

**Prepared For  
The Federal Trade Commission,**

**Re: Telemarketing Sales Rule -Debt Relief Amendments,  
R411001**

**Prepared By**

**Scott C Johnson, CEO**

**&**

**Jeff Meek, SVP Operations**

**US Debt Resolve Inc**

**Toll Free:  
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**7 October 2010**

**(1)How would the proposed Rule impact different entities or the provision of different types of debt relief services?**

The impact on Debt Settlement would create a separation between companies that offer debt relief services as the rule would implement a performance base system. The legitimate debt settlement companies would embrace the rule as it would allow consumers to simplified access to understanding which criteria should be evaluated in determining which company offers the best solution for their needs, poor performing companies would either need to change procedures to ensure success rates or no longer being able to operate. The proposed fee structure would allow consumers to receive results in their program sooner and allow an option to change provider if dissatisfied with their service level with less out of pocket expense.

- a. In particular, do entities differ in how they currently collect their fees
  - **Program #1: Front-End Loaded**
    - Example: 40% or more of the service fee collected within the first 3 or 4 months of the program, and the remainder is paid over the next 12 months or less.
  - **Program #2: Flat Fee Program**
    - Example: Service Fee is paid evenly over 50% or more of the program duration. This often excludes the first month's earned fees for initial set-up costs.
  - **Program #3: Uniform Debt Management Services Act**
    - Example: 4% of the debt (not to exceed \$400) collected in first month, then \$50 per month service fee and 30% of the savings is paid to company after the settlement is finalized and paid.
    - [http://www.ftc.gov/bcp/workshops/debtsettlement/UDMSA\\_Final.pdf](http://www.ftc.gov/bcp/workshops/debtsettlement/UDMSA_Final.pdf)

Fee structure outlined in the final draft of the UDMSA appears to be the most efficient model for consumer protection and success rates in the area of plans that offer a reduction on the principal balance.

Debt settlement companies' most popular fee structure is designed to collect fees well in advance of any actual settlements being performed. Some states allow the collection of 100% fees being paid when a client is only completed 50% of the program time frame.

**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?**

There is no industry standard to measurement models designed to track the performance of Debt Settlement service providers. Proper success measurement should be based on Liquidation Rate/Settlement rate (the amount of Debt that is being settled on a monthly and annual basis and the percentage of debt reduction that a consumer achieves), Retention Rate (the percentage of clients who enroll in the program who stay in the program), and Graduation Rate (percentage of clients who complete the full program). The 3 Key factors listed below express a comprehensive evaluation of a Debt Settlement company's performance in relationship to a client's success.

The diagram demonstrates the opportunity for settlement as expressed as the performance of accounts typical liquidity life cycle:

# of Accounts to Settle Per Month	$\frac{\# \text{ of Accounts aged } > 90 \text{ Days}}{\text{Average Length of Program}}$
Total \$ of Accounts to Settle Per Month	$\frac{\$ \text{ of Accounts aged } > 90 \text{ Days}}{\text{Average Length of Program}}$

# of Accounts to Settle Per Month	$\frac{40,000 > 90 \text{ Days}}{36 \text{ Months}} =$ <b>1,111 Accounts Per Month</b>
Total \$ of Accounts to Settle Per Month	$\frac{\$120,000,000 > 90 \text{ Days}}{36 \text{ Months}} =$ <b>33.33 Million</b>

<http://www.ftc.gov/os/comments/debtsettlementworkshop/536796-00040.pdf>

The Consumer may be deceived by the dollar amount being settled by a debt settlement company as expectation of performance – challenge not what was settled but the relationship of what could be settled. The disclosure should be represented by what the total debt enrolled is versus settled.

The 2<sup>nd</sup> factor to determine a company's performance and consumer's success rate is the actual rate of the settlement

**\$10,000.00 balance settled for \$4,000.00 settlement average = 40%**

**\$20,000.00 balance settled for \$10,000.00 settlement average = 50%**

**\$10,000.00 balance settled for \$3,000.00 settlement average = 30%**

**Monthly settlement average = 40%**

A common evaluation of a company's performance is what settlement percentage they attain. The percentage that is represented should correspond for what percentage of clients enrolled receive that rate. As a representation of 35% settlement average would be perceived as exceptional performance of a DS company however it would be offset by the discloser that only 5% of clients receive that result.

