PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

BUSINESS PRACTICES OF DEBT RELIEF COMPANIES

Before the

SENATE COMMITTEE ON COMMERCE,

SCIENCE, AND TRANSPORTATION

Kansas City, Missouri

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I. Introduction

Senator McCaskill and members of the Committee, I am Alice Saker Hrdy, Assistant Director in the Division of Financial Practices at the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today, and the Commission thanks this Committee for its interest in the work of the FTC to protect consumers from deception and abuse in the sale of debt relief services.

The Commission has a long history of protecting consumers of financial products and services offered by entities within the agency's jurisdiction. With Americans continuing to feel the effects of the economic downturn, the Commission has stepped up its efforts to stop fraudulent financial schemes that exploit consumers who are particularly vulnerable as a result of financial distress.[2]

Stopping deceptive debt relief practices is one of our highest consumer protection priorities. Providers of debt relief services purport to help people who cannot pay their debts by negotiating on their behalf with creditors. Debt settlement companies, for example, market their ability to dramatically reduce consumers' debts, often by making claims to reduce debt by specific and substantial amounts, such as "save 40 to 60 percent off your credit card debt." In many instances, consumers pay hundreds or thousands of dollars for these services but get nothing in return.

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[1] The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions you may have are my own, however, and do not necessarily reflect the views of the Commission or any Commissioner.

[2] Since the beginning of 2009, the FTC has brought more than 40 cases to stop scams that prey on consumers suffering from the financial downturn. *See, e.g.,* Press Release, FTC, *FTC Cracks Down on Con Artists Who Target Jobless Americans* (Feb. 17, 2010), *available at* www.ftc.gov/opa/2010/02/bottomdollar.shtm; Press Release, FTC, *FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn* (July 1, 2009), *available at* www.ftc.gov/opa/2009/07/shortchange.shtm.

The FTC utilizes its four principal tools to protect consumers of debt relief services: law enforcement, rulemaking, consumer education efforts, and research and policy development. To halt deceptive and abusive practices and return money to victimized consumers, the Commission has brought 23 lawsuits in the last seven years against credit counseling firms, debt settlement services, and debt negotiators.[3] These cases have helped over 500,000 consumers harmed by deceptive and abusive practices.[4] The Commission continues to actively investigate debt relief companies and pursue aggressive enforcement in this arena. As the Commission's law enforcement experience has shown, victims of these schemes often end up *more* in debt than when they began. Especially in these difficult economic times, when so many consumers are struggling to keep their heads above water, this is unacceptable.

Over the past decade, the Commission and state enforcers have brought a combined 259 cases to stop deceptive and abusive practices by debt relief providers that have targeted consumers in financial distress. Despite these sustained efforts, consumer complaints continued to increase as did problematic advertising and telemarketing of these services. To strengthen the agency's ability to stop deception and abuse in the provision of debt relief services, the Commission proposed amendments to the Telemarketing Sales Rule ("TSR"). On July 29, 2010, after a thorough and careful review of the rulemaking record, the Commission announced its

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[3] A list of the Commission's law enforcement actions against debt relief companies is attached as Appendix A.

[4] In addition to consumers who lost money to fraudulent debt relief companies, millions of consumers have been harassed by automated robocalls pitching services in violation of the Do Not Call provisions of the Telemarketing Sales Rule. The Commission has charged companies engaging in these robocalls with violations of the Rule. *See, e.g., FTC v. Asia Pac. Telecom, Inc.*, No. 10C3168 (N.D. Ill., preliminary injunction issued June 17, 2010); *FTC v. JPM Accelerated Servs. Inc.*, No. 09-CV-2021 (M.D. Fla., preliminary injunction issued Dec. 31, 2009); *FTC v. Econ. Relief Techs., LLC*, No. 09-CV-3347 (N.D. Ga., preliminary injunction issued Dec. 17, 2009).

final amendments to the TSR. The Rule now bans debt relief providers from collecting fees in advance of performing promised services, prohibits them from making misrepresentations, and requires them to make several important up front disclosures.

This testimony provides an overview of the three common types of debt relief services, as well as the Commission's law enforcement efforts with respect to each. The testimony then describes the Commission's amendments to the TSR[5] and discusses the FTC's ongoing efforts to educate consumers about debt relief options and how to avoid scams.[6]

II. The Commission's Authority

The Commission enforces Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce,[7] as well as the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act")[8] and the associated TSR that prohibit certain deceptive and abusive telemarketing practices.[9] The Commission has used this authority to

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5 *Telemarketing Sales Rule; Final Rule,* 75 Fed. Reg. 48,458 (Aug. 10, 2010) (to be codified at 16 C.F.R. § 310).

