

Able Debt Settlement, Inc.
A National Debt Settlement Services Provider

OCTOBER 2009 COMMENTS

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REGARDING:

Notice of Proposed Rulemaking
16 CFR Part 310 Telemarketing Sales Rule
Debt Relief Amendments, R411001

SUBMITTED TO:

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

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1. Introduction

Able Debt Settlement, Inc. (ADSI) appreciates this opportunity to provide the Federal Trade Commission with information and comments on ***Proposed Rulemaking*** for the ***Telemarketing Sales Rule with respect to Debt Relief Amendments, R411001***.

ADSI is a Debt Settlement Services Provider headquartered in Irving, (formerly Dallas) Texas from where it provides independent contractors with settlement support services enabling practitioners such as attorneys, accountants, business analysts, project analysts, financial analysts and other debt analysts to focus their energy and resources on activities assisting the growing number of individuals seeking “***Alternative Dispute Resolution***” (“***ADR***”) means for resolving debt issues with their creditors.

ADSI processes “***workout***”, “***turnaround***”, “***restructure***” and “***liquidation***” programs employed by practitioners to assist such as “***business owners***”, “***project managers***”, “***professional individuals***” and “***consumers***” with the development of a “***Debt Resolution Program***” based on the financial capabilities of their client. ADSI Programs are referred to as “***Qualified Settlement Programs***” as defined in the “***Debt Settlement Services Provider Business Models April 2006 Report***” and described later in this report.

ADSI Programs generally incorporate three broad categories of services involving “***client analysis***”, “***creditor processing***” and “***settlement support services.***” These services may be “***unbundled***” and provided by separate independent contractors or they can be “***bundled***” and collectively coordinated and or serviced by one contractor for the duration of a settlement program lasting from several months to several years. Although many of these services sound similar from one program to the next, the processes, procedures, disciplines and objectives may vary significantly thereby providing clients with a great range of applications through which to resolve a complexity of debt issues.

As a “***debt settlement support services provider,***” ADSI processes and services “***debt resolution (settlement) programs***” involving merchants, vendors, suppliers, financial institutions, issuers of credit and loans as well as other holders of debt instruments. ADSI processes client accounts with creditor collection-settlement departments, accounts outsourced to third party debt collection agents and attorneys, as well as those accounts sold and re-sold to debt buyers. “***The Benefits of Resolving Debt Issues Through Debt Settlement Programs***” is included within the **Background** information to illustrate why debt resolution through debt settlement programs is becoming the preferred choice of many individuals as their first effort to resolve debt issues with their creditors.

Principals of ADSI have been in the financial services industry since 1973 working with clients having ***secured, unsecured, priority*** and ***non-priority*** debt issues as well as complex debts involving cross-collateralizations, tie-ins, lines-of-credit, all-inclusive notes, wrap-arounds and other forms of debt instruments.

In an effort to constructively advance that growing sector of the financial services industry whose practitioners assist clients attempting to resolve debt issues with their creditors we offer the following:

2. Background and Definitions

The reference to “***Debt Resolution Services Provider***” shall be construed as a broad generalization of a services provider whose activities include intermediating between a person and a creditor of that person to resolve a debt issue and for which the services provider receives compensation or other valuable consideration. It shall be understood that “***debt resolution***” is a generic reference to practices commonly referred to as “***debt settlement,***” “***debt management,***” “***debt or credit counseling,***” “***debt consolidation,***” “***debt negotiation,***” “***debt adjusting,***” “***debt relief***” and other such references representing a variety of distinct activities providing a great range of competitive programs to an even greater range of clients. Therefore, the range and scope of business activities of any services provider should not be construed solely from a “***debt resolution services***” reference but from the limiting or expanding descriptions and information contained within its Company Profile and its incorporated Definitions.

The following Definitions are intended to provide an interpretation of those terms commonly used throughout the greater financial services industry when incorporated into a Debt Resolution Services Provider Company Profile describing subject matter and activities of the Services Provider. Within the financial services community there are a variety of disciplines, processes and procedures employed by Debt Resolution Services Providers that generally incorporate ***client analysis, creditor processing*** and ***settlement support services***. While the actual settlement of a debt may be an objective of a client, it is an incidental activity compared to the volume of work performed over Debt Resolution Programs usually lasting several years. Relevant financial information regarding any debt settlement when such activity is made a part of a Debt Resolution Program of a client is then archived by the Services Provider for several years after the settlement of the debt.

The activities described may be and are often performed by separate practitioners who provide their clients with services such as ***workouts, turnarounds, restructures*** and/or ***liquidations*** involving ***secured, unsecured, priority*** and ***non-priority*** debts and where one practitioner may serve as a general or prime contractor coordinating the efforts of an entire Debt Resolution Program. Such bundled service combinations may also be unbundled, for example, a client may wish to solicit only “creditor processing” services conveying informational reports between the client and their creditors over the course of a Program until predetermined events take place at which time the client or their designated party may step in and resume control of their Program. [This is a common practice for business, project and professional clients.]

In another scenario, an analyst may provide financial analysis to a client who later uses that work product to engage their creditors in a Debt Resolution Program and independent of the analyst. A services provider of “***unbundled***” client analysis that does

not include intermediation as described would not be considered a Debt Resolution Services Provider unless the Provider develops a “*bundled*” Debt Resolution Program for the client and assigns it to an affiliate whose services include intermediation as described.

Therefore, for the purposes hereof, the following Definitions shall apply to any Debt Resolution Services Provider when incorporated into their Company Profile, unless specifically stated to the contrary by the Services Provider.

Debt Resolution – *is a broad generalization to an activity having a purpose or objective in resolving a debt issue between a person and a creditor of that person.*

Debt Resolution Services – *is a broad generalization of an activity that includes intermediating between a person and a creditor of that person to resolve a debt issue.*

Debt Resolution Services Provider – *is a broad generalization of a services provider that provides debt resolution services and for which the provider receives monetary compensation or other valuable consideration from any source.*

Debt Resolution Model – *is a reference used to identify a particular basis upon which a debt resolution program is developed.*

Qualified Resolution Model – *is a program based on the mechanics of an economic or statutory discipline for resolving debt issues of an insolvent person.*

Objective Resolution Model – *is a program based on an arbitrary percentage of the debt of a person at the time of enrollment.*

Arrangement Resolution Model – *is a program based on prior arrangements with creditors of a person.*

Negotiated Resolution Model – *is a program based on the negotiating ability of a services provider.*

Debt Resolution Program – *is a discipline, procedure or service employed by a person to resolve one or more debt issues with one or more creditors of the person.*

Workout Program – *is a debt resolution program usually employed by a person having experienced an event from which the person is expected to recover financially within a specified time period. While creditors of that person may make concessions, there is an expectation that creditors of the person will receive all or nearly the entire amount stated within their respective accounts over a specified time period.*

Turnaround Program – *is a debt resolution program usually employed by a person having experienced an event from which the person is not expected to recover*

financially within a specified time period. There is an expectation that creditors of the person shall receive less than the amount stated within their respective accounts within a time period specified.

Restructure Program – *is a debt resolution program usually employed by a person having assets from which to either convert debt-to-equity, essentially resolving a debt in exchange for ownership in an asset, or, equity-to-debt, essentially borrowing against an asset from which funds may be used to resolve other debt. With respect to consumers, a debt consolidation loan using a personal residence to obtain monies from which to resolve other debt is a form of restructure and great caution should be observed when converting unsecured debt to secured debt using a personal residence as security for a consolidation loan.*

Liquidation Program – *is a debt resolution program usually employed by a person or a receiver appointed to serve on behalf of an estate of a person having no expectation that there will be any future financial resources beyond what is currently available for resolving debt issues with creditors of the person or their estate.*

Bundled Program – *is a combination of services offered by one or more services providers in a single debt resolution program.*

Unbundled Program – *is a debt resolution program allowing a person to optionally select services for inclusion in the person's specific debt resolution program.*

Insolvency – *is a financial condition experienced by a person when nonexempt assets no longer exceed liabilities or when cash flow can no longer meet debt obligations when they come due. [NOTE: The term insolvent, a financial condition, should not be inappropriately interchanged with the term bankrupt, which may be construed as a legal finding.]*

Debt Resolution Services:

Client Analysis – *is a program, product or service of a services provider employing a discipline or procedure having a means of delivering a financial assessment of a person to that person.*

Creditor Processing – *is a program, product or service of a services provider employing a discipline or procedure having a means of conveying financial information between a person and a creditor of that person.*

Settlement Support – *is a program, product or service of a services provider employing a discipline or procedure having a means of documenting, archiving*

and reproducing debt settlement information between a person and a creditor of that person.

