Comments of Michael Calhoun, President, of the Center for Responsible Lending to the Federal Trade Commission

Notice of Proposed Rule-Making: Telemarketing Sales Rule
Debt Relief Amendments
Matter No. R4110011

July 2, 2010

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

Dear Commissioners:

Thank you for the opportunity to comment on the proposed rules regarding debt relief companies. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices.[1] Based on our analysis of available information, and in particular the debt settlement industry's use of advance paid fees, we support the Commission's proposed rule.

First, we note the key factual points that are either undisputed, or are established by industry submissions and accepted as true for the purpose of this analysis. More specifically, we hone in on the Commission's proposed ban on advance fees, which, like so many other commentators, we regard as the single most important component of the Commission's proposed rule.[2]

As we detail below, on certain fundamental points, the data is not materially disputed:

- A broad range of diverse stakeholders—including bankers, consumer finance companies, credit counselors, labor, consumer and civil rights groups and even some debt settlement service providers—all support the advance ban.
- Well more than half of debt settlement clients terminate the relationship prior to completion of the program, and of those who do terminate, according to a TASC study, approximately two-thirds have not obtained a single settlement.
- In the majority of cases, these individuals paid hundreds or thousands of dollars in fees to the debt settlement company.
- Even when considering savings generated by successful debt negotiations, the best available data suggest that consumers on the whole realize a net loss because of debt settlement.
- Consumers who enroll in debt settlement programs face added harms and risks from having done so. A significant proportion of debt settlement consumers face a dramatic reduction in their credit scores, lawsuits and other heightened collections efforts by their creditors, and many are forced into bankruptcy.

Whatever the merits of other contentions made by opponents of the proposed rule, these well-established facts demonstrate the unfairness, abusiveness, and sheer irresponsibility of debt settlement companies accepting large fees from severely strained consumers prior to – indeed without regard to – ever settling a debt.

The widespread harm and its impact on ordinary families in every state, at the hands of debt settlement companies large and small, including members the Association of Settlement Companies (TASC), U.S. Organization for Bankruptcy Alternatives (USOBA) and others supposedly engaged in the industry's "best practices," explains the unusual unanimity of views in support of the advance fee ban, by diverse groups who do not frequently agree on points of policy.

As detailed below, these data established in the record, and elsewhere, compel the conclusion that a debt settlement company's charging of fees in advance of actually settling debt is an unfair and abusive practice that should be prohibited.

1. **The Record Reflects A Rare Unanimity Of Views Among Diverse Stakeholders In Support Of The Proposed Rule, And In Particular, The Ban On Advance Fees.**

In a rare and compelling alignment of consensus, the financial services industry, consumer advocacy groups, actors independent of either any financial or debt settlement industry, and even some members of the debt settlement industry, based on their own extensive factual records, find that the widespread debt settlement industry practice of obtaining substantial fees in advance of any actual debt settlement is unfair and extremely harmful to consumers, and should be prohibited. In our experience, it is rare that this group of stakeholders unite around the same policy solution to protect consumers.

A. Financial Services Industry Associations

The American Bankers Association,[3] American Financial Services Association[4], and the Financial Services Roundtable,[5] representing a large portion of nation's creditor financial institutions, each have weighed in supporting the rules as proposed, with some suggestions related to scope and in some cases, explicitly highlighting the need for the advance fee ban. For example, the American Financial Services Association makes the case quite plainly: "[It] prevents harm to consumers that would not be eliminated by the disclosure requirements. AFSA agrees with the FTC that 'requesting or receiving payment of a fee for any debt relief service before the seller has provided the customer with documentation that the promised services have been rendered meets the criteria for unfairness.'"[6]

B. Actors Independent of Any Industry

Similarly, this unanimity of view is shared by wide swath of independent organizations – the Better Business Bureau,[7] consumer advocacy groups, including legal services entities,[8] the U.S. Government Accountability Office,[9] and 41 state attorneys general[10] – all of whom have uncovered substantial evidence of abuses by a wide range of debt settlement companies across the country. Significantly, these organizations report on a number of industries, beyond debt

settlement and beyond financial services, and have concluded that advance fees charged by debt settlement companies are inappropriate.

Also of note is the specific concurrence of the Reporter of the Uniform Debt Services Management Act. He notes that even though model legislation – which he helped draft – was adopted by the Uniform Law Commission to allow some upfront fees for debt settlement services, he nevertheless supports the advance fee ban, stating that as the act moves through state legislatures, industry actors attempt to raise the allowable front end fees. As such, he concludes: "the ban in § 310.4(a)(5) on requesting or receiving compensation before providing the consumer with a settlement agreement is perhaps the most valuable proposal in the TSR. On this point more than any other, I commend you."[11]

C. Debt Settlement Industry Representatives

Finally, even some debt settlement industry representatives submitted comments in support of the ban on advance fees.

