COMMENTS PROVIDED FOR

Federal Trade Commission Public Hearing

November 4, 2005

"Telemarketing Sales Rule - Debt Relief Rulemaking Forum"

Matthew Guthrie
Co-founder and Chief Legal Officer
DMB Financial, LLC
Beverly, MA 01915
October 26, 2009

Abstract

The Federal Trade Commission requested commentary and empirical analysis on proposed regulations for the debt settlement industry. DMB Financial (DMB) is the leading performance-based debt settlement company, a board member on The Association of Settlement Companies (TASC), and has saved over $90 million in credit card debt for over 11,000 consumers. DMB offers three products: the Guardian, Freedom, and Liberty Programs. In each program, the fee is principally derived as a percentage of the savings each negotiation delivers to the consumer off their current balance of a credit card. As one of the first major debt settlement company whose products are success-fee based, DMB provides a unique perspective on the debt settlement industry. This paper highlights several areas of concern about the proposed rule changes, provides some empirical data, and offers several alternative ideas for regulators to consider.

Introduction

DMB Financial (DMB) opened in November 2003 and has grown to provide debt settlement services across 26 states. Since inception, DMB has served over 11,000 active clients and saved those clients over $90 million in credit card debt. DMB is unique in the debt settlement industry in that our fees are principally ***success-based*** and tied to achieving a successful settlement agreement between consumer and creditor for the *greatest possible savings* to the consumer. Our fees are primarily based upon a percentage of what we save the consumer in a negotiation.[1] Our negotiators are directly incented to get the highest savings percentage possible and this drives the right kinds of business behavior—behavior in the best interest of both the consumer and of healthy business competition.

Our typical customer has around $39,000 of credit card debt on an income of $50,000-$70,000. Most customers are making only the minimum monthly credit card payments. Most are also carrying mortgages. On the question of "How much is the stress from your financial situation affecting your life?" they rate themselves an 8.6 out of 10.[2] Over 11.4% of our customers have filed bankruptcy in the past.[3] Many are undergoing a serious medical hardship such as recovering from long-term illness, cancer, or other calamity. Many are unemployed or have been unemployed for long stretches of time. Many have suffered from the collapsing housing market and used their credit cards to stay afloat. As mentioned by Dr. Robert D. Manning[4] and Dr. Richard Breisch[5], many of these consumers avoided bankruptcy or debt settlement during the housing boom by taking an equity loan on their homes to pay off bills and stay current; now with the housing market deflated, there is no equity to leverage. Our clients include all types of blue collar workers, consumers on disability or pensions, and white collar professionals like doctors and small business owners. Debt and the economy affect all strata of the social structure.

The emergence and evolution of the debt settlement industry is characteristic to and logical for the current American economy and is reflective of consumer demand. The explosion of new financial instruments for consumers has outpaced the financial education and literacy needed to use those instruments cautiously and responsibly. These new instruments include credit cards, debit cards, gift cards, pre-paid cards, fob keys, intelligent chips, online payments and banking, Paypal, online lending marketplaces, and many others have been introduced on a large scale in the past 30 years; many of these in just the last 10 years or so. This phenomenon, coupled with an implosion of the housing market, is driving thousands of consumers to seek remedy and re-negotiation of their original credit terms.

---

[1] Comparing "settled amount" with "current balance" at time of settlement. Some consumers enter a debt settlement program with a lump sum of cash available, either from savings, a 401(k), friends and family, or other source. In these instances, the "current balance" can equal what is known as "original balance" on the cards when first enrolled into a debt settlement program. However, most consumers do not have a lump sum available. Thus, while original balance is useful reference point, it is not the appropriate metric for success—consumer who have no ability to pay off or settle their debts immediately are faced with the alternatives of paying monthly minimum balances on their cards for 10 or 20 years or more, enrolling in consumer credit counseling, or enrolling in a debt settlement program. All of these options include the accumulation of interest and in some cases fees, thereby growing the original balance. If these consumers could pay their debts in full on the day they enroll into a debt settlement program, they would and should probably do so, but this is not a real alternative for most. Therefore, we encourage regulators to consider using ***current balance*** – defined as the full balance of principal plus interest plus fees on the date of settlement – when measuring the success for a consumer.

[2] Based on a CRM query of 3,522 budget applications submitted by consumers to DMB Financial from Jan 1 – Oct 26.

[3] ibid

[4] Dr. Robert D. Manning is author of best seller "Credit Card Nation" and numerous articles on debt settlement and debt alternatives for consumers. Dr. Manning is a frequent contributor and witness in congressional hearings concerning consumer credit issues.

[5] Dr. Richard Breisch is an Associate Professor at Southern Methodist University and author of "Economic Factors and the Debt Management Industry" available at http://www.consumercreditchoice.org/.