Financial Literacy – *is a program, product or service of a services provider having an objective to improve a person’s ability to make appropriate decisions in managing their personal finances.*

Escrow or Trust Account – *is a bank account under the control of a services provider established to hold another person’s monies for any purpose other than monies owed the services provider.*

Debt Pooling – *is an activity of a services provider involving the comingling of monies of two or more persons in a common account having an objective of distributing said monies to creditors of the persons. [A practitioner having authority to distribute monies of a client to creditors of that client in any manner that does not require the discretion and action of the client is an activity consistent with the intent of any such debt pooling statute and should be included within its regulatory process regardless of where a client monies are held. A negative-option or other time-based automatic-execution provision requiring a client countermand instruction to stop a money transfer should not exclude a practitioner from a debt pooling regulatory process.]*

Credit Service – *is an activity of a services provider involving the facilitation of a buyer engaged in a transaction with a party other than the services provider, which includes the direct lending of money to a buyer, extending of credit through which a buyer may borrow money, or brokering an arrangement between a buyer and a direct lender of money for which the services provider is compensated by either the lender or the buyer. [Note: an intermediation by a services provider assisting a person to resolve a debt issue with a creditor of the person is not construed as a credit service.]*

Credit repair – *is an activity of a services provider involving the intermediation between a person and a credit reporting agency publishing financial information of the person for which an objective of the services provider is to alter the financial information of the person being published and for which the services provider is compensated.*

Debt Resolution Clients:

Business Client – *is an entity having a complexity of merchant, vendor, supplier and or financial creditor accounts with no direct relationship to any customer of the entity unless a customer engages in a common transaction with a specific creditor.*

Project Client – *is an entity having a defined set of merchant, vendor, supplier and or financial creditor accounts under common contract with a customer of the entity or where a project-customer may be or become obligated or liable for a debt of the Project.]*

Professional Client – *is a natural person having an identity or license under which they produce income.*

Consumer Client – *is a natural person not definable as a business, project or professional client.*

Insolvent Client – *is a person having a net disposable income after adjustment for allowable expenses, secured and/or priority debts less than the minimum payment requirements of the person's unsecured nonpriority debts and the person has no other or insufficient non exempt property, which could be liquidated to satisfy the unsecured nonpriority debts.*

Extreme Hardship Client – *is an insolvent person having financial resources below an arbitrary threshold established for resolving debt issues.*

Debt Resolution Debts:

Secured Debt – *is a financial obligation of a person in which the creditor or other holder of the debt instrument has an interest in property for which the creditor may have a right of repossession or foreclosure in the event of a default by the person.*

Unsecured Debt – *is a financial obligation of a person in which the holder does not have a specific security interest in any particular property of the person.*

Priority Debt – *is a financial obligation of a person having a legal, senior or personal advantage over other debt of the person. [Note: a personal advantage may be construed solely as a subjective decision of a person.]*

Nonpriority Debt – *is a financial obligation of a person having no legal, senior or economic advantage over other debt of the person.*

3. Range and Scope of Activities

Within the financial services industry there exists a service sector broadly referred to as the settlement industry, which services the credit industry when debtors fail to meet their debt obligations. *Collections* and *Settlements* are the most commonly applied terms to describe the functions of those practitioners engaged in servicing such non-performing accounts. Basically, *Collections* are for pursuing individuals in default and *Settlements* are for resolving debt issues with individuals in default. Nearly every merchant, vendor,

supplier, financial institution and other form of [creditor] has a collection and or settlement department.

In recent years the reference to “*debt settlement*” has become associated with what should be more broadly understood as “*debt resolution*” so as to incorporate a greater range of activities than simply the act of settling a debt, which is often but not necessarily the objective of a “*debt resolution program*.” As in the legal profession where arbitration and mediation have become preferred programs as an “*Alternative Dispute Resolution*” means of avoiding costly and time consuming litigation, “*debt resolution*” is becoming the program of choice for debtors whether they are insolvent or just frustrated with creditor manipulation and escalation of charges assessed their accounts after a debt was incurred. Even more frustrating to individuals is an attempt to contact a creditor through their non productive and perpetually *circular-call-center* apparatus where a person must respond to an endless numerical index and cross connections leading either nowhere or back to the beginning.

Individuals have several choices to consider for resolving debt issues that have origins based on an objective, manner in which a program is processed or the type of result an individual may be seeking. Some of the more common references having a distinct function include:

Debt –

Management – includes *debt-pooling* activities;

Settlement – includes *conveying and processing* activities;

Counseling – includes *distributing* financial educational programs or materials;

Consolidation – includes *restructuring* of debt;

Negotiation – includes *bargaining* for more favorable terms of a debt;

Relief – includes *defeating* the collectability of a debt; and

Repair – includes *correcting* misinformation of a credit reporting agency.

Many of these programs have activities which overlap and practitioners do not always follow the traditions or the origins of their respective titles. Today there remains little continuity within the financial services industry, states and federal agencies, or of more concern the courts in referencing such activities for which there is a growing problem. Many statutes in recent years have been reinterpreted by state administrators in a manner inconsistent with the origin, intent and history of their statute, which may also conflict with the common industry understanding of the language for which no uncertainty exists except through an unreasonable and unpublished interpretation by a state agency. This has led to much confusion, conflict and legal arguments involving violation and noncompliance issues. Some of the more broadly referenced statutes involving the debt resolution industry and interpreted to cover debt settlement programs are statutes governing activities such as:

Debt Pooling – includes *controlling and distributing* client funds to creditors of the client in a manner that does not require the *discretion and action* of the client;

Credit Services Organization – includes *lending* money, *extending* or *issuing* credit, or *brokering* either a loan or extension of credit for a buyer [Note that a statute that

deviates from the normal language of person, individual or consumer and uses the term buyer is clearly indicating the intent of application and it is unreasonable to expect anyone to conclude otherwise];
Credit Counseling – includes distributing financial literacy materials to a client;
Credit Repair – includes correcting client misinformation on credit reports; and the
Uniform Debt Management Services Act – a “Frankenstein-Bill” proposed by the National Conference of Commissioners on Uniform State Laws that stitches business activities together that have no reflective quality or symmetry of operation and that has no balance of power nor does it provide equal protection for the intended parties. Absent is any greater protection for the consumers of a state. This proposed legislation does little more than establish a self-regulating cartel that provides no benefit to the state. It not only fails to provide greater protection to consumers than they might enjoy without the statute but it also creates a serious conflict of interest by driving consumers of the state into creditor-controlled programs with the same creditors with whom a consumer is attempting to resolve their debt issues and over whom the state has no jurisdiction. There are many other defects in the construction, application, implementation, operation and enforcement of this legislative proposal for which it should be rejected by every state.

Regardless of the title adopted by practitioners describing or naming their business, they usually perform common activities including some form of analysis, processing and settlement or resolution. With respect to the subject matter under review, the following activities are generally consistent with bundled or unbundled services provided by one or more practitioners which may result in a person seeking debt resolution through a debt settlement program:

Client Analysis – involves analyzing the suitability of a debtor and their debt for a debt settlement program;

Creditor Processing – involves conveying and processing debtor-creditor information; and

Settlement Support Services – involves documenting and archiving debt settlement-resolution information.

There are three broad categories of clients that turn to debt settlement programs for resolving debt issues including:

Clients that have been subjected to financial conditions beyond anyone’s control;

Clients that have abused credit; and

Clients that have been abused by creditors.

While it would be nearly impossible for any legislative effort to control the financial condition of all citizens, credit abuse and creditor abuse are controllable as a function of prudent lending practices.

The range of clients previously discussed includes ***Business Owners, Project Managers, Professional Individuals*** and ***Consumers***, which can require variations of

common elements of a specific discipline and are therefore described and differentiated as follows with respect to “*Debt Resolution*” and “*Debt Settlement Programs*.”

Business – any activity involving the sale or transfer of goods and or services to any person in exchange for valuable consideration and whether the activity operates under a fictitious business name, as an artificial entity or as a natural person and such activity incurs debt unrelated to customers of the business;

Project – any **Business** activity that incurs debt directly related to a customer of that business or in any manner whereby a customer of the business may be or become obligated or otherwise liable for any debt incurred as a result of a **Project**;

Professional Individual – any natural person having a license or identity under which they produce income and has incurred debt;

Consumer – any natural person that is not involved in an activity defined as a **Business, Project** or **Professional** activity and having debt or debt issues to resolve. **NOTE:** an individual that is definable as a **Business, Project** or **Professional Individual** shall be considered as such regardless of whether any debts for which the individual is seeking resolution were incurred for personal purposes or as defined under **Business, Project** or **Professional** purposes.

4. Business Models

Within the Debt Resolution industry there are numerous programs for a client-debtor to consider and within the Debt Settlement sector of that industry there are four major distinctions in business models. The following was copied from the:

Debt Settlement Services Provider Business Models April 2006 Report
By: Ralph S. Lewis, COO, Able Debt Settlement, Inc.

Qualified Settlement Programs

... are based on the mechanics of a statutory discipline such as that of a reorganization plan under bankruptcy, a tax settlement plan with the Internal Revenue Service or other economic insolvency settlement plans. All such disciplines are dependent solely upon the financial capability of the individual.

While there are numerous events that cause financial hardships, a test for enrolling a client in a **Qualified Settlement Program** is generally one of **insolvency**.

The term “insolvency” describes a financial condition experienced by a person or business entity when assets no longer exceed liabilities or when cash flow can no longer meet debt obligations when they come due.

The financial condition of a client determines whether or not the client qualifies for a settlement program and what the client should be able to pay creditors over

time frames established by government agencies for other programs such as bankruptcy and tax settlements.

A person may qualify for one or more qualified settlement programs if the net disposable income of the person after adjustment for allowable expenses, secured and or priority debts is less than the minimum payment requirements of the person's unsecured nonpriority debts and the person has no other or insufficient non exempt property, which could be liquidated to satisfy the unsecured nonpriority debts.

