Comments of the Center for Responsible Lending
to the Federal Trade Commission

Telemarketing Sales Rule Regulatory Review,
16 CFR Part 310,
Project No. R411001
79 Fed. Reg. 46732 (Aug. 11, 2014)

October 14, 2014

Federal Trade Commission Office of the Secretary
600 Pennsylvania Ave., NW, Suite CC-5610 (Annex B)
Washington, DC 20580

Dear Commissioners:

Thank you for the opportunity to comment on the regulatory review of the Telemarketing Sales Rule (TSR). 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]

CRL has been engaged in policy and research around debt settlement since 2009, before the FTC issued its debt relief amendments to the TSR. We have monitored the marketplace before and after the rule took effect. In our estimation, the debt relief rules and in particular, the advance fee ban, have had a significant impact on the industry for the better. Absent the ban, debt settlement clients would be far worse off than they are today.

Nonetheless, the industry is not without continuing problems and risks for consumers. Providing data and examples where available, we describe how the industry has changed following the implementation of the rule, and we set forth areas in which the rules could be strengthened or modified in order to further protect consumers, and where regulators should remain vigilant.

In summary, our comment notes the following:

(1) By itself, the fact that consumers are no longer paying for services that they do not receive is very beneficial, and has saved consumers millions of dollars in unearned fees per year. Moreover, with the new pay-for-service model, we expect debt settlement consumers to fair better and to face fewer harms.
(2) Due to the advance fee ban, many irresponsible debt settlement companies, including some that were purely unscrupulous, left the industry.
(3) Debt settlement still remains a risky proposition for consumers.
(4) Companies utilizing attorneys are improperly seeking to evade regulation.
(5) The compensation rules of the TSR should be amended to better align the interests of providers and consumers, particularly with regard to installment settlements and the calculation of fees.

I. The Debt Relief Amendments to the TSR Have Provided Significant Benefits to Consumers.

The FTC asks, “What significant benefits has the Rule provided to consumers?” and “What evidence supports the asserted benefits?” We discuss the benefits to consumers below.

Looking at the history of debt settlement, and where we are today, it is clear that consumers are better served under the TSR’s debt relief rules. Modern-day debt settlement experienced strong growth in the early 2000s when several states authorized the practice based on the Uniform Debt Management Services Act that was promoted by the debt-settlement industry.[2] At the time, the two debt-settlement trade associations—the United States Organizations for Bankruptcy Alternatives (USOBA) and American Fair Credit Council (AFCC) (then known as The Association of Settlement Companies (TASC)—represented approximately 200 and 220 companies, respectively.[3] As one industry leader noted, “the extraordinarily low barrier to entry and the ability to charge upfront fees led to an influx” of companies who did not have a commitment to results for consumers.[4] He estimated that by 2009, there were more than 1,000 firms in the industry.[5]

With this growth came increasing concerns by regulators and consumer advocates regarding industry practices. Most troubling and harmful was the industry’s general practice of charging high fees at the time of enrollment and then monthly, whether or not any debts had been settled. These high fees made it difficult for consumers to save enough money to settle debts, and provided little incentive for firms to settle any debts for their clients.

The data that were presented to the FTC previously about results for consumers under the advance fee model were compelling. The AFCC industry survey revealed that after three years, a full 65.6% of consumers who enrolled in a debt settlement program terminated without having “completed” the program (defined as having 75-100% of their debt settled).[6] 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***.[7]

The Colorado Attorney General issues annual data on debt settlement services in Colorado.[8] The first report (of results through December 31, 2008 under the advance fee regime), revealed termination rates of higher than 50% for those who had signed up within the previous one to three years, and completion rates of only 7.81% for those who had enrolled two to three years earlier.[9] By contrast, enrolled consumers—regardless of whether any of their debts had been settled—had already paid an average of $1,666 in fees to the debt settlement company.[10]

The GAO review of public enforcement actions revealed completion rates in the single digits.[11]

As we set forth in our FTC comment at the time: “Put plainly, for most consumers enrolling in a debt settlement program, advance fees translate into unearned compensation for the debt settlement company.”

