PROFITEERING FROM FINANCIAL DISTRESS: AN EXAMINATION OF THE DEBT SETTLEMENT INDUSTRY

CIVIL COURT COMMITTEE
CONSUMER AFFAIRS COMMITTEE

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Executive Summary

The New York City Bar Association's Consumer Affairs and Civil Court Committees prepared this White Paper on debt settlement, a kind of debt relief service. Debt settlement services providers purport to obtain lump-sum settlements of unsecured debts for consumers in exchange for fees. The debt settlement model presupposes that financially distressed consumers accumulate sufficient funds in special purpose accounts to settle accounts owed and that creditors are predisposed to settle for the amounts offered. The model also presupposes that debt settlement operators can turn a profit at the same time that financially distressed consumers both pay fees for these services and also experience a net financial benefit, i.e., settle debts with abatements such that they come out ahead financially. Debt settlement proponents frequently claim to have special access and means to negotiate deep settlements with creditors.

In the last decade, however, thousands of New Yorkers have not had this experience. Instead, these New Yorkers experienced net financial loss and lasting financial harm due to their involvement with debt settlement service providers. New Yorkers have filed complaints with enforcement agencies about their experience with debt settlement programs. The Federal Trade Commission ("FTC"), the New York State Office of the Attorney General, and other enforcement agencies have filed dozens of enforcement actions against unscrupulous operators on behalf of New York State consumers and others throughout the country.

An extensive public record details widespread and systematic deceptive and abusive practices. These practices have included deceptive advertising and marketing, exorbitant fees, over-reaching contracts, and, most importantly, an abysmal record with regard to effectiveness and outcomes. This record shows conclusively that substantial numbers of New Yorkers involved in debt settlement experienced net financial harm from enrollment: increased debt,

damaged creditworthiness, and stepped up collection efforts on the part of creditors. Until October 2010, when federal regulatory amendments went into effect, operators extracted significant fees – up to thirty percent (30%) to forty percent (40%) in advance fees prior to settling even one debt. Post October 2010, federal law prohibited advance fees but providers continue to charge such fees by taking advantage of loopholes. In particular, the emergence of the "purported attorney model" of debt settlement is especially troubling.

The proliferation of debt settlement operators in New York State and across the country in the last decade is not a unique occurrence. The debt relief sector has had a long and troubled history in the United States and state legislatures addressed abuses in the past primarily through bans. In the 2000's, changes in debt relief services occurred in the midst of record-high levels of consumer debt and credit card defaults following a recession in 2001 and, in 2008, the deepest recession since the Great Depression. These economic downturns led to historic unemployment rates and numbers of financially distressed consumers.

Meanwhile, in the face of extensive abusive and deceptive practices, legislators, regulators, and other policymakers have wrestled with the best approach to curb industry excesses: licensure and regulation versus prohibition. After extensive study and analysis of the available record, the Committees conclude that debt settlement for a fee that is more than nominal is inherently flawed and cannot yield a net benefit to consumers. Even without advance fees and to the extent the new rules are observed by operators, the targeted financially distressed consumers experience increased total debt, damaged credit, and stepped up collection efforts by creditors. The Committees further conclude that debt settlement for a fee that is more than nominal should be prohibited in New York State.

Accordingly, the Committees' recommendations are as follows:

1. New York State should adopt a ban of debt settlement for a fee that is more than nominal.[1] More particularly, state legislators and Governor Andrew Cuomo should oppose bills currently introduced to license debt settlement operators.[2] Should a licensure regime be considered, at a minimum:

    - operators should not be permitted to enter into contracts with consumers with income exempt from collection;[3] and
    - operators should be permitted to charge as a fee no more than 5% of savings calculated based on the amount of the debt initially enrolled less the settlement amount up to a modest fee cap.[4]

2. New York State's Rules of Professional Conduct should be enforced against attorneys involved in debt settlement operations who purport to be acting as attorneys. To the extent attorneys engaged in these enterprises are not acting as attorneys, their conduct would fall outside the scope of the Rules of Professional Conduct and should therefore be included in the statutory scheme.[5]

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[1] The Committees do not make any recommendation on the amount that would constitute a nominal fee.

[2] See A. 944, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=A00944&term=2011; A. 8341, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=A08341&term=2011; S. 3735, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=S03735&term=2011; S. 5215, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=S05215&term=2011.

[3] See, e.g., FTC Consumer Alert: Creditors Seeking Federal Benefits in Your Bank Account? Understanding Your Rights, FEDERAL TRADE COMM'N, http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt135.shtm (listing federal benefits that creditors cannot garnish such as 1) Social Security Benefits; 2) Supplemental Security Income (SSI) Benefits; 3) Veterans' Benefits; 4) Civil Service and Federal Retirement and Disability Benefits; 5) Military Annuities and Survivors' Benefits; 5) Student Assistance; 6) Railroad Retirement Benefits; 7) Merchant Seamen Wages; 8) Longshoremen's and Harbor Workers' Death and Disability Benefits; 9) Foreign Service Retirement and Disability Benefits; 10) Compensation for Injury, Death, or Detention of Employees of U.S. Contractors Outside the U.S.; and 11) Federal Emergency Management Agency Federal Disaster Assistance) (last visited May 9, 2012). The policy recommendation to prohibit debt settlement operators from entering into contracts with consumers with income exempt from collection presents numerous implementation issues, which the Committees do not address.

[4] See, e.g., Debt Settlement Consumer Protection Act, S. 3264, 111th Cong. (2010) (permitting, in section 1004 of the bill, fees equal to 5 % of the difference between the principal amount of the debt and negotiated settlement amount).

[5] N.Y. GEN. BUS. LAW §§ 455(2) & (5) (2012). Subsection 2 states that "[p]erson, as used in this article, shall not include a person admitted to practice law in this state." Id. § 455(2). Subsection 5 provides as follows:

3. Whatever the statutory framework for governing debt settlement services, New York State should provide for a private right of action for violations of the law and attorney's fees.
4. New York State consumer protection agencies should undertake statewide campaigns to educate consumers regarding the dangers of unscrupulous debt settlement providers and to inform them of other no-fee alternative options available to them, such as the "Protect Your Money" campaign and the Financial Empowerment Centers of the New York City Department of Consumers Affairs.
5. New York City and New York State should expand free legal services, free financial education, and free financial and bankruptcy counseling to low-income and working-poor residents who are the target of unscrupulous debt settlement companies.
6. Bar associations throughout the state should undertake education efforts related to debt settlement such as: (a) informing consumers how to file complaints against unscrupulous debt settlement providers with enforcement agencies and, when attorneys are involved, with disciplinary committees; and (b) educating attorneys regarding the ethical obligations that are implicated by some of the practices of the "purported attorney model" of debt settlement.
7. The federal Consumer Financial Protection Bureau ("CFPB") should make oversight of the debt settlement industry a priority and should require that debt

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> Any attorney licensed to practice in this state who is engaged in budget planning shall (a) negotiate directly with creditors on behalf of the client; (b) ensure that all moneys received from the client are deposited in the attorney's account maintained for client funds; (c) pay creditors from such account; and (d) offer budget planning services through the same legal entity that the attorney sues to practice law.

Id. § 455(5).

settlement providers collect and report aggregate data. The CFPB should make that data public.

1) Introduction

In recent years, judges, consumer law advocates, bankruptcy specialists, financial counselors, and legal services attorneys have seen increasing numbers of New Yorkers fall victim to unscrupulous debt settlement scams. Debt settlement services providers purport to obtain lump-sum settlements of unsecured debts for consumers in exchange for fees. Debt settlement comprises one end of a spectrum of "debt relief services." Debt settlement outfits target financially distressed consumers—often low-income and working poor persons, many times immigrants, seniors, and persons with income exempt from collection—and snare them with the promise of becoming "debt free." Instead, consumers are bilked out of hard-earned and desperately needed money.

This White Paper considers the debt settlement sector over time: (1) prior to the modern era of debt relief services (pre-2000); (2) during the 2000's (and before the 2010 amendments to federal regulations); and (3) following September and October 2010 amendments to federal regulations. During the past decade, state legislatures have turned their attention to debt settlement services providers.[6] New York State lawmakers introduced four bills dealing with debt relief, including debt settlement, during the 2011-2012 legislative session alone.[7] Legislative action has occurred in the context of a spate of state and federal enforcement activity in response to widespread abusive and deceptive practices.[8] In late 2010, the Federal Trade Commission ("FTC") responded to this record by amending the Telemarketing Sales Rule ("TSR") and heightening consumer protections.[9]

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[6] See infra Part 3.b.ii (describing state legal provisions governing debt settlement and changes during the past decade); Appendix E (providing a chart of current state laws governing debt settlement).

[7] See A. 944, 2011-2012 Reg. Sess. (N.Y. 2011); A. 8341, 2011-2012 Reg. Sess. (N.Y. 2011); S. 3735, 2011-2012 Reg. Sess. (N.Y. 2011); S. 5215, 2011-2012 Reg. Sess. (N.Y. 2011).

[8] See infra Appendices B and C (compiling a chart of state and FTC enforcement actions against debt settlement companies).

[9] See FTC Telemarketing Sales Rule, 16 C.F.R. pt. 310 (2012); FTC Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,461 (Aug. 10, 2010) [hereinafter FTC 2010 TSR Final Rule Amendments]; FTC Telemarketing Sales

This White Paper examines the debt settlement sector and makes recommendations for policy makers, particularly those in New York State government. The White Paper provides a brief history of debt relief practices, describes the structure of the debt settlement sector, reviews the record of deceptive and abusive practices, details the impact of debt settlement involvement on consumers, and analyzes the growing role of attorneys. The White Paper concludes with recommendations for reform and several appendices.

1(a) Methodology

In preparing this White Paper, the Committees reviewed sources related to the debt settlement sector, including: reports from the FTC, congressional committees, and consumer advocacy organizations; congressional hearings; state legislative histories; law review articles; and newspaper accounts.[10] The Committees also sought and reviewed documents published by debt settlement services providers and trade organizations, including: websites; reports; and comments submitted by debt settlement representatives as part of the public record in FTC rulemaking and other proceedings.

The Committees surveyed the statutory and regulatory framework governing debt settlement services at the federal and state levels and compiled and analyzed legislative proposals concerning debt settlement advance fees during the past decade.[11] Additionally, the Committees also examined court documents involving debt settlement services providers. This effort focused on enforcement actions by the FTC, attorneys general offices, and other state regulators. The Committees reviewed court filings in private litigation as well. The Committees also examined court decisions, bankruptcy filings, receivers' reports, and ethics decisions, which

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Rule, 74 Fed. Reg. 41,988, 41,990 (Aug. 19, 2009) [hereinafter FTC 2009 TSR Proposed Rule Amendments]; see also infra Part 4.a (summarizing the TSR).

[10] See Appendix A (compiling a bibliography of sources).

[11] Id.

either involved or implicated debt settlement services providers.[12] In describing the operations of debt settlement companies, the Committees relied upon court and disciplinary decisions, government reports, consent decrees and other settlement-related documents, complaints by state attorneys general and affidavits by State officials. The Committees acknowledge that the assertions in the complaints and affidavits are not equivalent to findings of fact, government studies, or admissions, but they are consistent with and fill out the picture presented by those other sources in portraying the debt settlement industry.

The Committees conducted a wide range of stakeholder interviews. The Committees spoke with representatives of a nationwide debt relief company, which offers debt settlement, and the company's New York State lobbyist. The Committees spoke with officials of one of the nation's top credit card issuers. The Committees met or conducted interviews with representatives of three New York State agencies with jurisdiction over consumer issues[13] and officials with the New York City Department of Consumer Affairs. The Committees also spoke with prosecutors from eight attorneys general offices[14] and advocates and service providers in the non-profit sector in New York State and elsewhere. Committee members interviewed New York City residents who entered into contracts for debt settlement services before and after the FTC regulatory amendments.

The Committees obtained data related to complaints against and investigations of debt settlement companies by government oversight and enforcement agencies, including the FTC,

[12] Id.
[13] The Committees spoke with representatives of the Office of the New York State Attorney General, the New York State Department of State, Division of Consumer Protection, and the New York State Department of Financial Services, Financial Frauds & Consumer Protection Division.
[14] The Committees spoke with representatives of the offices of attorneys general or other enforcement agencies that had brought actions against debt settlement operators in the following states: California, Illinois, Maine, North Carolina, Tennessee, Texas, Vermont, and West Virginia.

the Office of the New York State Attorney General, and the New York City Department of Consumer Affairs.

Whenever possible the Committees sought sources that shed light on debt settlement practices following the late 2010 TSR amendments.

1(b) Debt Settlement and the Spectrum of Debt Relief Services

Debt settlement entities comprise one type of a range of "debt relief services,"[15] which include non-profit organizations as well as private for-profit businesses. Debt settlement services providers purport to obtain lump-sum settlements of unsecured debts for consumers in exchange for fees.[16] Government agencies, consumer advocates, commentators, and industry representatives themselves use various terms when describing the broad array of debt relief services.[17] The FTC recognizes the following types of debt relief services: credit counseling agencies ("CCAs"), debt negotiation, and debt settlement.[18] In the past decade, for-profit

[15] Federal regulation defines "debt relief services" to mean:

> any program or service represented, directly or by implication, to negotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

FTC Telemarketing Sales Rule, 16 C.F.R. pt. 310.2(m) (2011).

[16] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,461 (Aug. 10, 2010). The Federal Trade Commission explains for-profit debt settlement as follows:

> Debt settlement companies purport to offer consumers the opportunity to obtain lump sum settlements with their creditors for significantly less than the full outstanding balance of their unsecured debts. Unlike a traditional [debt management plan], the goal of a debt settlement plan is for the consumer to repay only a portion of the total owed.

Id.