The American Coalition of Companies Organized to Reduce Debt ("ACCORD"), a debt settlement trade association,[12] states that banning the collection of fees prior to the settling of debt "align[s] consumers' interests with their debt settlement company's interests" and "ensuring a debt settlement company's right to collect a fee based on the enrolled debt ensures a disconnect between the value of the service and the size of the fee. In contrast, a success-based fee links the consumer's benefit and the amount of the company's fee, providing the debt settlement company with a strong incentive to achieve good results for its clients."[13]

Similarly, individual debt settlement companies Financial Consulting Services[14] and Care One Services[15] submitted statements in the record in support of the Commission's proposed rule, both highlighting that the settlement fee model properly aligns the interests of the consumer and the provider. [16] Moreover, both companies indicate that they are able to provide services to consumers using a settlement fee model.[17]

D. Credit Counseling Agencies

Credit counseling agencies similarly support the ban on advance fees for debt settlement companies. Unlike debt settlement companies, credit counseling agencies provide counseling and education to consumers, and help clients repay their unsecured debts through Debt Management Plans. For example, the Association of Independent Consumer Credit Counseling Agencies (AICCCA) expresses support for the rule, and describes the harm that AICCCA's membership agencies witness firsthand when consumers who first went to a debt settlement company seek help from a credit counseling agency:

> AICCCA members are regularly contacted by consumers who have suffered the "irreparable injury" noted in the NPR as a result of unscrupulous practices engaged in by some for-profit debt settlement entities. These victims have been advised to cease making payments to their creditors and have made substantial payments to the service provider in advance of receiving any relief.

> They have not received realistic disclosures and have often been provided with substantial misrepresentations regarding the realistic ability of these entities to provide help. As a result, these consumers incur greater damage to their credit histories, are subjected to late and penalty fees by creditors, and are usually left in a substantially worse position than if they had used legitimate credit counseling services.[18]

Other credit counseling agencies and associations similarly express concern about the injurious impact of for-profit debt settlement companies charging high fees and no results.[19]

The diverse support for the Commission's proposed ban on advance fees is strong evidence that the ban is both necessary and reasonable.

2. Available Data, Including Industry Data, Shows Why Advance Fees Are Unfair: Most Consumers Pay Without Having Debts Settled While Those With Settlements See Minimal Or No Overall Savings.

Put plainly, for most consumers enrolling in a debt settlement program, advance fees translate into unearned compensation for the debt settlement company. Whether looking at industry data provided by TASC, industry-wide data released by the Colorado Attorney General, or investigations into particular companies, the data lead to the same conclusion: few consumers have their debts eliminated as promised, while those who do see debt settlements receive little benefit.

A. Most Consumers Pay Fees But Do Not Get Their Debts Settled.

Since the Commission released its NPR, the trade association TASC submitted the results of a survey that includes responses from 14 of its 20 largest members, and that represents coverage of 75% of the enrolled consumers of TASC members.[20] The self-reported data by TASC members – presumably the data most favorable to the industry -- reveals, as explained below, that the majority of consumers do not get the services they pay for, while a significant percentage pay their fees and get ***zero*** debt settlement in return.[21]

The TASC survey reveals that after three years, a full 65.6% of consumers who enrolled in a debt settlement program have terminated without having "completed" the program (defined as having 75-100% of their debt settled).[22] A significant percentage of these consumers, 65.2% – or more than 42% of all consumers who enroll – had absolutely no debt settled at all, despite having paid advance fees to the debt settlement company in hopes of having their debts settled.[23]

The Colorado Attorney General's first annual report, *i.e.*, data not stemming from discovery or enforcement actions, [24] on debt settlement companies' activities in Colorado revealed that that the termination figures for those signing up within the last one to three years were already higher than 50%.[25] Moreover, only 7.81% of those who had enrolled two to three years earlier had completed the program.[26] By contrast, enrolled consumers – regardless of whether their debts

had been settled and including the more than 50% of costumers who terminated before completion – had already paid an average of $1,666.

This data alone compels the prohibition of advance fee payments to debt settlement companies. Even if industry claims were true as to the minority of clients who completed the program, there can be no justification for extracting substantial fees from financially stressed consumers who do not obtain the desired settlement of their debts.

B. Even Clients Who Obtain Settlements Get Little Financial Benefit, Especially When Weighed Against The Attendant Risks And Harms

The alleged benefits claimed by industry for the minority of clients who successfully settle their debts do not justify the manifest harm to the majority of clients who do not. For this reason, industry's asserted benefits for some clients are not material to the propriety of the advance fee ban. Nonetheless, it is worth noting that industry's own data show that even for "successful" debt settlement clients, the benefits obtained are very small, and diminish further when taking into account other detrimental consequences of enrolling in a debt settlement program.

The TASC survey provides the most detailed and broadest scope of information relating to consumer fees paid versus debts settled. In order to get a full picture of the true outcomes for borrowers, it is necessary to compare the consumer's situation upon entering the program versus the consumer's situation after three years. To do so, it is necessary not simply to compare the fees paid versus debts settled, but to compare the amount of debt that the consumer originally enrolled with versus the total of (1) the fees paid; (2) the amount paid by the consumer to creditors to settle debts; and (3) the amount of debt remaining that was not settled. Not surprisingly, however, TASC does not disclose the amount of debt left unsettled for the three-year subset of consumers upon which it reported.