The implementation of the debt relief amendments to the TSR has changed the industry and improved practices. Results for consumers appear to be at least somewhat improved, although we do not have enough data to reach a complete conclusion on this issue.

What do we know about the benefits that have occurred following the rules?

A. Reduction in Pure Fraud.

The 2010 debt relief amendments to the TSR dramatically changed the scope and size of the industry. The implementation of a bright line "no advance fee" rule made it much harder for purely fraudulent companies to profit and survive without facing enforcement actions. As such, many of these companies simply left the industry all-together.

Following the rule, USOBA's membership dropped from 200 to 30 firms, and eventually the trade association folded.[12] TASC re-branded itself as the American Fair Credit Council (AFCC) and its membership fell from 220 to just 31 debt-settlement companies.[13] According to AFCC, following the TSR amendments, 70-80% of the industry either stopped taking on new clients or left the industry altogether.[14]

In an article one year after the implementation of the rules, Andrew Housser, head of Freedom Debt Relief and Board Member of AFCC opined that "[a]s a result of the advance-fee ban, the debt settlement industry has been purged of most of the unscrupulous players…"[15]

B. Fees for Service as the New Standard.

Although some companies continue to evade the advance fee ban (as we discuss below), evasion *does* appear to be the exception. Indeed, many debt settlement companies now collect fees only after settlements are obtained for customers and tout this as a benefit in their marketing.[16]

Moreover, the industry group AFCC, which previously opposed an advance fee ban, has since embraced it as a positive for consumers and the industry. AFCC maintains that "[m]embership in our organization is limited to companies that agree to comply with our strict code of conduct," which includes not charging advance fees, regardless of any claimed exemption from the TSR.[17] In an article one year after the implementation of the rules, industry leader Andrew Housser, admitted that the debt relief amendments to the TSR were "a major step in the right direction," and noted that AFCC has publicly endorsed the rules.[18]

This new standard is beneficial for consumers because it brings with it new financial incentives for debt settlement companies that more closely align with consumer interests. As described above, under the prior model, fees were front-loaded, and were paid regardless of whether debts were settled. The pure (short-term) financial incentive, then, was for companies to enroll as many consumers as possible (even those not suitable for debt settlement) collect the fees, and then do little, if anything, to negotiate settlements or otherwise serve the consumer (as, providing service is resource-intensive and costly for the companies). As the AFCC noted, "…there is no dispute that some consumers were disadvantaged by this structure."[19]

When companies do not get paid until they settle debts, however, the incentives are dramatically altered. Now, companies are incentivized to work quickly and efficiently to settle at least some of the consumer's debts in order to get paid.[20] Notwithstanding its earlier arguments to the contrary,[21] the AFCC now agrees that the TSR amendments have "resulted in a model that has a stronger correlation with the consumer's program success."[22]

C. The Harms and Risks of Debt Settlement May be Less Severe Post-TSR

As an obvious corollary to the fact that debt settlement companies (in large part) do not get paid unless they settle one or more debts for consumers, consumers who enroll but do not have any of their debts settled, pay no fees. As described above, prior to the debt relief amendments, large percentages of consumers were stuck paying substantial fees despite seeing no debts settled. Under the new model, consumers will not be stuck paying hundreds or thousands of dollars to a debt settlement company that provides nothing in return, as they owe no fees until a debt is settled. This is a substantial improvement for debt settlement consumers.

It is important to remember, though, that while it may be accurate to say that these consumers have paid no fees to the debt settlement company if no debts are settled, it would not be accurate to say that they have incurred no costs as a result. Consumers may still end up paying for late fees, default interest charges, and litigation expenses if some (or all) of their debts remain unsettled after they default on their debts in order to enter the program.