6 With respect to its research and policy development in this area, in September 2008, the Commission held a public workshop entitled "Consumer Protection and the Debt Settlement Industry," which brought together stakeholders to discuss consumer protection concerns associated with debt settlement services. Workshop participants also debated the merits of possible solutions to those concerns. An agenda and transcript of the Workshop are available at www.ftc.gov/bcp/workshops/debtsettlement/index.shtm. Public comments associated with the Workshop are available at www.ftc.gov/os/comments/debtsettlementworkshop/index.shtm.

7 15 U.S.C. § 45.

8 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act's directive, the Commission promulgated the original TSR in 1995 and amended it in 2003, 2008, and 2010.

9 The Commission also has law enforcement authority and, in some cases, regulatory powers under a number of other consumer protection statutes specifically related to financial services, including the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j; the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x; the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f; the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j; the Electronic Funds Transfer Act, 15 U.S.C.

challenge debt relief providers within its jurisdiction[10] who have engaged in deceptive or abusive practices. In addition, the Commission works to protect consumers from a wide range of other unfair and deceptive practices in the marketplace, such as credit-related and government grant scams, mortgage loan modification scams, deceptive marketing of health care products, deceptive negative option marketing, and business opportunity and work-at-home schemes. The FTC works closely with many state attorneys general and state banking departments to leverage resources in consumer protection.[11]

III. Overview of Debt Relief Services and FTC Law Enforcement Efforts

Debt relief services have proliferated over the past few years as greater numbers of consumers struggle with debts they cannot pay. A range of nonprofit and for-profit entities – including credit counselors, debt settlement companies, and debt negotiation companies – offer to help consumers facing debt problems. As detailed below, consumers have complained of deceptive and abusive practices in all of these services, and in response, the FTC and state

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§§ 1693-1693r; the privacy provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809; and the Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009).

[10] The FTC Act exempts banks and other depository institutions and bona fide nonprofits, among others, from the Commission's jurisdiction. 15 U.S.C. §§ 44, 45(a)(2). These exemptions apply to the FTC's jurisdiction under the Telemarketing Act and the TSR as well.

[11] *See, e.g.,* FTC, Press Release, *Federal and State Agencies Target Mortgage Foreclosure Rescue and Loan Modification Scams* (July 15, 2009), *available at* www.ftc.gov/opa/2009/07/loanlies.shtm (announcing sweep targeting mortgage assistance relief scams, including *FTC v. US Foreclosure Relief Corp.*, No. SACV09-768 JVS (MGX) (C.D. Cal., final order March 11, 2010) (State of Missouri, State of California, and FTC filed joint case alleging violations of FTC Act and TSR against defendants purporting to provide mortgage assistance relief services)); Press Release, FTC, *FTC Announces "Operation False Charity" Law Enforcement Sweep* (May 20, 2009), *available at* www.ftc.gov/opa/2009/05/charityfraud.shtm (including four cases brought by the Attorney General of Missouri).

enforcement and regulatory bodies have brought numerous cases.[12]

A. Credit Counseling Agencies

Credit counseling agencies ("CCAs") historically were nonprofit organizations that worked as liaisons between consumers and creditors to negotiate "debt management plans" ("DMPs"). DMPs are monthly payment plans for the repayment of credit card and other unsecured debt that enable consumers to repay the full amount owed to their creditors but under renegotiated terms that make repayment less onerous.[13] Credit counselors typically also provide educational counseling to assist consumers in developing a manageable budget and avoiding debt problems in the future. Beginning in the late 1990s, however, some CCAs registered as nonprofit organizations with the Internal Revenue Service, but in reality were operating as for-profit companies and engaging in aggressive and illegal marketing practices. Other CCAs incorporated and openly operated as for-profit companies.

Since 2003, the Commission has filed six cases against credit counseling providers for deceptive and abusive practices.[14] In one of these cases, the FTC sued AmeriDebt, Inc., at the

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[12] The Commission has addressed similar problems with respect to companies offering to resolve consumers' mortgage debts. The Commission has engaged in an aggressive, coordinated enforcement initiative to shut down companies falsely claiming the ability to obtain mortgage loan modifications or other relief for consumers facing foreclosure. In the past year alone, the FTC has brought 10 cases targeting foreclosure rescue and mortgage modification frauds, with other matters under active investigation. In addition, state enforcement agencies have brought more than 200 cases against such firms in recent years. Further, as directed by Congress under the Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, the Commission has initiated a rulemaking proceeding addressing the for-profit companies in this industry. Under the proposed rule, companies could not receive payment until they have obtained for the consumer a documented offer from a mortgage lender or servicer that comports with any promises previously made. *Mortgage Assistance Relief Services*, 75 Fed. Reg. 10707 (Mar. 9, 2010).

