15]

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[12] *See State of Texas v. Four Peaks Financial Services, LLC,* Cause No. D-1-GV-09-000900, 200th District Court, Travis County, Texas.

[13] Remarks by J. Thomas Rosch, Commissioner, Federal Trade Commission, 4th Annual Credit and Collection news conference, Carlsbad, California, April 2, 2009.

[14] By way of illustration, the following is from a classified ad in the Willamette Week, Portland, OR, from September 25, 2009: *"This is truly the NEXT WAVE!! I'm sure you heard about it. Debt Settlement! It's everywhere, Radio, TV and is taking the country by storm! You've seen or heard the commercials! You can be part of it and make a fantastic residual income!!! You too can potentially earn a Million dollars in the next 12 months! Free Complete Training! No Fee To Become An Affiliate!"* http://portland.wweek.com/ManagementJobs/tap_into_the_lucrative_debt_settlement_industry_/classifieds/ViewAd?oid=1871457

[15] *See* Monterey County Weekly Classified, August 28, 2009: "*Free Debt Settlement Business*

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Prohibiting the collection of up-front fees would provide regulators and enforcement authorities a bright line means of readily identifying unscrupulous entities that merit immediate investigation and prosecution. Moreover, a regulatory scenario in which up-front fees are not prohibited places those debt relief providers who prefer not to require consumers to pay substantial up-front fees at a competitive disadvantage.

The debt settlement companies examined by the States cannot demonstrate any justification for their substantial advance fees based on the effort required to set up an account. In fact, the industry's own reports suggest that it is marketing, lead generation and referral costs that drive the debt settlement industry's zeal for up-front fees. In its 2008 Preliminary Report, TASC acknowledged that the primary costs incurred by settlement companies are not service related, but rather are marketing and other costs to acquire clients. (*See* Attachment 2, p. 4). From the complaints received and the cases brought, the States have seen little evidence that debt settlement companies provide any other useful services such as credit counseling, debtor education, or getting interest rates reduced before settlement negotiations are initiated, which can take several months, or even years.

There is state and federal precedent for an approach prohibiting the collection of up-front fees. States have established solid precedent for restricting advance fees for debt-related services that have a history of complaints regarding unfair and deceptive practices resulting in consumers not receiving the services for which they paid. North Carolina already bans debt settlement companies from charging fees until all promised services have been performed.[16] Numerous states have recently enacted laws prohibiting advance fees for foreclosure assistance or mortgage loan modification services.[17] Under the federal Credit Repair Organizations Act, 15 U.S.C. § 1679b(b), and many similar state laws, a credit repair business is prohibited from charging or receiving money or other valuable consideration prior to full and complete performance of the agreed upon credit repair services. Similarly, the TSR (16 C.F.R. § 310.4(a)(4)) prohibits advance fees in the area of loan brokering, another activity in which the service to be provided

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http://monterey.montereycountyweekly.com/LegalServices/free_debt_settlement_business_opportunity_software_no_set_up_fee_read_more_/classifieds/ViewAd?oid=680226:

[16] *See* N.C. Gen. Stat. § 14-423, *et seq*.

[17] For example, the Maryland Protection of Homeowners in Foreclosure Act, Md. Code Ann., Real Prop. §§ 7-301 through 7-325 (2008 Supp.) provides "a foreclosure consultant may not . . . [c]laim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform" (*id.* at § 7-307(2)) and the Illinois Mortgage Rescue Fraud Act, ILCS 940/1, *et seq*. (2007) similarly makes it a violation for a "distressed property consultant" to collect any payment until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform. *Id*. at §50(a)(1). Other states that ban advance fees charged by mortgage rescue consultants include: California, Colorado, Florida, Hawaii, Indiana, Louisiana, Massachusetts, Montana, Missouri, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Carolina, Oregon, Rhode Island and Virginia.

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and results are speculative and lend themselves to false promises and minimal performance.

In urging the FTC to prohibit the charging of advance fees, the States submit that a prohibition on advance fees will prevent the substantial monetary losses suffered by consumers, level the playing field, discourage unscrupulous operators from flocking to this industry and facilitate efficient and timely enforcement.