Last year, AFCC commissioned a report that set out to compare the results of debt settlement from before and after the changes to the TSR, looking at data from its three largest members. Although we take some issue with the limited focus of the report and its emphasis on account-level data rather than consumer-level data for those who enrolled after the TSR, the report suggests that we may see improved results under the new rules, at least with respect to this sample.[23]

While the percentage of accounts settled in the pre-TSR group was approximately 40%, the percentage of accounts settled in the post-TSR group was higher than 40% after 26 months (versus an expected program life of 36-48 months), with approximately 20% of accounts still enrolled in a program.[24] AFCC estimated in its report that because most account terminations occur early in the process, more than 50% of accounts will end up settling after 36-48 months.[25] Other data, although also preliminary, appear less promising.[26]

Much of this will become clearer with more data. October 27, 2014 marked four-year anniversary of the advance fee ban. There has now been enough time to analyze whether debt settlement companies are providing greater benefits to consumers under the new rules. We urge the AFCC and other industry actors to publicize client-level data on debt settlement results as soon as possible, including data that are sufficient to demonstrate what proportion of clients had all of their debts settled within 48 months.

II. Notwithstanding the Benefits of the TSR, Gaps and Areas of Concern Remain With Respect to Debt Relief.

While the advance fee ban strongly incents companies to settle at least one debt for each consumer, there is no disincentive for leaving consumers with some debts unsettled. Although the FTC's advance fee ban appears to have reduced the potential financial harm to consumers enrolled in debt settlement programs, it remains unclear whether a substantial share of consumers will be better off after pursuing debt settlement than they were when they enrolled.

Moreover, consumers are unable to fully evaluate the risk factors that affect the number of debts that can be settled (if any), such as creditors that may be unwilling to work with debt settlement companies, lawsuits (and potential wage garnishment) that may impact the consumer's ability to make monthly payments for the debt settlement program, or the inability of a consumer to complete an installment settlement. Given these unknown risks, a consumer cannot accurately gauge whether the debt settlement services will leave her debt-free, result in some benefit while leave some debts unsettled, or leave her worse off than she was at the time she began the debt settlement program.

A. The Debt Relief Industry Has Seen A Rise in Attorney-Affiliated Companies Evading the Advance Fee Ban.

The FTC asks whether "changes in industry structure affected the need for or effectiveness of any parts of the Rule?" With respect to debt relief, the TSR amendments have improved the industry in the ways described above. These improvements highlight the continued need for the rule, in order to prevent the return of practices and participants now widely recognized as harmful. Nevertheless, some industry participants are attempting to evade the TSR through loopholes or subterfuge.

Following the issuance of the debt relief amendments to the TSR, the debt relief market experienced a rise in various attorney-related debt settlement models. Although the FTC has made clear that attorneys as a category are not exempted from the TSR,[27] many states do exempt attorneys from their debt settlement regulations. Moreover, because the TSR does not cover in-person communications, some companies have developed models in which an attorney or paralegal meets with the customer to sign the debt relief contract, and claim that this exempts their conduct from the rule.

Although these so-called attorney models differ across companies, in each, attorneys and non-attorneys are affiliated, and the attorneys appear to be present only to provide a cover for collecting advance fees and for evading state regulation. In fact, the attorneys do not engage in any debt settlement activities; only non-attorneys perform any debt settlement work.

The primary models of attorney model evasion are represented by Morgan Drexen and Legal Helpers Debt Resolution. Morgan Drexen is a company consisting of non-lawyers that contracts with attorneys who serve as a front, but its own non-lawyer employees actually provide the debt settlement work and consumer contact, to the extent any is performed. Legal Helpers Debt

Resolution is a company that includes attorneys, but which contracts out the debt settlement work to third-party non-lawyers, to the extent any is performed.