Even without taking into account the substantial debt left unsettled (and its growth over time), a closer look at the figures provided by TASC reveals that after paying $199 million to creditors towards the settlement of debts and $126 million to the debt settlement companies for fees, with respect to the debts actually settled, consumers in aggregate have saved $39 million, or just over 10% over the enrolled amount of that debt.

When we consider the debt that has not been settled, however, the picture becomes much bleaker for consumers. Assuming an equal average enrolled debt by all consumers, and making assumptions favorable to the industry based upon data they provided, we can extrapolate that if $364 million in enrolled debt was settled, then approximately ***$482 million in enrolled debt was not settled***, and that unsettled debt has grown to $587 million during the three year period through the addition of interest and fees. [27]

Looking at the complete picture, it becomes clear that consumers are not receiving a benefit when they enroll in a debt settlement program,[28] and, in fact, ***in the aggregate end up paying more than 10% more than what they originally owed.***

Including "Successful" Debt Settlement Still Results in Net Loss for Consumers	
Total Amount of Enrolled Debt	$828 million[29]
Fees Paid by Consumers to Debt Settlement Companies	-$126 million
Payments Made by Consumers to Creditors to Settle Debts	-$199 million
Unsettled Debt	-$482 million
Additional Interest and Fees Imposed on Unsettled Debt	-$105 million[30]
Aggregate Losses to Consumers in Debt Settlement	**= – $84 million**

Under either scenario, when the supposed benefits are weighed against the costs of debt settlement, including reduced credit scores, lawsuits, garnishments and bankruptcy, the industry's arguments in favor of their unearned fees disintegrate.

C. Consumers Get Sued by Creditors and/or Forced into Bankruptcy, Even After Making Substantial Advance Payments to Debt Settlement Firm.

Consumers seek the help of debt settlement companies in order to avoid litigation with their creditors and to avoid bankruptcy. As shown below, industry submissions, however, make clear that a significant proportion of debt settlement clients end up being sued by creditors, forced into bankruptcy, or both. In these circumstances, the payment of unearned advance fees leaves consumers without what limited financial resources they might have had available to assist them in managing these difficulties.

- A report by Richard A. Briesch, issued by Americans for Consumer Credit Choice, a membership group made up of those in the consumer finance industry, found that, of the approximately 60% of consumers who cancelled their plans before completion, ***at least 13.5%*** of them cancelled due to forced bankruptcy.[31]

- Similarly, data provided by debt settlement law firm Morgan Drexden shows that ***14%*** of clients who canceled did so due to bankruptcy filing.[32]

- The experience of the 20,000 debt settlement clients described in the data submitted by Arnold & Porter on behalf of NCC was even worse: ***24.9%*** of all cancellations from this individual company (more than 5,000) were attributable to the consumer entering bankruptcy.[33]

These clients ended up with the worst of all worlds – they struggled to make payments to the debt settlement companies, and still ended up facing the total financial loss associated with bankruptcy. It is not possible to determine from the data what portion of these clients might have avoided bankruptcy had they instead directed their resources toward maintaining minimum payments with their creditors, or entered into a debt management plan through a credit counselor.

Nor is it possible to determine how many faced this outcome as a specific result of their having followed the debt settlement company's instruction to cease payment on their debts.

3. Under The Advance Fee Model, Debt Settlement Companies Fare Better As Consumers' Economic Conditions Worsen.

Not only do debt settlement companies fail to provide promised benefits for the vast majority of consumers, but often, enrolling in a debt settlement service puts consumers in a worse position, facing increased debt, higher risk of (or actual) bankruptcy, ruined creditworthiness, heightened collections efforts, garnishments and even lawsuits.

Notwithstanding industry claims to the contrary, the GAO investigation revealed that the great majority of debt settlement companies – 17 of the 20 called by the GAO – directed consumers to stop paying creditors, sometimes directly, sometimes indirectly.[34] As the GAO Report indicated, stopping payments to creditors as part of a debt settlement plan ***can reduce a consumer's credit score anywhere between 65 and 125 points,*** with higher impacts on consumers who were current on their payments prior to enrolling in the program, and missed payments can remain on a consumer's credit report for 7 years even after a debt is settled.[35]

Because consumers who in enroll in debt settlement programs are not paying their creditors, their debt grows substantially through the addition of interest and late fees. One large debt settlement provider disclosed an average debt growth ("accretion rate") of 21.9% between the time of enrollment and the time of settlement (assuming a settlement), so that a debt of $10,000 would have grown to $12,190.[36] Presumably debt that does not settle grows even more substantially.

Given the increased delinquencies, and sometimes because of the involvement of a debt settlement company, consumers experience heightened collection efforts, including lawsuits or garnishments. Indeed, the ABA admits in its submission that indeed "many [debt settlement] consumers find themselves deeper in debt, with a seriously impaired credit record, and facing continued collection efforts—including collection lawsuits and garnishment proceedings—following their engagement of a for-profit debt relief provider."[37] Moreover, some creditors specifically refuse to deal with debt settlers, as some debt settlement companies acknowledge.[38]

Even alone, these costs to consumers are material and significant, but when measured in conjunction with the high fees charged in advance and the failure to put consumers in a better financial position than when they enrolled strongly supports the Commission's prior conclusion that charging advance fees for debt settlement services causes consumers substantial harm that is not outweighed by the benefits.