[13] To be eligible for a DMP, a consumer generally must have sufficient income to repay the full amount of his or her debts, provided that the terms are adjusted to make such repayment possible.

[14] *See* Appendix A (items 15, 16, 17, 18, 20, and 21).

time one of the largest CCAs in the United States.[15] On the eve of trial, the FTC obtained a $35 million judgment as part of a settlement agreement. Thus far, the Commission has collected and distributed $12.7 million in redress to 287,000 consumers.[16] In *AmeriDebt* and other credit counseling cases, the FTC charged that the agencies engaged in deceptive conduct in violation of Section 5 of the FTC Act and the TSR, including:

- misrepresentations about the benefits and likelihood of success consumers could expect from the services, including the savings they would realize;[17]
- misrepresentations regarding fees, including false claims that the CCAs did not charge upfront fees;[18]
- deceptive statements regarding their purported nonprofit nature;[19] and

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15 *FTC v. AmeriDebt, Inc.,* No. PJM 03-3317 (D. Md., final order May 17, 2006).

16 *See* Press Release, FTC, *FTC's AmeriDebt Lawsuit Resolved: Almost $13 Million Returned to 287,000 Consumers Harmed by Debt Management Scam* (Sept. 10, 2008), www.ftc.gov/opa/2008/09/ameridebt.shtm. The FTC expects to make another distribution of consumer refunds this year.

17 *See FTC v. Integrated Credit Solutions, Inc.,* No. 06-806-SCB-TGW (M.D. Fla., final order Oct. 16, 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal., final order June 16, 2006); *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla., final order Mar. 30, 2005).

18 *See FTC v. Leshin*, No. 06-cv-61851-WJZ (S.D. Fla., final order May 5, 2008); *FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md., final order May 17, 2006).

19 *See FTC v. Leshin*, No. 06-cv-61851-WJZ (S.D. Fla., final order May 5, 2008); *FTC v. Integrated Credit Solutions, Inc.,* No. 06-806-SCB-TGW (M.D. Fla., final order Oct. 16, 2006); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal., final order June 16, 2006); *FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md., final order May 17, 2006); *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 04-1674-T-17-MSS (M.D. Fla., final order Mar. 30, 2005). Although the defendants in these cases had obtained IRS designation as nonprofits under Section 501(c)(3) of the Internal Revenue Code, they allegedly funneled revenues out of the CCAs and into the hands of affiliated for-profit companies and/or the principals of the operation. Thus, the FTC alleged that the defendants were "operating for their own profit or that of their members" and fell outside the nonprofit exemption in the FTC Act. 15 U.S.C.§ 44.

- violations of the TSR's provisions that require certain disclosures and prohibit misrepresentations, as well as the requirements of the TSR's Do Not Call provisions.[20]

In addition, over the last several years, in response to abuses such as these, the IRS has challenged a number of purportedly nonprofit CCAs – both through enforcement of existing statutes and new tax code provisions – resulting in the revocation, or proceedings to revoke, the nonprofit status of 41 CCAs.[21] In addition, state authorities have brought at least 21 cases against CCAs under their own statutes and rules.

B. Debt Settlement Services

Debt settlement companies purport to obtain from consumers' unsecured creditors lump sum settlements for significantly less than the full outstanding balance of the consumers' debts. Unlike a traditional DMP, the goal of a debt settlement plan is to enable the consumer to repay only a portion of the total debt owed. Debt settlement providers heavily market through Internet, television, radio, and print advertising. The advertisements typically make claims about the

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[20] *See FTC v. Leshin*, No. 06-cv-61851-WJZ (S.D. Fla., final order May 5, 2008); *United States v. Credit Found. of Am.,* No. CV 06-3654 ABC(VBKx) (C.D. Cal., final order June 16, 2006).

