

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

DECEMBER 2009 RESPONSE

REPORTED BY:

Ralph S. Lewis, COO
Able Debt Settlement, Inc.
1333 Corporate Drive, Suite 360
Irving, Texas 75038
Tel: 214 357 5356 ext 201
Email: rslewis@cox.net

REGARDING:

Additional Information Supplementing
October 2009 Comments on 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

SENT VIA: <https://secure.commentworks.com/ftc-TSRDebtRelief>

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1. Preliminary Comment

Able Debt Settlement, Inc. (ADSI) hereby submits the following Response to the FTC additional questions regarding the 16 CFR Part 310 Telemarketing Sales Rule / Debt Relief Amendments, R411001. This Response should be understood within the context and definitions as provided within the ADSI Report of Ralph S. Lewis submitted with the OCTOBER 2009 COMMENTS, which may be viewed at the following FTC website:

[Able Debt Settlement, Inc. \(Lewis, Ralph S.\) \(10/21/2009\)
http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00181.pdf](http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00181.pdf)

The FTC Proposed Amendments and these additional questions indicate that false assumptions have been made incorrectly implying that practitioners provide only a very narrow range of services to a limited class of consumer clients. Principals of unincorporated small businesses and professional individuals having licenses or identities under which they produce income and for which they have personal liability and obligations may be construed as entities or activities under the jurisdiction of the Proposed Amendments. Bankruptcy treats consumers that have excessive unsecured or secured debts separately and requires them to file for reorganization under Chapter 11 rather than Chapter 13. No provisions within the Proposed Amendments address or exclude such parties. In addition, a financial consultant that provides services to a party whom later incorporates the results of that service in an effort or other activity to resolve a debt issue might be interpreted under the FTC Amendments as included and under the jurisdiction of the FTC Amendments.

It would be an unconscionable act to allow one party to a contract, such as a credit card issuer, to freely hire any debt collector they wish while restricting another party to that same contract, a consumer, from freely soliciting or hiring the services of a settlement agent of their choosing. This regulatory discrimination favors one party to a contract, serves no benefit to the States or Federal Government and fails to provide any greater protection to consumers than they would enjoy without the Proposed Amendments or through some other means.

ADSI believes that the Proposed Amendments violate the personal rights and freedom of choice of individuals in a manner far beyond the Legislative scope and intent of the underlying Rule and that such interference will have absurd consequences through misinterpretation creating uncertainty, argument and frivolous lawsuits.

The greater “*Turnaround Industry*” provides several different programs to a great range of clients seeking to resolve a complexity of debt issues. ADSI is opposed to the Proposed Amendments as broad interference with undefined and unintended business activities. Although ADSI has responded where possible to the FTC questions, readers are encouraged to review the Able Debt Settlement, Inc. OCTOBER 2009 COMMENTS to properly evaluate and interpret the following ADSI Responses.

2. Questions and Responses

Questions From FTC Staff Following Up on Public Comment

1. Company Background

(a) How long have you been enrolling consumers in debt settlement programs?

RESPONSE: Principals of ADSI have engaged in what today is commonly referred to as the *Turnaround Industry* since 1973 working with business owners, project managers and professional individuals. ADSI started accepting programs from employees of turnaround businesses and other consumers in May of 2003.

NOTE: although the term “*enrolling*” is commonly used, it should be understood that it is a financially insolvent person that solicits and hires the services of a settlement support services provider such as ADSI to process and service the person’s financial forecast and strategy based solely on that person’s financial information as represented by them. ADSI only processes “*qualified*” programs as defined in its COMMENTS. ADSI does not accept all parties and not all services and programs of ADSI are available to all clients.

(b) Have you made significant changes in your programs since you began offering settlement programs?

RESPONSE: ADSI programs (*workouts, turnarounds, restructures and liquidations*) have remained the same since the early 1970’s. However, the content of our documents has changed in an attempt to maintain continuity within the greater financial services industry as well as with state and federal agencies for which there is little continuity in the language used to describe similar activities. “*Debt relief*” for example was used to describe a practice of defeating a creditor’s ability to collect on a debt and contrary to a voluntary settlement program. In another example, “*debt management*” has become associated with “*credit counseling*” and includes an activity more commonly referred to as “*debt pooling*” for which the IRS has revoked the tax-exempt status of over 250 nonprofit credit counselors for engaging in such activities.

NOTE 1: not all programs are accepted by ADSI from all types of clients. ADSI does not process “*restructures*” for or from consumer clients or their practitioners where it involves securing a loan for the purpose of converting unsecured debt to secured debt in a manner that jeopardizes a family residence.