4. Similar Experiences With Debt Settlement Companies Across The Country Reveal That Abuses Are Widespread And Pervasive, And Not Isolated To Rogue "Bad Apples".

Misconduct by debt settlement companies – and specifically, charging substantial advance fees unconnected to the settlement of debt for consumers – has been reported by individuals, legal services entities, and law enforcement officials across the country. These are neither geographically isolated, nor limited to small, fly-by-night operators. Rather, they implicate companies operating in each of the fifty states,[39] and include some of the largest debt settlement companies nationwide.

It is also worth noting that many of these investigations and abuses involve companies that are members of the trade associations TASC and/or USOBA. These associations publicize accreditation, implying that their members are not the ones who are abusing consumers.[40] The facts, however, suggest otherwise. For example, 12 of the companies investigated in the GAO report were members of either TASC or USOBA.[41] The GAO reported widespread deceptive and misleading practices by these companies, not to mention practices that violate the organizations' own supposed "best practices."[42] Additionally, state attorneys general have taken enforcement actions and obtained settlements or judgments against many members of TASC and USOBA for numerous violations of the states' debt settlement or other laws.[43]

Additionally, at the April 22, 2010 hearing on the debt settlement industry before the U.S. Senate Committee on Commerce, Trade, and Transportation, the U.S. GAO identified 6 of the abusive debt settlement companies it investigated.[44] All of them are still in business, proclaim to have a national reach, and have been in business for multiple years: New Beginning Financial & Ministries,[45] Credit Solutions of America,[46] FreedomDebt.com,[47] Freedom Fidelity Management,[48] ProCorp Debt Solutions,[49] and Web Credit Advisors.[50] Review of investigations by state attorneys general the same pattern of big abuse by big companies, many of whom have commented in opposition to these rules.[51]

Of particular note is Credit Solutions of America (CSA), which claims to be the "U.S. debt settlement industry leader."[52] Despite its claims, CSA has been subject to enforcement actions in 8 different states in the last two years alone.[53] In May 2010, Oregon banned CSA from doing business in the state because the company charged higher fees than allowed by state law and told consumers to stop paying creditors.[54] It is also worth noting that CSA is a member of USOBA.

CSA has also been subject to media investigations, such as a July 24, 2009, Nightline News report, in which the company executives were unable to answer questions about its performance.[55] In that same report, Better Business Bureau of Dallas stated they have received more than 1,600 consumer complaints against the company in three years.[56] As such, the 21 consumer comments submitted on behalf of CSA to the FTC should be balanced against the foregoing information.

The problems related to debt settlement are not abating; to the contrary, complaints are on the rise.[57] Finally, the substance of the complaints is corroborated by the consistency of the allegations by thousands of dispersed consumers, by the investigations and prosecutions of state attorneys general, and by the experience of independent "mystery shoppers" such as those employed by the GAO in its study.[58]

5. Conclusions

The landscape of available data presents disturbing trends, all leading to the same conclusion: A model in which debt settlement companies can charge consumers fees, in advance of actually settling any debt, presents a harmful misalignment of incentives. The end result is not financial relief for consumers, but rather, in a majority of cases, an unearned windfall for debt settlers as consumers are driven to greater economic harm such as bankruptcy, lawsuits, deeply scarred credit scores, and income stripping. The abusive practices of the debt settlement industry, and

in particular the pervasive use of advance paid fees from financially stressed consumers who receive no debt settlement benefit in return, and the rare alignment of opinion among financial institutions, consumer groups, state attorneys general, and even members of the debt settlement industry themselves, create an especially strong case to support the Commission's proposed rule.

Sincerely,

Michael Calhoun
President
Center for Responsible Lending

[1] CRL is an affiliate of Self-Help, a nonprofit community development financial institution that consists of a credit union and a non-profit loan fund. For close to thirty years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans to low-income and minority families who otherwise might not have been able to get affordable home loans. In total, Self-Help has provided over $5 billion of financing to 55,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America. Self-Help's lending record includes an extensive secondary market program, which encourages other lenders to make sustainable loans to borrowers with blemished credit.

[2] CRL supports the proposed advance fee ban and urges the Commission to clarify that any settlement-based compensation structure include the following two components: (1) no fees shall be paid by the consumer until the settlement is both fully documented and fully funded by the consumer; and (2) no fees shall be paid by the consumer pro-rata during the payment of an installment settlement, but only upon full funding and settlement of the debt.