[17] For example, the Better Business Bureau lists the various forms of debt relief services as "debt negotiation/settlement," "debt consolidation," and "debt elimination." See BBB on Difference Between Debt Consolidation, Debt Negotiation, and Debt Elimination Plans, BETTER BUS. BUREAU (Mar. 2, 2009), http://www.bbb.org/us/article/bbb-on-differences-between-debt-consolidation-debt-negotiation-and-debt-elimination-plans-9350 (last visited May 7, 2012). Morgan Drexen Integrated Systems, a national player in the for-profit debt settlement industry, lists "Non-Formal Debt Resolution" as a "Supported Legal Service" and describes it as "Assist[ing] customers get out of debt [sic] for less than the current balance by negotiating with creditors to achieve the lowest resolution on unsecured debt." See Non-formal Debt Resolution, MORGAN DREXEN INTEGRATED SYS., http://www.morgandrexen.com/legal_services/nonformal_debt_resolution.html (last visited May 7, 2012).

[18] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,459-64.

companies frequently called "debt management" or "debt negotiation" companies have also emerged.[19]

Historically, CCAs have been non-profit organizations funded by creditor banks to prevent defaulted customers from filing for bankruptcy.[20] CCAs serve as liaisons between creditors and consumers, helping to fashion "debt management plans" ("DMPs") for the repayment of defaulted debts.[21] Debt negotiation service providers do not promise to obtain full balance payment pursuant to DMPs or lump sum settlements of less than the full balance like debt settlement companies.[22] Instead, these entities claim to secure interest rate reductions and other concessions from creditors to reduce consumers' monthly payments.[23] Debt management and debt negotiation companies claim to obtain abatements related to the interest, late fees, and other penalties charged by creditors in exchange for fees.[24] Generally, CCAs have been non-profit organizations and debt negotiation, debt management, and debt settlement entities have been for-profit businesses.[25]

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[19] See id. at 48,464. The FTC refers to these companies as "debt negotiation" companies. Id. Others refer to these operators as "debt management" companies. See FTC, Transcript of the Consumer Protection and Debt Settlement Industry Workshop 153 (Sept. 25, 2008), available at http://www.ftc.gov/bcp/workshops/debtsettlement/OfficialTranscript.pdf [hereinafter FTC 2008 Workshop].

[20] FTC 2009 TSR Proposed Rule Amendments, 74 Fed. Reg. 41,988, 41,990 (Aug. 19, 2009); see also John Hurst, Protecting Consumers From Consumer Credit Counseling, 9 N.C. BANKING INST. 159, 160-62 (2005).

[21] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,459; Hurst, supra note 20, at 160-62. See also CONSUMER FED'N OF AM. & NAT'L CONSUMER LAW CTR., CREDIT COUNSELING IN CRISIS: THE IMPACT ON CONSUMERS OF FUNDING CUTS, HIGHER FEES AND AGGRESSIVE NEW MARKET ENTRANTS 1 (Apr. 2003), available at http://www.consumerfed.org/elements/www.consumerfed.org/file/finance/credit_counseling_report.pdf (noting that debt management plans are also known as debt consolidation plans) [hereinafter CFA & NCLC, CREDIT COUNSELING IN CRISIS].

[22] See FTC 2009 TSR Proposed Rule Amendments, 74 Fed. Reg. at 41,997.

[23] See id.

[24] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,464.

[25] NAT'L CONSUMER LAW CTR., AN INVESTIGATION OF DEBT SETTLEMENT COMPANIES: AN UNSETTLING BUSINESS FOR CONSUMERS 1 (Mar. 2005), available at http://www.nclc.org/images/pdf/debt_settlement/report_investigation_debt_settle_co.pdf [hereinafter NCLC 2005 REPORT].

2) Debt Settlement and Debt Relief Services Prior to 2000

This Part summarizes debt relief services and their regulation prior to 2000. Section (a) describes the business models that evolved into modern-day debt settlement. Section (b) provides a brief overview of state legislative action (including outright bans) targeted at curbing abuses by these businesses.

2(a) Debt Relief Business Models Prior to 2000

Debt relief service providers, particularly those who operate as for-profit businesses, are not new in the United States.[26] Starting in the early twentieth century, companies that operated like modern-day debt settlement companies began to emerge.[27] Variously labeled "debt adjusters," "debt poolers, debt consolidators, debt managers, debt pro-raters," and "debt consultants," these companies purported to obtain lump-sum settlements from creditors in exchange for fees from debtors.[28] These businesses engaged in startlingly familiar abusive and deceptive practices to those documented during the past decade, including exacting exorbitant

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[26] See, e.g., Andrew T. Schwenk, A Beast of Burden Without Any Reins, 76 BROOK. L. REV. 1165, 1166 (2011) ("[d]ebt relief services have a long history in business and regulation"); see also UNIFORM DEBT-MANAGEMENT SERVICES ACT, PREFATORY NOTE (Amended 2011), available at http://www.law.upenn.edu/bll/archives/ulc/UCDC/UDMSA_FINAL_2011_2.htm (last visited May 7, 2012). [hereinafter UDMSA Prefatory Note] (last visited May 7, 2012); Lea Krivinskas "Don't File!": Rehabilitating Unauthorized Practice of Law-Based Policies in the Credit Counseling Industry, 79 AM. BANKR. L.J. 51, 59 (2005) ("From the 1930s through the early 1970s, when the debt pooling industry was dominated by for-profit entities, the industry fell into disrepute.").

[27] See UDMSA Prefatory Note, supra note 26 (noting that the "industry originated in the early twentieth century" and "consisted of profit-seeking enterprises that communicated with a consumer's creditors to persuade them to accept partial payment in full satisfaction of the consumer's obligation"); Schwenk, supra note 26, at 1166 (noting that the first-generation of debt relief entities which negotiate reductions in the principal amount of a debt in exchange for fees began operating in the early twentieth century).

[28] See UDMSA Prefatory Note, supra note 26; NEW YORK LEGISLATIVE ANNUAL, Governor's Memoranda on Bills Approved 451 (1955). See also Carla Stone Witzel, The New Uniform Debt-Management Services Act, 60 CONSUMER FIN. L.Q. REP. 650, 651 (2006) ("Called 'debt poolers,' 'debt adjusters,' 'debt pro-raters,' or 'budget planners,' from the 1930's through the early 1970's these businesses arranged for settlement of consumers' debts, collected money from consumers, and distributed it to creditors, all for fees paid by the consumers."); Abby Sniderman Milstein & Bruce C. Ratner, Consumer Credit Counseling Service: A Consumer-Oriented View, 56 N.Y.U. L. REV. 978, 979 (1981) ("From the 1930's through the early 1970's debt pooling was primarily a commercial business, practiced on a profitmaking basis.").

fees, making false and deceptive claims, leaving consumers with greater debt, and defrauding some people outright.[29]

State regulation of debt relief companies began in 1935 with Minnesota and Wisconsin adopting licensure requirements.[30] Debt-adjuster business models proliferated during the 1950's.[31] In the 1950's, legislatures in more than half of the states banned these businesses;[32] by the 1970's, most states had banned for-profit debt adjustors.[33] A majority of the remaining states regulated these businesses through licensure and strict regulatory measures.[34] Many of these

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[29] See, e.g., Schwenk, supra note 26, at 1166-67; UDMSA Prefatory Note, supra note 26; Milstein & Ratner, supra note 28, at 980. A description of for-profit "debt poolers" is startlingly similar to that of modern for-profit debt settlement:

> [D]ebt poolers have, for example, charged exorbitant fees and collected these fees before paying amounts owed to creditors. There have been instances in which creditors have simply not received the payments made to the debt pooler, and debtors have been unable to recover their money. Further, debt poolers have established repayment plans that are clearly not feasible. Finally, they have failed to obtain cooperation from certain creditors while leading debtors to believe that they were participating in a plan that would satisfactorily settle all of their obligations.

Milstein & Ratner, supra, at 980 (citations omitted).

[30] See Milstein & Ratner, supra note 28, at 982 (citing Act of Apr. 29, 1935, ch. 347, 1935 Minn. Laws 629 and Act of Sept. 26, 1935, ch. 515, 1935 Wis. Laws 883). During legislative hearings, Minnesota legislator Bellman remarked that the business of pro-rating debts was fast developing into "a racket" and that some curb had to be made on the practice. The Thirty-Eighth Meeting of the Judiciary Committee of the House of Representatives (1935) (statement of Bellman). Further, another legislator pointed out that the proposed bill interfered with the practice of law. Id. (statement of MacKinnon).

[31] Lawrence T. Bench, Commercial Debt Adjustment: An Alternative to Consumer Bankruptcies?, 9 B.C. INDUS. & COM. L. REV. 108, 108 (1967-1968) (noting that commercial debt adjustment "grew rapidly during the 1950's").

[32] See UDMSA Prefatory Note, supra note 26.

[33] See Schwenk, supra note 26, at 1167; infra notes 57-114 and accompanying text. In 1970, Fordham Law School Professor Carl Felsenfeld addressed the American Bar Association National Institute on "Consumer Credit in the Seventies," which took place on September 18 and 19, 1970. He noted that "there are approximately 27 states that now prohibit the business of debt adjusting." Carl Felsenfeld, 26 BUS. LAW. 925, 927 (1970-1971). He described "commercial pro-raters" and "commercial debt adjusters" as follows:

> This is a well established business which exists in many forms throughout the country as commercial ventures. They are variously called commercial pro-raters or commercial debt adjusters, and their business is advising consumers as to their financial plight, arranging for settlement of their obligations in some way and, normally collecting money from them and paying it to their creditors as a method of working out the debts – all for a fee.
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> This business has been subject to great criticism. All of the criticism stems from one fact, and that is that this type of business takes people who are – because they come to the debt adjuster in the first place – in financial trouble and it makes money as a result of their financial troubles . . . .

Felsenfeld, supra, at 927.

[34] UDMSA Prefatory Note, supra note 26; Schwenk, supra note 26, at 1167.

states exempted non-profit organizations engaged in financial counseling from the debt adjustor provisions[35] as well as attorneys.[36]

The legislative history of New York's regulation of debt adjustment businesses is instructive.[37] The New York State Legislature adopted legislation banning for-profit "budget planning" in 1956.[38] The record from the legislative history includes this notation:

> The Attorney General reports that debt consultants lure the financially distressed by false and deceptive advertising; that they charge excessive fees; and that they derive the bulk of their revenue from the poorly educated and the people in the lower income groups.[39]

The record goes on to include the following observation about debt adjusters: "[i]t appears these practices are too common and widespread in the area affected, that the only feasible way to control them is by prohibiting this type of business . . . ."[40]

The history of regulation of debt adjuster businesses by other states reveals the same policy debate that is occurring in states throughout the country today: regulation versus ban. For example, the Nebraska state legislature took up the issue of whether to regulate or ban debt adjustors in 1963.[41] A commentator stated as follows:

> The Nebraska Unauthorized Practice of Law Committee reviewed the entire problem. Review indicated debt adjusting constitutes a nefarious activity as generally conducted. It further appeared, however, impossible to prepare a bill which would adequately regulate the firms and protect debtors from their evils. Licensing and regulation of debt

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[35] See Witzel, supra note 28, at 651 (noting that "state laws prohibiting commercial debt adjustment contained exemptions for [non-profit] organizations").
[36] See CFA & NCLC, CREDIT COUNSELING IN CRISIS, supra note 21, at 38 (noting that most state debt relief laws contain an explicit exemption for attorneys). See also infra notes 472-491 (detailing attorney exemption provisions in current state laws).
[37] New York's current budget planner statute is codified at article 28-B of the New York General Business Law. See N.Y. GEN. BUS. LAW §§ 455-57 (2012) (prohibiting budget planning except by non-profit corporations that obtain a license in accordance with article 12-C of the New York Banking Law (N.Y. BANKING LAW §§ 579-587)).
[38] NEW YORK LEGISLATIVE ANNUAL 451 (1955) (Governor's Memoranda on Bills Approved, "budget planning prohibited").
[39] Id.
[40] Id. at 452.
[41] See Albert T. Reddish, Debt Adjustment–Regulation or Prohibition?, 18 PERS. FIN. L.Q. REP. 19, 19 (1963).

> management firms merely lends an aura of dignity to an activity which doesn't justify any elevation.[42]

During the latter half of the twentieth century, the majority of states opted to ban for-profit debt adjusters, including, as defined by statute, businesses engaged in debt settlement.[43]

The *Personal Finance Legal Quarterly Report* published articles concerning debt adjustment on a regular basis between 1953 and 1973. For example, in 1953, the journal published an article titled *Should Debt Adjustment Companies Be Regulated*?[44] The article noted that the business was being studied in various states, that government enforcers were bringing various actions under existing statutes to curb excesses, and that some jurisdictions were concluding that the practice constituted the unauthorized practice of law.[45]

By 1954, an article noted that "[t]he operation[] of debt adjustors . . . [is] well on the way to becoming a national scandal."[46] The author noted that "[t]his type of company has functioned . . . for up to two decades but, within the past year or two, their number has multiplied and the geographic scope of their operations has increased at a prodigious rate."[47] The article discussed a national survey of creditors conducted in 1955, which reported that ninety percent (90%) of respondents believed that debt adjustors did not serve a useful purpose and seventy percent (70%) did not accept agreements from debt adjusters.[48] The article went on to describe practices such as misleading advertising and advance fees and discussed the need for either bans or

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[42] Id.
[43] See infra notes 57-114 and accompanying text.
[44] Should Debt Adjustment Companies Be Regulated? Activities Being Studied in Several States, 8 PERS. FIN. L.Q. REP. 82, 82 (1953). "For a number of years such companies have operated, particularly in the mid-west states, largely without legal restrictions as to the rates charged, or the requirement of licensing or any other challenge to their authority to conduct business." Id.
[45] See id. at 82-84 (noting that the business was being studied in California, Illinois, New Jersey, and Ohio and that state prosecutors had brought actions in New York and in Pennsylvania).
[46] Allan E. Backman, Debt Adjustment Abuses: Cause Many Complaints to Better Business Bureaus, 9 PERS. FIN. L.Q. REP. 44, 44 (1954).
[47] Id.
[48] See id.

licensure.[49] In 1959, *Good Housekeeping* magazine published an article titled *Warning: The Debt* 'Adjusters' *are back!*[50] The article's description of harm to consumers wrought by debt adjustment is nearly identical to the harms caused by modern-day debt relief practices.[51]

The *Personal Finance Legal Quarterly Report* covered stories of instances involving consumer fraud in states that had passed licensure provisions[52] and multiple stories of debt adjusters who were civilly and criminally prosecuted by enforcement officials.[53] Notably, the journal also published articles that discussed whether debt adjustment involved the unauthorized practice of law when conducted by non-attorneys.[54] The 28th Annual Meeting of the Conference on Personal Finance Law selected as the annual conference argument the topic of "Are Debt Adjusters Engaged in Authorized Practice of Law?"[55] In addition, the Standing Committee on

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[49] See id. at 44-45. "If the flagrant abuses of which many pro-raters are guilty continue to spread, demands for their abolition, as in Pennsylvania, or their regulation, as in Wisconsin may well become both universal and irresistible." Id. at 45.