Available Alternatives to the Consumer

Debt settlement fills a very specific void in the market. Table 1 outlines the different debt re-negotiation alternatives available to consumers and when each may be appropriate:

Table 1: Alternatives For a Consumer with $39,000 of Credit Card Debt				
If the consumer can afford to pay…	**…the appropriate alternative may be:**	**Expected results**	**Timeframe to achieve the results**	**Total payments by consumer**
Nothing at all	Chapter 7 bankruptcy	Liquidation, minimal to no repayment	12 months	$0
Less than 20% of the debt owed	Chapter 13 bankruptcy	Renegotiation of principal, interest, fees, and assets ***Perhaps $100.00 monthly payment***	12-60 months	$5,850[6]
20% to 70% of the debt owed	Debt settlement	Renegotiation of the principal amount ***$500.64 monthly payment***	0-60 months[7]	$30,038[8]
70% to 90% of the debt owed	Credit counseling	Renegotiation of the interest rate ***$775.00 monthly payment***	0-66 months[9]	$51,150[10]
90% or more of the debt owed	Pay credit card minimums	Pay majority towards interest, minimal towards principal ***$815.00 monthly payment***	0-275 months[11]	$224,122[12]
100% of the debt owed	Pay card full balances	Paying down both principal and interest in full, over time; dependent on available cash ***$815.00+ monthly payment***	0-? months	$39,000+

As outlined in the comments submitted to this NPRM by Dr. Richard Briesch and reflected by Dr. Robert D. Manning, bestselling author of *"Credit Card Nation"*, ***consumers who fit well into one category are poor fits for another category***. For example, a consumer who can afford to pay back their entire principal and interest in full is a poor candidate for debt settlement. When the time comes for negotiation of the debts, creditors will demand to know the financial hardship the consumer is under that warrants a re-negotiation of the existing credit terms and obligations. Finding none (which is the appropriate assumption with a consumer who can truly afford to pay their debts in full), the negotiation will fail because the creditor will not agree to any re-negotiated terms. Creditors are wary of abuse, as are debt settlement companies. Taking a consumer to Creditor A to attempt a settlement, where discovery shows the consumer bought 4 jet skis and then immediately filed for a settlement, would not only lead to an unsuccessful negotiation, but Creditor A would also probably stop working with that debt settlement company, thereby impeding not only the current

[6] Estimating a repayment of 15% of original debt, freezing of interest rates and fees, over a 60 month period.
[7] Based on $39,000 of credit card debt, a debt settlement program of 60 month's length, making payments of $500.64 per month, assuming no additional purchases added to credit card, no interest rate adjustments by creditors, typical savings percentage of 40 percent on current balance, and the DMB Financial Guardian Program's schedule of fees. This amount is *inclusive* of the debt settlement fees.
[8] Monthly payment of $500.74 * 60 month program, inclusive of all settlement fees, credit card interest and fees.
[9] Based on $39,000 of credit card debt at a renegotiated interest rate of 10.00% APR, making payments of $775.00 per month, assuming no additional charges added to credit card, no missed or late payments, and no further interest rate adjustments by creditors.
[10] Monthly payment of $775.00 * 66 months, at terms listed in previous footnote.
[11] Based on $39,000 of credit card debt at 24.99% APR, making minimum payments of $815.00 per month, assuming no additional charges added to credit card, no missed or late payments, or interest rate adjustments by creditors.
[12] Monthly payment of $815.00 * 275 months, inclusive of cumulative interest and original principal amount, at terms listed in previous footnote.

negotiation but *all future business* with Creditor A and a large portion of the potential revenue stream and customer base for the debt settlement company. **There is a strong business *disincentive* for debt settlement companies to present bogus financial hardships to creditors.**

There exists a large gulf between consumers who can barely pay the minimum credit card monthly payments and those who can pay something just over liquidation value for their debt. This gulf is well served by an industry that seeks to renegotiate the *principal balance of debts owed*, due to financial and/or medical hardship by the consumer with whom the original credit terms were made. That industry is debt settlement. If regulated properly to allow sufficient competition, pricing models, and premium versus value-based companies and consumer options, debt settlement is an excellent alternative for both consumers and creditors to salvage the best of an admittedly bad turn of events—*the unforeseen financial hardship befalling a consumer*.