[3] Comments of the American Bankers Association to Federal Trade Commission (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00199.pdf ("We support using FTC's proposed application of its targeted TSR authority to regulate the for-profit debt settlement industry. Thus, ABA and the banking industry are fully supportive of the FTC's proposal to amend the TSR to encompass all inbound calls made in response to direct mail or other media advertisements by for-profit debt relief providers and to add additional provisions to address specific deceptive and abusive marketing practices prevalent in the for-profit debt relief industry. ABA

believes that the proposed rule strikes an appropriate balance between maximizing protections for consumers from deceptive and abusive conduct in the telemarketing of for-profit debt relief services while avoiding the imposition of unnecessary compliance burdens on legitimate debt relief providers and creditor sponsored outreach.").

[4] Comments of the American Financial Services Association to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 9, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00137.pdf.

[5] Comments of the Financial Services Roundtable to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 9, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00134.pdf ("We agree that certain practices within the "debt relief services" industry are harmful to consumers and support the FTC's effort to curb abusive practices by expanding the Telemarketing Sales Rule.").

[6] Comments of the American Financial Services Association to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 at 9 (Oct. 9, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00137.pdf.

[7] The Better Business Bureau provided data to state attorneys general showing that, since 2007, debt settlement and debt negotiation companies have annually generated the most complaints received by the Bureau. The Better Business Bureau has concluded that the debt settlement industry is an "Inherently Problematic Business." See Comments of the National Association of Attorneys General to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 at n.5 and text (Oct. 23, 2009, available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00192.pdf.

[8] Comments of South Brooklyn Legal Services to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00216.pdf; Comments of Consumer Federation of America to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 16, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00161.pdf; Comments of Consumers Union to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 9, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00139.pdf; Comments of Queens Legal Services to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 22, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00185.pdf; Comments of Southeastern Ohio Legal Services to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Sept. 25, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00029.pdf.

[9] Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers (U.S. Gov't Accountabilty Office Rep. No. GAO-10-593T Apr. 22, 2010) [hereinafter U.S. GAO Report], available at http://www.gao.gov/new.items/d10593t.pdf.

[10] Comments of National Association of Attorneys General to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 23, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00192.pdf.

[11] Comments of Michael M. Greenfield, George Alexander Madill Professor of Law, Washington University in St. Lewis to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R411001 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00208.pdf.

[12] ACCORD (American Coalition of Companies Organized to Reduce Debt), http://www.accordusa.org/ ("a not-for-profit organization that was established to promote advocacy of consumer oriented debt settlement programs to professionals, legislators, regulatory agencies and consumers.")

[13] Comments of the American Coalition of Companies Organized to Reduce Debt (ACCORD) to Federal Trade Commission re Telemarketing Sales Rule - Debt Relief Amendments, Matter No. R4110011 (Oct. 9, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00144.pdf.

[14] Comments of Financial Consulting Services to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011, available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00224.pdf.

[15] Comments of Care One Services to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 23, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00191.pdf.

[16] See Comments of Financial Consulting Services at 2 ("First, by forgoing any payment until the creditor is paid, a company is motivated to work hard for the client throughout the entire client relationship and has no incentive to enroll clients for whom debt settlement is not likely to be successful."); Comments of Care One Services at 5 ("The proposed advance fee ban will *effectively* align the interests of consumers and providers, ultimately producing the intended outcome of prompt settlement of consumer debts and fair compensation for services rendered.").

[17] Comments of Financial Consulting Services at 2 (noting that "[w]hile others in the industry may claim that a success fee model is unworkable, FCS has established that such a model can be successfully marketed and administered to the mutual benefit of the company and its clients.") See also comments from Care One Services at 5. (noting that it "has analyzed the impact of the advance fee ban in the proposed Rule and has determined that we could *effectively* provide debt settlement services under this model.")

[18] Comment of the Association of Independent Consumer Credit Counseling Agencies (AICCCA) to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00197.pdf.

[19] Comment of Consumer Credit Counseling Services of Central NY to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00008.pdf; Comment of GreenPath, Inc. to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00184.pdf; Comment of Financial Education and Counseling Alliance (representing Consumer Credit Counseling of Greater Atlanta, Inc. Consumer Credit Counseling of Greater Dallas, Inc., Money Management International, Inc. Springboard Nonprofit Consumer Credit Management, Inc., Take Charge America, Inc. and GreenPath, Inc.) to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00214.pdf

[20] Comment of the Association of Settlement Companies (TASC) to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00202.pdf. [hereinafter TASC Survey Comment]. TASC notes, however, that only 12 companies provided data on fees and debt reduction. Id. at 9 n.7. TASC does not reveal the size of the two companies that did not report the data and it is not known whether their results might have differed significantly from those reported by the other 12 companies. Moreover, TASC admits that at least one company's report had to be discarded due to questions about reliability. See Letter of Andrew Houser of TASC to the FTC (Mar. 8, 2010), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00334.pdf [hereinafter Mar. 8 Houser Letter]. One may also question the reliability of data self-reported by each company in an attempt to protect their own financial interests.

[21] See generally id.

[22] Id. at 10.

[23] Id.