Other companies that employ some form of the attorney model include Allegro Law, Consumer Law Group, Johnson Law Group, CareOne,[28] Persels & Associates, whether on its own or in affiliation with CareOne, and World Law Group.[29]

States' Attorneys General have been actively using their enforcement powers in an effort to crack down on the attorney model of debt settlement for several years. Especially active states include North Carolina, West Virginia, North Carolina, Connecticut and Florida. Moreover, last year, the CFPB filed a lawsuit against Morgan Drexen, alleging that it charges illegal upfront fees and deceives consumers, in violation of both the FTC rule and the Dodd-Frank Wall Street Reform and Consumer Protection Act.[30] According to the Complaint, at least 22,000 consumers have enrolled in Morgan Drexen's program since the implementation of the FTC rule on October 27, 2010, and have been charged millions of dollars in up-front fees.[31] The CFPB alleges that only a "tiny fraction" of enrollees has all of their debts settled, and most do not have any debts settled.[32]

These cases demonstrate the efforts of some debt settlement companies to evade state laws and the debt relief rules, and to continue to engage in unlawful, unfair, and deceptive practices by promising unattainable results and charging harmful advance fees to vulnerable consumers. CRL commends the CFPB and the State Attorneys General who have taken enforcement actions against Morgan Drexen and other companies that employ the unfair, deceptive, and abusive attorney model of debt settlement, and would encourage the FTC, as well as other federal and state policymakers, to remain vigilant to enforce the TSR with respect to companies that continue to harm consumers.

Given the widespread abuses in this area, the FTC might be well-served by releasing additional guidance with respect to attorneys involved in debt relief, reiterating that attorneys are not exempted from the rule, and clarifying the scope and application of the face-to-face meeting exception.

B. The FTC Should Amend the Compensation Rule in Two Respects To Increase the Benefits to Consumers.

In its request for comment, the FTC asks, "[d]oes the Rule include any provision that fails to serve its intended purpose?" and "[w]hat changes, if any, should be made to the Rule to increase the benefits to consumers?" We describe two areas of the compensation rule that should be amended to better align the incentives of providers with consumers.

1. The Current Compensation Rule Regarding Installment Settlements Should Be Amended.

The debt relief amendments to the TSR specifically provide that "It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to" request or receive advance fees for debt relief services. The TSR continues that the seller may receive its fee for a particular debt account if (1) the seller renegotiated the debt pursuant to an agreement with the customer; and (2) "*the customer has made at least one payment* pursuant to that settlement agreement, …" 310.4(a)(1)(5) (emphasis added). In practice, what this means is that if a debt settlement company negotiates a term settlement agreement that will be paid over time, the company will be entitled to its full fee on that settlement once the customer makes only one payment towards the settlement.

Herein, we provide data demonstrating that this rule may be having negative unintended consequences. Evidence suggests that following the implementation of this rule, debt settlement companies began to negotiate installment settlements more frequently. Additionally, it appears that the lengths of the installment terms, and therefore the risks of installment settlements, may be increasing.

At an April 2012 industry conference– held approximately 18 months after the new rules became effective – industry panelists reported a marked shift in the share of installment settlements versus lump sum settlements.[33] One panelist reported that installment settlements went from 20-30% of all settlements pre-TSR to 70%-80% post-TSR.[34] Another company reported doing five times as many installment settlements after the passage of the rule.[35] While some might argue that earlier settlements (possible with installment settlements) can be beneficial for consumers, the rapid increase in installment settlements after the amendments to the TSR should give pause.

It seems quite clear that the driver of this increase is not to benefit consumers but to the desire for companies to get paid more quickly than they would if they needed to wait for a customer to accumulate the necessary funds to pay a settlement in one lump sum. This suggests that debt settlement companies are conducting their business so as to maximize and front-load their revenues, potentially to the detriment of consumers.[36] Debt settlement industry leaders have warned in the past that changes to compensation rules can incentivize debt settlement companies to engage in practices that are not beneficial to the consumers they represent.[37]

Installment settlements may also be getting lengthier. Although specific data is lacking, it now seems common for settlements to have six to twelve, if not more payments, something we do not believe was common prior to the rule. Longer settlement terms are presumably entered into before the consumer has accumulated the full settlement amount in his or her settlement account. The longer the settlement, the earlier the agreement can be negotiated, and the earlier the provider can be paid.

