

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

JULY 2008 COMMENTS

REPORTED BY:

Ralph S. Lewis, COO
Able Debt Settlement, Inc.
2351 W. Northwest Hwy, Suite 3355
Dallas, Texas 75220
Tel: 214 357 5356 ext 201

REGARDING:

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Email: debtrelief@ftc.gov

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I__Introduction

Able Debt Settlement, Inc. (ADSI) appreciates this opportunity to provide the Federal Trade Commission with information regarding *Consumer Protection and the Debt Settlement Industry*.

ADSI is a Debt Settlement Services Provider headquartered in Dallas, Texas from where it provides independent contractors with settlement support services enabling practitioners such as attorneys, accountants, business analysts, project analysts, financial analysts and other debt analysts to focus their energy and resources on activities assisting the growing number of individuals attempting to resolve debt issues with their creditors.

ADSI “*workout*”, “*turnaround*”, “*restructure*” and “*liquidation*” programs processed by ADSI are used by practitioners to assist such as “*business owners*”, “*project managers*”, “*professional individuals*” and “*consumers*” for the purpose of developing a debt resolution program based on the financial capabilities of their client. ADSI Programs are referred to as “*Qualified Settlement Programs*” as defined in the “*Debt Settlement Services Provider Business Models April 2006 Report*” and described later in this report.

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

As a “*debt settlement support services provider,*” ADSI processes and services “*debt settlement (resolution) programs*” involving merchants, vendors, suppliers, financial institutions, issuers of credit and loans as well as other holders of debt instruments. ADSI processes client accounts with creditor collection-settlement departments, accounts outsourced to third party debt collection agents and attorneys, as well as those accounts sold and re-sold to debt buyers.

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

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

II_Background

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

In recent years the reference to “*debt settlement*” has become associated with what should be more broadly understood as “*debt resolution*” so as to incorporate a greater range of activities than simply the act of settling a debt, which is often but not necessarily the objective of a “*debt resolution program*.” There are several other references for resolving debt issues that have origins based on an objective, manner in which a program is processed or the type of result an individual may be seeking. Some of the more common references having a distinct function include:

Debt –

Management – includes *debt-pooling* activities by the practitioner;

Settlement – includes *documenting* a final payment of a debt by a debtor;

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

Consolidation – includes *restructuring* of debt;

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

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

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

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

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

Credit Services Organization – includes *lending* money, *extending* or *issuing* credit, or *brokering* either a loan or extension of credit for a buyer [Note that a statute that deviates from the normal language of person, individual or consumer and uses the term buyer is clearly indicating the intent of application and it is unreasonable to expect anyone to conclude otherwise];

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

Regardless of the title adopted by practitioners describing or naming their business, they usually perform common activities including some form of analysis, processing and settlement or resolution. With respect to the subject matter under review, the following activities are generally consistent with any practitioner engaging in debt settlement activities:

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

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

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

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

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

Clients that have abused credit; and

Clients that have been abused by creditors.

While it would be nearly impossible for any legislative effort to completely control the financial condition of all of its citizens, credit and creditor abuse are controllable.

Lending practices today are far removed from those of the past involving local banks, finance companies and merchants. Today’s lending strategies are more focused on target-oriented customers and economic markets and absent any geographic or political boundaries. While this highly competitive and expansive extension of credit may have artificially stimulated the economy, it has also led to an overwhelming level of underperforming and nonperforming unsecured debt that has spiraled upwards into the trillions of dollars. Given the lack of prudent lending disciplines or controls, an argument could be made that these are not lending institutions making loans based on the verified future cash flow of an individual but gaming casinos wagering credit determined by a financial score representing a numerical value of a participant with an expectation of a

return based on the historical odds of returns of other such participants represented by similar numerical values. Whether they use *rectangular-chips* or *circular-chips*, neither have value until a participant put their “*chip*” in play. The public might be better served if such activities were regulated by State Gaming Commissions rather than the Federal Reserve.

The unsecured debt market generated through the issuance of credit by creditors comprises approximately 85% to 90% of the “*consumer*” debt settlement clientele’s unsecured accounts except for those debt settlement companies that specifically focus on such as commercial debt, secured debt, tax liens, medical bills, deficiencies and judgments. Looking at just nonperforming unsecured credit card debt for which creditors have been selling 100 Billion Dollars worth per year for several years, and taking a \$5,000 debt amount per account, demonstrates that there are 2 million accounts per year that must be resolved through Bankruptcy, judicial action, or some other form of personal or private receivership such as a non judicial debt settlement program.