[50] See Developments in the Debt Adjustment Field, 13 PERS. FIN. L.Q. REP. 59, 59-60 (1958).

[51] See, e.g., id. at 60.

[52] See, e.g., Class Action to Recover Excessive Pro-Rate Fees Instituted by Legal Aid in Portland, Oregon, 24 PERS. FIN. L.Q. REP. 59, 59 (1970) (noting that the defendant company allegedly charged fees exceeding those permitted by state statute, ORS 697.740 (3)); Lee Johnson, Oregon's Attorney General Files Suit Against Debt Reducers, Inc., 24 PER. FIN. L.Q. REP. 73, 73 (1970) (noting that the defendant company allegedly had clients execute contracts which violated the statutory scheme in several ways); Regulation of Debt Adjusters Fails to Protect Debtors in Illinois and Oregon, 16 PERS. FIN. L.Q. REP. 119, 119 (1962) (noting that a company in each state suddenly shut down without returning funds consumers had deposited). See also Wilkie Bushby, Elimination of Debt Adjusting by Laymen: Constitutional Basis Established, 17 PERS. FIN. L.Q. REP. 78, 78 (1963) (stating that licensure statutes were "highly undesirable" and that they were "just what the lay debt adjusters want, because it dignifies the business and gives them official standing and the regulation is usually ineffective").

[53] See Commercial Debt Poolers Charged with Million Dollar Fraud, 23 PERS. FIN. L.Q. REP. 63, 63 (1968) (describing the indictment charging "the nation's largest debt-pooling chain" with defrauding consumers who were "lulled into a false sense of security, . . . [b]ut their wages would be frequently garnished and their debt situation remained unimproved); Jury Finds Rhode Island Debt Poolers Guilty of Mail Fraud, 26 PERS. FIN. L.Q. REP. 83, 83 (1972) (noting that the defendant company collected fees for services which it did not perform); New York Debt Pooling Scheme Stopped by Attorney General, 26 PERS. FIN L.Q. REP. 32, 32 (1972) (describing assurance of discontinuance regarding allegedly false advertising); John J. Wargo, Iowa Debt Adjuster Enjoined from Making False Representations, 21 PERS. FIN. L.Q. REP. 28, 28 (1966) (describing consent decree).

[54] See, e.g., Are Commercial Debt Poolers Engaged in the Unauthorized Practice of the Law?, 18 PERS. FIN. L.Q. REP. 58, 58 (1964); Developments in the Debt Adjustment Field, supra note 50, at 59 (discussing report of the Committee on Unauthorized Practice of the Law of the Tennessee Bar Association regarding debt adjustment companies); To Eliminate Pro-Raters Quebec Amends Bar Profession Act, 9 PERS. FIN. L.Q. REP. 65 (1954) ("In 1954 the Canadian Province of Quebec amended its Bar Profession Act so as to classify debt adjusting or pro-rating as unauthorized practice of law.").

[55] Reginald Heber Smith, Goodrich, Barnes and Joiner to Judge Conference Argument: Subject: Are Debt Adjusters Engaged in Unauthorized Practice of Law?, 9 PERS. FIN. L.Q. REP. 72, 72 (1954).

Unauthorized Practice of Law of the American Bar Association presented reports on debt adjustment companies in 1955.[56]

2(b) State Bans on and Regulation of Debt Relief Prior to 2000

The following review of state legislative bans of debt adjustment shows that: 1) legislatures based their policies on consumer protection grounds, after reviewing complaint information from consumer protection agencies; and 2) several legislatures were urged to consider licensure by industry players, but concluded that regulation was insufficient and that bans were necessary.

- **1955 – Maine,[57] Massachusetts,[58] and Pennsylvania[59] banned debt adjustment.**

In Massachusetts, consumer advocates led the effort to outlaw the practice.[60] One advocacy organization reported receiving "many complaints" and that "there were enough cases reported to show serious abuses and deception of debtors."[61] Notably, in Massachusetts, the practice of debt adjustment was defined broadly to include possibly debt settlement and was also deemed by the legislature and the courts to constitute the practice of law.[62]

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[56] Debt Adjustment Companies as Reflected in the Spotlight of the Press, 9 PERS. FIN. L.Q. REP. 106, 106 (1955).
[57] Maine Prohibits Budget Planning Business, 9 PERS. FIN. L.Q. REP. 84, 84 (1954). The statute defined "budget planning" narrowly to encompass debt management: "'Budget planning' means the making of a contract with a particular debtor, whereby the debtor agrees to pay a certain amount periodically to the person engaged in the budget planning, who shall distribute the same among certain specified creditors in accordance with a plan agreed upon." Id. (referencing ME. REV. STAT. ANN. ch. 137, §§ 51-53 (effective 1955)).
[58] Maine and Massachusetts Outlaw Pro-Raters: Adopt Different Approaches, 9 PERS. FIN. L.Q. REP. 117, 117 (1954). The statute defined debt pooling as follows: "The furnishing of advice or services for and in behalf of a debtor in connection with any debt pooling plan, whereby such debtor deposits any funds for the purposes of making pro rate payments or other distributions to his creditors, shall be deemed to be the practice of law . . . ." Id. (referencing MASS. ANN. LAWS ch. 221, § 46C (effective 1955)) (emphasis added).
[59] Pro Raters Prohibited From Doing Business in Pennsylvania: Law Similar to Enactments in Other States and Canadian Provinces, 10 PERS. FIN. L.Q. REP. 3, 3 (1955). The statute defined "budget planning" to encompass debt management: "'Budget planning' as used in contract, express or implied, with a this [sic] section means the making of a particular debtor [sic], whereby the agrees [sic] to pay a certain amount of money periodically to the person engaged in the budget planning business, who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon." Id. (referencing PA. STAT. ANN. tit. 18, § 4899).
[60] See id. at 3 (describing Massachusetts's ban and consumer protection advocacy efforts).
[61] Id. (internal quotes and citations omitted).
[62] See Charles B. Rugg, Massachusetts Upholds "Anti-Debt Pooling" Statute: Activity Found to Constitute Practice of Law, 11 PERS. FIN. L.Q. REP. 46, 46-47 (1957) (citing Home Budget Serv. v. Boston Bar Ass'n, 335 Mass. 228, 139 N.E.2d 387 (Mass. 1957)).

In Pennsylvania, the Legal Aid Society helped lead the campaign to ban the companies and the *Philadelphia Inquirer* ran investigative stories.[63] Critics maintained that the companies charged fees of "as much as 25 percent of [consumers'] total indebtedness for the so called 'service'."[64]

- **1956 – Georgia[65] and Virginia[66] banned debt adjustment.**
- **1957 – Ohio,[67] Oklahoma,[68] West Virginia,[69] and Wyoming[70] banned debt adjustment.**

The Oklahoma Attorney General reported "widespread abuses in the field of prorating and debt pooling . . . ."[71]

- **1959 – Florida banned debt adjustment**.[72]

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[63] See Pro Raters Prohibited From Doing Business in Pennsylvania, supra note 59, at 3.
[64] Id.
[65] See Pro-Rate Businesses Prohibited in 10 States, 11 PERS. FIN. L.Q. REP. 96, 96 (1957) (noting that Georgia and several other states banned debt adjusting in 1955-1956); see also Prohibitory Pro-Rate Bill Enacted in New Jersey, 15 PERS. FIN. L.Q. REP. 49, 49 (1960) (noting that Georgia banned debt adjusting in 1956).
[66] Bushby, supra note 52, at 78 (noting that Virginia prohibited debt adjustment by non-attorneys by declaring that it constituted the practice of law); Prohibitory Pro-Rate Bill Enacted in New Jersey, supra note 65, at 49 (noting that Virginia banned debt adjusting in 1956); Pro-Rate Businesses Prohibited in 10 States, supra note 65, at 96.
[67] Prohibitory Pro-Rate Bill Enacted in New Jersey, supra note 65, at 49 (noting that Ohio enacted "prohibitory pro-rate legislation" in 1957); see also Pro-Rate Business Prohibited in 10 States, supra note 65, at 96. The statutory definition included debt settlement. See David H. Pohl, Ohio Supreme Court Declares Debt Pooling Law Constitutional: Grandfather Clause Upheld, 19 PERS. FIN. L.Q. REP. 102, 102 (1964) (citing the statute). The Ohio statute defined "debt pooling company" to mean:

> any person doing business as a budget counseling, debt management, prorating, or debt pooling service, or holding itself out, by words of similar import, as providing services to debtors in the management of their debts, and contracting with a debtor for a fee or other thing of value (1) to effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor; (2) to receive from the debtor and disburse to his creditors any money or other thing of value.

Id. The definition in the current statute is nearly identical. OHIO REV. CODE ANN. § 4710.01 (2012).
[68] Pro-Rate Business Prohibited in 10 States, supra note 65, at 96 ("Outright prohibitive measures were enacted in Oklahoma and Wyoming.").
[69] Prohibitory Pro-Rate Bill Enacted in New Jersey, supra note 65, at 49 (noting that West Virginia enacted legislation in 1957).
[70] Pro-Rate Business Prohibited in 10 States, supra note 65, at 96 ("Outright prohibitive measures were enacted in Oklahoma and Wyoming."); see also WYO. STAT. ANN. § 33-14-101 et seq. (2012) (effective 1957) (prohibiting "debt adjusting," defined as "contracting with a debtor for a fee to: Effect the adjustment, compromise, or any discharge of any account, note, or other indebtedness").
[71] Paul L. Washington, Oklahoma Attorney General Rules Debt Pooling Statute Applies to Lawyers, 12 PERS. FIN. L.Q. REP. 100, 100 (1947).

- **1961 – Kansas[73] and New Jersey[74] banned debt adjustment.**

The New Jersey Supreme Court upheld the constitutionality of the statute later that year in a unanimous decision.[75]

A federal appeals court struck down the Kansas statute, but the Supreme Court reversed and upheld the constitutionality of the statute.[76] A Kansas City advocacy organization conducted a survey of creditors regarding their views and policies with regard to debt adjusters in 1962.[77] The group found that creditors overwhelmingly did not deal with debt adjustors and that many consumers complained of being misled.[78]

- **1963 – Missouri,[79] North Carolina,[80] and South Carolina[81] banned debt adjustment.**

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[72] Prohibitory Pro-Rate Bill Enacted in New Jersey, supra note 65, at 49 (noting that Florida enacted "prohibitory pro-rate legislation" in 1959 without providing further details about how the Florida statute defined debt adjustment).

[73] Wilbur D. Geeding, Prohibitory Debt Adjusting Law Declared Unconstitutional by Three Judge Federal Court in Kansas, 16 PERS. FIN. L.Q. REP. 49, 49 (1962) (referring to Skrupa v. Sanborn, 210 F. Supp. 200 (D. Kan. 1961)). But see Ferguson v. Skrupa, 372 U.S. 726 (1963) (reversing and upholding the statute).

[74] Prohibitory Pro-Rate Bill Enacted in New Jersey, supra note 65, at 49.

[75] David Landau, Prohibitory Debt Pooling Law Upheld by New Jersey Supreme Court, 16 PERS. FIN. L.Q. REP. 4, 4 (1961) (referencing Am. Budget Corp. v. Furman, 36 N.J. 129, 175 A.2d 622 (N.J. 1961)). The statutory definition included debt settlement:

> A "debt adjuster" is defined to mean a person who acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in anywise altering the terms of payment of any debts of the debtor; and, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor.

Id. New Jersey's statute was last amended in 1979 and retains the same definition and ban on such practice. N.J. STAT. ANN. § 17:16G-1 et seq. (2012).

[76] See Geeding, supra note 73, at 49; Skrupa, 372 U.S. at 726.

[77] Joe B. Birkhead, Debtors Misled and Deceived by Pro-Raters, Kansas City Better Business Bureau Finds, 16 PERS. FIN. L.Q. REP. 116, 117 (1962).

[78] Id. at 117-18.

[79] George L. Gisler, Missouri Court Permanently Enjoins Debt Adjuster, 18 PERS. FIN. L.Q. REP. 90, 90 (1963) ("The 1963 session of the Missouri Legislature enacted a law modeled after the New Jersey Act prohibiting the business of debt adjusting."); Hon. Alex M. Petrovic, Debt Adjusters Outlawed in Missouri: Scheming Efforts to Forestall Prohibitory Legislation are Overcome, 17 PERS. FIN. L.Q. REP. 125, 125 (1963).

[80] North Carolina Outlaws Debt Adjustment Companies: Senator Jordan Spearheads Drive to Eliminate Practice, 17 PERS. FIN. L.Q. REP. 83, 83 (1963). The North Carolina provision included debt settlement in its definition of debt adjustment:

> The term "debt adjusting" is further defined and shall also mean the business or practice of any person who holds himself out as acting or offering or attempting to act for a consideration as an

In North Carolina, the drivers behind the legislative campaign considered licensure but concluded that the practice "could not be regulated adequately and therefore, [the state] should prohibit it."[82] The bill included a lengthy recitation of the problems with debt adjusters.[83]

South Carolina's statute prohibiting debt adjusting deemed it the practice of law.[84]

- **1965 - New Mexico[85] and Texas[86] banned debt adjustment.**

> intermediary between a debtor and his creditors for the purpose of settling, compounding, or in anywise altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or the distribution among, the creditors of the debtor.