[http://htc01.media.globix.net/COMP008760MOD1/ftc\\_web/transcripts/092508\\_sess2.pdf](http://htc01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/092508_sess2.pdf)

**Attrition and Retention:**

- **Example:** The model below demonstrates the difference between calculations of retention rate on “bulk average” calculation versus an “aggregate” calculation. This addresses how many consumers are retained for settlements

YEAR	Criteria	Clients	“Bulk” Avg.
2007	Total Clients Enrolled	1,000	50%
	<b>Total Currently Enrolled</b>	<b>500</b>	
2008	Total Clients Enrolled	2,000	60%
	<b>Total Currently Enrolled</b>	<b>1,200</b>	
2009	Total Clients Enrolled	4,000	85%
	<b>Total Currently Enrolled</b>	<b>3,400</b>	
<b>TOTAL AGGREGATE</b> 72.8%	<b>GRAND TOTAL CLIENTS ENROLLED 2005-2007</b>	7,000	<b>BULK AVERAGE:</b> 65%
	<b>GRAND TOTAL CLIENTS CURRENTLY ENROLLED</b>	<b>5,100</b>	

**(1) What would be the effect of the proposed Rule changes (including any benefits and costs), if any, on consumers?**

The proposed Rule change would have the effect of allowing the consumer to save and settle debt faster since the predatory up-front fees charged by settlement companies would not be restricting or burdensome to settlement activity. The cost saving to the consumer would be substantial in relation to the reduction in balance as the actual cost of the program would be decreased.

**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?**

The consumer can be misled by advertising purporting to show that debt settlement companies have formal settlement agreements in place with debt owners. This is done by improperly displaying settlement letters on their websites thereby giving the impression a formal agreement between the debt owner and the settlement company exists. The only formal agreement that exists is between the particular consumer in the letter and the debt owner. There does not appear to be any evidence produced by a settlement company or by the industry trade associations that formal agreements, covering all clients of a settlement company, have been agreed to by debt owners and the original creditors or secondary debt buyers. Below are just a few samples of settlement letters used by settlement companies to create the appearance of a more formal agreement between the settlement company and the creditor/collector. In addition, we are not aware of any agreement permitting the use of these company names and trademarked logos for the purpose of marketing. In the interest of space we are limiting release of all available data since the examples provided clearly make the point.

**ACADEMY COLLECTION SERVICE, INC.**

10965 Decatur Road  
 1(800)221-0605  
 Hours: Mon thru Thurs 8AM-6PM  
 Fri 8AM-6PM

(SIF)

27 AUG 2009

Use this Coupon to Return Payment  
 Make Check Payable to: Citicorp Credit Services

Account#  
 Academy File#  
 Total Bal as of 27 AUG 2009: 3404.46

DEREK 1741

TX 78

-----Detach and return top portion to expedite your account-----

As per our conversation, our client has agreed to settle the above referenced account for \$1000.00. Upon receipt and clearance of these funds your account will be marked settled, you will be relieved of any further responsibility pertaining to this account, and our client will notify the appropriate credit bureaus that this account has been settled.

This offer remains valid providing the funds reach our office by 8-28-09.

A self-addressed envelope is enclosed for your convenience in mailing the agreed upon settlement amount. Should you have any questions do not hesitate to call.

This is an attempt by a debt collector to collect a debt. Any information obtained will be used for that purpose. If you pay us by check or check by phone, your transaction will be converted to an ACH. Additionally, the check writer authorizes Academy or its agent to re-present the check electronically if the check is returned for insufficient or uncollected funds.

Federal Law prohibits certain methods of debt collection, and requires that we treat you fairly. You can stop us from contacting you by writing a letter to us that tells us to stop contact. Sending such a letter does not make the debt go away if you owe it. Once we receive your letter, we may not contact you again, except to let you know that there will not be any more contact or that we intend to take a specific action.