NOTE: *The term insolvent, a financial condition, should not be inappropriately interchanged with the term bankrupt, which may be construed as a legal finding.*

While **Qualified Settlement Programs** are more difficult to implement and operate, original issuers of credit agree with their disciplines more than with other settlement programs. Although an individual **Qualified Settlement Plan** is based on non-negotiable settlement forecasts, creditors often submit settlement offers, which may be accepted by an individual if they fall within the financial capability of the individual and do not disrupt the settlement plan with respect to other creditors in the plan.

Payments to creditors under **Qualified Settlement Programs** may range from a single lump-sum payment to monthly settlement payments for the duration of the settlement program and commence within thirty to sixty days of the individual's enrollment in a program.

Qualified Settlement Programs accommodate the greatest range of individuals from those that are only marginally insolvent and can repay nearly all of their debts to those that have liquidated their assets due to conditions beyond their control and where there is no expectation of financial recovery.

Objective Settlement Programs

... are based on an arbitrary percentage of an individual's debt at the time of enrollment, which is used to establish a settlement objective. The percentage is applied to the debt and divided by the number of months of the program, which is typically thirty-six months and used to establish a monthly savings amount for the individual to fund the **Objective Settlement Plan**.

While **Objective Settlement Programs** are easy to implement and operate and original issuers of credit may have settlement arrangements with such service providers, many creditors object to the manner in which objective programs are marketed to the public. This type of settlement plan is generally described as a settlement objective and not guaranteed. Each account of the individual is negotiated with each respective creditor.

Payments to creditors under **Objective Settlement Programs** may range from a single lump-sum payment to monthly settlement payments for the duration of the settlement program and commence within thirty to sixty days of the individual's

enrollment in a program. However, few creditors accept monthly payments from such programs and the individual usually accumulates funds until there are sufficient funds to make a lump sum payment.

Objective Settlement Programs accommodate individuals having sources of funds at or in excess of the objective. However, individuals unable to meet the percentage settlement objective do not qualify and are generally not enrolled in a program.

Arrangement Settlement Programs

... are based on prior percentage settlements obtained by the service provider from the different creditors of the individual and where the individual's total settlement amount is the sum of the various percentages applied to the respective creditor balances at the time of enrollment. The settlement amount is divided by the number of months of the program, which is typically thirty-six months and used to establish a monthly savings amount for the individual to fund the settlement plan.

While **Arrangement Settlement Programs** are easier than "*Qualified*" programs to implement and operate and original issuers of credit may have arrangements with such service providers, there is a great difference in the settlement amounts represented to different creditors at the time of enrollment. Such inequitable settlements could be reversed in the event an individual fails the program and must convert to a bankruptcy proceeding. Many creditors object to the manner in which arrangement programs are marketed to the public as though such service providers have an agreement with the creditors rather than an arrangement. This type of settlement plan is not guaranteed and each account of the individual is generally negotiated with each respective creditor. Creditor controlled **Non-Profit Credit Counseling** adaptations of **Debt Management Programs** are a form of **Arrangement Settlement Plan**.

Payments to creditors under **Arrangement Settlement Programs** may range from a single lump-sum payment to monthly settlement payments for the duration of the settlement program and commence within thirty to sixty days of the individual's enrollment in a program. However, few creditors accept monthly payments from for-profit programs and the individual usually accumulates funds until there are sufficient funds to make a lump sum payment.

Arrangement Settlement Programs accommodate individuals having sources of funds at or in excess of the settlement amount. However, individuals unable to meet the monthly payment or that have insufficient funds do not qualify and are generally not enrolled in a program.

Negotiated Settlement Programs

... are not limited to any settlement discipline other than the negotiating skills of the service provider and the merits of the account stated by a creditor. Accounts of other creditors not having settlement issues with an individual may be kept current and do not need to be enrolled in the program. However, since most creditors will not

negotiate a current account the individual generally stops paying the creditor which can trigger “universal default” type clauses causing other creditors of the individual to increase interest rates and or close their respective accounts. This domino-effect usually ends up with the individual having to negotiate with most of their major creditors.

While **Negotiated Settlement Programs** are the easiest to implement and operate, they tend to produce the most nonproductive and adversarial activities except where the individual has a legitimate claim against the creditor or the account stated. Many providers of such negotiating services are attorneys that market themselves under such as “**debt elimination**” services and often engage creditors in legal actions attempting to defeat the account of the creditor. Although this appears on the surface to be an improper conduct, many creditors have failed to produce valid documents supporting their accounts as stated or agreements under which they have charged the individual with excessive fees, and in a few cases it has been discovered that the creditor engaged in a predatory lending practice.

Payments to creditors under **Negotiated Settlement Programs** may range from nothing to a single lump-sum payment or monthly settlement payments for the duration of a negotiated time period. Unfortunately, many accounts in programs requiring straight negotiations remain unsettled for years with no real exit strategy or closure for the individuals whose unresolved accounts also remain of record.

Negotiated Settlement Programs accommodate individuals having legitimate disputes with creditors as well as individuals that have become frustrated with what they believe are excessive and unfair charges being assessed their accounts.

* * *

The complexity of debt issues suitable for debt settlement programs is limited only by the resources of a practitioner. Although many consumers have secured, unsecured, priority and nonpriority debt, most debt settlement companies offering **Objective** or **Negotiated** programs and creditor controlled debt management companies offering **Arrangement** programs only resolve unsecured credit card debt. Attorneys acting within an *attorney-client* relationship that seek a judicial remedy in civil or bankruptcy court to defeat a creditor ability to collect on a debt are referred to as “**Debt Relief**” programs and not considered “**Debt Settlement**” programs. *Debt Relief* programs are generally pursued by clients as their second choice and course of action when creditors fail to accept their debt settlement program or upon harassment and disruptive activity on the part of debt collectors.

Approximately 90 - 95% of the debt resolution industry that offer debt settlement programs primarily to “consumer” clients operate hybrid models combining “Objective” disciplines for establishing the basis of a program and where “Negotiated” disciplines may be applied for a final resolution. However, 90 – 95% of the debt resolution industry that offer debt settlement programs to “business” clients applies “Qualified” disciplines as the basis for establishing nonnegotiable forecasts conveyed to all like creditors.

Able Debt Settlement, Inc. (ADSI) only provides or processes debt settlement programs applying “Qualified” disciplines for insolvent clients. ADSI does not provide “Restructuring” programs for consumer clients where a personal residence would be used as security to convert unsecured credit card debt to secured debt possibly jeopardizing a family home. Approximately 75% of ADSI clients are businesses or persons engaged in business activities as well as professional individuals having licenses or identities under which they produce their income.

5. Service Fees and Refunds

Service Fees and the manner in which they are paid by clients under contract for debt resolution or debt settlement services differ significantly between practitioners, business models and the various programs offered. Settlement programs that provide client analysis, creditor processing and settlement support services bundled within a single program usually negotiate their fee arrangement during or upon completion of the client analysis activity for which the fee may be based on factors discovered during the analysis process. Such activities are the more common and typical fees can range from 5% to 15% of the debt with a first portion of the fee being paid after the client analysis activity has been sufficiently completed for the client to decide on a course of action. Many service contracts mistakenly refer to this first stage payment as a retainer although they are actually received after the client analysis work has been completed and prior to the commencement of creditor processing. Fees may be based on a combination of factors including the amount of debt, number of creditors, type of program, condition of the client and duration of the program. The apportionment of a service fee or the weighted value of the various functions of a program such as those incorporating client analysis, creditor processing and settlement support services may vary from business to business and from program to program within the same business. In general:

Fees greater than 15% of the client debt are usually the result of:

- Unbundled services being solicited independently by a client;
- Complexity, level and duration of *Client Analysis* work performed;
- Excessive number of creditor and collector accounts requiring *Creditor Processing*;
- Complexity of required reporting of *Settlement Support Services and Archiving*; and
- Contingent fees based on client savings – usually around 30% of savings.

Fees below 5% of the client debt are usually the result of:

- Clients referred directly to services providers of bundled programs;
- Reduced rates for such as extreme hardships and liquidations; and
- Flat rates for liquidation programs and other no-charge accommodations.

Service Fees Payment Arrangements are usually established prior to the commencement of creditor processing and may be a single fee for the entire program, itemized for functions and activities of the program, or could be contingent upon the success of a single action such as negotiating a concession from a creditor of a client.

A first portion of a fee paid over the first several months of approximately 25% to 40% of an entire fee is common practice to accommodate the business activities of the practitioner engaged in client analysis and to offset public awareness activities and programs on behalf of the industry for which there is no fee or other compensation. Such activities include industry, institutional, state and federal conferences, workshops and requests for contributory comments such as this paper.

A second portion of a fee paid over one to several years during the creditor processing period compensates underwriting, processing the information received from a client and their files, establishing creditor processing files and or electronic files for such as monthly updates and batch filing status reports, communications and other correspondence on behalf of the client and in response to creditor-collector inquiries. Another function or activity compensated from the secondary payment of a remaining service fee involves the archival storage of clients files for several years after completion of a program thereby providing clients with settlement support services to reproduce or to attest to a documented resolution of a debt when or if necessary.

Discounted fees are offered by some practitioners for prepaid service fees or for any amount paid prior to its normal due date. Many business clients and clients involved with liquidation programs take advantage of such discounts.

