



ACCORD

***The American Coalition of Companies
Organized to Reduce Debt***

October 9, 2009

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

Re: Telemarketing Sales Rule – Debt Relief Amendments, R411001
<https://secure.commentworks.com/ftc-TSRDebtRelief>

The American Coalition of Companies Organized to Reduce Debt (ACCORD) is a trade association representing debt settlement firms and related businesses that are committed ensuring the highest standards of professionalism and integrity to the debt settlement industry. ACCORD and its members support fair regulation of debt settlement practices that will fully protect the interests of consumers who can benefit from debt settlement services.

ACCORD is pleased to support the Commission's proposed amendments to the Telemarketing Sales Rule addressing the practices of debt settlement companies and other providers of debt relief services to consumers. In particular, ACCORD believes that the proposed ban on collecting fees under services are performed is a vitally important provision, which will benefit both consumers and the debt settlement companies that work for them.

Critical differences exist between the practices that ACCORD members advocate and those of other debt settlement firms, some of which have been accused of abusive practices by the Federal Trade Commission and other law enforcement agencies. The practices ACCORD advocates include:

- **Consumer and/or third party control of consumer funds being saved for debt settlement.** Consumers should own their bank accounts and transfers from the accounts should occur only at the consumer’s direction.
- **Strict screening of the suitability of a debt settlement program for each applicant.** Debt settlement is not appropriate for all consumers faced with high credit card debt. Debt settlement can be highly effective for consumers who are able to repay a meaningful portion of their debts within a reasonable time, usually three years or less, but who cannot hope to repay their unsecured debts in full. ACCORD members recognize that consumers having the means to fully repay their debts and consumer who can pay very little of their debt are typically not good candidates for debt settlement. The consumers should be advised to consider other alternatives, including personal bankruptcy when appropriate.
- **Full disclosure of all fees.** A consumer’s understanding of the amount and timing of fees for services is critical. Disclosures must be clear, meaningful, and promptly provided.
- **Full disclosure of program guidelines and consequences of debt settlement.** For a consumer to succeed in debt settlement, she must be willing to follow program guidelines and have realistic expectations. Debt settlement does not “repair” a poor credit history or achieve overnight results. Both debt settlement firms and their debtor clients are best served when consumers know what to expect.
- **Adherence to all fair trade practices guidelines in advertising.** Companies that use third party marketing firms must also ensure that the service providers meet the same high standards of integrity that the ACCORD member pledges to follow.

Companies that follow these practices are the most likely to have satisfied consumer clients. ACCORD believes that adhering to two additional principles will generate the respect the industry deserves from consumers, consumer advocates, law enforcement, and the consumer financial services industry.

1. **A ban on advance fees; and**
2. **Fees based on the savings achieved for consumers.**

These two principles protect consumers from the nightmare we all fear – a debt settlement program that leaves a consumer in worse financial shape than when he started the program. By agreeing to take no fee until a creditor is paid, and by basing the fee on the amount of savings negotiated, the debt settlement company will ensure that its client debtors always benefit from its services. ACCORD members have either already adopted

these two principles or pledge to transition their operations to incorporate them in the coming months.

With these two simple changes, a ban on advance fees and fees based on the success of debt settlement negotiations, abuses in the debt settlement industry can become past history. These principles align consumers' interests with their debt settlement company's interests – the consumer can become free of unmanageable unsecured debt and the company can earn an appropriate fee for its services.

Critics of the debt settlement industry sometimes point out the fact some consumers drop out of the program before a single settlement is negotiated. When that occurs today, the debt settlement company can usually collect its fee even though the consumer has received no benefit from the program. This is a situation ripe for abuse. Careful screening of prospective clients will reduce the chance of enrolling consumers for whom debt settlement is not a suitable choice. The debt settlement company will bear the risk that the consumer will not see the program through to the settlement of her debts.

Industry members will point out that many consumer “drop outs” do so through no fault of the debt settlement firm and that even the most careful screening will not eliminate the problem of drop outs. This is unquestionably true. ACCORD and its members have found, however, that careful screening, excellent customer service, and full disclosure greatly reduce this problem.

The ban on advance fees is an important step in transforming an industry to one that always works for consumer interests. Alone, however, it is not enough. Equally important is the concept of a fee based on the company's success for the consumer. It is this provision that ensures a consumer will not be left worse off by completing a debt settlement program.

Occasions will exist in which the debt settlement company cannot negotiate a significant savings for the client debtor from a particular creditor. It may seem unfair to the company to deny it a fee despite its best efforts on the consumer's behalf. This objection does not withstand scrutiny, in ACCORD's view. On average, creditors do negotiate significant reductions for appropriate consumers. Despite the occasional situation in which the success-based fee yields no fee, the debt settlement company will generally be able to earn fair fees while achieving valuable benefits for its clients.

Some industry members suggest that abuses can be prevented by simply capping the fees a debt settlement company can charge, based on the amount of a consumer's

unsecured debt. ACCORD disagrees. Such an approach still allows companies to collect fees even when the consumer receives no benefit. Even when a settlement occurs, under this approach the net cost to the consumer, including the debt settlement company's fees, can exceed the original debt. Indeed, ensuring a debt settlement company's right to collect a fee based on the enrolled debt *ensures a disconnect* between the value of the service and the size of the fee. In contrast, a success-based fee links the consumer's benefit and the amount of the company's fee, providing the debt settlement company with a strong incentive to achieve good results for its clients.

ACCORD applauds the Commission's work in proposing a rule to reform this important industry. We look forward to working with the Commission staff to create an effective final rule.

Sincerely yours,

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Counsel to ACCORD