Id. at 84 (citing S.B. 109 (N.C. 1963)).

[81] South Carolina Legislature Passes Prohibitory Pro-Rate Law, 17 PERS. FIN. L.Q. REP. 84, 84 (1963) ("On June 6, 1963, the South Carolina Senate passed H.B. 1275 . . . to define the business of debt adjusting as the practice of law.").

[82] North Carolina Outlaws Debt Adjustment Companies, supra note 80, at 83.

[83] Id. at 84. Senate Bill 109 introduced by North Carolina State Senator Jordan on March 7, 1963 and enacted on May 8, 1963 stated as follows:

> Whereas, a national organization . . . states: "that those who have swarmed into the debt adjustment field recently have included a large proportion of unscrupulous or incompetent opportunists whose activities have spread misery throughout the land. They have used extravagant and deceptive advertising to claim far more than they were in position to deliver. They have made false promises to persons whom they knew, or should have known, were beyond redemption credit-wise. They have withheld their own fees from the debtors' payments and have failed to promptly make agreed payments to creditors or to obtain creditors' accession to the pro-rate plan devised. The net result of their activities, in many cases, has been to leave already desperate people more hopelessly mired in debt and litigation than before"; and
>
> Whereas, said debt adjusters and their business and practices are known by several names, such as pro-raters, debt-poolers, debt managers, credit counselors, . . . and these practices have grown to such proportions that for the most part they have become a national menace by preying upon unfortunate people and harassed debtors, and those engaged in such practices, except for a few, have engaged in false advertising, have falsely held themselves out as being competent and able to solve debt problems regardless of any and all circumstances, have lured ignorant and unsuspecting people into executing contracts heavily loaded in their favor and have charged large fees for alleged services which results in piling debt upon debt; and
>
> Whereas, such practices have been condemned by . . . many . . . reputable publications [which] have published articles condemning such practices; and
>
> Whereas, said debt adjusters are now increasing in number in the State of North Carolina and many instances of their unwarranted practices are now being made known in the State, and instances of many sharp practices, hardships on the unfortunate, no services actually performed, and increase of debt through false advertising and other fraudulent means, have been committed and have been carried out . . . .

Id. at 84 (citing S.B. 109 (N.C. 1963)).

[84] South Carolina Legislature Passes Prohibitory Pro-Rate Law, supra note 81, at 84.

[85] Hon. Boston E. Witt, Pro Raters Outlawed in New Mexico, 19 PERS. FIN. L.Q. REP. 100, 100 (1965).

[86] Bill Clark, Commercial Debt Pooling Now Illegal in Texas, 19 PERS. FIN. L.Q. REP. 138, 138 (1965). The statutory definition did not include debt settlement. Id.

In New Mexico, the attorney general, the New Mexico Retail Association, and other organizations advocated for the law.[87] The bill's advocates emphasized that "the same service [as commercial debt adjusters] was available to those needing debt advice from civic organizations and private financial institutions at far less cost and in some cases at no cost."[88]

- **1966 – Delaware banned debt adjustment.**[89]
- **1967 – Arkansas**[90] **and Hawaii**[91] **banned debt adjustment.**

The statutory definition in Arkansas included debt settlement.[92] The bill's sponsor mentioned interference with creditors' rights as a rationale for the legislation.[93]

The state legislator behind Hawaii's House Bill 33 stated that he sought to ban such practices when he learned of a "commercial debt adjusting firm [that] had over 4,000 cases and that of these 4,000 cases only 10 to 15 percent were successfully completed."[94] The legislator stated that the "firm was taking money under false pretense by promising relief from creditors'

[87] Witt, supra note 85, at 100-01.
[88] Id. at 101.
[89] Congress Prohibits Commercial Debt Adjusting in the District of Columbia: Kentucky Becomes the 27th State to Prohibit Commercial Debt Pooling, 24 PERS. FIN. L.Q. REP. 89, 89 (1970) (noting that Delaware had banned debt adjusting in 1966).
[90] Arkansas Becomes the 21st State to Prohibit Commercial Debt Adjusting, 21 PERS. FIN. L.Q. REP. 54, 54 (1967). The statute remains in effect today and the definition ("acting . . . for a consideration as an intermediary between a debtor and the debtor's creditors for the purpose of settling . . . any debt . . . .") encompasses debt settlement. ARK. CODE ANN. § 5-63-301 (2012).
[91] George W. T. Loo, Hawaii Becomes 22nd State to Prohibit Commercial Debt Adjusting, 21 PERS. FIN. L.Q. REP. 108, 108 (1967). House Bill 33, which was approved on March 30, 1967, defined "debt adjuster" to mean "a person who for a profit engages in the business of acting as an intermediary between a debtor and his creditors for the purpose of settling, compromising or in any way altering the terms of payments of any debts of the debtor." Id. (referencing H.B. 33, 4th St. Leg., Reg. Sess. (Haw. 1967)). The current ban on debt adjustment retains the same definition. HAW. REV. STAT. § 446-1 et seq. (2011).
[92] Arkansas Becomes the 21st State to Prohibit Commercial Debt Adjusting, supra note 90, at 54.
[93] Id.
[94] Loo, supra note 91, at 108.

harassment and was causing its clients to sink further into debt."[95] Moreover, the bill won the unanimous support of legislators in both of the committees that reviewed it.[96]

- **1968 – Louisiana,[97] Maryland,[98] and Tennessee[99] banned commercial debt adjusting.**
- **1969 – Montana banned debt adjustment.[100]**
- **1970 – Kentucky[101] banned debt adjustment and Congress banned debt adjustment in the District of Columbia.[102]**

In the District of Columbia, although debt adjustors lobbied for regulation and maintained that "adjusters perform a useful service, free from corruption and undesirable practices," legislators concluded "that simple regulation of debt adjusting cannot adequately

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[95] Id.

[96] HAWAII SENATE JOURNAL STANDING COMMITTEE REPORTS 835-36 (1967); HAWAII HOUSE JOURNAL STANDING COMMITTEE REPORTS 493 (1967). Both of these reports found the bill "necessary in the public interest, for the following reasons:"

1. The service is available to those needing debt advice from civic organizations and private financial institutions at far less, or no cost.
2. Debt adjusting intrinsically involves practice of law; no one can effectively represent a debtor badgered by creditors without performing functions constituting practice of law . . . .
3. Prohibition is the only feasible way to control the abuses of debt adjusting.
4. A usual sequence of events is that either the creditors, or some of them, fail to accept the plan or the debtor finds it impossible to live with; and as a consequence, the only thing the debtor gains is the additional debt incurred by virtue of the fee payable to the adjuster.

HAWAII SENATE JOURNAL STANDING COMMITTEE REPORTS, supra, at 835; HAWAII HOUSE JOURNAL STANDING COMMITTEE REPORTS, supra, at 493.

[97] Louisiana Becomes 25th State to Prohibit Commercial Debt Pooling, 22 PERS. FIN. L.Q. REP. 133, 133 (1968).

[98] Tennessee and Maryland Enact Prohibitory Debt Pooling Laws: 24 States Have Now Abolished Commercial Debt Adjusting, 22 PERS. FIN. L.Q. REP. 83, 83 (1968). Maryland defined "debt adjusting" narrowly to encompass debt management. Id.

[99] Tennessee defined "debt adjusting" to include debt settlement:

> the business or practice of any person who holds himself out as acting or offering or attempting to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in anywise altering the terms of payment of any debt of a debtor, and to that end receives money or other property from the debtor, or on behalf of the debtor, for the payment to, or distribution among, the creditors of the debtor.

Id.

[100] Montana 26th State to Prohibit Commercial Debt Pooling, 23 PERS. FIN. L.Q. REP. 70, 70 (1969).

[101] Congress Prohibits Commercial Debt Adjusting in the District of Columbia: Kentucky Becomes the 27th State to Prohibit Commercial Debt Pooling, supra note 89, at 90.

[102] Id. at 89.

protect the public, and that the debt consolidation business offers no useful service that should be fostered by the official approval implied by regulation."[103]

Consumer advocates led the fight in Kentucky to outlaw debt adjustment.[104] There, an outfit operating in multiple states including West Virginia, Alabama, Mississippi, and Georgia defrauded consumers and ultimately went out of business.[105] The bill introduced in the Kentucky General Assembly in 1970 passed the House unanimously.[106]

- **1971 – Mississippi banned debt adjusting.**[107]

Mississippi's statute contained a broad definition of debt adjusting, which included debt settlement.[108] The state legislature considered both a licensure bill and a ban bill, but the ban bill obtained the support of a majority of the legislature.[109] Here too consumer advocates weighed in.[110]

- **1974 - Rhode Island banned debt adjustment**.[111]

Rhode Island had initially passed a licensing statute in 1962, which was amended in 1964 by prohibiting debt poolers from contracting with in-state residents.[112] As a result, Rhode

[103] Id. at 90. See also Labor Supports Bill to Prohibit Debt Adjusting in District of Columbia: Regulation Not Satisfactory Solution, 21 PERS. FIN. L.Q. REP. 111, 116 (1967) ("most observers agree regulation is not sufficient and that the best course is to prohibit outright a practice that seldom gives the promised relief and often victimizes the suffering debtor") (internal quotations omitted).
[104] Alan Markfield, Debt Pooler Closes Shop, 24 PERS. FIN. L.Q. REP. 58, 58-59 (1970).
[105] Id.
[106] Id. at 59.
[107] John H. Stennis, Mississippi Becomes 28th State to Outlaw Debt Adjusting, 25 PERS. FIN. L.Q. REP. 75, 75 (1971).
[108] Id. (noting that the statute definition of "debt adjusting" included "for a fee either to effect the adjustment compromise or discharge of any indebtedness of the debtor or to receive from the debtor and dispense to his creditors any money or other thing of value").
[109] Id.
[110] Id. ("[Consumer advocates] and other concerned trade groups supplied the Legislature with helpful background and research data.").
[111] John J. Skiffington & Thomas F. Farrelly, Rhode Island No Longer to Be Haven For Interstate Commercial Debt Pooling: Legislation Restricts All Debt Pooling to Lawyers, 28 PERS. FIN. L.Q. REP. 43, 43 (1973).
[112] Id.

Island became a haven for national companies.[113] The 1974 measure passed "in record time" after the legislature heard testimony from the governor's staff and the United States Attorney's Office that complaints were being received at the rate of approximately 2,000 per month.[114]

This history and commentary from the 1950's through the 1970's reveal two enduring phenomena. First, debt relief, particularly when conducted by for-profit businesses, has long been associated with and criticized for abusive practices that harm consumers.[115] The descriptions of the deceptive, abusive, and predatory practices of for-profit debt adjusters of the 1950's and 1960's are virtually identical to those documented of for-profit debt settlement of the past decade in the public record.[116] One commentator has noted that debt settlement companies "represent a revival of the first generation of for-profit debt adjusters."[117] The New York Attorney General's conclusions in 1956 regarding commercial debt poolers are the same as those detailed in complaints filed by the Attorney General's Office during recent years.[118] Second, state legislatures—then and now—have looked to either licensure regimes or outright bans as a

[113] Id. ("The result [of the 1964 amendment] was an influx of commercial mail order debt pooling operators doing business on a nationwide basis without regulation by the state.").
[114] Id.
[115] See, e.g., Bench, supra note 31, at 109 (detailing industry abuses and concluding that "[c]ertain practices, widespread in the debt adjustment field, led to numerous complaints from dissatisfied clients"); Felsenfeld, supra note 33, at 927-28 ("This business has been subject to great criticism."); Note, Budget Planners—Regulation to Protect Debtors, 17 VAND. L. REV. 1565, 1565-68 (1964) (setting out criticisms of for-profit debt poolers).
[116] See supra notes 26-56 and accompanying text and infra Part 3.a; see also Leslie E. Linfield, Uniform Debt Management Services Act: Regulating Two Related—Yet Distinct—Industries, 28 AM. BANKR. INST. J. 50, 60 (2009).
[117] Linfield, supra note 116, at 60; see also UDMSA Prefatory Note, supra note 26 (Background).
[118] Compare NEW YORK LEGISLATIVE ANNUAL 451 (1956) ("debt consultants lure the financially distressed by false and deceptive advertising . . . charge excessive fees, and . . . derive the bulk of their revenues from [low-income consumers]."), with Press Release, N.Y. State Office of the Att'y Gen., Attorney General Cuomo Sues Debt Settlement Companies for Deceiving and Harming Consumers (May 19, 2009), available at http://www.ag.ny.gov/press-release/attorney-general-cuomo-sues-debt-settlement-companies-deceiving-and-harming-consumers ("According to the Attorney General's lawsuits, [the defendant companies] have engaged in fraudulent and deceptive business practices and false advertising in connection with their debt settlement businesses. These companies have made millions of dollars on the backs of New Yorkers by selling misleading debt settlement plans that very rarely deliver the promised benefits to consumers dealing with debt.") (last visited May 7, 2012).

means for reining in industry excesses.[119] As shown above, in the 1960's, bans predominated[120] and at least some commentators approved of this approach.[121] One observer noted as follows:

> Even the most complete of the [licensure] statutes suffer from defects . . . . Since the statutes necessarily depend on complaints from debtors to inform authorities of infractions, it is often too late for effective action.
>
> Even if the statutes could be adequately enforced, and amended to afford the maximum protection against the abuses common to commercial debt adjustment, they would still be defective in allowing the practice at all, because of the great potential harm to the debtor . . . .
>
> In effect, the licensing statutes in addition to encountering many problems of enforcement, merely give state approval to an activity that, even when carried on by the most experienced and honest of laymen, cannot be performed with any real efficacy, and is likely to do the debtor more harm than good.[122]

3) Debt Settlement from 2000 to 2010

This Part of the White Paper describes the debt settlement sector during the 2000's. Section (a) describes the emergence of modern debt settlement entities and details how they operated, including descriptions of illegal and deceptive practices from enforcement actions. Section (b) discusses the regulatory and legislative responses to debt settlement abuses. Section (c) examines the harms experienced by consumers who contracted with debt settlement companies. Finally, Section (d) describes the role of attorneys in the industry.