Fee refunds when offered by practitioners may be total, partial or no refund at all subject to many factors including the type of client and program, the functions and work performed or lack thereof, or as simply stated that upon commencement there is no refund.

Total refunds are generally associated with contingency fee programs such as Negotiated Programs where the service may be limited to the practitioner awaiting the client having available funds at which point the practitioner engages a creditor in dialog with the objective of obtaining a specific result for the client. Such programs are sold on performance with little regard for other services beyond the art and skill of the negotiator. Practitioners often require a prepaid fee or a portion thereof to assure payment upon performance. Failing performance a client would expect a total refund. Practitioners that do not obtain some fee in advance find themselves in litigation with an insolvent client who may have had funds to settle but not to pay the practitioner and in which case the practitioner is now a creditor and could be forced to disrupt the client program.

Partial refunds are generally the result of multifaceted programs and where for a variety of reasons a client cancels the program having prepaid fees in excess of those earned at the time of cancellation. Many practitioners break a program down into functions and provide a weighted value for each function. There is no continuity in this process and in an effort to maintain an open and competitive market there should never be a mandated weighted value associated with programs, products or services. Assigning

values to distinct functions is little more than price fixing and tends to reduce services to the minimum while maximizing the return from allowable fees.

No refunds are generally associated with complex business clients but could involve any client having a complexity of debt issues requiring specific client related knowledge and experience for which a client has the right to hire in their normal course of business. Work product produced by such practitioners constitutes labor and for which upon completion is now work product specific to the client and available to present or have presented or otherwise conveyed to an intended recipient and for which a client is not entitled to a refund. Any work solicited in the normal course of business regardless of the type of client or program is subject to the negotiated terms and conditions of the parties and to interfere with this basic concept of the free market enterprise usually deprives the market place of professionally competitive goods and services and reduces the market to generic off the shelf activities.

Fee variances for unbundled services may also provide a client with additional options for those not seeking all of the services offered. Clients having already received analysis from their own practitioner may only wish to solicit creditor processing services until such time that a creditor authorizes an account for resolution at which time the client may direct communications to a designated individual for resolving the account. Many creditors sit on nonperforming debt for at least six months before it is moved to a department or agency authorized to resolve an issue and most clients do not wish to respond to “*circular call centers*” several times a day where if they do reach a live person they are informed that any prior dialog to resolve the debt issue has been cancelled and they will need to rehash the entire dialog again. Few of these call center respondents are ever authorized to consider the financial condition of a client and have predisposed guidelines based upon the demands of the holder of the account. This nuisance encountered by clients generates the largest number of clients seeking debt resolution programs so that they do not have to waste their time with such frustrating creditor activities.

6. Marketing, Advertising and Affiliates

Marketing and Advertising are the two broad categories by which a company creates market awareness of its name-brand, products and or services. This commentary-report may be thought of as a form of marketing in that a reader could find interest and make further inquiries for themselves or others with whom they share the information and which could result in a contractual arrangement. An advertisement on the other hand is generally designed to promote a specific product or service sufficiently to encourage a person to respond directly to the advertisement. However, marketing and advertising are noninvasive activities and each requires the action of a person to initiate contact. Telemarketing laws were intended for unsolicited outbound caller-contact with persons directly and with an objective of selling on contact. The millions of persons signing petitions and placing their names on the “Do-Not-Call” lists never intended their voices to be expanded to cover marketing or advertisements where they themselves initiate the

contact. A returned call or other response by a company to an inbound inquiry is not and should not be considered or construed as being consistent with telemarketing and the Telemarketing Sales Rule is an inappropriate forum to regulate business activities in an arbitrary manner.

Categorical Information posted on the early internet was scrutinized by volunteer topical-index managers. Today this same activity is orchestrated by such as “yellow page” directories having scoured the internet for websites actually related to popular key words being searched to present the viewer with websites or information previously cached, controlled and presented by the yellow page website. Unfortunately, managers of such directories create their own recitals to attract viewers whom may later search and find the actual company website for direct contact. In such instances, incorrect or misleading information could have been conveyed to the person and for which the actual company had no knowledge until the person filed a complaint alleging such as a deceptive advertisement. Another problem occurs when search engines “cache” information that may be outdated and intentionally removed from a company website and yet is presented to a viewer and linked to the current or active website in a manner with which the website owner has no knowledge or control.

Advertising mediums such as TV, radio and print mediums remain the target for much of industries marketing and advertising programs. However, it’s the internet super highway that has captured potential client attention as the preferred avenue of travel to search, learn and compare companies, programs and prices for nearly any industry topic imaginable. Companies that publish and post useful and informative subject matter on their websites may have high numbers of linking sites and discerning search engines provide higher search-retrieval placement positions to these websites in response to an inquiry. This is a most powerful tool in the hands of potential clients provided they have the freedom of choice to entertain offers in this open and competitive market place.

Affiliates are independent contractors having knowledge of the programs and services offered by a debt resolution company and may serve in general, prime or subcontractor relationships incorporating or “bundling” their activities with those of the resolution company to provide a more cost effective and efficient program for the client. Such affiliate relationships provide smoother transitions of activity and transfers of information across secured networks with a least number of potential data errors. Anyone attempting to retrieve 6 point character print from the second or third scan-fax of a document will understand this point.

The most common affiliate relationship involving debt resolution-settlement programs incorporates the activities of analysts and creditor processing with either of them providing the settlement support services. Where resolution-settlement programs imitate personal or private receiverships the client analyst usually provides the settlement support services and archival records keeping with the resolution-settlement service provider providing creditor processing until such time as an account becomes authorized

by a creditor for resolving a debt issue at which time the processing company notifies the affiliate and provides the creditor contact information.

Affiliate relationships can include any number of service providers where one is usually designated as a prime contractor and coordinates the activities, communications and conveyances between a client and creditors of the client until such time that a predefined event requires others to act. Typical affiliates may include such as business, project or financial analysts, accountants, attorneys, tax consultants or other financial consultants.

Other affiliate activities include such as educational and technical training or support services, administrative and clerical support services, escrow or trust fund and receivership or debt management services and other client specific activities.

Marketing Affiliate and **Advertising Affiliate** are substantially different activities and should not be inappropriately interchanged by reference.

Marketing affiliate activities involve general advertisement of catalog or yellow page materials, which requires technical or human resources providing information assisting a person to self-analyze their condition, direction and possible course of action. Such activities are work product related and serve as a preliminary client analysis helpful to both the client and any future analyst now working with a more informed person. It is customary for a service provider to pay a marketing affiliate a fee as a reimbursement for the affiliate cost of providing prescreening activities benefitting the service provider as well as the now potential client. The fees associated with such activities depend on the level of prescreening activities and can range from tens of dollars to hundreds of dollars.

Advertising affiliate activities involve specific advertisement of a product or service by the advertising affiliate whom does not prescreen a party responding to the advertisement. In such activities the responding party to the advertisement is directly identifiable through a mechanism of the advertisement and forwarded or conveyed product or service related information or materials or upon confirmation of an interested party may be transferred directly to a company specifically offering the product or service. Such latter activities are sometimes referred to as warm transfers and such advertising affiliates more closely resemble an outsource activity providing human or technical resources directly to the recipient company. In addition, the specific advertisement is generally reviewed and approved by a potential recipient of a responding party so as to meet certain requirements of the recipient company as well as compliance issues that may be associated with the specific product or service.

It should be noted that not all marketing or advertising companies have any prior arrangement with product or service providers and simply direct interested parties to indexes of companies as a service to attract viewers supporting peripheral advertisers on high-traffic websites.

7. Benefits

There are many factors considered by a debtor seeking an “*Alternative Dispute Resolution*” (“*ADR*”) means of resolving debt issues satisfying the specific wants, desires and needs of that debtor. Debt Resolution involving a “*Debt Settlement Program*” is one choice that provides benefits to more than just the debtor.

The Benefits of Resolving Debt Issues Through Debt Settlement Programs

By: Ralph S. Lewis – January 2009

Within the greater *Financial Services Industry* there are several distinct programs for resolving financial issues affecting debtors. The purpose for this paper is to describe for the reader those benefits commonly associated with business practices and activities that resolve debt issues of a debtor through personal or private receiverships sometimes referred to today as a “*Debt Settlement Program*.” An objective of this paper is therefore to assist the reader in establishing reasonable expectations when taking advantage of such program activities that benefit States, Creditors and Debtors through a range of disciplines involving a complexity of debt issues.

A Debt Settlement Program may be suitable for *business owners, project managers, professional individuals or consumer [clients]* consulting with their *attorney, accountant, business, project or financial analyst* or other professional **[practitioners]** assisting their clients with the development of *workout, turnaround, restructure or liquidation [programs]* as a course of action for resolving a complexity of financial issues involving *secured, unsecured, priority and nonpriority [debts.]* One of the more complex benefits is realized when a small business owner has personally guaranteed loans of an ailing business and resolution through bankruptcy requires a Chapter 11 for the business and a Chapter 13 for the owner, which usually converts to a Chapter 7 due to a lack of continued compensation. Practitioners refer to such activities as Chapter 31s (i.e. 11+13+7=31) and require three bankruptcy attorneys, three trustees’ and sets of court fees as well as oversight and approvals associated with bankruptcy procedures. As an alternative, one debt settlement program could be considered as a single program and course of action for resolving the entire complexity of issues.