Given the passage by Congress of the Bankruptcy Abuse Prevention and Consumer Protection Act, more *consumer-clients* have been turning to debt settlement programs as an alternative to Bankruptcy. For many it remains a stigma they would prefer to avoid. Others have consulted with Bankruptcy attorneys and made a decision based on economic and financial objectives. Unless there is another Bankruptcy reform in favor of consumers, Bankruptcy alternatives are likely to expand and the number of Bankruptcy attorneys engaging in debt settlement activities will also increase.

It is anticipated that the “*Debt Resolution Industry*” including “*Debt Settlement Programs*” will grow at least ten-fold over the next three to five years as consumers strain to keep up financially with increases in their cost of living expenses.

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

III_Topics for Comment

1. *Demographic and Industry Information for Debt Settlement Companies*

Please provide information on the size and nature of the for-profit debt settlement industry. For example, we would like to understand how many debt settlement companies operate in the marketplace, the different business models that exist for debt settlement companies, and the types and extent of consumer debts accepted into debt settlement plans.

At the time of this FTC Workshop there are nearly a thousand debt settlement companies within the US and a few companies servicing US consumers from outside the US with operations in Canada, Mexico, Argentina, India and Malaysia. Internationally there are many more companies with approximately 9,000 practitioners recognized by INSOL, an organization addressing the international financial community and foreign governments with concerns over the escalating amount of personal debt around the world.

The US debt settlement company market place is comprised of companies having common business structures including *Management*, *Operations* and *Marketing* efforts supported by typical officers and directors, managers, analysts, agents, consultants, staff employees as well as affiliated third party independent contractors that provide a variety of services. Of the thousand plus or minus companies whose business activities are related to debt settlement, the estimates for the numbers of companies and the numbers of individuals either working for or affiliated with them are as follows:

Two percent consist of more than 100 individuals;
Eight percent consist of 25 to 100 individuals; and the remaining
Ninety percent consist of less than 25 individuals.

The total number of individuals at this time whose work is directly or indirectly related to debt settlement is approximately twelve thousand (12,000). However, only twenty-five to thirty percent of the companies and their respective practitioners are recognized by any state or federal agency, industry association or even the creditors with whom their respective programs resolve debt issues on a regular basis. This is due to the infrequency of their debt settlement activity and or the independent contractor relationships that exist between professional practitioners normally associated with other industries and a recognized debt settlement third party affiliate. Other professional practitioners include such as attorneys, accountants, financial analysts, debt analysts and tax preparers, even bankruptcy attorneys and mortgage brokers, who focus their resources on “*client analysis*” activities assisting the growing numbers of insolvent individuals in developing a debt resolution program and not the processing or operating of the program itself.

There are four general disciplines by which to develop a financial strategy and are identified by ADSI as “*workout*”, “*turnaround*”, “*restructure*” and “*liquidation*” programs, which should not be misconstrued as business models discussed later. However, most debt settlement services providers only provide “*turnaround*” strategies. For the sake of brevity a very short description of their distinctions are as follows:

“*Workout*” is for a marginally insolvent individual subjected to a short term adversity from which there is an expectation that the individual will recover financially within a reasonable time period and resume servicing their debt and possibly maintain creditor relationships as well;

“*Turnaround*” is a more aggressive insolvency from which there is no expectation that an individual will recover financially within a reasonable time period and that creditors will not recover the full amount owed under their respective debt;

“*Restructure*” is a “*debt-to-equity*” conversion essentially selling an interest in property to retire debt or an “*equity-to-debt*” conversion where a secured interest in a property is executed in favor of a lender for a new loan to retire an existing debt usually on terms more serviceable by the debtor and where creditors may or may not receive the full amount of monies owed them [*with respect to consumers, a restructure usually involves the refinancing of a personal residence thereby converting unsecured debt to secured debt and potentially jeopardizing a family home and not advisable except under specific circumstances*]; and

“*Liquidation*” is a most severe financial condition where there is no expectation that there will ever be anything more than whatever monies become available from such as the liquidation of assets of an estate of an individual or a failed business.