[24] See Press Release, "Attorney General Unveils First Annual Report On Debt Settlement, Credit Counseling Business Practices," available at http://www.coloradoattorneygeneral.gov/press/news/2009/10/15/attorney_general_unveils_first_annual_report_debt_settlement_credit_counseling; See also 2008 Annual Report – Colorado Debt Management Service Providers, available at http://coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf

[25] TASC Survey Comment. Although TASC suggests that it is inappropriate to use data reported earlier than three years after enrollment, id. at 9 n.8, consideration of the drop-out rate, even prior to three years is both appropriate and compelling.

[26] Comments of the Association of Settlement Companies (TASC) to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00202.pdf.

[27] Conservative assumptions favoring the industry include that 100% of debt was settled for the "completed" group, 70% of debt was settled for the "active" group, and 50% of debt was settled for the terminated group that had at least one debt settled. Using these assumptions leads to an average debt per consumer of just under $20,000, and remaining debt of $482 million.

[28] Industry commentators contend that education and support services entitle the debt settlement firm to its fee, even if it never settles a single debt. This claim is untenable. The industry markets itself as a means to eliminate debt, not as an entity to hold the consumer's hand during tough times. Consumers are paying to eliminate their debt, not for supposed ancillary services, even if such services are provide. As the GAO revealed, much of this financial education entailed simply pointing the consumer to information on the company's website. U.S. GAO Report at 8. In fact, the industry has admitted that the costs they seek to cover with advance fees are not the costs of providing services to customers, but the costs of marketing and acquiring customers. See Federal Register: Federal Trade Commission Telemarketing Sales Rule; Proposed Rule, 74 Fed. Reg. 159, 41988, at 42008 and n.234 (Aug. 19, 2009) ("industry has conceded that a large portion of its purported operating costs are actually devoted to marketing, and not provision of services to consumers.").

[29] The amount of enrolled debt was calculated by adding the disclosed $364 million in enrolled debt that was settled with the estimated $482 million in enrolled debt that was left unsettled.

[30] This figure was calculated by taking the estimated $482 million in enrolled debt that was left unsettled, and applying a 21.9% accretion rate, a conservative estimate for unsettled debt, as TASC offered an average accretion rate of debt from enrollment *to settlement* of 21.9%. Mar. 8 Houser Letter.

[31] Richard A. Briesch, Economic Factors and the Debt Management Industry at 15-16 (Aug. 6, 2009), available at http://www.consumercreditchoice.org/files/ACCC-Dr.%20Briesch%20Study%20Report%20on%20Debt%20Management%20Industry.pdf.

[32] Comments of Morgan Drexen, Inc. to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 at Ex. E-8 (Mar. 22, 2010), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00340.pdf.

[33] The data relates to a company referred to in the documents only as "NCC." Comments of Arnold & Porter to Federal Trade Commission, re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011at Ex. 4, (Mar. 17, 2010), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00336.pdf.

[34] U.S. GAO Report at 9-10.

[35] U.S. GAO Report at 10, 14.

[36] Mar. 8 Houser Letter.

[37] Comments of the American Bankers Association to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011 at 2 (Oct. 26, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00199.pdf.

[38] Comment by Superior Debt Services to Federal Trade Commission re Telemarketing Sales Rule – Debt Relief Amendments, Matter No. R4110011, at 6 (Oct. 7, 2009), available at http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00116.pdf

[39] The Better Business Bureau reports, "Since 2007, BBB has received more than 3,500 complaints from individuals in all 50 states, including many who paid hundreds of dollars in upfront fees to debt settlement companies only to fall deeper into debt. See, e.g., Better Business Bureau Serving Eastern North Carolina, "Better Business Bureau Warns Consumers of Debt Settlement Companies Making Unrealistic Claims" (May 10, 2010), available at http://easternnc.bbb.org/article/bbb-warns-consumers-of-debt-settlement-companies-making-unrealistic-claims-19447.

[40] TASC, Members, available at http://www.tascsite.org/index.cfm?event=Members, ("Accreditation is the process whereby an independent third party company, approved by TASC, conducts an on-site audit of the Member's policies and procedures to certify that member's adherence to TASC standards. To remain accredited, members must have this audit conducted on an annual basis."); See also USOBA, http://www.usoba.org/ ("Requirements of membership are consumer protective, compliance oriented and continuously evaluated).

[41] U.S. GAO Report, Appendix I.

[42] See generally U.S. GAO Report.

[43] See Appendix A "State Attorney General Enforcement Actions against Members of TASC and USOBA."

[44] U.S. Senate Committee on Commerce, Trade, and Transportation, "The Debt Settlement Industry: The Consumer's Experience," April 22, 2010, archived webcast available at http://commerce.senate.gov/. See also Good Morning America, "Fed Investigation of Debt Settlement Finds 'Fraudulent, Abusive and Deceptive' Practices: Senate Committee Releases Names of Six Most Problematic Companies," available at http://abcnews.go.com/GMA/ConsumerNews/undercover-investigation-debt-settlement-companies/story?id=10453587&page=2.

[45] New Beginning Financial & Ministries, www.anewbf.com, (aiming "To be the best debt relief and debt assistance organization in America").

[46] Credit Solutions of America, www.creditsolutions.com (Founded in 2003, "Credit Solutions is the U.S. debt settlement industry leader in the US managing over $2.5 billion of unsecured debt for our clients.)