In recent years the *Financial Services Industry* has adopted a distinction between “*debt management*,” which includes an activity commonly referred to as “*debt pooling*,” from “*debt settlement*,” which does not.

Debt pooling – is an activity whereby a practitioner commingles monies of two or more clients in a common account for the purpose of distributing those monies to creditors of the clients in a manner that does not require the discretion and action of the clients.

While holding client monies in an account controlled by a practitioner is an obvious test for debt pooling, a practitioner that has the authority to distribute client

monies from any account in any manner that does not require the discretion and action of the client should be subject to regulatory controls providing greater protection to the client than they would have without such protection.

The following terms and statements identify the four basic business models through which practitioners offer a variety of “*Debt Settlement Programs*” to their clients:

- **Qualified** – programs based on the financial capabilities of an insolvent debtor.
- **Objective** – programs based on an arbitrary percentage of the debt of a debtor.
- **Arrangement** – programs based on the creditor requirements of a debtor.
- **Negotiated** – programs based on a practitioner argument on behalf of a debtor.

The following benefits may vary between programs and their respective practitioners and not all practitioners employ or apply the disciplines associated with the titles under which they provide services. Therefore, each reader is encouraged to make inquiries of any practitioner, program or their respective activities to establish realistic expectations while considering other options and a course of action.

State, Creditor and Client Benefits

State Benefits

- Programs are typical tax-paying activities.
- Programs are Industry funded and do not require state subsidy such as bankruptcy and state receivership programs.
- Programs do not require state funded or subsidized facilities such as courts or offices.
- Programs do not require state funded or subsidized human resources such as Judges, administrators, receivers, clerks and other support staff.

Creditor Benefits

- Programs increase Creditor net collections by an average of 250%, the average creditor nets less than 20% of a debt through their own collection activities while the average voluntary settlement is nearly 50% of the debt.
- Programs can reduce Creditor collection activities by as much as 90%, since the creditor need not pursue debtors submitting and conveying financial information.
- Programs avoid Creditor outsourcing expenses for third party debt collectors saving the creditor a typical 30% of the amount collected since no pursuit is required.
- Programs avoid Creditor loss resulting from the sale of nonperforming debts for which creditors generally receive only 5% to 7% of the debt from debt buyers.

- Programs maintain Creditor Goodwill and retain future Client Relations from which they will once again provide and receive business.

Client Benefits

- Freedom of choice from a variety of Competitive Business Models:
Qualified, Objective, Arrangement or Negotiated
- Freedom of choice from a variety of Resolution-Settlement Programs:
Workout, Turnaround, Restructure or Liquidation
- Option of Bundled and Unbundled Services:
Client Analysis, Creditor Processing and or Settlement Support Services
- Option of selectively including or excluding classes of debts or creditors:
Secured, Unsecured, Priority and Nonpriority
- Range of Clients:
Business Owners, Project Managers, Professional Individuals and Consumers
- Client Analysis:
This process provides tools, schedules, worksheets, disciplines and assistance enabling a client to develop a forecast based on their income and expenses as well as an evaluation of their types and classes of debts in a manner that may be conveyed to their creditors in a more structured format.
- Creditor Processing:
This process allows the client to update their creditors on a monthly basis for the entire duration of the program and avoid monthly calls to circular-call-centers and repetitious nonproductive debt collection calls.
- Settlement Support Services:
This process conveys financial information between clients and their creditors documenting and archiving for up to seven years after completion of a program all communications for the future benefit of the client in the event a creditor, debt buyer or debt collector attempts to make a false claim on a resolved account.
- Programs are based solely on Client financial capabilities.
- Programs may involve a variety of disciplines covering a complexity of debt issues.
- Programs are not controlled by the Creditors of a Client.
- Programs can be modified to accommodate Client financial changes.
- Programs can be processed in real time without delays associated with formal hearings.
- Programs provide Client with subjective benefits through having resolved their debt issues themselves and in a manner that improves their productive mental outlook by avoiding the stigma that many individuals associate with bankruptcy.

Debt settlement programs are a realization in “*tough love*” and not soon forgotten by Clients having gone through the process. For this reason Clients are

generally better prepared in the future to avoid the pitfalls that may have led to their becoming insolvent.

* * *

Another benefit not mentioned above regarding private or personal receivership aspects of debt resolution under a debt settlement program is that most practitioners allow a client-debtor to cancel or terminate their program at any time for any reason or for no reason.

8. Termination

Termination of a program by a client may result from any one of several factors such as a worsening of the financial condition caused by a reduction in business or wages, or the opposite, an individual obtains a significant contract or increase in wages for which they no longer need such services. Another scenario could be that after a specified time period the major creditors failed to respond or were unwilling to consider the forecast or offering of the client-debtor and the effort is terminated. Most alternative dispute resolution programs such as debt settlement programs involving insolvent client-debtors provide a **three day right of rescission** prior to the commencement of creditor processing and allow their clients to cancel or otherwise terminate the remainder of a program at any future time for any reason or for no reason.

Creditor Debt Collector Deceptive Practices activities causing premature termination of a program result when creditor debt collectors intentionally provide clients with false and misleading information in an attempt to deceive the client by claiming that their debt resolution company has not communicated with their creditors or that they don't work with debt resolution companies. Fortunately, most clients are intelligent enough to remind a debt collector that they too are a third party and that if they don't wish to work with the client's representative then the client doesn't wish to work with them and to send the account back to the original creditor.

Attached hereto marked as **Exhibit A Page 1 of 2** is a false and deceptive retraction letter drafted by the manager of a debt collection agency representing a major financial institution and their card servicing company attempting to coerce a person into filing false claims against the client's settlement company along with a settlement offer of 39.9% of their stated account marked as **Exhibit A Page 2 of 2** attached thereto. Pages 1 & 2 of Exhibit A were sent via the same email to the settlement client.

Attached hereto marked as **Exhibit B** is a false and misleading notice sent to a client of a settlement company forwarded by the same financial institution referenced in **Exhibit A** clearly demonstrating that the financial institution has received notice that the client is working with an attorney or agency to resolve their debt issues and that the institution is disregarding the client notice but is in fact recognizing the financial hardship conveyance of the settlement company as demonstrated by the 70% settlement offer being made by the institution.

Attached hereto marked as **Exhibit C** is a deceptive creditor debt collector dunning letter implying a false power and or authority that has been intentionally sent to a client of a settlement company claiming that the third party representative of the creditor does not work with third party settlement companies representing client-debtors. Both "... Card Services" and "... Services, Inc." are third parties and neither has any such power or authority to prohibit or interfere with freedom of choice of such as the debtors in receipt of their correspondence.

The most egregious of activities causing termination of individual programs results when creditor debt collectors in an attempt to gain an advantage over other debt collectors file lawsuits against insolvent debtors disrupting their voluntary effort. In such cases one disruptive creditor activity can cause an individual to cancel the entire effort and in the event such individuals are entitled to a discharge under Chapter 7 of the Bankruptcy Code then none of the unsecured creditors receive anything. In another scenario, an individual may not pursue a remedy under bankruptcy and instead apply a court ordered priority-preference obtained by a disruptive creditor to reduce the forecasts available to the remaining like creditors. It is not the responsibility of a client-debtor to defend the respective rights of creditors in a frenzied race to the court house in their attempt to cannibalize each other's remains of an insolvent estate.

State and Federal Legislators should act to prevent creditors that are receiving "*bailout-welfare*" checks for mismanaging their own businesses from receiving monies to replace those monies forfeited as a result of their own actions to disrupt voluntary debt resolution program. It is absurd for Legislators to not Act to prevent creditors and their debt collectors from disrupting voluntary resolution programs of insolvent individuals whom may terminate such efforts and file bankruptcy in contradiction to the constructive notice from Congress for individuals to make such efforts to avoid bankruptcy.

9. Completion

Completion of a debt resolution program occurs at several stages including, Client Analysis, Creditor Processing and Settlement Support Services, which includes archiving records for several years after the program has ended.

Client Analysis is considered completed when a client has received industry, business and or program information sufficient to decide on a specific program and course of action; the client has provided sufficient information as to apply the disciplines of the preferred program demonstrating a reasonable expectation that the client may receive the expected benefits of the program; that if the program is to be bundled with additional services or service providers that relevant disclosures be made; and when the analysis is bundled with other services that either the total fee or a itemization of the fees along with the terms of payment of said fees be disclosed and included in the final work product incorporating the client analysis embedded within an established program meeting the objectives of the client. It should be noted that a client may decide to process

and resolve debt issues themselves and it is not a requirement that an analyst bundle their work product with any other services.

Creditor Processing is considered completed at the earlier of either termination of the program or the maturity date incorporated within the program, unless otherwise extended by the parties. Creditor Processing accounts for most of the actual work involved in a settlement program although the apportionment of fees when or where applicable are not weighted on work but the value associated with such work. Creditor processing commences when a service provider receives and processes a client program in accordance with the disciplines of that program.