[21] Eileen Ambrose, *Credit Firms' Status Revoked; IRS Says 41 Debt Counselors Will Lose Tax-Exempt Standing,* BALTIMORE SUN, May 16, 2006. To enhance the IRS's ability to oversee CCAs, Congress amended the IRS Code in 2006, adding Section 501(q) to provide specific eligibility criteria for CCAs seeking tax-exempt status as well as criteria for retaining that status. *See* Pension Protection Act of 2006, Pub. L. No. 109-280, § 1220 (Aug. 2006) (codified at 26 U.S.C. § 501(q)). Among other things, Section 501(q) of the IRS Code prohibits tax-exempt CCAs from refusing to provide credit counseling services due to a consumer's inability to pay or a consumer's ineligibility or unwillingness to agree to enroll in a DMP; charging more than "reasonable fees" for services; and, unless allowed by state law, basing fees on a percentage of a client's debt, DMP payments, or savings from enrolling in a DMP. In addition, as a result of changes in the federal bankruptcy code, 158 nonprofit CCAs, including the largest entities, have been subjected to rigorous screening by the Department of Justice's Executive Office of the U.S. Trustee. Finally, nonprofit credit counseling agencies must comply with state laws in 49 states, most of which specify particular fee limits.

company's supposed ability to reduce consumers' debts to a fraction of the full amount owed, and then encourage consumers to call a toll-free number for more information.[22] During the calls, telemarketers repeat and embellish many of these claims.

Most debt settlement companies charge consumers hundreds, or even thousands, of dollars in upfront fees, in many cases with the entire amount of fees due within the first few months of enrollment and before any debts are settled. An increasing number of providers spread their fees over a longer period – for example, 12 to 18 months – but consumers generally still pay a substantial portion of the fees before any of their payments are used to pay down their debt. Most consumers drop out of these programs before completion, and they typically forfeit all of the money they paid to the debt settlement company, regardless of whether they received any settlements from their creditors.[23]

Since 2004, the Commission has brought nine actions against debt settlement providers, alleging that they deceived consumers about key aspects of their programs.[24] The defendants' misrepresentations included claims that:

- the provider will, or is highly likely to, obtain large reductions in debt for enrollees, *e.g.*, a 50 percent reduction or elimination of debt in 12 to 36 months;[25]

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[22] *See, e.g., FTC v. Connelly,* No. SA CV 06-701 DOC (RNBx) (C.D. Cal., final order Oct. 2, 2008); *FTC v. Edge Solutions*, *Inc.,* No. CV-07-4087 (E.D.N.Y., final order Aug. 29, 2008); *FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo., final order Apr. 11, 2008); *FTC v. Jubilee Fin. Servs., Inc.*, No. 02-6468 ABC (Ex) (C.D. Cal., final order Dec. 12, 2004).

[23] *Telemarketing Sales Rule; Final Rule,* 75 Fed. Reg. at 48471-72 (citing commenters).

[24] *See* Appendix A (items 2, 6, 11, 12, 13, 19, 20, 22, and 23).

[25] *See, e.g., FTC v. Edge Solutions*, *Inc.,* No. CV-07-4087 (E.D.N.Y. , final order Aug. 29, 2008); *FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF JTLx (C.D. Cal., final order July 13, 2005).

- the provider will stop harassing calls from debt collectors as well as collection lawsuits;[26]
- the provider has special relationships with creditors and is expert in inducing creditors to grant concessions;[27]
- the consumer will not have to pay substantial upfront fees,[28] and
- the consumer will be able to obtain a refund if the provider is unsuccessful.[29]

The Commission also has alleged that debt settlement companies encouraged or instructed consumers to stop paying their creditors, while not disclosing that failing to make payments to creditors may actually increase the amount owed (because of accumulating fees and interest) and would harm their credit rating.[30] In addition to the FTC cases, state attorneys general and regulators have filed over 125 law enforcement actions against debt settlement providers under state statutes that, among other things, ban unfair or deceptive practices.[31]

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[26] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo., final order Apr. 11, 2008); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass., final order Mar. 28, 2005); *FTC v. Jubilee Fin. Servs., Inc*., No. 02-6468 ABC (Ex) (C.D. Cal., final order Dec. 12, 2004).

[27] *See, e.g., FTC v. Debt-Set, Inc.,* No. 1:07-cv-00558-RPM (D. Colo., final order Apr. 11, 2008); *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass. 2005). Some providers are also misrepresenting that their service is part of a government program through the use of such terms as "government bailout" or "stimulus money." *See, e.g., FTC v. Dominant Leads, LLC,* No. 1:10-cv-00997 (D.D.C., preliminary injunction issued July 8, 2010).