NOTE 2: “*liquidation*” of a consumer client usually involves an executor or administrator of the estate of a deceased person and would be processed in a manner similar to that of a closed business. While ADSI services *estate-liquidations* we have only had one living-disabled “*liquidation*” consumer client accepted for a five year program in 2004 through which she completed her program in 2009.

2. Number of accounts and consumers

For each question, state the specific time period.

(a) For how many total accounts has the company provided support services?

RESPONSE: ADSI provides a variety of services for *business owners, project managers, professional individuals and employees of turnarounds as well as other consumers*. The majority of ADSI clients have debt issues associated with business and professional activities. ADSI does not provide gross numbers and does not differentiate forecasted creditor accounts once accepted for processing. However, a best estimated average per ADSI consumer client is that they are seeking assistance in resolving debt issues with 5.92 of their creditor accounts.

(b) For how much total debt has the company provided support services?

RESPONSE: The average amount of debt processed by ADSI per consumer client is approximately \$35,566. This is an average of \$6,008 per consumer client account.

(c) How much total debt have consumers settled using the company's services?

RESPONSE: ADSI clients including consumer clients are *debtors in possession* of their assets (monies) and as such are required to make final settlements directly with their creditors. Although ADSI provides archival services for confirming, documenting and recording final settlements, clients are not obligated to submit evidence of payments. Clients and or their independent practitioners may use the services of ADSI to process their program until such time as their creditors move their respective accounts into departments authorized for settlement at which point any client may terminate the services of ADSI and communicate directly with a creditor's authorized agent. Although ADSI conveys "*batch-files*" to every creditor and is the procuring cause for settlements, many creditors forward settlement arrangements directly to consumer clients after having received client-forecast conveyances from ADSI. By choice and for personal or private reasons many clients do not wish to disclose or have ADSI archive final settlement arrangements. In fact, ADSI often learns or receives verification that an account was settled through creditor status updates indicating settled accounts for which ADSI received no notice from the client.

Given the insolvent financial condition of ADSI consumer clients and their limited financial resources, nearly all accounts are eventually settled at or very near the "*turnaround program*" forecast at least on average. Subtracting from these estimates are the 4.78% of ADSI consumer clients that cancel and file bankruptcy as well as the 22% of consumer clients whose financial condition improves prior to completion of their program and who may resume creditor relationships.

Therefore, the percentage of debt settled on average is estimated at 73.22% of the initial \$35,566 of debt for a total of \$26,041 per consumer client.

NOTE: Not included in these estimates is any consumer client "*workout program*" where there is a reasonable expectation that a marginally insolvent client will recover financially within a specified period and that their creditors are expected to receive all or nearly the

entire amount of the debts indentified. Forecasts of such clients are in excess of 85% of the debt of the client.

(d) For how many total consumers have the company provided support services? Please include all consumers who have made at least one payment.

RESPONSE: ADSI provides *business, project, professional* and *consumer* clients with *workouts, turnarounds, restructures* and *liquidations* programs for resolving *secured, unsecured, priority* and *nonpriority* debt issues generating 64 classifications of creditor accounts. There are three major functions involving *client analysis, creditor processing* and *settlement support services*, which can be *unbundled or bundled* in six different orders based on the wants, desires and needs of the client and or their independent practitioner. This matrix generates 384 distinct scenarios. The FTC assumes only one classification, *consumer-turnaround-unsecured* and a partial *settlement-function*. ADSI does not differentiate information in such a manner and does not provide gross numbers.

3. Debt reductions

(a) What is the average percentage reduction of settled debt that consumers who completed a program using your support services received? Please calculate this percentage reduction using the amount owed at enrollment.

“Completed” is defined as having had 95%-100% of the consumer’s total amount of debt settled.

RESPONSE: ADSI processes and conveys the nonnegotiable forecasts of insolvent clients as represented to ADSI. The completion of a program is described in our prior COMMENTS and having that understanding the average consumer client settlement forecast is currently 38.54% or inversely a reduction of 61.46%. This is down significantly from our April 2006 consumer numbers that reflected a 48% average settlement or 52% reduction. ADSI programs have no subjective process or arbitrary objective and therefore these numbers simply reflect a worsening of the insolvent financial condition of individuals seeking assistance.

NOTE 1: the range of settlements was from 0% (a complete waiver of debts) to 109% (workouts involving marginally insolvent clients and not included with these numbers.)