Settlement Support Services is considered completed at the earlier of either the termination of the program or upon the resolution of the accounts described within the program. Programs including settlement support services that are terminated prior to the resolution of all the accounts stated within the program may be considered partially completed and for which compensation may be based upon the completed work and the partially completed work. Although many creditors provide settlement documents to third party settlement companies, other creditors forward such documents directly to clients of the settlement company and the settlement company may only receive notice that an account has been successfully resolved without full documentation. There is no obligation for a client to provide final arrangement documents with their resolution-settlement company only that the account has been resolved. Given the nature of “Project” clients a service provider may insist that formal documentation be provided on all settlements prior to any further conveyances are made. Unfortunately, some consumer clients fail to provide copies of their documents, which can reduce the effectiveness of the archival services in retrieving settlement support documents at some future point in time. It should be noted that debt settlement programs are *debtor-in-possession* programs in that it is the responsibility of the client to pay or direct payments to their creditors. Regardless of the nature of the settlement procedure, the service provider under contract with a client is the procuring cause of any resolution or settlement during the program even when creditors claim they do not work with debt resolution-settlement companies. Evidence of such a claim by a creditor marked as **Exhibit B** attached hereto demonstrates the creditor is acknowledging notice from the client’s agency or firm having conveyed the client’s financial hardship to the creditor and the creditor is making an offer to settle their account at 70% of the stated balance directly to the client as a result of that notification.

Archival Services sometimes referred to as records keeping is stopped at the termination or completion of a program and the information, documents and other notes if they exist are available upon request by the client for seven years after termination or completion of the program. In certain instances the service provider may provide documents attesting to or otherwise certifying the authenticity of specific documents or information retrieved by a client as well as other testimonials describing events and activities that may have transpired during the program.

10. Comments on FTC Amendments

The following responses address more specifically those areas of interest posted by the Federal Trade Commission.

310.2 Definitions

The term **310.2 (m) “Debt Relief”** is a poor choice of terms for the broad definition of activities included within the **Telemarketing Sales Rule (TSR) Debt Relief Amendments (DRA)** due to the fact that within the greater financial services industry *debt relief* is a one-dimensional activity associated with practitioners that primarily seek to defeat a creditor’s ability to collect on a debt instrument. However, the only rationale basis for restricting payment of any service fee until after successful results, which is commonly understood as a *contingency fee*, is consistent with debt relief and not consistent with the breadth of activities interpreted within the **TSR DRA** definition or as described within this **Report** and therefore the service fee restriction proposed is inequitable and unreasonable. A more appropriate reference might be **“Debt Resolution”** or **“Alternative Debt Resolution”** so as to eliminate uncertainty as to the activities and practice areas within this sector of the financial services industry is to be included. A larger group of practitioners included by definition are members of **T.M.A. (Turnaround Management Association)** acting within the **Turnaround Industry** of which this **Reporter** has been associated since 1973 and whose activities go far beyond those of the intended practitioners described in the documents accompanying these Proposed Rules. **It would be unreasonable and have absurd consequences for these Proposed Rules to apply to a practitioner involved with turning around (salvaging) a construction-project client or a business client.**

The definitions **310.2 (cc) “telemarketer”** engaged in **310.2 (dd) “telemarketing”** include the receiving of inbound calls even when initiated by a person in response to whatever could be interpreted (or alleged) as a plan, program or campaign essentially regulating the use of the telephones of a service provider in a manner subjecting the provider to possible private party actions **[310.7]** representing the same parties that initiated the call. Non-Telemarketing marketing and advertising are noninvasive activities and each requires the action of a person to initiate contact. A returned call or other response by a company to an inbound inquiry is not and should not be considered or construed as being consistent with telemarketing and the Telemarketing Sales Rule is an inappropriate forum to regulate business activities in such an arbitrary manner that leaves open opportunities for frivolous claims and private party actions. As demonstrated within the attached **Exhibits A, B & C** unscrupulous creditor debt collectors will incite frivolous actions should these Proposed Rules become enforceable.

310.3 Deceptive telemarketing acts or practices.

310.3 (a)(1)(ii) “All material ...” this language is overly broad and would be more appropriately stated as **“All reasonable material...”**

310.3 (a)(1)(viii) *“In the sale of any debt relief service,”*

In general – *what constitutes a “bona fide settlement offer” as opposed to what might be construed as a non bona fide settlement offer?* **For example: Able Debt Settlement, Inc. only represents and conveys information regarding nonnegotiable forecasts of insolvent parties based solely on the financial capability of the client.**

(A) *“The amount of time...”* This is not appropriate language for all programs currently available to all clients especially business or project clients that may be recovering from events where there may be a reasonable expectation of recovery but absent definitive time for that recovery, which could also be dependent upon market conditions beyond anyone’s range of knowledge other than a best guess. **For example: Able Debt Settlement, Inc. provides every creditor with a monthly status update commencing with creditor processing and continuing for the duration of every program and any creditor may authorize and convey a confirmation of an acceptance at anytime.**

(B) *“... the amount of money...”* This is not appropriate language for all programs currently available to all clients. **For example: Programs processed by Able Debt Settlement, Inc. are not dependent upon an accumulation of money – this is a fallacy and actually a defective policy of some creditors and their debt collectors that prefer to wait for a lump sum rather than to accept a monthly payment over the course of a resolution program even though such programs benefit the creditor.**

(C) *“that not all creditors or debt collectors will accept...”* While this may be a true statement with respect to early stage nonperforming accounts, rarely will a creditor not eventually accept or be forced to accept a legitimate proposal from an insolvent debtor or end up selling that account to a debt buyer that stands to receive a forecast averaging 43 - 48% of a debt purchased for 5-7% of the debt balance. The alternative is a judgment subject to garnishment restrictions (another forecast) whereby the creditor receives payments or a client converting their program to a bankruptcy and for which the creditor either receives a forecasted payment or possible nothing at all.

(E) *“to the extent that any aspect of the debt relief service relies upon or results in the customer failing to make timely payments...”* **this is an absurd provision that describes actions and activities of creditors and their debt collectors against insolvent persons and not the result of a resolution program. However, Able Debt Settlement, Inc. does disclose to their clients that creditors and debt collectors may engage in such activities.**

(F) *“that savings a customer realizes... may be taxable.”* **This is not an accurate statement if a client is insolvent prior to or during the forgiveness of a debt. While**

Able Debt Settlement, Inc. does not provide legal or tax advice they will inform tax professionals of IRS Form 982 and make taxable income disclosures to their clients.

310.3 (a)(2) “Misrepresenting, directly or by implication...”

310.3 (a)(2)(x) “Any material aspect of any debt relief service, ...” this provision makes false statement regarding the effect of the service, which are actually the effects of creditor and debt collector activities.

310.4 “Abusive telemarketing acts or practices.”

310.4 (a) “Abusive conduct generally.”

310.4 (a)(5) “Requesting or receiving payment of any fee or consideration ...until... [settled]...” this provision assumes that all practitioners provide the lowest level of services involving little more than a one-dimensional debt negotiation. Further, this provision establishes creditors as a self regulating cartel that may arbitrarily discriminate against practitioners not fulfilling the demands of the creditors simply by controlling their compensation and thereby creating a conflict of interest between the practitioner and their client. This provision not only fails to provide a greater protection to the client than they would enjoy without this regulation it is deceptive unless it discloses that unless the practitioner presents an offer acceptable to the creditor regardless of the financial condition of the client that the practitioner cannot be paid or receive compensation. It would be absurd and unreasonable to expect a service provider to provide any meaningful services to a client over three to five years without compensation. This provision would reduce all services to nothing more than a waiting game serving no real benefit to the client, the creditor or the practitioner. This provision especially interferes with business and project clients in need of real services jeopardized under these Proposed Rules that not only damage the businesses but puts at risk jobs as well.

310.7 Actions by States and Private Persons

Should be modified to mandate private actions be filed first with the Commission for applicable interpretation at least until more constructive notices could have been given to avoid law suits against unsuspecting practitioners. An alternative is to acknowledge that those areas not addressed are not covered under these proposed rules and thereby carved out for compliance purposes.

A. General Questions for Comment

Please provide comment on each aspect of the proposed Rule, including answers to the following questions

(1) How would the proposed Rule impact different entities or the provision of different types of debt relief services? Please provide as much detail as possible. Useful information would include information about the services provided by particular entities or types of entities, and how different entities perform their services. SEE REPORT Sections 3 & 4 and 10

a. In particular, do entities differ in how they currently collect their fees, e.g., what payments are required before the services are begun, what payments are required while services are being provided, and what payments are not collected until after the work is completed? Which providers of debt relief services currently require consumers to make some payment before services are completely provided? Which entities do and do not require such payments? How much of the total fee do the various providers charge prior to completion of the services being offered?

SEE REPORT Section 5 & 10

b. How do the various types of entities measure their success in providing the represented services and what level of success are they able to achieve? (Please provide data to support these representations.) **SEE REPORT Sections 7, 8, & 9**

(2) What would be the effect of the proposed Rule changes (including any benefits and costs), if any, on consumers? Would the benefits to consumers differ depending on the service offered or the type of provider offering it, and if so, how? What evidence is there that consumers are or are not misled in the promotion and sale of different types of goods or services or by different providers? Please provide as much detail as possible. **SEE REPORT Sections 10**

(3) What would be the impact of the proposed Rule changes (including any benefits and costs), if any, on industry? **Creditors will suffer from the lack of professional assistance provided deeply indebted persons whose alternative maybe bankruptcy for which creditors receive less – SEE ALSO REPORT Section 7.**

(4) What changes, if any, should be made to the proposed Rule to increase benefits to consumers and competition?