[28] *See, e.g., FTC v. Debt-Set*, No. 1:07-cv-00558-RPM (D. Colo., final order Apr. 11, 2008).

[29] *See, e.g., FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 GAF JTLx (C.D. Cal., final order July 13, 2005).

[30] *See, e.g.*, *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal., final order Oct. 2, 2008); *FTC v. Jubilee Fin. Servs., Inc*., No. 02-6468 ABC (Ex) (C.D. Cal., final order Dec. 12, 2004).

[31] *See, e.g., Minnesota v. American Debt Settlement Solutions, Inc*., No. 70-CV-10-4478 (Minn., 4th Dist., filed Feb. 18, 2010); *Illinois v. Clear Your Debt, LLC,* No. 2010-CH-00167 (Ill. 7th Cir., filed Feb. 10, 2010); Press Release, Colorado Attorney General, *Eleven Companies Settle with the*

C. Debt Negotiation

Debt negotiation companies assert that they can obtain interest rate reductions or other concessions from creditors to lower consumers' monthly payments. Such companies often market debt negotiation services through so-called automated "robocalls." Like debt settlement companies, many debt negotiation providers charge significant upfront fees and promise specific results, such as a particular interest rate reduction or amount of savings.[32] In some cases, the telemarketers of debt negotiation services refer to themselves as "card services" or a "customer service department" during calls with consumers in order to mislead them into believing that the telemarketers are associated with the consumer's credit card company.[33]

The FTC has brought nine actions against defendants alleging deceptive debt negotiation practices.[34] In each case, the Commission alleged that defendants (1) misrepresented that they could reduce consumers' interest payments by specific percentages or minimum amounts, (2) falsely purported to be affiliated, or have close relationships, with consumers' creditors,[35] and

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State Under New Debt-Management and Credit Counseling Regulations (Mar. 12, 2009), *available at* www.ago.state.co.us/press_detail.cfmpressID=957.html; *Texas v. CSA-Credit Solutions of Am., Inc.*, No. 09-000417 (Dist. Travis Cty, filed Mar. 26, 2009); *Florida v. Boyd*, No. 2008-CA-002909 (Cir. Ct. 4th Cir. Duval Cty, filed Mar. 5, 2008).

[32] *See FTC v. Asia Pac. Telecom, Inc.*, No. 10 C 3168 (N.D. Ill., preliminary injunction issued June 17, 2010); *FTC v. JPM Accelerated Servs. Inc.*, No. 09-CV-2021 (M.D. Fla., preliminary injunction issued Dec. 31, 2009); *FTC v. Econ. Relief Techs., LLC*, No. 09-CV-3347 (N.D. Ga., preliminary injunction issued Dec. 17, 2009); *FTC v. 2145183 Ontario, Inc.,* No. 09-CV-7423 (N.D. Ill., preliminary injunction issued Dec. 17, 2009); *FTC v. Select Pers. Mgmt.,* No. 07- 0529 (N.D. Ill., final order May 15, 2009); *FTC v. Group One Networks, Inc.*, No. 8:09-cv-352-T-26-MAP (M.D. Fla., final order March 19, 2009); *FTC v. Debt Solutions, Inc.,* No. 06-0298 JLR (W.D. Wash., final order June 18, 2007).

[33] *See* cases cited *supra,* note 32.

[34] *See* Appendix A (items 1, 3, 4, 5, 7, 8, 9, 10, and 14).

[35] *See* cases cited *supra,* note 32.

(3) violated the TSR's Do Not Call provisions, among other TSR violations.[36]

Our law enforcement colleagues at the state level also have focused attention on bogus debt negotiation companies. The states have brought at least 14 cases against such firms, and the FTC will continue to work closely with our state partners on these and related issues.

IV. The Commission's Amendments to the Telemarketing Sales Rule

On July 29, 2010, the Commission announced final amendments to the TSR governing providers of debt relief services ("Final Rule"), based on its determination that such revisions to the TSR are necessary to protect consumers from deceptive and abusive practices in the telemarketing of debt relief services.[37] The Commission developed the Final Rule after considering an extensive rulemaking record, including over 300 public comments,[38] and information gathered during a November 2009 public forum. At that forum, representatives of all the major stakeholders discussed the key consumer protection issues and problems that are present in the debt relief industry and possible solutions for them.[39] The Final Rule:

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[36] *See* cases cited *supra,* note 32.