B. The TSR Should be Amended to Cover Inbound Calls to Debt Relief Companies.

The States agree that the TSR should be amended so that its protections will apply to both outbound telemarketing calls by debt relief companies and *inbound* debt relief calls in response to direct mail or general media advertisements. It has been the States' experience that most (if not all) debt relief companies advertise their services primarily through television, radio, direct mail and/or the Internet. These advertisements often require consumers to call a toll free number to obtain additional information or to enroll in a program. If the TSR were not applied to inbound debt relief calls made by consumers in response to direct mail or general media advertisements, then the vast majority of consumers who purchase debt relief services would not be protected.

C. The TSR Should be Amended to Prohibit Deceptive Telemarketing Acts or Practices by Debt Relief Companies.

The enforcement actions taken by the States and complaints the States have received from consumers have shown that consumers have been misled concerning the effectiveness of debt relief services, the cost of the services, alternatives to debt relief services, and the impact the services will have on their financial well being. The States also recognize that many of the consumer complaints they have received reflect a misunderstanding by consumers as to how their debt settlement program will work. Section 310(a)(1)(viii), as amended, will ensure that before consumers sign any contracts with or make any payments to a debt relief company, they will be informed of pertinent material facts including, among other things: (i) how long it will take to settle each debt; (ii) the cost to settle each debt; (iii) that the service will not stop harassing creditor calls or other collection efforts; (iv) that results are not guaranteed, and (v) that the settlement program may adversely impact the consumer's credit rating. While disclosures alone may not be sufficient means to protect consumers in this area, clearly consumers are entitled to this basic information so they can make better informed decisions about debt relief alternatives.

The proposed amendments contained in §310(a)(2)(x) make it an unfair and deceptive trade practice for a debt relief company to misrepresent any material aspect of its services including, but not limited to, the time it will take for the debt relief company to settle the consumers' debts, the cost of the services, the impact on a consumers' creditworthiness, the debt relief company's prior success rates, and the status of the debt relief company (i.e., as a non-profit). The States believe the practices prohibited under §310(a) are already prohibited by the FTC Act and state unfair and deceptive trade practices statutes. However, codifying these disclosures under the TSR will create a more defined bright line standard for enforcement purposes and will leave little or no doubt as to what obligations debt relief companies have to inform their customers.

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The States have also reviewed complaints and brought enforcement actions against debt settlement companies making exaggerated and unsubstantiated savings claims to consumers. Consistent with the FTC's advertising substantiation doctrine, any rules that are promulgated should make clear that it is a violation of the TSR for a debt relief company to make any savings claims to consumers that are not substantiated by data that exists at the time the claim is made.[18] The same principle applies to other misleading claims, such as that the companies can stop creditor calls or collection lawsuits.

Finally, it is important that the rules cover the various entities that play critical roles in the sale and delivery of debt relief services. The States have observed several companies that attempt to divide each stage of the debt settlement business process - marketing and solicitation, contract origination and closing, payment collection, maintenance of consumer accounts, and actual debt negotiation - among different companies. This segmentation of services creates consumer confusion, as well as added complexity for law enforcement. The States recommend that all parties actively engaged in the sale and delivery of debt relief services be prohibited from engaging in unfair and deceptive trade practices in the telemarketing of debt relief services, either directly or under §310.3 of the TSR, which applies to those who knowingly assist or support deceptive telemarketing acts or practices.

V. CONCLUSION

The States view the eradication of unfair and deceptive practices in the debt relief industry - and the harm caused to consumers and the marketplace by these practices - as a consumer protection priority. Thus, the Attorneys General of the States, as the chief law enforcement officers of their respective states, will continue to investigate and take enforcement actions against unscrupulous operators in the industry. The States, however, submit that the comprehensive bright line approach reflected in the proposed rules would substantially aid law enforcement agencies in addressing the harms that have been caused to consumers by unscrupulous practices in the debt relief industry.