There Are Drawbacks to All Alternatives

Each of the above alternatives has inherent drawbacks. Any time a consumer must renegotiate an existing financial contract, especially when done from a position of inferior power, a consumer (and regulators) should expect associated costs. Generally speaking, the principal creditors are large financial institutions with sizeable legal departments and substantial budgets; when compared with the typical consumer, creditors have nearly unlimited resources to pursue litigation or aggressive debt collection. The consumer, on the other hand, has very few resources at his/her disposal. This imbalance of resources and information, alongside the precarious financial situation of the consumer, makes the re-negotiation process an especially difficult one for that individual consumer. Meant only for illustrative purposes, Table 2 lists some of the drawbacks of each alternative to the consumer:

Table 2: Drawbacks to Each Debt Alternative For a Consumer with $39,000 of Credit Card Debt

Alternative	Drawbacks
Chapter 7 bankruptcy	• Assets may be liquidated • Negative impact on credit score; bankruptcy stays on credit report for years • Social stigma, possible effects on future employment
Chapter 13 bankruptcy	• Assets may be liquidated • Negative impact on credit score; bankruptcy stays on credit report for years • Social stigma, possible effects on future employment
Debt settlement	• Negative impact on credit score • Can still be sued during process
Credit counseling	• Attaches all credit cards to single debt; default on one card equals default on all • No debts are settled along the way, there is no partial completion or partial success; all debts are outstanding until the last month's payment so unemployment, unexpected medical problems, or other hardships can derail what may otherwise be a successful strategy • Pays back $51,150 on a $39,000 debt
Pay credit card minimums	• Consumer pays $185,122 in interest, an exorbitant expense • Takes nearly 23 years to pay off existing debt in full • Continues to burden consumer's debt-to-income ratio on credit report
Pay card full balances	• Must have $39,000 of cash or equivalents available

In addition, according to several studies both credit counseling and bankruptcy have low completion rates, and presumably so do many—but not all—debt settlement companies. When consumers are in dire financial situation and cannot repay the debts they've incurred under the original terms negotiated with the creditors, all alternatives involve important drawbacks and considerations.

Recommendation #1

We request that regulators consider and assess the pros and cons of all the available options for consumers and do not single out the debt settlement industry as a bad actor simply because there are tradeoffs to the consumer involved. Each alternative has drawbacks and consumers deserve to understand what those drawbacks are. We do agree – and currently comply – with providing consumers disclosures of the inherent risks in undertaking a multi-month or multi-year negotiation strategy against an opponent with superior resources and information. While we agree that strict and fair regulation is necessary and helpful, we urge caution with regards to effectively regulating the industry out of existence.

DMB Financial's Fee Structures

In response to the FTC call for empirical data on fee structures and refund policies, we offer the following about our current products :

Guardian Program™. This is the main debt settlement program for DMB Financial and more than 97 percent of our clients are enrolled under the Guardian Program. Enrollees must reside in a state in which DMB currently operates, have a minimum of $10,000 of unsecured debt, and agree to the terms of the program. The fee structure for the Guardian Program is as follows:

- Success-based Settlement Fee. At the time of a settlement, we earn *25 percent* of the savings amount negotiated (the difference between current balance and the settled amount) as a performance fee. This is the largest portion of our overall fee. Before a settlement fee is earned, the client must approve and authorize the specific settlement amount and terms, and the funds must generally be available in the client's escrow account to make the settlement.
- Setup Fee. When developing a payment program with a client, we help them assess how much they can afford to put into the program and on what schedule. Cash in their bank account is a prerequisite to beginning a settlement negotiation. The more money they can put in, and the faster they can put it in, the sooner we can re-negotiate the debts and hopefully restore them to debt free status. In the Guardian Program, we receive 100 percent of the first two monthly payment amounts as a fee for conducting a budget assessment with the client, helping them identify or determine their financial goals and timeline, developing a financial repayment plan, setting up escrow, customer service, and other administrative accounts, conducting conference calls for new enrollees, providing a New Client Package, enrolling them in a 3rd party legal assistance network that provides free and reduced legal assistance to our clients, and making several customer service and settlement consultant introductory calls.

- Monthly administrative fee of $34.95. This administrative fee covers the cost of ACH withdrawals and deposits from and into their escrow accounts, monthly customer service calls, a financial education and literacy series of 300+ articles, monthly newsletter production and distribution, the availability of a personal customer service representative (each client is paired with a single CSR throughout their program which enables them to build a personal relationship and ensure they receive the level of service desired), and other administrative costs.

Freedom Program™. This is the secondary debt settlement program for DMB Financial and approximately 2 percent of our clients are enrolled under the Freedom Program. *This program is as pure of a "success based" fee model as exists in the industry, so far as we are aware.* Enrollees must reside in a state in which DMB currently operates, have a minimum of $10,000 of unsecured debt, and agree to the terms of the program. The fee structure for the Freedom Program is as follows:

- Success-based Settlement Fee. At the time of a settlement, we earn *35 percent* of the savings amount negotiated, the difference between current balance and the settled amount, as a performance fee. This is the largest portion of our overall fee. Before a settlement fee is earned, the client must sign authorization for the specific settlement amount and terms, and the funds must generally be available in the client's escrow account to make the settlement.
- Monthly administrative fee of $34.95. This administrative fee covers the cost of ACH withdrawals and deposits from and into their escrow accounts, monthly customer service calls, a financial education and literacy series of 300+ articles, monthly newsletter production and distribution, the availability of a personal customer service representative (each client is paired with a single CSR throughout their program which enables them to build a personal relationship and ensure they receive the level of service desired), and other administrative costs.