[37] Press Release, FTC, *FTC Issues Final Rule to Protect Consumers in Credit Card Debt* (July 29, 2010), *available at* www.ftc.gov/opa/2010/07/tsr.shtm. Commissioner Rosch dissented from the Commission decision.

[38] Comments were submitted by: 35 industry representatives, 10 industry trade associations and groups, 26 consumer groups and legal services offices, six law enforcement organizations, three professors, two labor unions, the Uniform Law Commission, the Responsible Debt Relief Institute, the Better Business Bureau, and 236 individual consumers. The public comments are available at www.ftc.gov/os/comments/tsrdebtrelief/index.shtm.

[39] A transcript of the forum is available at www.ftc.gov/bcp/rulemaking/tsr/tsr-debtrelief/index.shtm. After the forum, Commission staff sent letters to industry trade associations and individual debt relief providers that had submitted public comments, soliciting follow-up information in connection with certain issues that arose at the forum. The letters are posted at www.ftc.gov/os/comments/tsrdebtrelief/index.shtm. Sixteen organizations responded and provided data.

- prohibits any telemarketer or seller of debt relief services from requesting or receiving payment until it produces the promised services and provides proof documenting this fact to the consumer;
- mandates certain additional disclosures and prohibits misrepresentations in the telemarketing of debt relief services; and
- extends the existing protections of the TSR to inbound debt relief calls, *i.e.,* those where consumers call a telemarketer in response to a general media or direct mail advertisement.[40]

As to its scope, the Final Rule covers telemarketers of for-profit debt relief services, including credit counseling, debt settlement, and debt negotiation services. Because the FTC Act exempts nonprofit entities from the agency's jurisdiction under that Act, and the Telemarketing Act incorporates the FTC Act exemptions, the TSR generally does not apply to such entities. However, companies falsely claiming nonprofit status are subject to both the FTC Act and the TSR.

The Final Rule specifies that fees for debt relief services may not be collected until:

- the debt relief provider successfully renegotiates, settles, reduces, or otherwise changes the terms of at least one of the consumer's debts;
- there is a written settlement agreement, debt management plan, or other agreement between the consumer and the creditor, and the consumer has agreed to it; and
- the consumer has made at least one payment to the creditor or debt collector as a

[40] Outbound calls to solicit the purchase of debt relief services are already subject to the TSR.

result of the agreement negotiated by the debt relief provider.

To ensure that debt relief providers do not front-load their fees if a consumer has enrolled multiple debts in one debt relief program, the Final Rule specifies how debt relief providers may collect the fee for each settled debt. First, the provider's fee for a single debt must be in proportion to the total fee that would be charged if all of the debts had been settled. Alternatively, if the provider bases its fee on the percentage of what the consumer saves as result of using its services, the percentage charged must be the same for each of the consumer's debts.

Another new provision of the Final Rule will allow debt relief companies to require that consumers set aside their fees and savings for payment to creditors in a "dedicated account." However, providers may only require a dedicated account as long as five conditions are met:

- the dedicated account is maintained at an insured financial institution;
- the consumer owns the funds (including any interest accrued);
- the consumer can withdraw the funds at any time without penalty;
- the provider does not own or control or have any affiliation with the company administering the account, and
- the provider does not exchange any referral fees with the company administering the account.

In addition, the Final Rule requires that providers must make several disclosures when telemarketing their services to consumers. Before the consumer signs up for any debt relief service, providers must disclose how long it will take for consumers to obtain results, how much it will cost, the negative consequences that could result from using debt relief services, and key information about dedicated accounts if they choose to require them. In addition, the TSR mandates general disclosures for all telemarketers, including the total cost and any material restrictions or limitations of the service.

The Final Rule also prohibits misrepresentations about any debt relief service, including savings rates and whether the provider is a nonprofit entity. The Commission's Statement of Basis and Purpose, which accompanies the Final Rule, provides extensive guidance about the evidence providers must possess before they make specific claims about the amount of debt reduction they will obtain for consumers. First, providers must account for the additional debt and costs consumers incur as a result of interest, late fees, and other charges imposed by the creditors or debt collectors during the course of the program. Second, providers must account for the fees consumers pay to the provider in calculating the savings. Third, providers must include in their calculation of savings those consumers who dropped out or were otherwise unable to complete the program. Finally, providers must account for individual accounts that were not settled successfully. Thus, providers may not exclude debts that they have failed to settle – including those associated with consumers who dropped out of the program – from their calculations of the average savings percentage or amount of consumers' debt reduction.