Respectfully,

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[18] Moreover, it should also be made clear that any calculation of savings made by a debt settlement company to substantiate its claims to consumers must be made based on the percentage saved of the amounts of the debts consumers sought to have settled at the time they hired the debt settlement company, and not the amounts of their debts at the time they are settled (which may include additional interest, penalties and costs incurred while consumers remained on the settlement program). For example, a consumer entering the program with an unsecured debt of $10,000, which subsequently grows to $15,000 due to late fees, interest, *etc.* while enrolled in the program, then settles for $8,000, has saved 20% (10,000 - 8,000 = 2,000/10,000 = 20%). Further, savings calculations must include consumers who do not complete the program, not just those who do.

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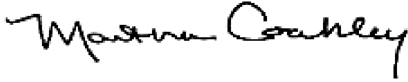

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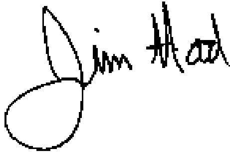

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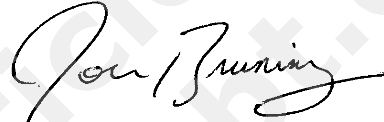
Wayne Stenehjem
Attorney General of North Dakota

Janet T. Mills
Attorney General of Maine

Lori Swanson
Attorney General of Minnesota

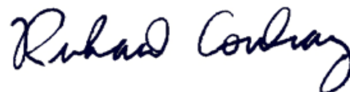
Chris Koster
Attorney General of Missouri



Jon Bruning
Attorney General of Nebraska

Michael A. Delaney
Attorney General of New Hampshire

Roy Cooper
Attorney General of North Carolina



Richard Cordray
Attorney General of Ohio

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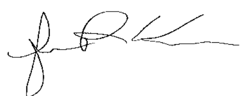
W.A. Drew Edmondson
Attorney General of Oklahoma



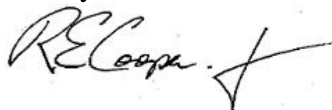
John R. Kroger
Attorney General of Oregon

Tom Corbett
Attorney General of Pennsylvania

Patrick C. Lynch
Attorney General of Rhode Island

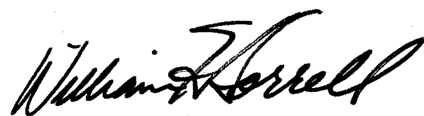
Henry McMaster
Attorney General of South Carolina

Marty J. Jackley
Attorney General of South Dakota

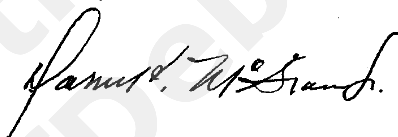


Robert E. Cooper, Jr.
Attorney General of Tennessee

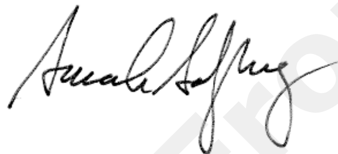
Greg Abbott
Attorney General of Texas



William H. Sorrell
Attorney General of Vermont



Darrell V. McGraw, Jr.
Attorney General of West Virginia



Bruce A. Salzburg
Attorney General of Wyoming

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ATTACHMENT 1
STATE ATTORNEYS GENERAL ENFORCEMENT ACTIVITY

Settlements

Colorado

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Georgia

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- (Complaint)- http://myfloridalegal.com/webfiles.nsf/WF/JFAO-7CFMMD/$file/FutureFinancialComplaint.PDF

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State of Florida v. Enterprise Technology Group, Inc. (2008) - (Press Release) -
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From Article at GetOutOfDebt.org

The Association of Settlement Companies

Preliminary Study

Updated January, 2008

From ArticleDebt.org
GetOutOfDebt.org

THE ASSOCIATION OF SETTLEMENT COMPANIES (TASC) STUDY ON THE DEBT SETTLEMENT INDUSTRY

The following data was compiled as a preliminary study of the debt settlement industry conducted in September 2006, and updated in December 2007, from companies who are members of TASC.

Debt Settlement Company Data

Completion Rates. Completion rates vary between companies depending upon a number of factors, including client qualification requirements, quality of client services and the ability to meet client expectations regarding final settlement of their debts. Completion rates range from 35% to 60%, with the average around 45% to 50%. While most companies defined a completion as having all debts settled, there were two that considered a client completed if they had settled at least 80% of the debt and one if they had settled at least 50% of the debt.