As terms get longer, settlements get riskier because situations are more likely to arise that would impede the consumer's ability to fully fund the settlement. Debt settlement customers are likely to be financially stressed already and unable to withstand further financial shocks, such as a lawsuit, job loss, or an unexpected expense. Moreover, there may be questions of whether companies are negotiating lengthy settlements that customers are unlikely to be able to afford. If a consumer is unable to continue making deposits into the dedicated account, she may not be able to complete a term settlement. This "breaking" of term settlements appears to be occurring with some frequency.

In a survey of creditors handling term settlements, nearly one-third of surveyed collectors reported that term settlements were not completed more than 40% of the time, while another 37% reported breakage for between 20% and 40% of term settlements.[38] This represents a large portion of debt settlement accounts. Although 40% of respondents reported that terms settlements were completed more than 80% of the time, the breakage rates are troubling.[39]

The risk for the consumer of a term settlement is that, if she is not able to make all payments as agreed, the creditor will consider her to be in default on that debt and would not be likely to honor any concessions or principal reduction previously granted. Nevertheless, the consumer will owe the debt-settlement fee as long as she has made at least one payment toward the settlement. The consumer may also have other unsettled debts in default that continue to grow. It seems unlikely that a consumer in this situation would end up better off from having enrolled in debt settlement.

The Uniform Law Commission recommended that, in the case of installment settlements, fees be paid either proportionately with the installments, or once the settlement is finally paid in full. We endorse this approach, while suggesting some additional proposals as set forth below.

2. The TSR Should Be Amended To Provide That Any Fee Must Be Based Upon Settlement Savings And Not On The Amount Of Enrolled Debt.

Another area where incentives play a big role in company conduct relates to the calculation of fees. Under the current rule, fees may be calculated based either on a percentage of the debt enrolled, or a percentage of the savings achieved.

We recommend that the rule be modified to require that fees be calculated based on the amount of savings achieved, comparing the settlement amount with the amount of the debt *at enrollment*. The history of industry practices make clear that this industry is very sensitive to the incentives provided by regulation, and often these incentives work to the detriment of consumers. By requiring that the fee is based on savings, the FTC can more closely align the interests of the provider and the consumer. By contrast, a fee that is based upon the amount of enrolled debt presents numerous perverse incentives for the provider, including the following:

- **Low Quality/Value Settlements.** With a percentage-of-enrolled-debt fee, the provider is guaranteed a set fee regardless of the quality of the settlement, thereby incentivizing quick, low savings settlements so that the company can get paid quickly.

- **Fees Higher Than Savings.** Under a percentage-of-enrolled-debt fee structure, a provider may be paid a fee that is larger than the savings to the consumer from the settlement, particularly for debts that have grown significantly through accretion since enrollment.

3. Proposed Amendments to the Compensation Rule.

Based upon the above discussion, we urge the FTC to amend the debt relief amendments to the TSR to provide that in the case of an installment settlement, the provider may receive its fee either in parallel installments, or once the full settlement has been paid, consistent with the rule as set forth in the Uniform Debt-Management Services Act. We would also recommend, however, that an additional provision be added that if a settlement is not completed, the provider is not entitled to a fee. This will provide a needed disincentive to negotiating unsustainable or overly lengthy installment plans, as seems to be common under current law.

We also recommend that fees be calculated based only on a percentage of savings achieved.

In particular, we recommend that 16 C.F.R. § 310.4(a)(5)(i) be amended as follows:

(a) ***Abusive conduct generally.*** It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

*** * ***

(5)

(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration ~~**either:(*1*) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or(*2*) Is**~~ ***is*** a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(D) if a debt is to be settled by installment payments, the provider may receive compensation either when the last installment of the settlement is paid or in installments.

(1) If the provider's compensation is received in installments:

(a) each installment must be made simultaneously with the individual's installment payments to the creditor;

(b) an installment of the compensation may not be a greater percentage of the provider's total compensation for

settlement of the debt than the simultaneous payment to the creditor is of the entire settlement amount for the debt; and

(c) if the settlement is not completed, the provider shall refund the compensation received with respect to that settlement.