If you have a complaint about the way we are collecting this debt, please write to our Compliance Center at 10965 Decatur Road, Philadelphia PA 19154, email us at [compliance@academycollection.com](mailto:compliance@academycollection.com), or call us toll-free 800-220-0605 ext 2261, between 9:00 A.M. Eastern Time and 5:00 P.M. Eastern Time Monday - Friday.

The Federal Trade Commission enforces the Fair Debt Collection Practices Act (FDCPA). If you have a complaint about the way we are collecting your debt, please contact the FTC online at [www.ftc.gov](http://www.ftc.gov), by phone at 1-877-FTC-HELP, or by mail at 600 Pennsylvania Ave NW, Washington DC 20580.

YOURS TRULY,  
 MARIE ROGERS, DEBT COLLECTOR EXT 2216

**NOTICE: SEE NEXT PAGE FOR IMPORTANT INFORMATION.**CONTACT INFORMATION

Academy Collection Service, Inc.  
 10965 Decatur Road  
 Phone: 1(800)221-0605 or 1  
 Hours: M-TH 8am - 6pm, F 8am - 5pm

ACCOUNT INFORMATION

Date of Letter: 27 AUG 2009  
 Creditor: CITIBANK (SOUTH DAKOTA) N.A.  
 Title:  
 Fwdl Creditor:  
 Account#: 5466  
 Creditor #: WORLD MASTERCARD  
 Academy File#: 1741  
 Total Bal as of 27 AUG 2009: \$ 3404.46  
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(SIF) 08-25-09

Cardmember Service  
Fulfillment Department, DE1-0811  
P.O. Box 517  
Frederick, MD 21705-0517

**CHASE** 

S D K

4305

NE

August 28, 2009

Balance: \$26,904.53

Dear Mr. K

We are pleased we found a settlement that works for you. This letter confirms that we agreed to settle your credit card account for \$5500.00 . As a result of this settlement, you will benefit from all these advantages:

You will only pay \$5500.00 , a significant savings over the full balance. We will stop all attempts to collect. Upon conclusion of the settlement, we will report your account to the national credit bureaus as settled with a remaining balance due of zero (0.00).

To accept this offer, please send your payments, as follows:

Payment Amt.: \$5500.00 August 31, 2009

Payment Amt.:

Payment Amt.:

Payment Amt.:

The total settlement amount must be received within the agreed timeframe. If you do not complete your settlement arrangement on time, this agreement will become null and void. We will continue our collection efforts.

We have the following convenient payment options available for you:

Electronic Payment

Provide your Checking  
Account information over  
the phone, free of charge by  
calling

Wire Payment Address

Cardmember Service  
3 Christina Centre  
201 N. Walnut Street  
Wilmington, DE 19801

Overnight Address (FedEx, UPS)

Cardmember Service  
2500 Westfield Dr.  
Elgin, IL 60123

Regular Payment Address

Cardmember Service  
P. O. Box 94014  
Palatine, IL 60094-4014

Please call us toll free at 1- if you have any questions about your settlement agreement. We look forward to settling your account.

Sincerely,

Rose

Fulfillment Department

Account is owned by Chase Bank USA, N.A.  
Calls may be monitored and/or recorded to ensure the highest level of quality service.



Below is a letter series presented by just one Settlement Company. This information is available to the public on the settlement company's website. They very clearly listed the name of the original creditor in an attempt to borrow credibility and create a sense of endorsement by that creditor for this program. This tactic is common and typical.