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[119] Bench, supra note 31, at 109 ("Legislatures attempting to curb . . . abuses took two courses: regulatory statutes designed to eliminate the abuses through supervision, or outright prohibition of commercial debt adjustment."); Note, supra note 115, at 1568 ("The solutions adopted by the various state legislatures to meet the problem brought on by the business of budget planning have taken two forms—regulatory legislation and prohibitory legislation.").

[120] Note, supra note 115, at 1568 (noting that most states adopted bans); see also supra notes 57-114.

[121] Bench, supra note 31, at 115-17 (citations omitted); Note, supra note 115, at 1570.

[122] Bench, supra note 31, at 115-16; see also Note, supra note 115, at 1570 ("It is submitted that the best solution to the problem is to prohibit budget planning for a fee. The evil in this business arises because the budget planner has placed in his possession money in which he has a financial interest and over which its real owner, the debtor, has little or no control.").

3(a) Key Features of Modern Debt Settlement

3(a)(i) Emergence and Proliferation of Modern Debt Settlement Operators

Notwithstanding the pre-existing state bans and licensing requirements outlined above, modern debt settlement services providers emerged during the early 2000's and proliferated during the following decade.[123] Several explanations have been hypothesized by commentators and observers of the industry, including: 1) a crackdown on non-profit entities; 2) economic conditions; and 3) exploitation of statutory loopholes.

First, non-profit credit counseling agencies expanded greatly with the growth of consumer debt in the 1980's and 1990's.[124] By 2002, more than 1,000 credit and debt management organizations operated in the United States.[125] A 2004 Senate investigation uncovered widespread abuses in this non-profit sector, including inappropriate or inadequate services, improper customer fees, excessive compensation for directors, and illegal ties to for-profits.[126] Notably, the Senate Report that ensued described the establishment and operation of

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[123] Some enforcement agency complaints assert as of when debt settlement companies began to operate in various jurisdictions. See, e.g., Complaint at 5, FTC v. Edge Solutions, Inc., No. CV-07-4087 (E.D.N.Y. Oct. 1, 2007), available at http://www.ftc.gov/os/caselist/0723025/071001edgesolutionscmplt.pdf ("Since at least 2000, . . . Defendants have offered debt settlement to consumers having difficulties with their personal finances.") (last visited May 7, 2012); Complaint at 5, FTC v. Connelly, No. SA CV 06-701 (C.D. Cal. Aug. 3, 2006), available at http://www.ftc.gov/os/caselist/0523091/060921cmp0523091.pdf ("[Defendant] began operating a debt-negotiation business in or about 2001.") (last visited May 7, 2012); Complaint at ¶ 27, FTC v. Nat'l Consumer Council, Inc., No. 04-0474, 2004 WL 1064199 (C.D. Cal. Apr. 23, 2004) ("Since at least 2002, [defendants] have operated a nationally-advertised debt negotiation business . . . .") (on file with the Committees); Pl.'s Affirmation at 3, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/09 (N.Y. Sup. Ct. Sept. 23, 2011) (quoting the founder of CSA as stating that the company began in 2003) (on file with the Committees); Complaint at 10, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) ("Since at least 2003 and continuing thereafter, Defendants and their affiliates have offered financial services to consumers including debt negotiation, debt reduction throughout the Unites States.") (on file with the Committees); Complaint at 5, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Sup. Ct. Nov. 16, 2009), available at www.maine.gov/ag/consumer/docs/cas_complaint.doc ("From 2003 to the present, CSA, in its present or a past incarnation . . . has provided debt management services to Maine consumers . . . .") (last visited May 7, 2012); Assurance of Discontinuance at 1, In re Debt Settlement USA, Inc. No. 867-11-09 (Vt. Super. Ct. Nov. 4, 2009), available at http://www.atg.state.vt.us/assets/files/Debt%20Settlement%20USA%20Inc%20AOD.pdf (defendant began doing business in Vermont in or around July 2003) (last visited May 7, 2012).

[124] Krivinskas, supra note 26, at 60.

[125] CFA & NCLC, CREDIT COUNSELING IN CRISIS, supra note 21, at 7.

[126] See PROFITEERING IN A NON-PROFIT INDUSTRY: ABUSIVE PRACTICES IN CREDIT COUNSELING, S. REP. NO. 109-55, pt. III.A (2005) [hereinafter PROFITEERING IN A NON-PROFIT INDUSTRY]; See also CFA & NCLC, CREDIT COUNSELING IN CRISIS, supra note 21, at 26-35; Krivinskas, supra note 26, at 52-59.

extensive for-profit entities—including processing centers—that were illegally tied to the purportedly non-profit credit counseling agencies.[127] A subsequent crackdown by the United States Internal Revenue Service ("IRS") led to a dramatic reduction in the number of credit counseling agencies.[128] The crackdown had the unintended consequence of spurring the proliferation of for-profit debt settlement,[129] which was facilitated in great part by the existence of third-party businesses that had previously contracted with credit counseling agencies for both "front end" and "back end" services and operations.[130]

Second, the 2000's corresponded with record-high levels of consumer debt and credit card defaults.[131] "Debt settlement companies have emerged as declining incomes and rising living costs have led consumers to see their debts increase."[132] At a 2008 public forum on the

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[127] PROFITEERING IN A NON-PROFIT INDUSTRY, supra note 126, at nn.43-145 and accompanying text (describing complex affiliations among non-profit and for-profit businesses, including for-profit businesses that provided for DMP processing services). See also CFA & NCLC, CREDIT COUNSELING IN CRISIS, supra note 21, at 9 ("Some agencies have found ways to make more money by setting up close ties to for-profit businesses, including . . . payment processing centers. These connections allow non-profit credit counseling organizations to direct excess revenue to affiliates.").

[128] See FTC 2008 Workshop, supra note 19, at 18-27 (describing the involvement of the Internal Revenue Service in investigating and prosecuting violations by non-profit credit counseling agencies).

[129] Id. at 29 (commentator noting that "as a result of companies being pushed out of [non-profit status], many have reemerged or are morphing into for-profit entities and, in some cases, debt settlement companies").

[130] An example of this phenomenon involves Amerix, the parent company of CareOne, as set out in a complaint by the Tennessee Attorney General. See Complaint, Tennessee v. AscendOne Corp., No. 10C 4310 (Tenn. Cir. Ct. Nov. 4, 2010), available at http://www.tn.gov/attorneygeneral/cases/ascendone/ascendonecomplaint.pdf (last visited May 9, 2012). Amerix was founded in 1996 and offered services to existing non-profit credit counseling agencies and entities interested in establishing such new agencies. Id. at 6, ¶ 22. Beginning in 1997, Amerix entered into "back end" service agreements with nine credit counseling agencies. Id. at 6-7, ¶ 24. Amerix and affiliated companies "offered, sold, and performed the [debt management] services that were purportedly being offered, sold and performed by the [credit counseling agencies] that contracted with Defendants." Id. at 7, ¶ 25. In 2002, Amerix went through a corporate reorganization and CareOne and other entities were organized. Id. at 6, ¶ 23. CareOne began operating for-profit debt management services in 2003 and debt settlement services in 2009. FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,470 n.186 (Aug. 10, 2010).

[131] See, e.g., JOSE GARCIA & TAMARA DRAUT, THE PLASTIC SAFETY NET: HOW HOUSEHOLDS ARE COPING IN A FRAGILE ECONOMY—FINDINGS FROM A 2008 NATIONAL HOUSEHOLD SURVEY OF CREDIT CARD DEBT AMONG LOW AND MIDDLE-INCOME HOUSEHOLDS 1 (July 28, 2009), available at http://www.demos.org/sites/default/files/publications/PlasticSafetyNet_Demos.pdf (last visited May 7, 2012); Profiteering in a Non-Profit Industry, supra note 126, at 2 (noting that "[c]onsumer debt has more than doubled in the past 10 years").

[132] MARCELINE WHITE, MD. CONSUMER RIGHTS COALITION, DEBT SETTLEMENT IN MARYLAND: COMPOUNDING PROBLEMS, DEEPENING DEBT 3 (2010), available at http://www.marylandconsumers.org/LinkClick.aspx?fileticket=rW-1JrbWEzk%3D&tabid=38 (last visited May 7, 2012).

debt settlement industry, the Director of the Bureau of Consumer Protection at the FTC noted that "latest studies from the Federal Reserve board reveal that consumer debt is at an historical high," and that the economic situation "has created a growing market" for debt settlement companies.[133]

Third, modern-day debt settlement operators evaded state statutes by making sure they "did not touch the money."[134] Many state provisions defined or define debt adjustment as involving "distribution" or "receipt" of funds.[135] Thus, for example, New York State defines budget planning, in relevant part, as involving a person or entity "distribut[ing]" "sums of money."[136] The New York State Banking Department,[137] which regulated budget planners, concluded that "[e]ntities that don't directly handle or supervise consumer funds for

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[133] FTC 2008 Workshop, supra note 19, at 5.

[134] Id. at 41.

[135] Massachusetts's 1955 ban on debt pooling included the definition: "The furnishing of advice or services for and in behalf of a debtor in connection with any debt pooling plan, whereby such debtor deposits any funds for the purposes of making pro rate payments or other **distributions** to his creditors, shall be deemed to be the practice of law . . . ." MASS. ANN. LAWS ch. 221, § 46C (2012) (effective 1971) (emphasis added). Pennsylvania's 1955 ban on budget planning including the definition: "'Budget planning' as used in contract, express or implied, with a this [sic] section means the making of a particular debtor [sic], whereby the agrees [sic] to pay a certain amount of money periodically to the person engaged in the budget planning business, who shall for a consideration **distribute** the same among certain specified creditors in accordance with a plan agreed upon." 18 PA. STAT. ANN. § 4899 (West 1955) (emphasis added).

[136] New York's statute defines budget planning as follows:

> Budget planning, as used in this article, means the making of a contract between a person or entity engaged in the business of budget planning with a particular debtor whereby (i) the debtor agrees to pay a sum or sums of money in any manner or form and the person or entity engaged in the business of budget planning **distributes**, or supervises, coordinates or controls the distribution of, or has a contractual relationship with another person or entity that **distributes**, or supervises, coordinates or controls such distribution of, the same among certain specified creditors in accordance with a plan agreed upon and (ii) the debtor agrees to pay to such person or entity, or such other person or entity that **distributes**, or supervises, coordinates or controls such distribution of, a sum or sums of money, any valuable consideration for such services or for any other services rendered in connection therewith. For the purposes of this article, a person or entity shall be considered as engaged in the business of budget planning in New York, and subject to this article and the licensing and other requirements of article twelve-C of the banking law, if such person or entity solicits budget planning business within this state and, in connection with such solicitation, enters into a contract for budget planning with an individual then resident in this state.

N.Y. GEN. BUS. LAW § 455(1) (2012) (emphasis added).

[137] The New York State Banking Department was abolished on October 3, 2011. The functions and authority of the agency was transferred to the New York State Department of Financial Services. N.Y.S. DEP'T OF FIN. SERVS., http://www.dfs.ny.gov/about/history.htm (last visited May 7, 2012).

disbursement, such as debt settlement companies, are not required to be licensed in New York and currently operate outside any regulatory framework."[138] The genesis of this approach may have been in California.[139] In the Committees review of available sources, modern-day debt settlement companies appeared to have avoided "touching the money" by using third-party companies to manage client trust accounts.[140] An attorney for debt settlement industry clients[141] explained it this way: "I think that the industry now is not touching the money or controlling the money to get around the various state laws that would restrict them if they were touching the money or controlling the money."[142] The Executive Director of the United States Organizations for Bankruptcy Alternatives, or USOBA, an industry trade group, noted in 2008: "I don't know

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[138] Press Release, N.Y. State Banking Dep't, Banking Department Recommends Regulation of Debt Settlement Companies: Amendment of Article 12-C Would Maintain Stronger Consumer Protection Standards (May 14, 2009), available at http://www.dfs.ny.gov/about/press/pr090514.htm (last visited May 7, 2012). But see Pavlov v. Debt Resolvers USA, Inc., 907 N.Y.S.2d 798, 807 (N.Y. Civ. Ct. 2010) (finding that debt settlement company was engaged in budget planning even though the defendant company "[did] not directly 'distribute' the payment to the creditor").

[139] The Executive Director of the American Association of Debt Management Organizations commented as follows:

> California changed its law several years ago and created the pro rata definition where a debt settlement company or credit counseling agency is one that receives and disburses funds on behalf of the consumer to creditors. That was an epiphany moment for debt settlement because they asked the regulator from California, if we don't touch the money are we then not regulated? The answer was, the statute speaks for itself. If you don't touch the money, you're not considered in this definition.
>
> Great moment for debt settlement, realized now suddenly they could go out and operate in an unregulated environment on a state-by-state basis. In my belief, . . . that is exactly what happened because you saw immediately after that a huge explosion in advertising and media for debt settlement.

FTC 2008 Workshop, supra note 19, at 41.

[140] See Carlsen v. Global Client Solutions, 256 P.3d 321, 323 (Wash. 2011) (describing the companies that contract with debt settlement companies to hold the money and manage special purpose accounts). At least one consumer advocacy expert reported seeing some smaller debt settlement companies accept monies without using third-party account managers.

[141] The speaker was Carla Witzel who introduced herself at the FTC 2008 Workshop as follows: "I'm Carla Witzel, I'm a partner in a law firm . . . Gordon, Feinblatt. My clients are debt settlement companies, debt management companies, for-profit and non-profit, extenders of credit from the largest banks to payday lenders." FTC 2008 Workshop, supra note 19, at 210. Ms. Witzel also served as the American Bar Association Advisor to the drafting committee on the Uniform Deb-Management Services Act. See Committees, Debt-Management Services Act, UNIF. LAW COMM'N, http://www.nccusl.org/Committee.aspx?title=Debt-Management%20Services%20Act (last visited May 7, 2012).