[47] Freedom Debt.com, About Us, http://www.freedomdebt.com/aboutus.html ("Richard Martin founded FreedomDebt.com in 2002 and it has quickly become a nationally leading debt consulting company.")

[48] Freedom Fidelity Management, https://www.ffmgt.com (claiming there are only a small number of states for which "open enrollment" is not available: DE, RI, UT, WV, GA, SC, NC, SD).

[49] ProCorp Debt Solutions, www.procorpdebtsolutions.org (advertising its TASC membership).

[50] Web Credit Advisors, http://www.webcreditadvisors.com/pages/backend.php (claiming to be "founded in 2007" and "established in 47 states.")

[51] The following state investigations have been brought against companies who have commented in opposition to the proposed rules: State of Delaware v. Freedom Debt Relief (2009) (Paid $153,000 in restitution to 105 Delaware consumers with whom it conducted business without complying with the licensing process of Delaware's debt management services statute); State of Colorado v Freedom Debt Relief (2009), available at (Refunded $509,582 to 558 Coloradans and paid a fine of $109,500 to the Colorado Attorney General for failure to comply with the law on cancellation rights, cautionary disclosures & advertising, while unregistered. on cancellation rights, cautionary disclosures & advertising, and was not registered); State of New York v. Freedom Debt Relief (2009); State of Idaho v. DMB Financial (Refund $60,796 to Idahoans for unlicensed debt relief services.); State of New York v. DMB Financial, LLC (2009); State of Idaho v. Debt Settlement USA, Inc. (2008); State of New York v. Debt Settlement USA (2009); State of New York v. Debt Settlement America (2009); State of Vermont v. Debt Settlement America (2010) (Refunded more than $69,000 in fees to 25 Vermont consumers, pay $2,000 to anyone sued by a creditor after enrolling, and complete negotiations w/out cost, and pay $50,000 to the State. Settled claims that it violated the Consumer Fraud Act by not following the State's three-day right to cancel requirements and by failing to have prior proof to support online claims about the results it could achieve for consumers (i.e., that it could reduce consumers' debts to "less than 50 cents on the dollar."); Joseph B. Doyle, Administrator, Fair Business Practices Act v. Debt Remedy Solutions, LLC (2005); State of Vermont v. Debt Remedy Solutions, LLC (2009); State of New York v. Debt Remedy Solutions, LLC (2009); State ex rel. McGraw v. Able Debt Settlement, Inc. (2009).

[52] Credit Solutions of America, www.creditsolutions.com, (Founded in 2003, "Credit Solutions is the U.S. debt settlement industry leader in the US managing over $2.5 billion of unsecured debt for our clients.)

[53] See State of Texas v. CSA-Credit Solutions of America, Inc., Cause No. D-1-GV-09-000417, 261 District Court, Travis County (2009); State of Idaho v. Credit Solutions of America, Inc; State of New York v. Credit Solutions of America, Inc. (2009); State of Missouri v. Credit Solutions of America (2009); State of Maine v. Credit Solutions of America, Inc. (2009); State of Florida v. Credit Solutions of America, Inc. (2009); State of Oregon v. Credit Solutions of America (2010); State of Idaho Department of Finance, "Department Of Finance Settles With A Dallas, Texas Based Debt Settlement Company – $588,000 In Consumer Restitution Ordered" (2008), available at http://finance.idaho.gov/PR/2008/Credit_Solutions_PressRelease.pdf.

[54] Press Release, "Attorney General John Kroger Bans Nation's Largest Debt Settlement Company From Doing Business In Oregon" (May 7, 2010), available at http://www.doj.state.or.us/releases/2010/rel050710.shtml.

[55] Nightline News Interview with Vice President of CSA, Heather Carmichael in "Claims of 'Becoming Debt-Free' Fall Flat for Consumers," http://abcnews.go.com/Business/story?id=7932088&page=1, July 24, 2009, ("'Nightline' asked Carmichael if she could tell us what percentage of clients pay their fees without having their debt settled by Credit Solutions. 'That's a great question. I don't have that number, but I can certainly look at it for you," she told us.' Carmichael never did get back to us with that answer.")

[56] Nightline News, "Claims of 'Becoming Debt-Free' Fall Flat for Consumers," available at http://abcnews.go.com/Business/story?id=7932088&page=1.

[57] Peter S. Goodman, "Peddling Relief, Firms Put Debtors in Deeper Hole," New York Times (June 18, 2010), available at http://www.nytimes.com/2010/06/19/business/economy/19debt.html.

[58] U.S. GAO Report.