Programs such as these are employed by a debt resolution client such as a “*business owner*”, “*project manager*”, “*professional individual*” and “*consumer*,” for the purpose of developing a debt resolution program based on the financial capability of the client.

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

A “*debt settlement support services provider*,” processes and services “*debt settlement (resolution) programs*” involving merchants, vendors, suppliers, financial institutions, issuers of credit and loans as well as other holders of debt instruments. Practitioners process client accounts with creditor collection-settlement departments, accounts outsourced to third party debt collection agents and attorneys, as well as those accounts sold and re-sold to debt buyers.

Creditors often outsource to third party collection agents their delinquent accounts to satisfy recovery requirements and to avoid adversarial communications, which can be detrimental to the goodwill of their business entity. In a reciprocal process, an individual having several major creditors may seek the assistance of a third party debt settlement services provider to provide an analysis of their financial condition and assist them in preparing, processing and conveying a settlement plan to their creditors. Settlement plans can range from a few months to a few years depending on the source of funds and do not generally exceed five years. As with most industries, the innovations of its providers and practitioners are driven by the wants, desires and needs of the clients being served.

The following was copied from the *Debt Settlement Services Provider Business Models April 2006 Report of Ralph S. Lewis, COO, Able Debt Settlement, Inc.*

Qualified Settlement Programs

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

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

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

The financial condition of a client determines whether or not the client qualifies for a settlement program and what the client should be able to pay creditors over time frames established by government agencies for other programs such as bankruptcy and tax settlements.

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

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

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

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

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

Objective Settlement Programs

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

While **Objective Settlement Programs** are easy to implement and operate and original issuers of credit may have settlement arrangements with such service providers,

many creditors object to the manner in which objective programs are marketed to the public. This type of settlement plan is generally described as a settlement objective and not guaranteed. Each account of the individual is negotiated with each respective creditor.

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

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

Arrangement Settlement Programs

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

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

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

Arrangement Settlement Programs accommodate individuals having sources of funds at or in excess of the settlement amount. However, individuals unable to meet the

monthly payment or that have insufficient funds do not qualify and are generally not enrolled in a program.

Negotiated Settlement Programs

... are not limited to any settlement discipline other than the negotiating skills of the service provider and the merits of the account stated by a creditor. Accounts of other creditors not having settlement issues with an individual may be kept current and do not need to be enrolled in the program. However, since most creditors will not negotiate a current account the individual generally stops paying the creditor which can trigger “universal default” type clauses causing other creditors of the individual to increase interest rates and or close their respective accounts. This domino-effect usually ends up with the individual having to negotiate with most of their major creditors.

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

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

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

* * *

The types and extent of debt suitable for debt settlement programs is limited only by the resources of the practitioner. Although many consumers have secured, unsecured, priority and nonpriority debt, most debt settlement companies service only the unsecured nonperforming debt of their clients. The reason for this is the practitioner does not have the knowledge or experience to offer additional services or practitioner may be licensed under another professional activity and simply does not show up on the radar screen as a debt settlement services provider.

The average debt settlement client has nearly \$30,000 in unsecured debt held by six creditors enrolled in programs ranging from several months to as long as five years.

2. *Demographic and Industry Information for Non-profit Credit Counseling Agencies*
Please provide information on the size and nature of the non-profit credit counseling industry.

Much of the nonprofit credit counseling industry engages in debt management activities having an arrangement with for profit creditors who are the direct recipient of the nonprofit charitable function for which they are tax exempt and in violation of the 501(c)(3) and 501(c)(4) sections of the Internal Revenue Code (IRC). In her testimony before the US Senate’s Permanent Subcommittee on Investigations, which was looking into profiteering in the nonprofit industry, the chief counsel for the IRS stated that her department had audited 110 business entities that were tax exempt under 501(c)(3) of the IRC and revoked the tax exempt status of 107 of those companies.

Given the creditor controlled aspect of the credit counseling industry it is no wonder that it enjoys large numbers of clients enrolled in what may be referred to as “creditor arrangement” programs. However, since Consumer Reports reported the internal audit of credit counseling demonstrated that they had an estimated 75% failure rate along with the actions of the IRS has encouraged states to entertain activities by other than nonprofit entities.