  The Freedom Program is a much higher risk program to DMB as it delays all substantive fees until the time of settlement. Due to the inherently credit risky nature of the typical debt settlement consumer, the fee amounts must increase over Guardian to compensate for the dramatic increase in risk assumed by the settlement company. As noted in several other comments and testimony, this makes the debt settlement company function as a credit provider. Because of the extreme risk to DMB of this fee structure, we authorize a Freedom Program enrollment only under rare conditions. In utilizing this program over the past several years we faced a number of very serious consequences:

  1. Because of the inherent risk involved in carrying a consumer whose credit cards *underrated* them at a 24.99% APR (on average) credit risk, delaying payment for services rendered at the time of enrollment and prior to settlements results in DMB requiring a larger fee as a percentage of the settlement savings. Even though we may save a consumer $10,000 off of a $20,000 debt, thus earning a $3,500 fee at that point in time, clients often attempt to avoid paying any fees after the settlement is reached – some feel that they've already received the benefits they wanted and can now avoid paying the full fee amount they agreed to contractually. An alarming number of clients in the Freedom Program attempted to default on the fees, even though all fees are disclosed up front, initialed and signed, often with voice recorded approvals by the client, and with signed settlement authorization letters. In theory, the Freedom Program should be the *best*

solution, as it pushes nearly all fees until after the time of settlement; however, in practice it encourages consumers to avoid putting "skin in the game", committing to a successful program, and fulfilling their obligations. Our direct experience suggests a pure model such as this is highly problematic.

2. This is not an issue of disclosure. We disclose all fees up front and have clients sign and initial a clear agreement, as well as make verbal confirmation of their acceptance to the fee terms prior to enrolling them in the program. In addition, clients must authorize each settlement agreement, in which they are made aware of the total fee amounts. In short, they never have a problem accepting the $10,000 savings; many simply try to avoid paying the fee to achieve that savings after the fact.

Liberty Program™. This is an offshoot of our Guardian Program and up to 2 percent of our new clients are enrolled under the Liberty Program. Enrollees must reside in a state in which DMB currently operates, have a minimum of $5,000 of unsecured debt, have a monthly minimum payment of $200, and no more than 10 percent of their total debt can be accumulated in cards that have a <$1,000 balance individually[13], and agree to the terms of the program. The fee structure for the Liberty Program is otherwise identical to the Guardian Program.

We launched the Liberty Program on July 1, 2009, in response to an increasing number of consumers who had less than $10,000 of unsecured debts. The dramatic rise in number of consumers who fall into this category suggests that due to the economic conditions, consumers now have trouble seeing how to get out from under even $10,000 of debt, whereas several years ago, the typical debt settlement consumer had a much higher debt load. We suspect that the depressed housing market and higher unemployment contribute to this.

Finally, the issues of refunds and cancellation deserve mention. Our policy is to provide a 100% refund to any consumer who chooses to cancel their contract within the first 30 days of its effect. This is a much more liberal standard than the minimum 3 day right of rescission. We've found that this policy both gives consumers the comfort to explore their options fully and the protection they deserve if they change their mind within the following few weeks. If a client cancels their agreement within the first 60 days, we issue a partial refund.

We do not, as a practice, refund any settlement fees earned after the fact. Clients must authorize every settlement agreement and part of that agreement is their acknowledgement of our right to earn the fee for that successful negotiation. Those fees, we believe, should be protected in the interest of the business if that business delivers the promised service. We do not, as a practice, refund administrative monthly fees either, as those are already earned and billed on a month to month basis.

[13] Creditors are often reluctant to or explicitly will not negotiate small credit card balances less than $1,000, presumably because the cost to administer the re-negotiation outweighs the potential amounts recovered.

Recommendation #2

Given our unique experience using a near pure performance-based model with the Freedom Program, we recommend that the FTC reconsider the move towards preventing a debt settlement company from taking *any* fee until a settlement is reached. In our real (non-theoretical) experience, many consumers also attempt to default on their settlement fee. Furthermore, this increase in real business risk only pushes the required fee percentages higher than the current market price. Presumably, increased prices – an inevitable byproduct of forcing debt settlement companies to take fee only after a settlement is reached – is harmful towards consumers.

In addition, there are a significant number of operating costs and investments in business development, marketing, technology, training and other areas that simply cannot be supported from the back-end fees alone, especially given the fact that the first of the client's several accounts is settled after several months of their entry into the program. While this may be sustainable in a mature industry, in a new and growing industry such as debt settlement where best practices and technology infrastructure are being written with each passing week, investment into these areas should be encouraged rather than discouraged.