* * *

III. Conclusion

As discussed within, based on our ongoing observations of the industry and our continuing research, CRL believes that the debt relief rules in the TSR have had a significant positive impact on the industry. Notwithstanding, we also believe that problems and risks continue. In particular, we call on the FTC to be vigilant in enforcing the rules, particularly with respect to those entities affiliating with attorneys in order to evade the advance fee ban and other regulations.

Additionally, we urge the FTC to further protect consumers and better align the interests of providers and consumers by amending the compensation rules.

Finally, now that the rule has been in effect for more than four years, we call on the industry to release data on their results for consumers, in particular consumer-level data that shows how consumers fare when they enroll in debt settlement, and including a report of what percentage of consumers have settled 100% of their debt since the implementation of the advance fee ban.

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[1] The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided $6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

[2] *Profiteering From Financial Distress: An Examination Of The Debt Settlement Industry. Association of the Bar of the City of New York* at 24-29 (Ass'n of the Bar of the City of N.Y. 2012) [hereinafter *NY Bar Report*], *available at* http://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf.

[3] Elizabeth Ody, "Debt Firms Play 'Whack-a-Mole to Skirt Fee Ban," *Bloomberg News* (Sept. 29, 2011), *available at* http://www.bloomberg.com/news/2011-09-30/debt-firms-play-whack-a-mole-to-skirt-fee-ban.html. Hereinafter, both TASC and AFCC are referred to as AFCC.

[4] Andrew Housser, "The Changing Debt Relief Industry – One Year Later," *InsideARM* (Sept. 26, 2011) [hereinafter, Housser, "One Year Later"], *available at* http://www.insidearm.com/daily/credit-card-accounts-receivable/credit-card-receivables/the-changing-debt-relief-industry-one-year-later/.

[5] *Id.*

[6] Letter from AFCC (then TASC) to the Federal Trade Commission, Commenting on the FTC's Proposed Amendments to the Telemarketing Sales Rule on the Marketing of Debt Relief Services at 9-11 (Oct. 26, 2009), *available at* http://www.ftc.gov/sites/default/files/documents/public_comments/2009/10/543670-00202.pdf.

[7] *Id.*

[8] *See 2008 Annual Report – Colorado Debt Management Service Providers*, *available at* http://coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf.

[9] *Id.*

[10] *Id.*

[11] U.S. Gov't Accountability Office, Rep. No. GAO-10-593T, *Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers* at 12-13 (Apr. 22, 2010), *available at* http://www.gao.gov/new.items/d10593t.pdf.