NOTE 2: because of the insolvency requirement as a condition for ADSI acceptance of a person soliciting ADSI services, clients may avoid a tax obligation resulting from a *forgiveness of debt*. The debt reduction information requested by the FTC does not reflect or account for the additional tax obligation resulting in other programs.

(b) What is the average percentage reduction of settled debt that consumers who completed a program using your support services received? Please calculate this percentage reduction using the amount owed at settlement.

RESPONSE: ADSI maintains no such records regarding the amount of debt beyond the point of forecast as conveyed to ADSI by a client, consumer or otherwise. Said

information is meaningless given that there is no consistency by creditors or throughout the financial community in processing non performing accounts. Creditors sometimes raise interest rates to the highest limit possible in order to increase the value of one account while the same or other creditors simply close other accounts and stop posting charges to them. In any event, such information is irrelevant with respect to an insolvent person whose forecast is based solely on the financial capabilities of that person.

4. Accretion

What is the average rate of increase in amounts that consumers owe to creditors between enrollment and settlement?

RESPONSE: ADSI maintains no such records as stated in 3(b) above. In addition, given the complexity and diversity of ADSI programs and services such information would have no relevant meaning since there is no distinction between 12 month *liquidation* and 36 to 60 month *turnaround* programs.

5. Fee structure

(a) What percentage of companies for which you provide support services use a “front-end fee model,” in which the company requires consumers to pay as much as 40% or more of the fee within the first three or four months of enrollment, and collect the remaining fee over an ensuing period of 12 months or less?

RESPONSE: NONE and Not Applicable. No client simply enrolls in a program serviced by ADSI and ADSI receives no fee until after the entire *client analysis* has been completed, the client has gone through ADSI underwriting and been accepted by ADSI. No such *front-end fee model* is a requirement by any company for whom ADSI provides their clients with settlement support services and although ADSI never participates with fee negotiations between practitioners and their clients, ADSI believes that all fees are negotiable and has seen every conceivable fee structure. There is a *front-end fee model* optionally available to business clients, liquidation clients and certain other clients taking advantage of a discount for prepaid services fees. There is no average for this activity. Practitioners may from time to time contact ADSI for acceptance of *extreme hardships* at reduced or waived fees. In addition, ADSI may reject client programs if it believes the fees are excessive.

(b) What percentage of companies for which you provide support services use a “fixed fee model,” in which fees are spread out in a series of payments over a fixed period of time? Of members that use a “fixed fee” model, over how many months are payments collected?

RESPONSE: That is simply a reasonable fee schedule that is acceptable to ADSI from any practitioner at any time. There is no percentage of companies fixed to any particular fee schedule. Companies for which ADSI provides support services are free to structure whatever fee arrangement is reasonably necessary or required to accommodate any client and vary from discounted prepaid fees to fees paid over the course of an entire five year program.

(c) What percentage of companies for which you provide support services use a “back-end model” in which the consumer pays all of the fee upon program completion, paying a fee equal to a percentage of total savings?

RESPONSE: NONE. ADSI is opposed to a *percentage of the savings model* and finds it contrary to the objectives of our clients, their creditors and ourselves. ADSI usually receives lower fees for *extreme hardships* where the forecast to creditors is very low.

NOTE: A *percentage of the savings model* would have a practitioner charging its most extreme hardship clients the largest fees. If a client were only capable of paying back 20% of their debts then their practitioner would typically charge 30% of the 80% savings and receive 24% of the debt, not only receiving more than the creditors but becoming a larger creditor than those settled. ADSI does not process such programs. Since insolvency is generally not a requirement of such fee models, the client paid 20% to the creditor, 24% to the practitioner and 24% +/- in taxes for the *forgiveness of debt* totaling a 68% payback.

(d) Do any companies for which you provide support services use fee models not captured by questions 4(a)-(c)? If so, please explain for those fee models when amounts are collected, what amount is collected at each time, and how many members use the fee model.

RESPONSE: SEE SECTION **5. Service Fees and Refunds**, page 14 of the COMMENTS report referenced above.

SPECIAL NOTE: ADSI has a special fee program for creditors that refer clients directly to ADSI as well as a rebate of proportional service fees to creditors that accept *settlement-payment* arrangements within sixty days of an initial notice from ADSI. ADSI has received clients from state agencies, financial institutions and even collection agencies for which there is no preference shown, given or forecasted other than from the ordinary service fees of ADSI.

(e) Has the fee structure for any of the companies for which you provide support services changed over time?