We do believe in the performance-based model and we are proud to attach the majority of our fees to the direct success of each negotiation for which we are hired. However, we recommend providing the industry some flexibility to determine the balance and timing of those fees to manage business risk, cost, and consumer welfare. Perhaps a threshold of, for example, not more than 35% of the total projected fees can be taken before the first successful negotiation is successfully completed may be more appropriate.

Recommendation #3

We support the requirement to have an explicit refund policy. We feel that a 30 day right of rescission is an appropriate measure.

In order for businesses to be able to grow, and grow with the confidence in revenue streams that they've already earned, we do not support the regulation of refunds for administrative fees or settlement performance fees once earned. In the case where a debt settlement company collects a portion of their settlement performance fee in advance of the settlement taking place, it is reasonable to expect companies to refund those unearned performance fees if the client cancels the agreement prior to settlement taking place.

Key Issues Raised in the NPRM and U.S. Senate and U.S. House of Representatives Committee Testimony

In the past year, the U.S. Senate, U.S. House of Representatives, and FTC have all held hearings relating to the debt settlement and debt relief industries. House Resolution 2309, as drafted, appears to very closely mirror the FTC Telemarketing Sales Rules changes. It is clear that an increased level of oversight in this industry is both prudent and timely. As one of the only major performance-based debt settlement company that primarily weights its fee amounts and timing upon successful negotiation of a debt, we feel that DMB can lend a unique perspective on a number of concerns raised during the hearings of the past year. In the following

section, we would like to address some of the major issues and share our perspective in hopes that regulators will take them into consideration:

1. **ISSUE** – *"[The] FTC's own workshop showed that DSC's [debt settlement companies] benefit no more than 3% of the consumers who pay for them."*[14]
    - **RESPONSE** – DMB Financial graduates nearly 52% [15]of all of its clients, having settled <u>every one</u> of their accounts during the program. If we include clients for whom DMB Financial has settled *at least one* account, then more than 72%[16] of DMB's clients received benefit from the settlement services we provide. Based on academic research done on credit counseling and bankruptcy, the DMB Financial results are approximately <u>twice the average graduation rate</u> of the typical consumer credit counseling program (CCCS), and a substantially higher "success rate" than that experienced by consumers who file bankruptcy. In addition, 100% of our clients receive budgeting, financial goal setting, planning advice, and customer service. Each of these services has precedence in numerous other industries as being beneficial to consumers.

2. **ISSUE** – *"The FTC should ban the charging of any fees to consumers until and unless their debts are actually reduced."* [17]
    - **RESPONSE** – While we are in full agreement with the need to protect consumers from *exorbitant* or *undisclosed* fees, NACA fails to consider the impact such a policy as outlined above would have on the total cost to the consumer and the quality of customer service that could be delivered along what is typically a 24-48 month program:
        - Doing so would dramatically increase the risk premium to the debt settlement company, which would necessarily increase the overall cost to the consumer. If a debt settlement company is prohibited from collecting at least some of the fees up front or during the build-up period, they will be forced to collect the fees at settlement, which would lead to an even larger portion of the savings going to the debt settlement company as a fee. In addition, the time value of money would require that all fees which are currently being taken up front or during the build-up period rise at an annual rate of 24.99% or higher – the discount rate charged by credit card companies for consumers in this risk bracket; a discount rate which, by definition of the consumer being in a debt settlement program, was insufficient even at 24.99%.
        - DSCs incur considerable costs to get a consumer into a position where they can negotiate for a settlement. ACH fees, paperwork, significant labor and

[14] Testimony to the Subcommittee on Commerce, Trade, and Consumer Protection at a legislative hearing on H.R. 2309 by the National Association of Consumer Advocates (NACA) by Ira J. Rheingold, Executive Director, on March 24, 2009. Hereafter referred to as Rheingold.

[15] Based on aggregate results of a 914 client sample for all DMB Financial clients in New York State from January 1, 2006 to May 8, 2009. This sample represents the entire population of DMB Financial clients in New York state during those times. DMB is currently assembling a statistical study of a wider sample of its client base to support these FTC hearings and hopes to have that complete data picture available prior to the November 4, 2009 hearing.

[16] Based on TerminationsModel.xlsx, dated September 9, 2009, as an aggregate average of clients reaching Month 8 in a settlement program at DMB, and the assumption that the average settlement happens at month 8 or sooner.