The amendments become effective on September 27, 2010, except for the advance fee ban, which becomes effective on October 27, 2010. To help businesses comply with the new debt relief rules, the FTC staff issued a compliance guide describing the key changes to the TSR affecting debt relief services.[41]

V. Efforts to Educate Consumers

To complement its law enforcement and rulemaking, the Commission has made significant efforts to educate consumers about debt relief services and alert them to possible

[41] The guide is available at www.ftc.gov/bcp/edu/pubs/business/marketing/bus72.pdf.

deceptive practices. This past spring, the agency released a brochure entitled "Settling Your Credit Card Debts," which offers struggling consumers tips on seeking assistance with their debts and spotting red flags for potential scams.[42] This brochure, along with additional educational materials on debt relief,[43] is available at an FTC web page, www.ftc.gov/MoneyMatters.[44]

In addition, the Commission has conducted numerous educational campaigns designed to help consumers manage their financial resources, avoid deceptive and unfair practices, and become aware of emerging scams. For example, the FTC has undertaken a major consumer education initiative related to mortgage loan modification and foreclosure rescue scams, including the release of a suite of mortgage-related resources for homeowners.[45] Moreover, the agency has focused outreach efforts on a number of other issues faced by people in economic distress, including stimulus scams, rental scams, church "opportunity" scams, offers for bogus auto warranties, and solicitations for phony charities that exploit the public's concern for the

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42 The brochure is available at www.ftc.gov/bcp/edu/pubs/consumer/credit/cre02.shtm. Since its release in March 2010, the agency has distributed 20,400 print copies, and consumers have accessed it on the Internet over 13,700 times.

43 *Fiscal Fitness: Choosing a Credit Counselor* (2005), *available at* www.ftc.gov/bcp/edu/pubs/consumer/credit/cre26.shtm; *For People on Debt Management Plans: A Must-Do List* (2005), *available at* www.ftc.gov/bcp/edu/pubs/consumer/credit/cre38.shtm; *Knee Deep in Debt* (2005), *available at* www.ftc.gov/bcp/edu/pubs/consumer/credit/cre19.shtm. In the last two years, the FTC has distributed more than 271,000 print versions of these three publications combined, and consumers have accessed them online more than one million times.

44 Over the last six months, the Money Matters website has received approximately 60,000 hits per month.

45 NeighborWorks America, the Homeowners Preservation Foundation (a nonprofit member of the HOPE NOW Alliance of mortgage industry members and U.S. Department of Housing and Urban Development-certified counseling agencies), and other groups distribute FTC materials directly to homeowners.

welfare of our troops and public safety personnel in a time of crisis.

The Commission encourages wide circulation of all of its educational resources and makes bulk orders available free of charge, including shipping. We provide FTC materials to state attorneys general and other local law enforcement entities, consumer groups, and nonprofit organizations, who in turn distribute them directly to consumers. In addition, media outlets – online, print, and broadcast – routinely cite our materials and point to our guidance when covering debt-related news stories.

VI. Conclusion

The FTC appreciates the opportunity to describe its work to protect consumers from deceptive and abusive conduct in the marketing of debt relief services. Stopping the marketers of debt relief services who prey on consumers facing financial hardship is among the FTC's highest priorities, and we will continue our aggressive law enforcement and educational programs in this area.

<u>**APPENDIX A**</u>

FTC Law Enforcement Actions Against Debt Relief Companies

1. *FTC v. MCS Programs, LLC*, No. 09-CV-5380 (W.D. Wash., final order July 19, 2010) (debt negotiation), *available at* www.ftc.gov/os/caselist/0823216/index.shtm

2. *FTC v. Dominant Leads, LLC,* No. 1:10-cv-00997 (D.D.C., preliminary injunction issued July 8, 2010) (debt settlement and mortgage assistance relief services), *available at* www.ftc.gov/os/caselist/1023152/index.shtm

3. *FTC v. Asia Pac. Telecom*, *Inc*., No. 10-C-3168 (N.D. Ill., preliminary injunction issued June 17, 2010) (debt negotiation), *available at* www.ftc.gov/os/caselist/1023060/index.shtm

4. *FTC v. Advanced Mgmt. Servs. NW*, *LLC*, No. 10-148-LRS (E.D. Wash. filed May 10, 2010) (debt negotiation), *available at* www.ftc.gov/os/caselist/0923187/index.shtm

5. *FTC v. Group One Networks, Inc*., No. 09-CV-00352 (M.D. Fla., final order March 19, 2010) (debt negotiation), *available at* www.ftc.gov/os/caselist/0723230/index.shtm