3. *Industry Trends*
Please provide information on recent changes in the debt relief industry, and the roles of the for-profit debt settlement companies and non-profit credit counseling agencies. In particular, we are interested in hearing about the primary causes of growth in the for-profit debt settlement industry, whether this growth is attributable to a gap in other consumer debt management options, and what functions the debt relief industry typically outsource to third-party service providers.

The greatest change in the “*Debt Resolution Industry*” has primarily occurred as a result of public awareness through the Internet. While the purpose and objectives remain the same over the last 30 years, the amount of debt, the number of accounts and number of insolvent clients employing “debt settlement” has grown from tens of thousands to hundreds of thousands and over the next few years will expand to several million. The growth in the debt settlement industry is attributable to both the growth in the debt markets and the public awareness through the Internet that “debt settlement” is not a creditor controlled program and that consumers are no longer willing to be corralled into programs designed to keep them in perpetual debt.

Functions typically outsourced to third party service providers include client escrow and trust account management not under the control of the debt settlement practitioner as well as creditor processing and settlement support services, which may be “bundled” and serviced collectively.

While there is a public interest and need for financial literacy, there is nothing inherently charitable about financial services or financial education unless it is in relief of the poor and being insolvent does not mean that an individual is necessarily poor.

It is however the opinion of this Reporter that financial literacy should be a mandatory high school program lasting two weeks in both a math and home economics curriculum.

4. *Debt Settlement Practices and Techniques*

Please provide information on how debt settlement companies market their services, what services they typically provide, and what practices are used in obtaining settlements for consumers. In addition, we are interested in information about the types of disclosures provided to consumers, the success rate and cancellation rate for debt settlement plans, and the ways in which a debt settlement company's knowledge of a creditor's track record influence the services offered to consumers.

While most debt settlement companies have Internet “store fronts” and advertise through “lead generating” programs and internet displays, some also advertise over radio and television and through the mail. Other companies such as Able Debt Settlement, Inc market their companies through their goodwill activities and functions from which they gain business and public awareness of their programs.

Whether bundled or unbundled, most debt settlement companies provide at least the basic *client analysis, creditor processing and settlement support services*. For those programs having objectives resulting in the settlement of a debt, practitioners may engage directly in negotiations with creditors or process and convey financial information until the respective parties are ready, willing and able to resolve the debt issue, which in a settlement program would include a final payment of a debt.

Typical disclosures made to clients considering debt settlement as a means of resolving debt issues include:

Debt settlement plans are not suitable for all individuals;
Clients may ask for information about other programs;
Client accounts may continue to accrue interest;
Creditors may impose penalties;
Creditors may report adverse information;
Creditors may file a lawsuit to collect;
Unless you are insolvent, a forgiveness of debt by a creditor could result in a taxable income to you; and
This is not legal advice and a client should seek the advice of an attorney.

A best estimate for the success rate of debt settlement programs is 70% even though many settlement clients leave the settlement program prior to settling all of the debts in their program. This is actually an anticipated reality due to the nature of the financial condition of the clients, which may improve or deteriorate during the program period and for which a client may cancel at any time for any reason or for no reason.

Having knowledge of the settlement history of a creditor has a direct affect on “*arrangement settlement programs*” and may have little to no affect on the other settlement business models.

A real and significant concern of creditors with respect to “arrangement” programs stems from the slippery slope effect that would occur when practitioners advertise historical settlement arrangements with creditors as though the creditor has authorized such activity.

5. *Creditor Policies*

Please provide information on how creditors work with the debt settlement industry.

Many creditors have reciprocal debt settlement departments and individuals specifically trained and authorized to resolve debt issues on behalf of nonperforming consumer accounts. Many creditors have also adopted batch-processing such as employed by ADSI for maximizing the resources of their respective settlement departments. However, there is no continuity or consistency throughout the financial community on how this process is performed from client to client causing disruptions in some settlement programs.

This is a process that has both improved and deteriorated with respect to individual creditors and certain settlement companies that take advantage of more aggressive internet advertising campaigns. It is however expected that these programs will mature to accommodate the growing numbers of individuals and the desire for creditors to resolve their nonperforming accounts.