[17] Rheingold

communications expense, etc. The “services” delivered by a DSC are not limited to the actual settlement. Other services provided include: budgeting advice, setup and automation of the savings account and ACH transfers, management of credit card statements, a live customer service representative available to help, reduced and free legal support services[18], discount coupons and savings literature (blogs, newsletter, articles), assistance connecting with an appropriate Financial Planner at an authorized provider, etc. Each of these constitutes a service provided to the client; while not the primary deliverable, each of these elements delivers tangible and specific value to the client and evidence that a DSC should, in fact, earn some element of fee prior to each settlement. Preventing a DSC from obtaining *any fee* prior to settlement is comparable to preventing a lawyer from collecting fees for researching for a case, or a mechanic for finding the cause of a faulty engine. This is service with value; companies should not be deprived of the ability to request a reasonable level of payment for those services.

- Preventing a DSC from collecting any fee up front would almost by definition insist that customer service be provided either: a) not at all; b) by fully automated system of voicemails and auto-responses – a low quality solution to the consumer; or, c) from an overseas business process outsourcing (BPO) solution. The nature of debt settlement requires time for the consumer to accumulate sufficient funds with which a debt can be settled. This almost always takes several months. Unless the intent is to prevent these consumers from receiving customer service during these interim months debt settlement companies should be allowed the ability – but not the requirement – to charge reasonable monthly fees in order to provide live customer support, and American-based jobs, while they prepare for a settlement. Customer service during these months takes the form of monthly phone calls to communicate with the clients about their program status, monthly financial literacy email and educational series, handling of any inbound questions or concerns, and periodic quality reviews of all files in a portfolio for accuracy. The elimination of these services would result in consumers “flying blind” in a substantial financial contract, which cannot be advised in any industry.

3. **ISSUE** – *“Settlement firms charge such high fees that consumers often don’t end up saving much to make settlement offers, which is why so many drop out of settlement programs. ”*[19]
    - **RESPONSE** –This applies only to DSCs with Front-fee based business models, but not to all debt settlement companies. The timing of a settlement is based primarily upon the consumer’s ability to accumulate funds faster, not on the DSC’s performance. See Table 1 for a sample of expected payback amounts for the consumer. Relative to their other options, debt settlement is one of the ***least expensive options***, inclusive of fee, not the most expensive.

[18] Reduced and free legal services are provided to our client base by a third party provider.
[19] Keenst

Most DMB Financial clients who terminate the program, do so because they file bankruptcy or cannot afford to continue saving towards a settlement, not because of their unhappiness with DMB Financial. These are consumers on the brink of bankruptcy and, by definition, high-risk clients. DMB reaches its first settlement by months 6-8 on average, and sometimes sooner.

4. **ISSUE** – *"As a result of high fees, consumers targeted by debt settlement companies are generally the least likely to benefit. Some firms will work only with consumers who are in a hardship situation. Many have minimum debt requirements. Consumers facing serious hardship with very high debts are, of course, the least likely to be able to afford the hefty payments that are charged. Settlement firms also appear to make no distinction, as a good attorney would, between consumers in these hardship situations who are vulnerable to legal judgments to collect and those who are not."*[20]
    - **RESPONSE** –
        - First, firms work with consumers in hardship because financial hardship makes a compelling case for re-negotiation of the terms with a creditor—a hardship helps define *why* the consumer fell behind and why they need new terms. If debt settlement companies worked with consumers who were under *no* hardship but decided they'd rather not pay off the new jet skis they bought with their credit cards, the creditors would almost certainly refuse to settle and instead sue as the clients immediately; if the client is *not* in a hardship position, they are likely to have either wages (if they live in a garnish-able state) or assets against which the creditor is likely to recover owed debts. In addition, the creditor would almost certainly refuse to work with that debt settlement company again on any future settlements therefore providing a huge disincentive to DSCs to work with non-hardship consumers.
        - Second, minimum debt requirements are used simply because one cannot sustain a debt settlement company, one with actively involved customer service representatives and professional debt negotiators, below some price point. In the same way that *every* house in America isn't affordable to *every* consumer, every debt resolution product isn't affordable to every consumer. The costs associated with providing a 3- or 4-year coaching, customer service, and negotiation service are not insignificant. Ours is a product that only helps those in financial hardship; that one company cannot help *every single consumer* in financial hardship should not elicit moral indignation. Financial products in every industry are rated and priced by risk.
        - Third, DMB Financial, and I would presume every debt settlement company with a code of ethics or a performance-based fee model, is <u>absolutely</u> concerned with the likelihood that a consumer will be sued. Clients who are sued tend to terminate the program; to a performance-based company like ours, that means we're not able to perform settlements, to save the client any more money, or to earn any more fee-for-performance. We screen prospective clients and if they appear likely