Appendix A. State Attorney General Enforcement Actions against Members of TASC and USOBA

State	Company	Affiliation	Details of the Enforcement Action
Colorado	Century Negotiations	TASC	Refunded $53,796 to 51 Coloradans and paid a fine of $25,500 to the Colorado Attorney General based on an action for unregistered activities.
	Clearone Advantage	TASC, USOBA	Refunded $5,535 to two Coloradans and paid a fine of $1,000 to the Colorado Attorney General for failure to comply with the law on cancellation rights, cautionary disclosures & advertising, while unregistered.
	Credit Answers	TASC	Refunded $82,809 to 27 Coloradans and paid a fine of $5,000 to the Colorado Attorney General for failure to comply with the law on program fees, cancellation rights, and cautionary disclosures, while application for registration pending.
	Freedom Debt Relief (CA)	TASC	Refunded $509,582 to 558 Coloradans and paid a fine of $109,500 to the Colorado Attorney General for failure to comply with the law on cancellation rights, cautionary disclosures & advertising, while unregistered.
	New Beginnings Debt Settlement	USOBA	Refunded $110,000 to 86 Coloradans and paid a fine of $49,500 to the Colorado Attorney General for failure to comply with the law on program fees, cancellation rights, cautionary disclosures and advertising, while unregistered.
	New Life Debt Relief Corp. (CA)	TASC, USOBA	Refunded $36,000 to 14 Coloradans and paid a fine of $5,000 to the Colorado Attorney General for failure to comply with the law related to program fees, cancellation rights & cautionary disclosures, while unregistered.
	Pemper Companies (dba Curadebt)	TASC, USOBA	Refunded $4,075 to four Coloradans and $5,000 to the Colorado Attorney General for failure to comply with the law on program fees, cancellation rights, cautionary disclosures and advertising, while unregistered.
Delaware	Freedom Debt Relief	TASC	Paid $153,000 in restitution to 105 Delaware consumers with whom it conducted business without complying with the licensing process of Delaware's debt management services statute, in addition to a $10,000 fine paid to the Delaware Attorney General.

Appendix A. State Attorney General Enforcement Actions against Members of TASC and USOBA

State	Company	Affiliation	Details of the Enforcement Action
Georgia	Debt Remedy Solutions	TASC	[Settlement; details were not found]
	Debt Freedom	USOBA	[Settlement; details were not found]
Idaho	DMB Financial	TASC	Refunded $60,796 to Idahoans for unlicensed debt relief services.
	Credit Solutions of America	USOBA	Refunded $588,000 in restitution to Idahoans for unlicensed credit counseling. Credit counseling service providers must be non-profit entities to qualify under the statute in the State of Idaho; CSA did not meet that requirement.
New York	Nationwide Asset Services	USOBA	New York Attorney General Andrew Cuomo obtained a judgment against NAS and its affiliates. The Court found that only 1/3 of 1% of consumers received the promised savings (of 25-40% reduction in debt), while 180 consumers who completed the program paid more in fees than the amounts they saved. AG Cuomo noted that "the companies often take their substantial fees up-front and keep these fees even when they do not provide the promised services. As a result, many consumers find themselves worse off financially because of these debt settlement plans."
Texas	B C Credit Solutions	TASC	Texas Attorney General charged B C Credit Solutions with orchestrating fraudulent debt settlement schemes, including misrepresenting the availability and consequences of bankruptcy, making misleading credit repair claims, and misstating the effect of entering a debt settlement program. The lawsuit also challenges the fee structure itself, as well as the other risks/costs of debt settlement.
Vermont	Century Negotiations	TASC	Refunded over $65,000 in fees to 64 Vermonters and paid a fine of $70,000 to the State of Vermont for unlawfully engaged in the business of debt adjustment without a license, and failed to comply with the law regarding the three-day right to cancel, and failure to prove or substantiate online claims about the results it could achieve for consumers (i.e., that it could reduce consumers' debts to "less than 50 cents on the dollar."). In addition, was required to pay $2,000 to anyone sued by a creditor after enrolling and to complete negotiations without cost.

Appendix A. State Attorney General Enforcement Actions against Members of TASC and USOBA

State	Company	Affiliation	Details of the Enforcement Action
	Debt Remedy Solutions	TASC	Refunded over $30,000 in fees to 14 Vermonters and paid a fine of $30,000 to the State of Vermont for practicing without a license, failing to comply with the state's three-day right to cancel requirements, and failure to prove or substantiate online claims about the results it could achieve for consumers (i.e., that it could reduce consumers' debts to "less than 50 cents on the dollar."). In addition, was required to pay $2,000 to anyone sued by a creditor after enrolling, and complete negotiations without cost.
	Debt Settlement America	TASC (Accredited)	Refunded more than $69,000 in fees to 25 Vermont consumers and paid a fine of $50,000 to the State of Vermont for violations of the Consumer Fraud Act, including failure to comply with the state's three-day right to cancel requirements failure to prove or substantiate online claims about the results it could achieve for consumers (i.e., that it could reduce consumers' debts to "less than 50 cents on the dollar."). In addition, was required to pay $2,000 to anyone sued by a creditor after enrolling, and complete negotiations without cost.
West Virginia	New Horizons Debt Relief (CA)	USOBA	Refunded $4285.86 to 2 West Virginians for charging fees and other practices in violation of state law.
	Financial Freedom of America, Inc.	USOBA	Financial Freedom of America is 1 of 3 companies involved in a settlement with the West Virginia Attorney General, which required that companies refund $214,000 to 226 consumers in West Virginia.