A federal program should be adopted that creates an extra-judicial power to be asserted by consumers who have enrolled in a debt resolution program that prevents harassment from debt collectors and lawsuits from debt collection attorneys once an individual enrolls in a program. This could be provided within a notice delivered to the original creditor and or their third party representative as an “automatic stay” notice blocking further contact directly with the consumer as long as they remain in and comply with their debt resolution program.

(5) What changes, if any, should be made to the proposed Rule to decrease any unnecessary cost to industry or consumers? **SEE REPORT Sections 10**

(6) How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment? **In all probability it will open them up to frivolous lawsuits anyone of which could jeopardize their business. With respect to the fee arrangement it would be expected that no new companies would be able to survive the start up costs and operational expenses awaiting compensation and therefore creates an anticompetitive market depriving the client of their freedom of choice.**

B. Questions on Proposed Specific Provisions
Section 310.2 – Definitions

(1) Does the definition of “debt relief service” in proposed Section 310.2(m) adequately describe the scope of the proposed Rule’s coverage? If not, how should it be modified? Is the proposed definition

accurate? Are there alternative definitions that the Commission should consider? Should additional terms be defined, and, if so, how? What would be the costs and benefits of each suggested definition?

SEE REPORT Section 10 subsection 10.2 Definitions

(2) Are there reasons to broaden the definition of “debt relief service” to include the word “product”? Would the addition of “products” allow the Rule to reach additional deceptive and abusive practices engaged in by sellers and telemarketers of debt relief products and services? Are there reasons to include “products” to ensure that the scope of the definition is appropriately broad to anticipate likely changes in the marketplace? Why or why not? **NO**

(3) The definition of “debt relief service” in proposed Section 310.2(m) would apply to “any service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors.” (emphasis added). The Commission has so limited the provision in anticipation of covering mortgage loan modification and foreclosure rescue services under its new rulemaking authority with respect to mortgage loans. As a result of this determination, with a few exceptions, only outbound telemarketing calls to sell mortgage loan modification or foreclosure rescue debt relief services would be covered by the TSR. Is this determination appropriate? Why or why not? **Unless or until such time Congress acts to force financial institutions to cooperate with third party representatives controlling the activity of only one party to a transaction is meaningless.**

(4) Should any entities encompassed by the definition in proposed Section 310.2(m) be excluded or exempted from this definition? If so, which entities? Why or why not? **The only entities that should be included within the proposed definition are those that provide only one-dimensional negotiating services to settle a debt without regard to the financial condition of the client – essentially seeking to defeat a creditor’s ability to collect on a debt instrument.**

Section 310.3 – Deceptive telemarketing acts or practices

(1) The proposed amended Rule contemplates extending coverage of the existing TSR disclosure and misrepresentation provisions contained in Section 310.3(a) to inbound debt relief sales calls (as defined in the proposal). Would this adequately address the harms to consumers that occur in the sale of debt relief services? Why or why not? **This question implies facts not in evidence and assumes that all such practitioners potentially harm clients – having said that, no inbound calls should ever be included. To do so deprives a caller of the information they seek to make their own decision and not artificially or arbitrarily regulated by the state.**

(2) Proposed Section 310.3(a)(1)(viii) has six required disclosures. For each disclosure, please provide comment on the following questions:

a. Is this disclosure appropriate to address harms to consumers that occur in the sale of debt relief services? If not, why or why not? How could the proposed amended Rule be modified to better address such harms?

b. Should this provision be applicable to all providers of debt relief services, or should this provision be tailored to apply only to certain debt relief providers? Why or why not? If so, which entities should be covered?

c. What would be the benefits to consumers of this proposed requirement?

d. What burdens would be imposed on providers of debt relief services if this requirement were adopted?

e. As a practical matter, how would providers comply with the requirement? Would it be necessary to provide disclosures that were specific to the situation of an individual consumer or could the requirement be satisfied with a generic disclosure that would be given to all of the provider's potential customers? What would such a disclosure look like?

f. Are there changes that could be made to lessen the burdens without reducing the benefits to consumers?

Able Debt Settlement, Inc. is in favor of all appropriate and accurate disclosures as a service provider of Qualified Programs and believes that all such providers should make disclosures relative to their business models and programs offered.

(3) Are there other disclosures that should be included in the Rule to address harmful practices in the sale of debt relief services? If so, provide the suggested disclosure and discuss the relative costs and benefits to industry and consumers of such a requirement. **SEE previous question**

(4) Proposed Section 310.3(a)(2)(x) prohibits misrepresentations of any material aspect of a debt relief services, and provides specific examples of such prohibited misrepresentations. Is each specified misrepresentation sufficiently widespread to justify inclusion in the Rule? **Any response is subjective and while this Reporter does not believe it is widespread within the Turnaround Industry there are bad actors in every arena.**

(5) Are there other prohibited misrepresentations that should be specified in the Rule to address harmful practices in the sale of debt relief services? If so, why? **Not as long as financial institutions continue to act without regard to any reasonable code of conduct with respect to proper lending practices and the manner in which they treat their own customers – SEE REPORT EXHIBITS A, B, & C.**

(6) Does the proposed Rule need to be modified in any way to better address any misrepresentations or omissions, and if so, what should those modifications be? **NO**

Section 310.4 – Abusive telemarketing acts or practices

(1) What has been the experience in states that have regulated the fees that debt relief providers can charge – for example, allowing a limited initial or set-up fee, and then limiting the fees that can be charged while the services are being provided? Have providers of debt relief services been able to comply with these restrictions and still operate successfully in those states? What kinds of providers have been able to do so? Would it be appropriate for the Commission to consider such an approach? Why or why not? If providers were permitted to collect such limited fees, what fees should be permitted and what limits should be established on them? **Sate's that regulate fees while carving out special practitioners or groups have inadvertently established self regulating cartels and money laundering schemes by allowing classes of practitioners to receive compensation from client monies washed through the coffers of their**

creditors. SEE ALSO REPORT Section 10.

(2) *To what extent does proposed Section 310.4(a)(5) prevent harm to consumers that would not be eliminated by the disclosure requirements in proposed Section 310.3(a)(1) and misrepresentation prohibitions in proposed Section 310.3(a)(2)? Alternatively, if you believe that proposed Section 310.4(a)(5) would not prevent any additional harms, please explain why.*

SEE REPORT Section 10

(3) *Proposed Section 310.4(a)(5) provides that payment may not be requested or received until a seller provides a customer with “documentation in the form of a settlement agreement, debt management plan, or other such valid contractual agreement, that the particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered.” Is it appropriate to require provision of these documents before a covered entity can request or receive payment of any fee or consideration? In addition to those listed in the proposed amended Rule or described this Notice, are there other documents that typically evidence the completion of a debt relief service? Do such documents adequately demonstrate that a consumer’s debt has been successfully renegotiated, settled, reduced, or otherwise altered? Is one type of document preferable to another?*

SEE REPORT Section 10 310.4(a)(5); in addition, any confirmation notice adequately describing an arrangement that includes all pertinent information as well as acknowledgement by the parties could suffice.

(4) *Should any type or portion of fees charged by entities offering debt relief services be exempted from Section 310.4(a)(5)? If so, which fees – either by type of entity providing the service or by type of fee – should be exempted, and why? Will entities that offer a measurably beneficial service to consumers be adversely affected by this proposed Section? Why or why not? Will covered providers find it is no longer possible to provide particular types of services if this requirement is imposed? Which services will it no longer be economic to provide and why will it no longer be economic to provide them?*

Yes - SEE REPORT Section 5

(5) *Would an alternative formulation of an advance fee ban, such as the one in Section 310.4(a)(4) of the existing Rule (prohibiting requesting or receiving a fee in advance only when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging the promised services), be more appropriate than a ban conditioned on the provision of the promised goods or services? Why or why not? **There should be no regulatory ban on fees negotiated between the parties – to do so only deprives the customer of a free market place and allows creditors to control the last advocate most consumer clients have left.***

(6) *Are there alternatives to an advance fee ban exist that would sufficiently address the problem of low success rates in the debt settlement industry? If so, please explain. **Success rates are not as low as implied as demonstrated by EXHIBITS A, B & C attached. While many creditors do work with debt resolution program providers some tend to be disruptive and creditors do not want state and federal agencies to know the true numbers of settlements offered around the practitioner.***

(7) *As noted, the Commission does not intend that the advance fee ban be interpreted to prohibit a consumer from using legitimate escrow services – services controlled by the consumer – to save money in anticipation of settlement. Is it appropriate to allow the use of such escrow services? Why or why not? **The use of escrow or trust accounts is appropriate in certain cases as***

long as the client has absolute discretionary control and authority over the account. Any practitioner authorized to direct monies of a client to creditors of that client in any manner that does not require the discretion and action of the client must adhere to higher regulatory disciplines and bonding.