This completion rate exceeds that of the Chapter 13 bankruptcy completion rate of 33% and the National Foundation for Credit Counseling reported completion rate of credit counseling companies at 21%. As the National Consumer Law Center ("NCLC") stated in its September 2006 report on ***The Life and Debt Cycle***, "…it appears that only consumers with considerable disposable income left over each month are able to get out of debt through a DMP." The report further states "[i]f consumers are not able to significantly lower the amount that they owe, they're more likely to fail in completing a three to five-year DMP."

The information in that September 2006 NCLC report referenced above supports TASC's position paper where TASC contemplates a higher completion rate for debt settlement than for DMP or a Chapter 13 Bankruptcy. TASC attributes this higher success rate to the fact that, in the debt settlement model, the consumer debtor has significant input into the amount and terms of the repayment. The consumer debtor is in the best position to determine the feasibility of and likelihood of compliance with a repayment plan. By empowering the debtor with this ability and combining that with the constant "hand-holding" of the debt settlement company's customer service representative, there is a greater likelihood of completion with a debt settlement program.

From Article at GetOutOfDebt.org

Legal Accounts. The mistaken impression with individuals unfamiliar with debt settlement is that the debt settlement companies tell their clients to stop paying the creditors. This, then, results in increased creditor calls and lawsuits being filed against their clients. In reality, this is not supported by the TASC data.

Most clients contacting a debt settlement have already stopped paying their creditors due to the financial burden of meeting minimum monthly payments. If they have not, it is normally because they have been "robbing Peter to pay Paul" by transferring balances between cards and getting cash advances. TASC standards prohibit a member company from telling a consumer to stop paying their creditors, and require members to both warn the consumer that not making their required payments may be considered a breach of their agreement with their creditors and of the possible consequences of such non-payment.

In terms of number of clients receiving a lawsuit on at least one account, we found a range from 6% to slightly over 10%, with most reporting around 7%. The data further shows a range between 1.8% and 3.5% of accounts that resulted in a lawsuit which could not be settled through negotiation. Most report the number being under 2%. Significantly, nearly half of these law suits came from less than 5% of the creditors. Most creditors have established informal working relationships with a number of debt settlement companies and do not often resort to litigation as the preferred course of practice against the consumer client.

There are several types of services available for a debt settlement client facing a collections lawsuit. TASC member companies determine which one or a combination is most suitable for their clients. The initial attempt is to settle the debt, which can be accomplished in most instances, even if the settlement involves a monthly payment arrangement. Some companies elect to retain counsel for the client at the company's expense. Other companies will refer the client to a national legal services program that is responsive to the needs of a debt settlement client. Finally, some companies provide an internal legal counsel to assist the client with their lawsuit. TASC and its members recognize the problems with providing any direct advice to a client who has been sued because it may raise the concern of unauthorized practice of law. Therefore, most will immediately inform the client of the options available to the client upon notification of the lawsuit.

From Article at GetOutOfDebt.org

Creditor Calls. Another mistaken impression is that all of the consumer's creditors barrage these clients with telephone calls. While this is one of the biggest reasons that consumer debtors call into their debt settlement company, it certainly is not every creditor constantly calling and in most instances the calls do not go on forever. Some debt settlement companies seek to limit these calls by sending a notice to each creditor to make them aware that the debt settlement company has been engaged, so the creditor will call the debt settlement company rather than the client. In other cases, debt settlement companies may counsel the client on appropriate method of handling a creditor calls. Still others instruct the client to simply have the creditor call the debt settlement company. Some companies refer clients to a consumer advocacy group which helps ensure that the consumer's rights are protected under the Fair Debt Collections Practices Act by contacting the creditors for the consumer to help reduce or eliminate harassing calls. One such consumer advocacy company has found that, at any given time, only about one out of five clients of debt settlement companies report being bothered by alleged creditor harassment. Furthermore, in over half of those reported instances, the creditors will heed the request of the consumer advocate in regards to the consumer's request without the need for a cease and desist letter.