[20] Keenst

to be sued, we do not approve them for enrollment. This criteria includes: a) having only a single creditor account as it will likely take too long to accumulate funds necessary to make the settlement before they are likely to get sued; b) if the consumer lacks sufficient cash flow to save money for the settlements, we cannot enroll them, e.g. if they can only afford $100 a month and have $75,000 in debt, it would take more than 40 years for them to accumulate sufficient money to enact a settlement – the creditor would sue them long before we could successfully settle that account; or c) if the consumer has considerable assets, a lack of financial hardship, lives in a state where wages are garnishable, etc. and we deem them to be too high of a litigation risk, we do not enroll them into the program. This is in the best interest of both the consumer and DMB Financial. Not only do clients who get sued represent lost potential revenue for us, they also tend to hold fairly negative attitudes about the debt settlement industry or their DSC in particular, even though there's nothing a DSC can do to prevent a lawsuit. Our referral and new business is severely hurt by angry former clients. These are consumers on the edge of bankruptcy and part of our job as a debt settlement company is to help the consumer raise as much capital as possible, as quickly as possible, to settle debts before they get sued or have to file bankruptcy.

5. **ISSUE** –*"It is unclear what professional services most debt settlement companies offer to assist debtors while they save money to pay for a settlement. "*[21]
    - **RESPONSE** – Financial planners help you to identify your financial goals, organize your current budget and spending habits, and develop an ordered plan for which investments to make and when. This provides tremendous value to consumers. This is analogous to what a <u>professional</u> debt settlement company does for the client in the pre-settlement phase. We help them *set up and maintain a budget***.** We take consumers with poor quality spending habits and a general inability to save money, and transform them into consumers able to save $800 of cash a month on an annual income of $50,000 into their own bank account. That's a tremendously painful experience for many of these consumers who've lived years with unchecked spending habits. We provide them with *financial literacy tools*. We educate them through newsletters, blogs, personal customer service calls from live people – not automated robo-callers – and counsel them with hope, a plan, and repeated settlement successes. In addition, DMB Financial offers the following:
        - Financial literacy education.
        - Discounted or free legal services such as wills, living wills, and basic estate planning.[22]
        - Advice for handling stress and financial hardship.
        - A trusted customer service advisor, available 6 days a week.
        - Partnership with a financial planning firm to put graduating clients on the road to building wealth and long-term financial stability.

[21] Keenst
[22] Reduced and free legal services are provided to our client base by a third party provider.

6. **ISSUE** –"*There clearly is demand for a legitimate debt negotiation approach that offers more relief than traditional credit counseling but is not as far reaching as bankruptcy.*"[23]
    - **AGREEMENT** – Nearly 10 percent of all credit card debts are currently delinquent, according to the latest Nilson Report (June 2009). Many Americans want to avoid filing bankruptcy. Consumers are looking towards debt settlement as a viable alternative to bankruptcy. *The consumer market is asking for this solution*. Credit issuers are also anxious for a debt settlement alternative. Compared with their other alternatives for delinquent debt, debt settlement recovers a dramatically higher percentage of debts. On average, credit issuers see the following recovery rates on delinquent debts via these channels:[24]
        - **Litigation =** $0.12-$0.18 on the dollar net expected return
        - **Debt collection =** $0.06-$0.25 on the dollar expected return
        - **Debt settlement =** $0.25-$0.60 on the dollar expected return

      In a time where America's major banks and credit issuers – giants like Bank of America, Citigroup, JP Morgan Chase, and Capital One – are teetering on the edge of collapse, collecting billions in government bailout money, and struggling with record highs of delinquent debt (both in percentage terms and in actual dollar amounts), debt settlement is a tool that helps these companies recover 2 or 3 times the amount on their delinquent debts they would if they instead pursued litigation or drove consumers into bankruptcy. This helps keep creditors solvent and provides greater stability to our financial markets.

7. **ISSUE** –"*Require debt settlement firms to inform consumers up front whether or not creditors will participate in the plan.*"[25]
    - **RESPONSE** – It is difficult in this case to give consumers accurate information – which is what a respectable, quality company wants to provide – not because of a lack of effort or will to do so, but because creditors change their terms over time. Whereas a given creditor may not have accepted settlement agreements in 2004, in 2006 they may decide to deal with settlement companies. So, a consumer who signed up in 2004 and still in the program 18-24 months later may, in fact, be able to reach a settlement on a card where it would not have been possible when they entered the program. As a result, we have concern that such a mandate would only provide consumers with inaccurate information.

      In addition, a specific credit account may change ownership several times within a year, e.g. a Citibank account may be sold to Debt Collection Company A, who later sells that debt to Debt Collection Company B. Even if today's creditor may not accept settlements, a debt owner further down its ownership lifetime may still accept settlements. Buying and selling debt by the initial creditor and subsequent collection agencies on this secondary market is a common practice. Government and industry can reliably predict neither who will own the debt, nor what terms that owner may accept, several months or more in advance.

---

[23] Keenst

[24] Anecdotal from history of over 100 years of debt collection experience within the DMB Financial settlements division, but sufficient data sources and a number of academic studies support these as reasonably comparable assessments.