[12] Elizabeth Ody, "Debt Firms Play 'Whack-a-Mole to Skirt Fee Ban," *Bloomberg News* (Sept. 29, 2011), *available at* http://www.bloomberg.com/news/2011-09-30/debt-firms-play-whack-a-mole-to-skirt-fee-ban.html.
[13] *Id.*; http://www.americanfaircreditcouncil.org/our-members/ (visited Sept. 29, 2014).
[14] Greg J. Regan, *Options for Consumers in Crisis: An Economic Analysis of the Debt Settlement Industry* at 5 (Prepared by Hemming Morse LLP for the American Fair Credit Council) (Feb. 28, 2013) [hereinafter *AFCC Analysis*], *available at* http://onbfg14vkafwoteo1zn9b29b.wpengine.netdna-cdn.com/wp-content/uploads/2014/08/Options-for-Consumers-in-Crisis-as-of-Dec-12.pdf.
[15] Housser, "One Year Later".
[16] Freedom debt relief promises, "We do not charge any fees until after we have resolved a debt." *See* http://www.freedomdebtrelief.com/about-why-fdr. Elsewhere, it offers: "Our guarantee - no fees charged until after you see results." *See* http://www.freedomdebtrelief.com/about-trust. Century Negotiations represents that "CNI does not charge clients a fee for its services until we settle a debt for you, consistent with the new Federal Trade Commission (FTC) rule." *See* http://www.centuryni.com/. Clear One Advantage similarly offers, "We do not charge any upfront fees. We only charge fees after a settlement has been arranged." *See* http://www.clearoneadvantage.com/. There are similar claims from companies who are not members of AFCC. For example, Premier Financial Debt states on its website, "With Premier Financial Debt help working on your side, you pay no fees whatsoever until your debts are completely settled! We do not get paid one single cent until you see results! It's that simple." *See* http://www.premierdebthelp.com/. Trident Debt Solutions, an attorney-led debt relief firm, also touts "No Fees Until You Succeed." *See* http://tridentdebtsolutions.com.
[17] American Fair Credit Council (AFCC) Code of Conduct/Truth in Services, *available at* http://108.178.27.250/~american/wp-content/uploads/2014/03/afcc_code_of_conduct.pdf.
[18] Housser, "One Year Later".
[19] *AFCC Analysis* at 5.
[20] We do note that industry conferences always include presentations from companies marketing various add-on products designed to generate revenues from debt relief customers. These include such things as budgeting tools, retail and service discount programs, legal service programs, healthcare programs, and the like. We urge the FTC to keep an eye on any such offerings to make sure that they (1) comply with the TSR; and (2) in fact provide benefit to any consumers who enroll.
[21] *See infra* fn. 36 (discussing industry arguments to the FTC that the advance fee ban would create adverse incentives and, thus, adverse consequences for consumers).
[22] *AFCC Analysis* at 5.
[23] Attached hereto is a copy of CRL's report, *State of Lending: Debt Settlement* (June 2014).
[24] *AFCC Analysis* at 9-11 and Charts 4.4, 4.5. As we note in our own report, focusing on the account level instead of the consumer level makes it more difficult to analyze how a particular consumer fares in debt settlement. Ellen Harnick & Leslie Parrish, *A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households* at 8 (Center for Responsible Lending Nov. 2013), *available at* http://www.responsiblelending.org/other-consumer-loans/debt-settlement/research-analysis/CRL-Debt-Settlement-Research-Paper-and-Appendix.pdf. We note that "although the report goes into detail about the proportion of total debts in the data set for which settlement agreements have been reached, and the terms and costs of those settlements, it does not examine outcomes at the consumer level to determine what share of consumers settle all, some, or none of their debts. Further, the report does not consider the impact to the consumer of debts that remain unsettled, including the growth of balances on those debts and the potential for lawsuits, or other consequences such as state and federal tax liability." *Id.*
[25] *AFCC Analysis* at 10.
[26] At the state level, annual reports published by the Colorado Attorney General's office, suggest that the advance-fee ban may not lead to substantially increased success rates for consumers. A preliminary analysis comparing outcomes 12-24 months after enrollment between pre- and post- advance fee ban consumers suggest that outcomes are improving only slightly. *See Leslie Parrish &Ellen Harnick, State of Lending: Debt Settlement* at 6 (June 2014), attached hereto. More data will be necessary for a complete analysis.
[27] *See, e.g.*, Telemarketing Sales Rule, 16 CFR Part 310, Fed Reg 75-153, at 48468 (Aug. 10, 2010) ("Based on the record in this proceeding, the Commission has concluded that an exemption from the amended rule for attorneys engaged in the telemarketing of debt relief services is not warranted."), *available at* http://www.ftc.gov/os/2010/07/100810tsrdebtreliefamendments.pdf.
[28] CareOne, a debt settlement and debt management firm based in Maryland, appears to offer debt settlements services directly in some states, while in other states it utilizes law firm Persels & Associates to get around state

regulations or bans that do not apply to attorneys. CareOne indicates on its website that "it provides administrative, technology and paralegal services to Persels & Associates." *See* http://www.careonecredit.com/about-us/service-providers.aspx (visited Oct. 7, 2014). Evidence from a 2011 lawsuit against Persels reveals that non-attorney employees of CareOne actually perform the debt negotiation (to the extent any is performed) in this relationship, such that the use of attorneys appears to be simply a front to allow for the collection of advance fees and/or for CareOne to do business in states where regulations prohibit or otherwise restrict it. *See In re Kinderknecht*, Case No. 09-13443 (Sept. 6, 2011) (Trustee's Response to Defendants' Joint Motion for Summary Judgment, Ex. G) (indicating that CareOne negotiators contact the creditors and negotiate a settlement, not Persels' contract attorneys).