[142] FTC 2008 Workshop, supra note 19, at 226.

of a single debt settlement company that holds or controls funds and haven't for years."[143] This rationale appears to have been used by for-profit debt settlement companies in attempts to evade state oversight.[144]

During the past decade, these companies proliferated. Estimates of the number of debt settlement outfits vary widely—from 800[145] to more than 2,000 nationwide.[146] A number of debt settlement trade groups reported membership in the hundreds. In April 2010, the United States Organizations for Bankruptcy Alternatives (USOBA) claimed that it represented 200 companies, which had enrolled more than 277,000 customers.[147] In a 2009 survey, The Association of Settlement Companies ("TASC") estimated that 200 member organizations served more than 154,000 active consumers and managed more than $4.9 billion in debt.[148]

3(a)(ii) Common Practices of Debt Settlement Companies in the 2000's

Complaints filed by the FTC, state attorney general offices, and other state enforcement agencies comprise virtually the only source of information shedding light on the operation of

[143] Id. at 227. The speaker introduced herself as "[t]he Executive Director of the United States Organizations for Bankruptcy Alternatives, or USOBA. We're the oldest active trade association in the debt settlement industry . . . ." Id. at 209.

[144] See Consent Order at 3-4, In re Miracle Mgm't. Grp., Inc., No. 06F-BD002-BNK (Ariz. State Banking Dep't Aug. 26, 2005), available at www.azdfi.gov/PR/Miracle_Consent_Order.pdf (last visited May 7, 2012) (debt settlement company's attorney "stated that [debt settlement company] is not engaged in the operation of a debt management company as defined in A.R.S.§ 6-701 since [the company] does not receive money from debtors nor does it distribute money to creditors."). However, the Arizona State Banking Department found that the company's conduct "constitutes the conduct of a debt management company" and that the company did "not meet any of the exemptions to the [state's] licensing requirements . . . ." Id. at 5.

[145] Phil Mulkins, No Safe Port in a Storm, TULSA WORLD, Sept. 28, 2011, at E4, available at http://www.tulsaworld.com/site/printerfriendlystory.aspx?articleid=20110928_15_E4_Beingi105078&PrintComments=1 (last visited May 7, 2012).

[146] Reuven Blau, City Taking Hard Look at Debt-Help Companies, N.Y. DAILY NEWS, Aug. 10, 2011, at 12; see also Linfield, supra note 116, at 60-61 (in April 2009, stating that "[t]here are estimates that this industry currently has between 800-1,000 participants and is growing monthly"); David Streitfield, Debt Settlers Offer Promises but Little Help, N.Y. TIMES, Apr. 19, 2009, available at http://www.nytimes.com/2009/04/20/business/20settle.html ("As many as 2,000 settlement companies operate in the United States, triple the number of a few years ago.") (last visited May 7, 2012).

[147] The Debt Settlement Industry: The Consumer's Experience; Hearing Before the S. Comm. on Commerce, Sci., and Transp.,111th Cong. 66, 67 (2010), available at http://www.gpo.gov/fdsys/pkg/CHRG-111shrg67327/pdf/CHRG-111shrg67327.pdf (last visited May 7, 2010) (statement of John Ansbach, Legislative Dir., United States Organizations of Bankruptcy Alternatives).

[148] Ryan McCune Donovan, Note, The Problem with the Solution: Why West Viriginians Shouldn't "Settle" for the Uniform Debt Management Services Act, 113 W. VA. L. REV. 209, 213 n.7 (2010).

debt settlement companies in the 2000's. The Committees appreciate that the allegations made in many of the enforcement complaints do not constitute findings of fact by courts or fact finding by legislative bodies. Nevertheless, taken together along with congressional documents and the FTC's rule-making history, they paint a consistent picture of the practices of debt settlement operators during this time.

While debt settlement models and operations have varied, several practices appear to have predominated in the debt settlement sector during the 2000's.[149] First, debt settlement operators engaged in aggressive marketing through, among other means, the Internet, radio, and television.[150] Second, debt settlement contracts included many problematic provisions, most notably requirements that consumers pay "advance fees," as high as forty percent (40%) of the debt enrolled in the "program," prior to the company engaging in any purported settlement negotiations with creditors.[151]

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[149] These practices are illustrated in many state and FTC enforcement actions. The Assistant Director of the FTC's Division of Financial Practices, Alice Hrdy stated at an FTC 2008 Workshop titled Consumer Protection and Debt Settlement Industry that "unless there [is] an enforcement case, there isn't any data really to help us . . . understand what's happening to consumers." FTC 2008 Workshop, supra note 19, at 95. See also Enhanced Consumer Financial Protection After the Financial Crisis: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs Committee, 111th Cong. 11 (2011), available at http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=1980c90b-c8f9-4278-b509-d9de43e8506a&Witness_ID=3cb65047-012f-4110-991a-ec0463ae648d (last visited May 7, 2012) (statement of Michael Calhoun, President, Ctr. for Responsible Lending noting that "[r]obust data on the debt settlement industry are not available"); FTC 2008 Workshop, supra note 19, at 95 (banking executive describing the debt settlement industry as "opaque").

[150] FTC 2009 TSR Proposed Rule Amendments, 74 Fed. Reg. 41,988, 41,993 (Aug. 19, 2009).

[151] A General Accountability Office survey of debt settlement companies conducted in late 2009 through April 2010 found that 17 out of 20 respondents charged advance fees. GEN. ACCOUNTABILITY OFFICE, DEBT SETTLEMENT: FRAUDULENT, ABUSIVE, AND DECEPTIVE PRACTICES POSE RISK TO CONSUMERS 7 (2010), available at http://www.gao.gov/new.items/d10593t.pdf (last visited May 7, 2012) [hereinafter GAO 2010 REPORT]. Prior to the FTC's rule amendment, other fee structures existed as well, including collection of fees spread out over the first half of the enrollment period as well as "back end" fees collected as a percentage of any settlement secured for consumers. Id. at 4. In the latter instance, such companies frequently collected additional monthly fees. Id. Only 1 in 20 companies surveyed followed the "back end" fee model and that that company charged a fee equal to 35% of the reduction in each client's debt. Id. at 7-8. See also In re Kinderknecht, No. 09-13443, 6 (Bankr. D. Kan. Apr. 13, 2012), available at http://scholar.google.com/scholar_case?case=2409429033738162107&q=Kinderknecht&hl=en&as_sdt=2,33&as_yl o=2012 ("For the first 18 months [of the debt settlement plan] nearly all of the monthly payments go toward legal fees.") (last visited May 7, 2012); New York v. Nationwide Asset Servs., 888 N.Y.S.2d 850, 855-56 (N.Y. Sup. Ct. 2009) (describing the "set up fee," an upfront charge, and the "enrollment fee," noting that only after the enrollment

During the 2000 to 2010 time period, debt settlement operators invested heavily in marketing and advertising.[152] The FTC stated that "[o]verall, the record shows that advertising and marketing constitute the largest portion—and in many cases a substantial majority—of upfront costs for debt settlement providers."[153] Advertisements frequently promised consumers they would become "debt free" within certain periods of time with spectacular savings.[154]

Law enforcement complaints illustrate sophisticated and multifaceted marketing, including outbound cold calls by in-house telemarketers,[155] robo-calls,[156] Internet websites,

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fee has been paid "is any portion of the consumer's monthly payment [used] to fund any debt settlement(s) . . . ."); Complaint at ¶ 32, FTC v. Credit Restoration Brokers, No. 2:10CV00030, 2010 WL 1230609 (M.D. Fla. Jan. 9, 2010), available at http://www.ftc.gov/os/caselist/0823001/100318skycmpt.pdf (last visited May 7, 2012) (defendant "collected an advance payment from the consumer for a substantial portion, such as 30% to 60%, of the consumer's debt").

[152] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,478 (Aug. 10, 2010); infra note 171 and accompanying text (describing fees paid to "lead generators" for marketing).

[153] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,478.

[154] See id. at 48,478, n.50 ("In April 2010, FTC staff conducted a surf of debt settlement websites, based on a sample of the websites that a consumer searching for debt settlement services on a major search engine would encounter . . . . [and t]he staff found that 86% of the 100 debt settlement websites reviewed represented that the provider could achieve a specific level of reduction in the amount of debt owed."); id. at 48,461 ("Many advertisements make specific claims that appeal to the target consumers – for example, claims that consumers will save 40 to 50 cents on each dollar of their credit card debts or will become debt-free."). See also Nationwide Asset Servs., 888 N.Y.S.2d at 855 ("respondents represent . . . that they can . . . save the consumers a large portion, typically 25% to 40%, of the 'Original Amount Due'. . ."); Plaintiff's Original Petition at 2, ¶ 6, Texas v. Four Peaks Fin. Servs., No. D-1-GV-09-000900 (Tex. Dist. Ct. 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/052009fourpeaks_pop.pdf (last visited May 7, 2012) (describing debt settlement website stating that the "typical" client realized 45% reduction in debt over 36 months); Plaintiff's Original Petition at 2, ¶ 5, Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/032509csa_op.pdf (last visited May 7, 2012) ("Defendant CSA prominently represents on its web site that consumers can: 'Settle your debt up to 50%,' and 'Get out of debt in as little as 12 – 36 months'.").

[155] Nationwide Asset Servs., 888 N.Y.S.2d at 854-55 (noting that one of the interrelated entities marketed a "debt reduction program through telephone sales presentations initially made during 'cold-calls' to credit distressed customers"); Complaint / Petition for Injunctive Relief at 4, ¶ 17, Florida v. Nationwide Asset Servs., Inc. (Fla. Cir. Ct.), available at http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7WYJCD/$file/ADAcomplaint.pdf (last visited May 7, 2012) ("ADA telemarketers make outbound telephone calls to consumers"); Complaint at 8, ¶ 21 & 10, ¶ 29, Minnesota v. Morgan Drexen, Inc., No. 10-3105 (Minn. Dist. Ct. Feb. 18, 2010) (noting unsolicited calls to consumers who subsequently enrolled) (on file with the Committees); Complaint at 5, ¶ 13, North Carolina v. Consumer Law Grp., No. 10 CV 016777 (N.C. Super. Ct. Oct. 1, 2010) (listing "outbound telemarketing" as one method by which defendant "solicits its prospective consumers") (on file with the Committees).

[156] ROBB EVANS & ASSOCS., REPORT OF TEMPORARY RECEIVER'S ACTIVITIES: MAY 3, 2004 THROUGH MAY 14, 2004; FIRST REPORT TO THE COURT 3 (2004), available at http://www.robbevans.com/pdf/nccincreport01.pdf (last visited May 7, 2012) ("Company personnel advised the Temporary Receiver that current marketing efforts include using the auto-dialer to initiate about one million recorded messages per day and mailing about one hundred-fifty thousand solicitation letters per day."); Complaint at 10, ¶ 67, West Virginia v. Morgan Drexen, Inc., No. 11-C-829

Internet advertisements, radio advertisements, and local telephone book listings.[157] Operators, small and large, almost universally used the Internet for marketing.[158] Some marketing appears to have been targeted to Christian-radio listeners.[159] Larger players engaged in television and radio campaigns,[160] including on Spanish radio.[161] Additionally, some operators solicited business by offering existing clients financial incentives for referrals.[162]

(W. Va. Cir. Ct. May 20, 2011) ("One form of telemarketing used by Morgan Drexen is the use of 'robo' calls.") (on file with the Committees).

[157] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,461("Debt settlement companies typically advertise through the Internet, television, radio, or direct mail."); Complaint at ¶ 13, Consumer Law Grp., No. 10 CV 016777; see also Complaint at ¶ 12, FTC v. Credit Restoration Brokers, No. 2:10CV00030 ("[Defendant] has advertised . . . its services to consumers through Internet websites . . . and by other means, including but not limited to, rack cards, the Yellow Pages, magazine advertisements, and pamphlets."); Complaint at ¶ 9, FTC v. Better Budget Fin. Servs., Inc., No. 04-12326 (D. Mass. Nov. 2, 2004), available at http://www.ftc.gov/os/caselist/0423140/041115cmp0423140.pdf (last visited May 7, 2012) ("Defendants promoted their services . . . through a variety of means, including their own Internet web sites, unsolicited e-mail, and Internet advertising.").

[158] See, e.g., FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,461 (noting the use of the Internet by debt settlement companies as part of their marketing efforts); Memorandum Opinion Granting Motion for Preliminary Injunction, FTC v. Mallett, No. 11-01664 (D. D.C. Oct. 13, 2011) (describing Defendant's "network" of websites); Complaint at 4, ¶ 18 & 5, ¶ 25, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) (noting that the large "debt resolution law firm" markets via a website) (on file with the Committees); Complaint at 4, ¶ 16, Colorado v. Johnson Law Grp. (Colo. Dist. Ct. Apr. 28, 2011), available at http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2011/04/28/jlg_pllc_complaint.pdf (single-owner operated debt settlement company solicited customers nationwide through an Internet website) (last visited May 7, 2012); Plaintiff's Original Petition at ¶ 17, Four Peaks Fin. Servs., No. D-1-GV-09-000900 ("Defendant Four Peaks operates a website . . . on which it advertises its debt settlement program, which is available nationwide including in Travis County, Texas.").

[159] The Debt Settlement Industry: The Consumer's Experience; Hearing Before the S. Comm. on Commerce, Sci., and Transp., 111th Cong. 16 (2010) (statement of Gregory D. Kutz, Managing Dir., Forensic Audits and Special Investigations, U.S. Gov't Accountability Office) ("Company 3 targets Christians for its debt settlement services by employing a Biblical marketing theme."); see also Complaint at 13, ¶ 39, Consumer Law Grp., No. 10 CV 016777 (noting advertising for defendant on a Christian radio station).