6. *FTC v. Credit Restoration Brokers*, *LLC*, No. 2:10-cv-0030-CEH-SPC (M.D. Fla., final order Mar. 11, 2010) (debt settlement and credit repair), *available at* www.ftc.gov/os/caselist/0823001/index.shtm

7. *FTC v. JPM Accelerated Servs., Inc*., No. 09-CV-2021 (M.D. Fla., preliminary injunction issued Dec. 31, 2009) (debt negotiation), *available at* www.ftc.gov/os/caselist/0923190/index.shtm

8. *FTC v. 2145183 Ontario, Inc*., No. 09-CV-7423 (N.D. Ill., preliminary injunction issued Dec. 17, 2009) (debt negotiation), *available at* www.ftc.gov/os/caselist/0923183/index.shtm

9. *FTC v. Econ. Relief Techs., LLC*, No. 09-CV-3347 (N.D. Ga., preliminary injunction issued Dec. 14, 2009) (debt negotiation), *available at* www.ftc.gov/os/caselist/0923118/index.shtm

10. *FTC v. Select Pers. Mgmt., Inc.*, No. 07-CV-0529 (N.D. Ill., final order May 15, 2009) (debt negotiation), *available at* www.ftc.gov/os/caselist/0623215/0623215.shtm

11. *FTC v. Connelly*, No. SA CV 06-701 DOC (RNBx) (C.D. Cal., final order Oct. 2, 2008) (debt settlement), *available at* www.ftc.gov/os/caselist/0523091/0523091.shtm

12. *FTC v. Edge Solutions, Inc*., No. CV 07-4087-JG-AKT (E.D.N.Y., final order Aug. 29, 2008) (debt settlement), *available at* www.ftc.gov/os/caselist/0723025/index.shtm

13. *FTC v. Debt-Set*, No. 1:07-cv-00558-RPM (D. Colo., final order Apr. 11, 2008) (debt settlement), *available at* www.ftc.gov/os/caselist/0623140/index.shtm

14. *FTC v. Debt Solutions, Inc*., No. CV06-0298 (W.D. Wash., final order June 18, 2007) (debt negotiation), *available at* www.ftc.gov/os/caselist/0523002/0523002.shtm

15. *FTC v. Leshin*, No. 0:06-CV-61851-WJZ (S.D. Fla., final order May 5, 2007) (credit counseling), *available at* www.ftc.gov/os/caselist/0523146/index.shtm

16. *FTC v. Integrated Credit Solutions, Inc*., No. 8:06-CV-00806-SCB-TGW (M.D. Fla., final order Oct. 16, 2006) (credit counseling), *available at* www.ftc.gov/os/caselist/0323244/0323244.shtm

17. *United States v. Credit Found. of Am.*, No. CV06-3654 ABC (VBKx) (C.D. Cal., final order June 16, 2006) (credit counseling), *available at* www.ftc.gov/os/caselist/0423044/0423044.shtm

18. *FTC v. AmeriDebt, Inc.*, No. PJM 03-3317 (D. Md., final order May 17, 2006) (credit counseling), *available at* www.ftc.gov/os/caselist/0223171/0223171ameridebt.shtm

19. *FTC v. Innovative Sys. Tech., Inc.,* No. CV04-0728 (C.D. Cal., final order July 13, 2005) (debt settlement), *available at* www.ftc.gov/os/caselist/0323006/0323006.shtm

20. *FTC v. Nat'l Consumer Council, Inc.*, No. ACV04-0474CJC (JWJX) (C.D. Cal., final order Apr. 1, 2005) (credit counseling and debt settlement), *available at* www.ftc.gov/os/caselist/0323185/0323185.shtm

21. *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 8:04-CV-1674-T-17MSS (M.D. Fla., final order Mar. 30, 2005) (credit counseling), *available at* www.ftc.gov/os/caselist/0423029/0423029.shtm

22. *FTC v. Better Budget Fin. Servs., Inc.,* No. 04-12326 (WG4) (D. Mass., final order Mar. 28, 2005) (debt settlement), *available at* www.ftc.gov/os/caselist/0412326/0412326.shtm

23. *FTC v. Jubilee Fin. Servs., Inc*., No. 02-6468 ABC(Ex) (C.D. Cal., final order Dec. 12, 2004) (debt settlement), *available at* www.ftc.gov/os/caselist/jubilee/jubilee.shtm