RESPONSE: Fee structures are not fixed by companies with whom ADSI provides support services. Companies may freely structure whatever reasonable arrangement is needed to accommodate a client.

(d) For consumers who have dropped out of the companies for which you provide support service’s programs before completion, what is the total amount of fees paid by them?

RESPONSE: Not Applicable. ADSI does not commence services until after an independent financial consultant has completed their services for the client and the client

has decided on a course of action that involves the services of ADSI. At this point the client program is forwarded to ADSI underwriting for acceptance and unless rejected by ADSI there is no continuation of activity between the practitioner and the client for the client to drop out of. In an attempt to respond to part of this question, independent analysts receive no fees if their service fee is dependent upon acceptance of the client program by ADSI and is rejected by ADSI in underwriting. If a practitioner fee is paid over the course of a program and a client cancels their program then the practitioner may only receive that portion of the fee already paid. ADSI does not and has never pursued fees after cancellation of a program.

6. Completion Rate

(a) Of consumers who enrolled in a program for which you provide support services at least 36 months ago, what percentage have completed it?

RESPONSE: ADSI programs range from 36 to 60 months. Only *liquidation* programs involving deceased consumer clients would have a forecast for completion in twelve months or less. Consumer clients able to resolve their debt issues in less than 36 months would probably not qualify under ADSI program disciplines. However, consumer clients periodically receive financial assistance from parties having no legal obligation to do so and make settlement funds available upon authorization and confirmation of a settlement arrangement with creditors. There is no way to account for such funds other than to record settlements when conveyed by a client or their creditor. The number of consumer clients that resolve their debt issues in less than three years is less than 3% and there is no reasonable expectation that such clients would be able to do so. However, consumer clients cancelling their program as a result of receiving earlier than forecasted funds do not always forward such information for documenting and recording purposes.

(b) Of consumers who enrolled in the program for which you provide support services at least 36 months ago, what percentage are still active?

RESPONSE: The percentage of consumer clients remaining active for which ADSI commenced providing services at least 36 months ago but not longer than 60 months ago and whose program duration was initially forecasted such that it would still be active except for an early completion, cancellation, discharge or other termination is 32.85%.

NOTE: the calculation provided in response to this question should not be interpreted as having any significant meaning since clients having established *settlement-payment* arrangements with their creditors no longer need the assistance of ADSI and often terminate their program prior to a final payment.

7. Number of Settlements

(a) What percentage of consumers who enrolled in a program using your support services settled at least one debt in the first year after enrolling?

RESPONSE: The percentage of consumer clients that enter into a settlement arrangement with at least one creditor in the first year is approximately 26%. However,

the percentage of consumer clients that settled at least one creditor account in the first year is 21%.

NOTE 1: these are 36 to 60 month programs and many creditor accounts are not authorized for settlement or other resolution until after 180 days. Therefore, there is no reasonable expectation for consumer clients to settle any debt within 12 months.

NOTE 2: although a final payment may not have been made, a *payment settlement* arrangement would be documented and recorded as resolved.

(b) What percentage of consumers in a program using your support services settled at least one debt in the first two years after enrolling?

RESPONSE: The percentage of consumer clients that “*settled*” at least one creditor account in the first two years is approximately 74%. However, if all clients and all creditors followed the forecast of the client there would be NO settlements in the first two years. All settlements would be over the duration of the program ranging from 36 to 60 months.

(c) How many consumers who enrolled in a program using your support services dropped out before settling any debts?

RESPONSE: Unknown. Over the last year a major creditor and their collection agents began coercing clients into cancelling their programs early with offers to settle if they would cancel their program and file false complaints against their settlement company. ADSI only knows for certain from the clients that forwarded these documents to ADSI when it occurred but suspects that it happened numerous times. Evidence of this conduct is attached as Exhibits to the ADSI OCTOBER 2009 COMMENTS.

8. Independent Contractors

Please provide a list of companies for whom you provide support services and a brief description of their businesses.

RESPONSE: ADSI may provide support services for independent practitioners from time to time across the country that have demonstrated specific knowledge and experience in assisting insolvent persons in the development of a financial strategy for resolving debt issues. There is no obligation for such practitioners to use exclusively or otherwise ADSI services nor is there any obligation for ADSI to process their clients. ADSI provides support services for business analysts, project analysts, financial analysts, attorneys, accountants, enrolled agents and other tax professionals as well as other financial consultants. ADSI does not list or maintain a publication of such practitioners.