[160] See, e.g., FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,461 ("Debt settlement companies typically advertise through . . . television [and] radio . . . ."); Complaint at 4, ¶ 13, FTC v. Debt Relief USA, Inc., No. 3:11-CV-2059 (N.D. Tex. Aug. 17, 2011), available at http://www.ftc.gov/os/caselist/0923052/110823debtreliefcmpt.pdf ("Defendants marketed their debt relief service . . . through national television and radio advertisements.") (last visited May 7, 2012); Complaint at 3, ¶ 15, FTC v. Debt Set, Inc., No. 1:07CV00558, 2007 WL 6969886 (D. Colo. Mar. 20, 2007), available at http://www.ftc.gov/os/caselist/0623140/070327cmp0623140.pdf (defendants marketed through advertisements on television and radio) (last visited May 7, 2012); Complaint at 10-11, ¶ 69, Morgan Drexen, Inc. No. 11-C-829 ("Morgan Drexen's telemarketing efforts include the widespread use of television and radio advertisements, asking consumers to call a toll free number if they are interested in becoming debt free.").

[161] Complaint at 3, ¶ 13, FTC v. Media Innovations, No. 8:11CV00164, 2011 WL 334345 (D. Md. Jan. 20, 2011), available at http://www.ftc.gov/os/caselist/0923054/110120hermosacmpt.pdf (last visited May 7, 2012).

[162] Complaint at ¶ 32, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Super. Ct., Nov. 16, 2009), available at www.maine.gov/ag/consumer/docs/cas_complaint.doc (last visited May 7, 2012); see also infra section 4.b (one of the consumers interviewed by the Committees provided enrollment documents with a debt settlement company that offered consumers $100 per referral) (enrollment documents on file with the Committees).

FTC and attorneys general complaints also shed light on the structure and operation of debt settlement operators. A characteristic of this sector was the diversification of the industry into "front end" marketers and "back end" companies. "Back end" companies contracted with other debt settlement companies to negotiate with creditors on behalf of clients[163] and provided customer service and administered customer accounts.[164] "Front end" companies included "lead generators," who advertised to and contacted consumers, often through telemarketing.[165] Lead

[163] See, e.g., Stipulation as to Probable Cause, Conditional Guilty Plea and Consent J. for Disc. at ¶ 4(D), Fla. Bar v. Feinstein, 2010-70, 245(11I) (Fla. Nov. 10, 2010) ("[Respondent's law firm' contracted with a back office service provider (a non-legal entity) to set up web sites, advertising, data base management, maintenance of financial records and back office services") (on file with the Committees); In re Allegro Law, 2010 WL 2712256 (Bankr. M.D. Ala. 2010) ("[v]irtually all of the actual administrative work was outsourced to [two companies], which are in the business of providing these kinds of services"); Conditional Guilty Plea at ¶ 1(k), In re Nelms, ASB No. 08-247(A), ASB No. 09-1481(A), CSP No. 09-1684(A) (Disciplinary B. of the Ala. State Bar Jun. 24, 2009) (describing a back end arrangement; the debt settlement company entered into a contract with a company that "handle[d] the servicing of all client accounts" and the debt settlement company paid the back end company "a set-up fee and monthly fee[s] for each client") (on file with the Committees). See also Complaint at 3, ¶ 15, Colorado v. Enhanced Servicing Solutions, Inc., No. 2011CV3927 (Colo. Dist. Ct. May 31, 2011), available at http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2011/06/14/enhanced_servicing_solutions_complaint.pdf ("Defendant . . . provides back-end support services to debt-settlement companies. Among other things, [defendant] negotiates with creditors on behalf of its clients' (the debt settlement companies) customers to settle the customers' debts for less than the principal amount of the debt.") (last visited May 7, 2012); Initial Receiver's Report at 14, ¶ 61, Florida v. Hess, No. 007686 (Fla. Cir. Ct. 2008) (noting that defendants entered into contracts with Debt Settlement of America for payment processing services and to negotiate with consumers' creditors) (on file with the Committees); Order to Cease & Desist at 4-7, In re JHass Grp., No. 12F-BD021-SBD (Ariz. Dep't of Fin. Insts., Sept. 29, 2011), available at http://www.azdfi.gov/Final/Forms/JHASS_Group_C&D_ULA_9-29-2011.pdf (describing back end company defendant's operations) (last visited May 7, 2012).

[164] Stipulation as to Probable Cause, Conditional Guilty Plea and Consent J. for Disc. at ¶ 4(D), Fla. Bar v. Feinstein, 2010-70,245(11I) ("[Respondent's law firm' contracted with a back office service provider (a non-legal entity) to set up . . . data base management, maintenance of financial records and back office services"); Complaint at 6, ¶ 18, FTC v. Connelly, No. SA CV 06-701 ("[Defendant] provides so-called 'back end' service, which includes, among other things, negotiating settlements with consumers' creditors, providing customer service, and administering customer accounts."), available at http://www.ftc.gov/os/caselist/0523091/060921cmp0523091.pdf; Complaint at 9, ¶ 44, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 ("[Defendant] has entered into 'strategic alliances' with third parties to provide the so-called 'back-end' debt settlement service, which includes, among other things, negotiating settlements with consumers' creditors, providing customer service, and administering customer accounts."); Complaint at ¶ 50, Consumer Law Grp., No. 10CV016777 (noting that defendant used a third-party payment processor).

[165] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,461 (Aug. 10, 2010) ("Consumers who call [advertised] phone number[s] reach a telemarketer working for or on behalf of the debt settlement provider."); Complaint at 4, ¶ 18, Colorado v. Johnson Law Grp. (Colo. Dist. Ct. Apr. 28, 2011) (referring to a lead generators as a "front end companies"); see also Stipulated Final Order for Permanent Injunction and Settlement of Claims at 3, FTC v. Dominant Leads, 1:10-cv-00997 (D. D.C. Aug. 9, 2011), available at http://www.ftc.gov/os/caselist/1023152/110825fedmortgagestip.pdf (setting out functions of corporate lead generator defendant, which included "performing customer service functions [such as] receiving or responding to consumer complaints"; "formulating or providing . . . any telephone sales script or any other marketing material";

generators marketed the services of debt settlement providers and served as "referral agents" to enroll or refer consumers to debt settlement companies.[166] Like other debt settlement companies, they used the Internet, print materials, direct solicitation, and radio advertising;[167] they also sent unsolicited emails to consumers that contained a link to websites, which they operated.[168] Some debt settlement operators set up affiliated companies that served as lead generators[169] or contracted with other third-party lead generators.[170]

For a successful referral, debt settlement companies and law firms paid lead generators a substantial fee.[171] One state enforcement official recounted a case he dealt with in which the

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"formulation or providing . . . web or Internet Protocol addresses or domain name registration for any Internet website, affiliate marketing services, or media placement services"; and "providing names of, or assisting in the generation of, potential customers") (last visited May 7, 2012); UNIFORM DEBT-MANAGEMENT SERVICES ACT, § 2(13) (2011) (defining a "lead generator" as "a person that, in the regular course of business, supplies a provider with the name of a potential customer, directs a communication of an individual to a provider, or otherwise refers a customer to a provider"), available at http://www.law.upenn.edu/bll/archives/ulc/UCDC/UDMSA_FINAL_2011_2.htm (last visited May 7, 2012).

[166] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,461 ("[T]elemarketer[s] obtain[] information about the consumer[s'] debts and financial condition and make[] the sales pitch, often repeating the claims made in the advertisements as well as making additional new ones."); Memorandum Opinion Granting Motion for Preliminary Injunction, FTC v. Mallett, No. 11-01664 (D. D.C. Oct, 13, 2011) ("FTC learned that Mallett has registered a number of websites . . . that he has used to advertise purported debt-, tax-, and mortgage-relief services to consumers that are ultimately provided by third parties, a practice commonly referred to as 'lead generation'.") (on file with the Committees); Conditional Guilty Plea for Consent J. at ¶ 7(E), Fla. Bar v. Campos, 2008-51,003(17E) (Fla. Mar. 23, 2009) ("Respondent solicited his services to obtain clients indirectly through numerous third-party 'referral agents' that referred clients to respondent for purported debt settlement services.") (on file with the Committees); Complaint at 6, ¶ 17, Consumer Law Grp., No. 10 CV 016777; see also Lasky Affirmation at 10-11, ¶ 28, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/09 (N.Y. Sup. Ct. Sept. 23, 2011) (describing lead generators) (on file with the Committees).

[167] See Assurance of Discontinuance at 2-3, ¶¶ 3-4, New York v. Debtmerica, No. 11-040 (N.Y. Sup. Ct. Aug. 18, 2011) (on file with the Committees).

[168] See Lasky Affirmation at 10-11, ¶ 28, Credit Solutions of Am., Inc., No. 401225/09.

[169] See Complaint at 6, ¶ 15, Consumer Law Grp., No. 10 CV 016777.

[170] Complaint at ¶ 18, Johnson Law Grp. ("Most of [defendant's] clients come to it through marketing agreements with front-end companies that advertise debt relief services.").

[171] Id. at 4, ¶ 19; Complaint at ¶ 14, FTC v. Media Innovations, No. 8:11CV00164, 2011 WL 334345 (D. Md. Jan. 20, 2011) ("The third-party companies pay Defendants approximately $50 to $65 for each lead. Defendants have sold approximately 80% of the leads generated by their advertisements to an unrelated enterprise . . . that refers consumer leads to third-party debt settlement companies or law firms."). See also Complaint at Exhibit 23, Fl. Bar v. Hess, SC08-252, SC08-509, SC08-1785 (Fl. Sup. Ct. 2008) ("Advertising Services Agreement" between debt settlement company and debt settlement law firm, providing that the firm pay the company $18,000 per week), available at http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=DisActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed%26MFL%3DLaura%2520L%2520Hess%26ICN%3D200750983%26DAD%3DDisbarment (last visited May 7, 2012).

lead generator received fifty percent (50%) of the fees collected from consumers they had successfully referred. In addition, at least one lead generator also contracted with other third-party affiliates that utilized that lead generator's advertising materials; the lead generators' relationships with the affiliates varied.[172] In another case, state officials asserted that a large nationwide debt settlement company, received up to one thousand "leads" on any given day from the lead generators it paid.[173]

Consumers responding to advertisements that purported to be placed by in-state companies frequently contacted call centers located in other states, some of which were operated by lead generators.[174] Sometimes, these lead generators, which provided marketing and enrollment services only, advertised themselves as the company that was performing the debt negotiation.[175] One company both recruited consumers to enroll in its debt settlement program and also earned fees for referring consumers to other operators.[176] Another had in-house sales staff and also retained third-party lead generators.[177]

Complaints by law enforcement agencies against numerous debt settlement companies detailed the deceptive and fraudulent statements on websites and in other marketing.[178]

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[172] See Assurance of Discontinuance at 4, ¶ 6, Debtmerica, No. 11-040 ("For example, one affiliate may own websites where [defendant's] advertisements are displayed, while another affiliate may have existing relationships with companies that already have established e-mail lists that can be utilized to market [defendant's] services.").
[173] See Lasky Affirmation at ¶ 28, Credit Solutions of Am., Inc., No. 401225/09.
[174] Complaint at 7, ¶ 19, Consumer Law Grp., No. 10 CV 016777 ("Despite being listed as local telephone numbers for consumer credit counseling services, these telephone numbers actually connect customers with [Defendant] sales representatives in Boca Raton, Florida, or with telemarketers in boiler rooms in other locations operating on [Defendant's] behalf."). See also Complaint at 8, ¶ 32, California v. Freedom Debt Relief, No. CIV477991 ("Often consumers do not know which company they are dealing with because the websites for [defendants], their affiliates and others are linked or similar in appearance and content . . . .").
[175] See Assurance of Discontinuance at 10-11, ¶¶ 24-25, Debtmerica, No. 11-040.
[176] Complaint at 14-15, ¶¶ 43-46, Consumer Law Grp., No. 10 CV 016777.
[177] Complaint at 6, ¶ 16, FTC v. Connelly, No. SA CV 06-701, 6 (C.D. Cal. Aug. 3, 2006), available at http://www.ftc.gov/os/caselist/0523091/060921cmp0523091.pdf (last visited May 7, 2012).
[178] See, e.g., In re Kinderknecht, No. 09-13443, 37 (Bankr. D. Kan. Apr. 13, 2012), available at http://scholar.google.com/scholar_case?case=2409429033738162107&hl=en&as_sdt=2,33; ("What [the debt settlement company] sold were debt settlement services that Persels' dressed up as 'legal services' in a bald-faced effort to evade complying with [state law]. What could be more deceptive?"); Assurance of Discontinuance at 5-8, ¶¶ 15-20, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 2011); Complaint at ¶ 15, ¶ 23, FTC

Examples included the use of deceptive promotional pieces created to appear to be "television stories" featured on "NBC" and "ABC"[179] and soliciting consumers by suggesting false and misleading affiliations with government "Relief Act" programs and agencies.[180] The Committees have attached an example of an official-looking mailed solicitation from the "National Debt Relief Initiative."[181] Websites also contained confusing information that concealed disclosures.[182]

In-house telemarketers earned commissions based on the number of consumers enrolled in the program and had to meet enrollment quota or otherwise face termination.[183] At least one national debt settlement company had telemarketers available twenty-four hours a day, seven days a week.[184] Many of the complaints noted the use of detailed telemarketing scripts.[185] During telemarketing calls, one national debt settlement company had consumers guided through the company's website to undergo the enrollment process and execute an agreement with an

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v. Debt-Set, 2007 WL 6969886; Complaint at ¶¶ 16-18, ¶¶ 22-25, FTC v. Edge Solutions, No. CV-07-4087 (describing representations on website) (describing actual outcomes); Complaint at 8-11, ¶¶ 40-48, Maine v. CSA – Credit Solutions Am., No. BCD-WB-CV-10-02.

[179] Complaint at ¶ 41, Credit Solutions Am. No. BCD-WB-CV-10-02.

[180] Complaint at ¶ 27, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (stating that the defendant sent direct mail solicitation pieces stating to consumers that they had been "pre-qualified to take part in our U.S. National Debt Relief Plan"); Complaint at ¶ 14, Consumer Law Grp., No. 10 CV 016777 (stating that defendant's "website and pop-up advertisements represented that consumers could be eligible for the 'State of North Carolina Credit Relief Program granting credit relief to North Carolina Residents' and using the official seals of the FTC and the Social Security Administration at the bottom of the website home page). See also Memorandum Opinion Granting Prelim. Injunction, FTC v. Mallett, 1:11-cv- 01664 (D. D.C. Oct. 13, 2011) (setting out in detail the false representations of government affiliation on the many websites operated by the defendant, an individual natural person).