An area for immediate attention or intervention is to address the need for creditors to inform their third party collection agencies that an individual has voluntarily enrolled in a “debt settlement program” and that their third party debt collectors may not misrepresent their power and authority over a consumer by attempting to deceive the consumer with false or deceptive statements. This is also an area that state laws should address within statutory provisions providing greater protection to consumers.

6. *Industry Compliance with Federal and State Law*

Please provide information about practices and procedures debt settlement companies have in place to ensure compliance with applicable federal and state laws. In particular, we are interested in hearing about the most common consumer complaints about debt settlement companies and about the effectiveness of industry self-regulatory efforts in furthering the goal of consumer protection.

Activities of debt settlement companies ensuring compliance with state and federal laws include having written agreements incorporating proper disclosures, company accountability of personnel and their operations, adaptation of business and professions codes of the respective states of organization.

Other policies in place protecting the public include secured systems for safeguarding the personal information of clients and distribution of that information in accordance with the *Gramm Leach Bliley Act*.

Additional policies ensuring professional conduct include administrative and supervision over company employee operations, training and continued education for analysts and other employees interacting with the public. The periodic monitoring of communications for compliance with deceptive trade practice issues is also common place within the debt settlement industry although this is not as likely to occur with salaried employees as with commissioned settlement agents.

The most common complaint by consumers is that debt settlement companies cannot stop debt collector harassment and debt collection attorney lawsuits, and that the state of the consumer does little to nothing to prevent either of these activities. Abusive debt collection activities are the primary cause for individuals to convert their settlement program into a Bankruptcy program, which occurs in less than 5% of the programs.

7. Legal and Regulatory Issues

Please provide information about the ways in which recent legal developments, such as new state legislation, have affected the debt settlement industry. Please also comment on whether additional consumer education on debt settlement plans would assist consumers. If so, what issues should such consumer education address?

Please refer to the “**II_Background**” section above for information regarding statutes and reinterpretation of such statutes as “*Debt Pooling*”, “*Credit Services Organization*”, “*Credit Counseling*”, “*Credit Repair*”, and the “*Uniform Debt Management Services Act*.” These recent developments have chased legitimate companies out of states thereby depriving the citizens of that state of their freedom of choice in a manner inconsistent with antitrust laws and in violation of the “*Commerce Clause*.”

In addition, it is a rather deceptive activity to inform a consumer of a state that they may only work with a company licensed in their state providing a false sense of security that creditors may be obligated to work with such companies, which is not the case. This not only creates an anticompetitive market place but may leave consumers unattended and susceptible to out of country practitioners having little regard for any laws.

IV_Conclusions

The debt settlement industry is a viable option for resolving debt issues in a manner that out performs existing creditor collection activities in a voluntary program and without the inherently adversarial complaints associated with debt collection.

The numbers of clients and accounts found to be suitable for such programs is growing and shall continue to grow for several years. As a result, the number of practitioners engaging clients with debt settlement programs is also likely to grow.

Those progressive creditors that adopt programs embracing the debt settlement industry are more likely to regain customer relations when insolvent individuals recover than those creditors that have been adverse to debtor needs and attempt to disrupt their voluntary efforts to resolve debt issues with them.

V_Suggestions

Given the diversity of debt settlement company activities requires public awareness of the nature of the programs being presented. Therefore a publicly displayed company profile is suggested that may be viewed by state and federal agencies, creditors and potential customers to assist in their evaluation processes.

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

Meet the Reporter

Ralph S. Lewis has been in the *Financial Services Industry* including the management and settlement of secured and unsecured debt since 1973. Mr. Lewis is a nationally recognized and invited speaker on related topics where he consults and reports to business owners, project managers, associations, state and federal agencies. Mr. Lewis is the co-founder of **Able Debt Settlement, Inc.** and the economic architect and program developer of the *Qualified Settlement Programs Business Model*. Mr. Lewis also developed the *Debt Settlement Business Practices Standard* and the *Workout and Turnaround Professional Ethics*, which have now been adopted by their *Settlement Professionals*:

Settlement Professionals’ Ethics

Before entering into an agreement with a client Settlement Professionals shall have:

- I. The knowledge and experience necessary to achieve the goals of the client;*
- II. The time and resources available to facilitate the objectives of the client; and*
- III. A reasonable expectation that the client will benefit from the settlement plan.*

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