- **Collection Agency Settlement**  
Original Creditor: **Capital One**  
Settlement Percentage: **33**  
Client Savings: **2757.61**



- **Debt Settlement offer**  
Original Creditor: **GE Money Bank**  
Settlement Percentage: **30%**  
Client Savings: **2383.72**



- **Debt Collection Law Firm Settlement**  
Original Creditor: **HSBC**  
Settlement Percentage: **30%**  
Client Savings: **1061.75**

- Original Creditor: **Bank of America**



• **Debt Negotiated for substantial savings**

Original Creditor: **Bank of America**

Settlement Percentage: **23%**

Client Savings: **\$38,858.07**



• **Settlement with original creditor**

Original Creditor: **ETrade Bank**

Settlement Percentage: **30%**

Client Savings: **\$898.96**

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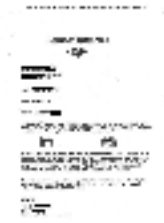


• **Debt Settlement works**

Original Creditor: **American Express Travel Card**

Settlement Percentage: **19%**

Client Savings: **\$24,990.62**



• **Commercial Debt Liquidated with 90% reduction**

Original Creditor: **Bank of America**

Settlement Percentage: **10%**  
Client Savings: **\$4,717.34**



• **Business Debt Settled at 10% of Balance**

Original Creditor: **Bank of America**

Settlement Percentage: **10%**

Client Savings: **\$10,640.54**

**(2) What would be the impact of the proposed Rule changes (including any benefits and costs), if any, on industry?**

The proposed Rule changes would have the effect of causing many debt settlement companies to cease functioning. The reason for this is most of the up-front fees collected by debt settlement companies go to client acquisition and not to on-going operations or settlement of debt.

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

US Debt Resolve, Inc. thinks that companies are entitled to charge for services provided. Therefore, we would recommend a change to the proposed Rule to allow debt settlement companies to collect a portion of their fees each month. This is consistent with our support for the plan put forward in the UDMSA. It would have the extremely beneficial effect of allowing the consumer to save funds for settlement faster and improve competition by ensuring only those debt settlement companies dedicated to providing the service they market remain in business.

***B. Questions on Proposed Specific Provisions Section 310.2 – Definitions***

US Debt Resolve, Inc. supports the definition proposed in Section 310.2(m).

**(2) Are there reasons to broaden the definition of “debt relief service” to include the word “product”?**

The term “product” generally refers to physical merchandize; however, US Debt Resolve, Inc. does not foresee any substantive problem with the addition of the term “product” to the proposed definition in Section 310.2(m).

**(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 appropriately limited the scope of the proposed rule.

**(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?**

US Debt Resolve, Inc. does not support the exclusion or exemption of any entity from the proposed definition in Section 310.2(m).

**(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?**

Typically a creditor will produce a “settlement letter” that details the terms and amount of the settlement offer. This letter should be sufficient and adequate proof of settlement. However, due to the time frame involved in the settlement process it would not be possible, nor is it reasonable to expect, any settlement company to operate for free. Many expenses including payroll, document retention/destruction, computing/phone systems, etc...are just some of the expenses incurred by settlement companies during the settlement process.

**(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?**

A complete ban on the collection of all fees would, in effect, require the debt settlement company to work for free.

**(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.**

The alternative is the collection of a one-time setup fee when coupled with a monthly service fee. Each month the consumer pays into the escrow account, the settlement company deducts a small portion for on-going support of the

service. In this manner, the consumer is able to save more funds at a faster rate and thereby settle more debt sooner.

**(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?**

Escrow services should be the preferred method for consumers saving money in anticipation of settlement. Success rates for consumers using escrow services are much higher than so-called “self-savers”.

### **Model # 1: Self Savers**

Example: Client save their funds in their own savings account and verifies account balances over the phone or by statement with a debt settlement company

- **Client:** Propensity to Spend
- (Transtheoretical Model of Change for Financial Behavior)
- **Creditor:** No verification of funds for creditors; can not guarantee payment
- **Company:** No verification of funds; can not accurately forecast settlement success

### **Model # 2: Escrow Account**

Example: A company subcontracts with a third party trustee to hold the client funds, allowing visibility of account balances and authorized disbursement of funds.

- **Client:** : Ensures financial behavioral change
- **Creditor:** Ability to provide creditors account status and ensure the follow-through on payment plans.
- **Company:** Accurate savings data to allow forecasting and prioritize settlements.