Section 310.5 – Recordkeeping requirements

(1) No changes to Section 310.5 are included in the proposed Rule, but the application of the Rule to inbound debt relief calls would require some sellers and telemarketers to comply with these requirements for the first time. What would be the costs and benefits to industry and consumers of this result? **Such activities may add a minor cost that should not affect the business if it can comply with the fee restriction in the first place.**

Section 310.6 – Exemptions

(1) *Proposed Sections 310.6(b)(5) and 310.6(b)(6) modify the general media and direct mail inbound call exemptions to make them unavailable to telemarketers of debt relief services. Is there a sufficient basis for this modification? Why or why not? SEE REPORT Section 6*

Regulatory Flexibility Act

(1) *As noted in this NPRM, it is not readily feasible to determine a precise estimate of how many small entities will be subject to the proposed Rule. Please provide any information which would assist in making this determination. **There are tens of thousands of sole practitioners engaged in financial consulting services anyone of which could be adversely affected if their client incorporates their work product in with a processing service provider to resolve debt issues. For example: an appellate court ruling in a state has given unprecedented discretionary interpretation to a state administrator now reinterpreting a statute in a manner beyond the origin, history and intent of the statute affecting unsuspecting practitioners involved in financial consulting and bankruptcy.***

(2) *Identify any statutes or rules that may conflict with the proposed Rule requirements, as well as any other state, local, or industry rules or policies that require covered entities to implement practices that comport with the requirements of the proposed Rule. **Any state that has such as a debt management, debt adjusting, prorators' law, debt pooling or similar statutes enabling or allowing activities in conflict with these Proposed Rules may create an uncertainty causing practitioners to avoid conflicting market places depriving persons in those areas of a competitive market. Able Debt Settlement, Inc. has been referred clients directly from state agencies as a result of widespread uncertainty and state exclusion by other than very few practitioners able to comply with highly discriminating guidelines.***

(3) *Do the prohibited practices in the proposed Rule impose a significant impact upon a substantial number of small entities? Ifso, what modifications to the proposed Rule should the Commission consider to minimize the burden on small entities?*

Many of the proposed rules are less burdensome on small businesses such as “affiliates” as described by Able Debt Settlement, Inc (SEE REPORT Section 6) than our own policies with the exception of the fee restrictions and other overly broad recitals.

What are lacking in these Proposed Rules are any actual disciplines by which a practitioner performs client analysis, creditor processing or settlement support services and instead only suggests that the practitioner engages in debt negotiation inappropriately referred to as debt relief.

Able Debt Settlement, Inc. would prefer to see a National Debt Resolution Program providing a variety of disciplines for a person to choose from as addressed in the REPORT Section 4. – Business Models, accommodating a great range of clients having a complexity of debt issues.

We are available to the Federal Trade Commission should they have any additional questions or inquiries.

Meet the Reporter

Ralph S. Lewis has been in the *Financial Services Industry* including the management and settlement of secured and unsecured debt since 1973. Mr. Lewis is a member of T.M.A. (*Turnaround Management Association*), the economic architect of the *Qualified Settlement Programs Business Model* and the co-founder of *Able Debt Settlement, Inc.*, in 2003. Mr. Lewis’ *Business, Turnaround and Settlement* experience includes the *Construction, Real Estate and Financial Services Industries* as well as the settlement (surrender) of *Insurance Policies* having a complexity of financial derivatives.

False and Deceptive Retraction Letter drafted by debt collection agency manager representing a major financial institution and their card servicing company that was forwarded unsolicited to a client of a debt settlement company along with the attached 39.9% Settlement Offer via email: EXHIBIT – A
From: bstXXXXX@XXX.biz; To: verXXXXXXXX@XXX.com

EXHIBIT – A
PAGE 1 of 2

To Whom It May Concern:

I recently enrolled in your debt Reduction program and in following your company's advice, I ceased making monthly payments to my creditors. It was not until I reviewed my finances recently that I found not only a drastic increase in all my credit card balances but also severe delinquencies noted on all of my accounts.

I spoke with a friend about this and they advised me that they where also misinformed by your company about the affects your program would have on his credit rating! Your company told me that my credit rating would only be affected for the time that I was in the program, no one told me that my accounts would be charged off, that I could be sued by my creditors for non payment of my debts, there would be a significant decrease in my credit rating that could have a lasting effect for up to ten years! I was also told by your company that you have a working relationship with all my creditors, and I have since received written proof from a creditor that stated they would not even consider a settlement offer from your company!

In light of my above mentioned complaints I am making a formal demand of a full and immediate refund of all monies that I have paid your company. If I do not receive immediate action on the issue I will be compelled to submit a copy of this letter along with formal complaints to my state attorney general, Federal trade commission, Better business bureau and I am also prepared to take my story to any media outlet that is willing to hear me out.

Thank you,

False and Deceptive Retraction Letter drafted by debt collection agency manager representing a major financial institution and their card servicing company that was forwarded unsolicited to a client of a debt settlement company along with the attached 39.9% Settlement Offer via email:

From: bstXXXXX@XXX.biz; To: verXXXXXXXX@XXX.com

EXHIBIT - A
PAGE 2 of 2

XXXXXXXX Recovery Services, LLC
NN XXXXXXX Drive
City, State XXXXX-XXXX
X-XXX-XXX-XXXX

XX/XX/2009

Amy X XXXXXX
nnn XXXXXX Xx
XXXXXXXX XX XXXXX-XXXX

Client Name: XXX CARD SERVICES, N
Balance: \$31,XXX.XX
Account Number: 7XXXXXXXXXXXXX6
Debtor ID: XXXXXXX

Dear Amy X XXXXXX

Your account has been placed with our office for collections. Our agency is authorized to settle your account for a reduced balance of \$12,500.00.

You can settle this matter by calling us and paying by phone or sending your check or money order along with payment coupon on the attached sheet. In the event that you are unable to make this settlement payment within the acceptance period indicated, please call our office to discuss your account. It is possible to extend the acceptance period under certain circumstances. **We are not obligated to renew this offer.**

Balance: \$31,XXX.XX
Settlement Amount: \$12,500.00
Acceptance Period Expiration: XXXXXXX XX, 2009

Upon receipt and clearance of the settlement amount, there will remain no further outstanding obligations pertaining to the account. We take pride in assisting our customers to resolve their situations. If you have any questions or wish to discuss your account with one of our representatives, please call our toll free number at XXX-XXX-XXXX during normal business hours. Monday - Thursday 8:00 AM - 9:00 PM EST; Friday 8:00 AM - 4:30 PM EST; and Saturday 9:00 AM - 12:00 PM EST.

Please send your payment or correspondence to the processing center listed below:

Payment Processing Center
XXXXX XXXXXXX Drive, Suite XXX
XXXXXXXX, XX XXXXX

This is an attempt to collect a debt and any information obtained will be used for that purpose. This is a communication from a debt collector.

Respectfully,

Bob XXXXXXX
Collection Manager

Unsolicited False and Deceptive Retraction Letter drafted and forwarded by a debt collection agency manager to a client of a Settlement Company along with a 39.9% Settlement Offer. EXHIBIT - A

False and Misleading Notice sent from Bank to Client of Settlement Company

ELDON [REDACTED]
[REDACTED]
[REDACTED]

October [REDACTED]

Account: [REDACTED]

Dear Eldon [REDACTED]

We recently received notification that you have retained a debt reduction agency or attorney to assist with the resolution of your debt. Please be aware that not all of these agencies or firms have your best interests in mind and through our experience we have found them difficult to work with. In fact any settlement amounts offered by the agency or firm will not be considered by [REDACTED]

We prefer to work with you directly. We are willing to offer you a settlement of 70%, provided that you call our office and speak with our Customer Assistance area to accept the offer by November [REDACTED]. [REDACTED] offers many additional programs that may assist you with your financial difficulties if you are unable to meet the settlement offer.

Please call our office to make payment arrangements and continue to make your required minimum monthly payment as described in the original Credit Card Agreement. Failure to pay your monthly minimum payment will result in your account being referred to an attorney to enforce your obligation under your Credit Card Agreement, which states that "Legal proceedings may result in a judgment and can be enforced to the fullest extent of the law."

Your current payment due is \$ [REDACTED] by November [REDACTED]. Please mail all payments to P.O. Box [REDACTED] Wilmington, Delaware [REDACTED] or call 1-800-[REDACTED] Monday through Thursday from 8 a.m. to 9 p.m., Friday, 8 a.m. to 5 p.m., or Saturday, 8 a.m. to 12 p.m. (Eastern time). Our knowledgeable Account Managers are ready to assist you.

Sincerely,

Customer Assistance department

[REDACTED] SERVICES, INC.
[REDACTED] BLVD
[REDACTED]
[REDACTED] or 800-[REDACTED]

EXHIBIT - C

05/07 [REDACTED]

Deceptive Debt Collection Letter Implies False Power and Authority

REFERENCE NO.

[REDACTED]

RE: [REDACTED] CARD SERVICES
BALANCE DUE: \$4, [REDACTED]

The above account has been placed with our firm in a prelegal status by [REDACTED] Card Services solely due to your decision to hire a third party debt settlement company.

[REDACTED] Card Services does not work with these types of companies and is giving you a final chance to retract your agreement with the debt settlement company.

Please call us at our toll free number, 800 [REDACTED].

Sincerely,

CHAD [REDACTED]

This communication is from a professional debt collection agency.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, that the debt, or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from current creditor.

When you send in a check to make your payment, you authorize Client Services, Inc. to initiate a one-time electronic debit from your bank account according to the terms of the check. When your check is converted to an electronic debit, please note that your check will not be returned to your bank and funds may be withdrawn from your checking account the same day we receive your payment. If you do not want your check to be converted to an electronic debit, please notify us in writing, by certified mail. Or if you would like to learn about other payment options, you may call 1-800-521-3236. Please have your Reference Number handy.

[REDACTED]