Consumers who are unable to make minimum required payments, cannot afford a DMP and do not wish to or cannot file bankruptcy would be facing the same creditor calls, threats of law suit, and actual law suits, had they attempted to work something out with the creditors on their own. Even the NCLC acknowledges that while creditors will offer individual consumers settlements in some cases, they "usually require a fairly sizable lump sum." One settlement example cited by the NCLC found a required payment of 65% of the debt within 20 days, and another 55% of the amount owed, with half payable within ten days and the balance ten days later.

From Article at GetOutOfDebt.org

Examples of Completed Clients. One of the potential concerns raised pertains to how much the client saves overall by entering the debt settlement after paying the settled amounts to the creditor and the fees to the settlement company. The following is a representative sample: $20,000 of debt settled for $9,600, plus fees for the debt settlement company of $4,000, leaving the client a net savings of $6,400. Certainly, there are instances of higher savings and lower savings. Clients are advised prior to enrollment that the amounts and timeframes in their agreement are estimates. The agreements also reiterate that there are no specific guarantees in terms of settlement results.

Following are some typical examples of clients that have completed their program.

Debt Amount Settled	Settlement Total	Fees Paid	Net Savings	Months
$28,668	$12,518	$2,423	$13,727	30
$64,411	$26,988	$5,613	$31,810	36
$30,682	$14,940	$2,361	$13,381	36
$3,512	$2,459	$158	$895	30
$43,969	$18,418	$3,832	$21,719	36
$42,335	$25,026	$2,596	$14,713	36
$13,101	$7,446	$848	$4,807	24
$43,467	$16,037	$5,021	$15,777	30
$16,315	$6,200	$2,216	$6,356	14
$17,663	$7,155	$2,219	$5,422	29
$20,300	$10,196	$2,334	$3,029	34

In each instance, the total amount paid by the consumer is less than those enrolled in a DMP offered though credit counseling with the same amount of debt. In a typical credit counseling program, the consumer debtor with a $20,000 debt load pays interest and fees totaling $16,000 over the life of the DMP. This brings the total to approximately $36,000. As shown above, a debt settlement program cost the consumer debtor less than half that amount. Additionally, the consumer debtor enrolled in a debt settlement program will be debt free after three years as opposed to a typical DMP program of 5 or more years.

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Program Costs. TASC maintains that the cost of acquiring and administering a debt settlement program is greater than that of a DMP under the consumer credit counseling model. This is one of the differences between the two business models. One of the primary costs is the client acquisition. Credit counseling has been the predominant industry in the consumer debt management for decades. In comparison, debt settlement is a relatively new industry. Since the concept of debt settlement is not well-known to the public, debt settlement companies must spend more time, effort and money marketing their services. The lead cost for acquiring one debt settlement client ranges from $300 to $400. Once the intake costs associated with contacting the potential clients and the overhead costs are factored into the lead costs, the cost to acquire and set up a single debt settlement client can range from approximately $425 to $1,000. The data reveals that most debt settlement companies report this cost at $700 to $1,000 range. This

necessitates debt settlement companies to charge a greater portion of fees during the initial phase of the program.

Listed below are the typical activities involved in executing a debt settlement plan:

- Initial consumer contact: explanation of program and gathering of consumer data, including contact, financial, creditor and hardship information.
- Evaluation of gathered information to determine appropriateness for the program. This often includes review of the information by an underwriting department or a manager.
- Emailing, faxing, postal mail, or by other means of transmission of the proposed client agreement for review and approval.
- Upon return receipt of the client agreement, a review of the agreement and all accompanying information including accuracy of creditor listing and account statements.
- Entering all Client information into a database.
- Entering or scanning all creditor account data into a database.
- Sending the welcome package to the client.
- Making a quality assurance call to the client to provide an overview the program, confirm client and creditor data and answer any questions.
- Monthly calls to the client to provide status reports, answer questions, and address other concerns. Often times, clients will contact the debt settlement company each time they receive a call or letter from a creditor. This results in several calls per month per client for the debt settlement company.
- Some companies call creditor on a monthly basis on each account. Creditors and the collection companies also contact the debt settlement companies each time the account changes hand.
- Reviewing monthly creditor account statements, updating information, filing or otherwise storing these statements for each account.
- Monthly recording and verifying of client payments.
- On-going written and/or telephonic negotiation between the client and the creditor for each account.
- In all instances, accurate recording of the information regarding each call or email between the company and the client and/or creditor.