[29] *See Cooper Takes On One of Nation's Largest Debt Settlement Firms*, NCPoliticalNews.Com (May 23, 2013), *available at* http://www.ncpoliticalnews.com/?p=1956; *DOJ seeks $10M in damages from Texas debt-relief company*, Chris Willis, KGW.com (May 23, 2013) (regarding a lawsuit against World Law Group), *available at* http://www.kgw.com/news/DOJ-seeks-10-M-in-damages-from-Texas-debt-relief-company-216089871.html.

[30] *CFPB v. Morgan Drexen, Inc.*, Case No. SACV13-01267 JST (JEMx) (C.D. Cal.) (Complaint filed Aug. 20, 2013), *available at* http://files.consumerfinance.gov/f/201308_cfpb_complaint_morgan-drexen.pdf.

[31] *CFPB v. Morgan Drexen*, Complaint ¶ 56.

[32] *Id.* ¶ 59.

[33] CRL Notes from April 2012 AFCC Conference (on file with CRL).

[34] *Id.*

[35] *Id.*

[36] In the discussion around the final debt relief amendments to the TSR, the FTC acknowledged the potential that companies may attempt to manipulate settlements in order to receive earlier fees. *See* Federal Trade Commission, 16 CFR Part 310, Telemarketing Sales Rule; Final Rule, 75 Federal Register No. 153, 48458, at 48489, n.432, *available at* http://www.ftc.gov/sites/default/files/documents/federal_register_notices/telemarketing-sales-rule-final-rule-amendments/100810tsr.pdf ("The 'at least one payment' provision applies specifically to the case of bona fide installment settlements, in which a creditor or debt collector contracts to accept the settlement amount in installments over time. If the creditor or debt collector requires a single payment to satisfy the debt, the provider cannot divide the settlement into separate parts and collect its fees upon a payment from the consumer that only partially satisfies the debt. The Commission will monitor fee practices relating to installment settlements to ensure that providers are not manipulating settlement offers to collect their fee to the detriment of consumers.") Although the industry practices may be somewhat different from what the FTC suggested, we nonetheless urge the FTC to take a close look at current practices, and amend the rule to ensure that company and consumer interests are more closely aligned, preventing unnecessary harm to consumers.

[37] *See, e.g.*, Letter from Freedom Debt Relief to the Federal Trade Commission, commenting on the FTC's proposed amendments to the Telemarketing Sales Rule on the marketing of debt relief services at 15-16 (Oct. 26, 2009) (arguing that an advance fee ban would incentivize debt settlement companies to settle debts in a way that would maximize revenues, rather than in a way that would maximize customer benefit), *available at* http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00204.pdf. Freedom Debt Relief is one of the nation's largest debt settlement providers. Its President and Co-Founder Andrew Housser is also on the executive board of the industry trade group AFCC. *See also* Letter from Wesley Young (for The Association of Settlement Companies) to the Federal Trade Commission, commenting on the FTC's proposed amendments to the Telemarketing Sales Rule on the marketing of debt relief services at 19-21 (Oct. 26, 2009) (discussing adverse consequences for consumers likely to occur from an advance fee ban), *available at* http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00204.pdf.

[38] *Inside ARM Debt Settlement Survey: How Creditors and Collectors Utilize the Debt Settlement Industry to Increase Collections*, InsideARM.com at 18 (Jan. 2013), *available at* http://www.insidearm.com/freemiums/debt-settlement-survey-round-ii-how-creditors-and-collectors-increase-collections/.

[39] *Id.*