[25] Keenst

8. **ISSUE** –"*Place a cap on back-end settlement fees, based on the settlement services actually rendered rather than the amount of debt that was forgiven.*"[26]
    - **RESPONSE** – This statement poses two major challenges: first, there are excellent precedents for industries where fees for negotiation are not capped and the market is allowed to decide what price is "fair"; and, second, this assumes a universal understanding of what is a "fair" amount. First, all lawyers do not receive the same fees, regardless of how good they are, or how well they perform. Nor do doctors, real estate agents, or most other professional services firms. A superior debt negotiator should be able to achieve higher savings amounts for a consumer – both in terms of percentage and in pure dollar amounts – than a low quality debt settlement provider. That superior service, recognized in the fact that they've saved the consumer 80 cents on the dollar for the same account for which another negotiator only gets 60 cents on the dollar, deserves greater compensation. The standard of American free markets is that superior service has the potential to yield better-than-average results. Restricting the amount that a consumer can pay a negotiator for saving the money will only limit the quality of the human capital that migrates into this industry. Superior negotiators and superior debt settlement firms should be provided the same right to pursue *premium* profits that all other industries have been given.

Recommendation #4

We recommend that any discussion of fee caps be relative to the level of success provided to the client, i.e. companies that settle accounts for greater consumer savings should be rewarded for delivering exemplary service to consumers. In conjunction, we favor a full fee disclosure statement to consumers, right up front, so that consumers can make smart shopping comparisons among debt settlement companies. We favor transparency among the debt settlement companies and the freedom for consumers to choose whether they want to value shop for low quality / low cost solutions, or enlist the help of the industry's best professionals at a premium price point. That kind of open, transparent competition is good for the consumer.

9. **ISSUE** –"*Require that any debt serviced by a settlement firm be settled within 12 months.*"[27]
    - **RESPONSE** – The timing within which a settlement can be achieved is determined almost completely by the speed with which a consumer can accumulate the funds necessary for a settlement. Our typical customer has an average of 5-7 accounts each and debts are typically settled sequentially, due mostly to the lack of sufficient capital from the consumer to negotiate all at once, and partly because these accounts are normally spread across several different creditors.

      For a consumer with $39,000 of credit card debt on a $50,000 a year income, placing a time limit such as this guarantees that 99% of these consumers will be excluded from being able to use debt settlement. It simply is not possible for these consumers on average to accumulate

[26] Keenst
[27] Keenst

the $19,500 of savings necessary, plus any fees due, within one year's time. *If they are capable of doing so, they are not under a financial hardship and should instead simply pay off their bills.* However, debt settlement clients aren't in that position. They generally live hand to mouth, most making just the minimum credit card payments each month. There is no discretionary income. There are no secret sources of cash. The reason debt settlement often takes 36 to 48 or even 60 months is because these consumers don't have the cash required to reach a settlement. Putting a deadline to reach settlement is no more realistic than placing a 12 month deadline on someone to become a millionaire. This is a function of how much cash they can generate in what period of time. This shows a misunderstanding of what the main drivers for debt settlement or credit counseling or bankruptcy are and how long the process takes.

10. **ISSUE** –"*Limit agencies allowed to engage in debt settlement practice to non-profits."*[28]
    - **RESPONSE** – As credit counseling firms have repeatedly shown, "being non-profit" does not necessarily equal "being good for the consumer". This restriction is unnecessary and inappropriate. Professional negotiators abound in a number of industries; lawyers and real estate agents are two examples. Neither of these professions is without scandal or bad apples. Neither of these professions is viewed by the typical American in a particularly positive light. But both professions add tremendous value to society. Both lawyers and real estate agents bring a professional, high paying (sometimes), skill set as a professional negotiator who knows the "rules of the game" and how to extract the maximum value from the negotiation at the lowest possible price. Debt negotiation is no different.

What this industry needs is transparency and accountability. We need to build a culture of trust with consumers through accurate and up front disclosure of the risks. But, also through disclosure of the *real successes* that debt settlement sees every day. Simply ask a debt settlement graduate who, at the age of 62 thought she was 3 years from retirement only to realize that after retiring, her complete retirement income would go directly to paying just the monthly minimums on her credit card debt. It would have taken her 23 more years –until the age of 88 – of paying the minimums until she could use her retirement income for rent, food, transportation or, heaven forbid, a well-deserved vacation. Instead, she enrolled in a debt settlement program and 3 years later is debt free and enjoying the fruits of a productive lifetime of hard work. Yes, her credit score suffered. But she is free of debt and able to retire with peace of mind. This industry needs some controls. It needs more transparency. But the industry itself is very much needed by *both* consumers and creditors as a way for both sides to recover greater value.

[28] Keenst