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- Accurate, written documentation for the client, the debt settlement company and the creditor, of each final settlement.

While credit counseling companies incur marketing costs, they also receive free marketing from numerous other sources. Creditors will refer consumer debtors to a credit counseling company in hopes of recovering the full amount of the debt. The bankruptcy reform act of 2005 requires consumers to contact a credit counseling company prior to filing for Chapter 7 bankruptcy. Consumer debtors experiencing financial problems often go to the credit reporting agencies' websites to gather more information about their credit score. For example, on Equifax's web site, it states that consumer credit counseling services are "[o]rganizations that help consumers find a way to repay debts through careful budgeting and fund management. CCCS's are usually non-profit organizations funded by creditors. By requesting a longer pay-off period from creditors one-by-one, a CCCS can often design a workable repayment plan on behalf of the consumer."

In terms of customer service, debt settlement companies provide ongoing services throughout the term of a client's contract. The number of hours required to service, negotiate, and administer the accounts for the duration of the program far exceeds what is expected and provided by credit counseling agencies. Debt settlement companies do not simply negotiate the debts at the beginning of the contract and act as a repayment collection clearinghouse for the creditors, as is the case with credit counseling agencies. Debt settlement companies must negotiate and actively monitor the creditor's activities with respect to their client's accounts throughout the length of the program. Additional contacts regarding the client's account are needed each time the account is transferred from the original creditor to a third party collection agency. All of these activities result in a higher number of active hours per account and consequently a higher cost to a debt settlement company.

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One credit counseling company reports that in 2005, they serviced 130,000 debt management plans and received 520,000 calls from clients and creditors. This averages to four calls per year per client. TASC's data indicates yearly client contact to be in excess of ten times that of this credit counseling company.

The following examples show the progression of three accounts through the creditor cycle. It is noteworthy that one account passes through several collection agencies which

requires the debt settlement company to initiate dialogue on multiple occasions for the same account.

Monitoring accounts through the collection process	
One account for the first client	
Creditor	**Date**
First USA	12/10/2001
Surpas	01/06/2003
Creditors Interchange	08/09/2003
Financial Asset Mgmt	04/28/2004
Commonwealth	09/20/2004
NCC	11/03/2004
Commonwealth	11/23/2004
One account for a second client	
Wells Fargo	08/28/2001
Central Credit	11/07/2002
Professional Recovery	11/20/2003
Plaza Assoc	08/18/2003
MNK Law Office	01/29/2004
Risk Mgmt Alternatives	12/08/2004
One account for a third client	
Citi	02/04/2002
James West, PC	08/28/2002
Associated Recovery	12/31/2002
Lake Valley Retrievals	10/02/2003
Unifund	05/30/2006

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Conclusion

Debt settlement is a necessary option for consumers who cannot otherwise afford a credit counseling program or do not wish or qualify to file bankruptcy. Just as a creditor has the right to contract with a collection company to collect from a consumer, that consumer has the right to contract with a company of their choice. More consumer options increases the likelihood that the consumer will find the program and the company that will help solve their current financial problem.

The NCLC agrees that consumers need options; that current work-out plans through credit counseling and outside of credit counseling do not serve the needs of the most vulnerable consumers. The NCLC also agrees that creditors should offer reductions in principal. Debt settlement offers these consumers the ability to turn around their life by working with creditors to reduce the principal.

While TASC cannot agree with many of the assertions of the 2005 NCLC report on debt settlement, NCLC acknowledges that separate laws should govern debt settlement companies from laws that govern credit counseling companies. This is precisely the position of TASC when asked of our position on the Uniform Debt Management Services Act.

To date, TASC has focused its efforts on affecting positive legislation in various States and developing industry standards for debt settlement companies. TASC is now expanding our focus towards setting standards for the collection of data from debt settlement companies. This will ensure uniformity and that data provided are reliable and reproducible. It is TASC's hope that industry-wide data will be available in the near future.

TASC respectfully submits this information for your consideration. We appreciate the opportunity to work with your department on these matters in the future.

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