[181] See Appendix F (redacted copy of advertisement dated August 1, 2010 from debt settlement operator that misleadingly looked like it came from a government agency).

[182] Pl.s Orig. Petition at 8, ¶ 19, Texas v. Debtor Solution (Tex. Dist. Ct. May 20, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/052009debtsolution_pop.pdf ("Defendant has created a complex maze of over 50 unique web pages with often times confusing information and random links to additional pages, with the effect of concealing these material disclosures.") (last visited May 7, 2012).

[183] See Complaint / Petition for Injunctive Relief at 9, ¶ 38, Florida v. Nationwide Asset Servs., Inc. (Fla. Cir. Ct.) (on file with the Committees).

[184] See Complaint at 10, ¶ 25, Florida v. CSA – Credit Solutions of Am., Inc., No. 8:2009cv02331 (Fla. Cir. Ct. 2009), available at http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7WYJAU/$file/CSAcomplaint.pdf (last visited May 7, 2012).

[185] See, e.g., Complaint / Petition for Injunctive Relief at 5, ¶¶ 21-22, Florida v. Nationwide Asset Servs., Inc.; Plaintiff's Original Petition at ¶ 19, Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009).

electronic signature.[186] In one case, salespeople who followed up on "leads" provided by lead generators were instructed to begin leaving three voicemails on the first day until sixteen voicemails had been left by the tenth day.[187] Complaints from enforcement agencies contained examples of telemarketing scripts that involved deceptive and predatory practices[188] and the use of "rebuttal" scripts when consumers raised questions or concerns.[189] Solo operators also engaged in deceptive marketing and sales.[190]

All of the documents reviewed by the Committees concerned debt settlement operators that marketed services beyond the company's home state and engaged in inter-state commerce or operated nationwide businesses.[191] Complaint data from the New York State Attorney General showed consumers complaining against companies located in twenty-six (26) different states and

[186] Complaint at ¶ 27, Credit Solutions of Am., Inc., No. 8:2009cv02331.
[187] Lasky Affirmation at ¶ 30, New York v. CSA – Credit Solutions Am., No. 401225/09 (N.Y. Sup. Ct. Sept. 23, 2011).
[188] See, e.g., Complaint/Petition for Injunctive Relief at 20, ¶ 93, Florida v. Nationwide Asset Servs., Inc. ("Defendants' intentional use of fraudulent and misleading scripts . . . [contributed to] a systematic ongoing course of conduct with the intent to obtain, and did obtain, the property of Florida consumers by false or fraudulent pretenses."); Complaint for Permanent Injunction and Other Equitable Relief at ¶ 19, FTC v. Debt Relief USA, Inc., No. 3:11-CV-2059 (N.D. Tex. Aug. 17, 2011), available at http://www.ftc.gov/os/caselist/0923052/110823debtreliefcmpt.pdf (alleging that telemarketers instructed consumers to stop paying creditors but that the company's contract stated that "in no manner has [defendant] represented that Client stop making payments to their Creditors") (last visited May 7, 2012); Complaint at 12, ¶¶ 53-54, Maine v. CSA – Credit Solutions Am. No. BCD-WB-CV-10-02 (describing the script used and how it is misleading and deceptive); Plaintiff's Original Petition at 9, ¶ 20, Credit Solutions of Am., Inc., No. D-1-GV-09-000417 ("[t]he script instructs the sales representative to put the consumer on hold while the consumer is filling in information to avoid questions from the consumer").
[189] See Plaintiff's Original Petition at ¶ 23, Credit Solutions of Am., Inc., No. D-1-GV-09-000417.
[190] See, e.g., Complaint at ¶¶ 15, 17, FTC v. Innovative Sys. Tech. Inc., No. CV04-0728 (C.D. Cal. Feb. 4, 2004), available at http://www.ftc.gov/os/caselist/0323006/040213comp0323006.pdf (principals told consumers to stop making payments to all of their unsecured creditors and at the same time "represented that purchasing [their] services constituted 'no risk' to consumers because [they] guaranteed that its services would produce the advertised results").
[191] See, e.g., Complaint at 4, ¶ 18, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) ("[Defendant] promotes itself as one of the largest debt resolution law firms in the nation with offices in fifty states."); Complaint/Petition for Injunctive Relief at 4, ¶ 15, Nationwide Asset Servs., Inc. (defendants offer services "throughout the country"); Order to Cease & Desist at 5, ¶ 12, In re JHass Grp., No. 12F-BD021-SBD ("JHASS conducts its debt settlement business nationwide."). See also Plaintiff's Original Petition at 4-5, ¶ 10, Texas v. Four Peaks Financial Servs., No. D-1-GV-09-000900 (Tex. Dist. Ct. 2009) ("Defendant . . . does business in Texas and throughout the United States. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process.").

the District of Columbia.[192] From May 2010 through October 2011, New York City residents filed complaints with the New York City Department of Consumer Affairs against companies located in eleven (11) different states.[193]

Many debt settlement service providers aimed their marketing efforts at financially distressed consumers with a minimum of $5,000 to $10,000 in debt,[194] and began charging them advance fees shortly after they enrolled.[195] Paying off the advance fees could take many months, during which time these businesses advised consumers not to pay creditors, resulting in defaulted accounts, triggering spikes in interest rates and other penalties, mounting debt, damaged credit, and stepped up collection efforts, including the filing of collection lawsuits.[196] Creditors often intensified debt collection efforts following consumers' enrollment in debt settlement programs and their ensuing default.[197]

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[192] See Appendix D (data compiled from complaints filed from 2009 through 2011).
[193] See Appendix D (data compiled from complaints filed from May 2010 through October 2011).
[194] NCLC 2005 REPORT, supra note 25, at 3 (citing industry expert who reported that the "ideal customers" are "insolvent, unable to afford the minimum payments required by a debt management plan (DMP), but have the ability to pay something"); Complaint at 14, ¶ 39, FTC v. Dominant Leads, No. 1:10-cv-00997 (D. D.C. June 15, 2010) (stating that defendants' website contained the following statement "Must have Credit Card Debt over $10,000"); Pl.'s Original Pet. at 2, ¶ 4, Four Peaks Fin. Servs., No. D-1-GV-09-000900 ("Debt settlement is a form of consumer debt relief, targeted to consumers with thousands of dollars of unsecured debt."); Pl.'s Original Pet. at 6, ¶ 15, Texas v. CSA – Credit Solutions of Am., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009) (stating that customers had to have a minimum of $6,000 in debt); Complaint at 10, ¶ 67, West Virginia v. Morgan Drexen, Inc., No. 11-C-829 (W. Va. Cir. Ct. May 20, 2011) (defendant's robo-calls asks "whether the consumer has more than $10,000.00 in unsecured debt and would like to be debt free"); Complaint at 2, ¶ 9, Legal Helpers Debt Resolution, No. 2011CH00286 ("Debt settlement is a for-profit business that targets consumers with significant amounts of unsecured debt, usually $10,000 or more."); see also Complaint for Permanent Injunction and Other Equitable Relief at ¶ 34, FTC v. Mallett, No. 1:11-cv-01664 (D. D.C. Sept. 14, 2011), available at http://www.ftc.gov/os/caselist/1123105/110922usdebtcarecmpt.pdf (more recent complaint noting that defendant solicited consumers with "$5,000 or more of unsecured debt") (last visited May 7, 2012).
[195] See supra note 151 and accompanying text.
[196] GAO 2010 REPORT, supra note 151, at 9-10; The Debt Settlement Industry: The Consumer's Experience; Hearing Before the S. Comm. on Commerce, Sci., and Transp., United States Senate, 111th Cong. 52 (2010), available at http://www.gpo.gov/fdsys/pkg/CHRG-111shrg67327/pdf/CHRG-111shrg67327.pdf (statement of Philip A. Lehman, Assistant Att'y Gen., N.C. Dep't of Justice) (last visited May 7, 2012).
[197] Complaint at 3, ¶ 7, Four Peaks Fin. Servs., No. D-1-GV-09-000900 (noting that collection activity can intensify with enrollment in debt settlement, that creditors may file lawsuits, and that credit scores will drop); Morrissey Affirmation at 20-21, ¶ 59, New York v. Nationwide Asset Servs., No. 2009-5710, 888 N.Y.S.2d 850 (N.Y. Sup. Ct. 2009) (describing the intensified debt collection activity of debt settlement customers) (on file with the Committees); Pl.'s Mot. for Summ. J. at 10, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/09

Third-party payment processors facilitated the collection of advance fees.[198] Debt settlement service providers had customers authorize that fees would be automatically, electronically debited from their bank accounts into special purpose bank accounts held by payment processors. The predominant third-party entities cited in law enforcement agencies' documents were Global Client Solutions, LLC[199] and Note World Servicing Center,[200] although other third-party payment processors also contracted with debt settlement operators.[201] These entities debited fees of their own—Global Client Solutions collected a $9 set-up fee and $9.85 monthly service fee for each account, and other additional fees such as $15 wire transfer fees.[202] The Washington Supreme Court described the contractual arrangements in this manner:

> [Consumers] could access their special purpose accounts on-line and terminate them at any time by sending written notice. But on a practical level, [consumers] did not need to access their accounts because they had signed blanket

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(N.Y. Sup. Ct. 2011) (noting the intensified collection activity testified to by CSA customers, including the filing of collection lawsuits, wage garnishments, and seized bank accounts) (on file with the Committees).

[198] As mentioned earlier, in order to evade state regulation, debt settlement operators avoided "touching the money" and relied almost exclusively on third-party entities to manage special purpose bank accounts and serve as payment processors. Supra notes 134-144. The Washington Supreme Court described how the companies that managed and held special purposes accounts worked:

> The [consumers'] special purpose accounts were held at [a bank, in this case Rocky Mountain Bank and Trust] and were structured as subaccounts of a large custodial account in [Global Client Solution's] name. The custodial account allowed debt settlement companies like Freedom to view the balance and transaction history in each of their customers' accounts. The [consumers] could access their special purpose accounts on line . . . . In its role as "processor" for the special purpose accounts, [Global Client Solutions] initiated . . . automatic transfers [from the consumers' accounts to the debt settlement operators' accounts].

Carlsen v. Global Client Solutions, 256 P.3d 321, 323 (Wash. 2011).

[199] See, e.g., id.; Verified Petition at 5, ¶ 21, New York v. Nationwide Asset Servs., No. 2009-5710 (see court decision published at 888 N.Y.S.2d 850 (N.Y. Sup. Ct. 2009)) (on file with the Committees); Complaint at 8, ¶ 24, North Carolina v. Consumer Law Grp., No. 10CV016777 (N.C. Super. Ct. Oct. 1, 2010) (on file with the Committees).

[200] Order to Cease & Desist at ¶ 11(a), In re JHass Grp., No. 12F-BD021-SBD (Ariz. Dep't of Fin. Insts. Sept. 29, 2011) (noting that debt settlement company required customers to open a trust account with NoteWorld, which acted as a third-party service provider, and detailing NoteWorld's operations); Complaint at 10, ¶ 58, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) ("Customers are required to set up a trust account through Note World, LLC or Global Client Solutions, LLC."). NoteWorld has changed its name to Meracord. MERACORD, http://www.meracord.com (last visited May 9, 2012).

[201] See Complaint at 16, Consumer Law Grp., No. 10CV 066777 (listing the fees charged by the third party payment processor—neither NoteWorld nor Global Client Solutions—used by the debt settlement law firm).

[202] Complaint /Petition for Injunctive Relief at 6-7, ¶¶ 27-32, Florida v. Nationwide Asset Servs., Inc. (Fla. Cir. Ct.), available at http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7WYJCD/$file/ADAcomplaint.pdf (last visited May 7, 2012).

> authorizations upon entering the debt relief program that established automatic (1) monthly transfers from the [consumers'] primary bank accounts to their special purpose accounts, (2) monthly payments from the special purpose accounts to the debt settlement company, (3) monthly and one-time payments from the special accounts to [Global Client Solutions] for banking services, and (4) disbursements from the special purpose accounts to creditors when the debt settlement company negotiated a settlement.[203]

In its decision holding that Global Client Solutions was subject to the state debt adjuster provisions, the Washington Supreme Court noted that plaintiffs alleged that Global Client Solutions had a custodial account at Rocky Mountain Bank and Trust that contained over 600,000 special purpose accounts and contracted with over 500 different debt settlement companies.[204] The Federal Deposit Insurance Corporation issued a cease and desist order against Rocky Mountain Bank and Trust in 2009.[205]

Debt settlement programs required consumers to enter into limited powers of attorney which often gave debt settlement companies control of clients' special purpose accounts.[206] Some of these instruments violated state laws.[207] The Maine Attorney General alleged that the limited power of attorney used by one company was misleading in that it appointed the debt settlement company as the consumer's attorney-in fact and provided for authority that extended to legal matters while, at the same time, disclaiming in the separate contract that the company provided legal advice or representation.[208]

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[203] Global Client Solutions, 256 P.3d 321, 323 (Wash. (2011).
[204] Id.
[205] Order to Cease & Desist, In re Rocky Mountain Bank & Trust, FDIC-09-065b (2009), available at http://www.fdic.gov/bank/individual/enforcement/2009-04-06.pdf (last visited May 7, 2012).
[206] See Consent Order at ¶ 7(b), Idaho v. Debt Settlement Solutions, No. 2011-9-04 (Idaho State Dep't of Fin. Mar. 29, 2011) ("Such limited power of attorney effectively gave the Respondent control of the client's [special purpose account]."). See also Verified Petition at 6, ¶ 25, New York v. Nationwide Asset Servs., No. 2009-5710 (N.Y. Sup. Ct. May 13, 2009); Complaint at 8, ¶ 36, Florida v. Nationwide Asset Servs., Inc.; Complaint at 9, ¶ 47, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286; Complaint at 15, ¶ 64, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) (describing power of attorney instruments) (on file with the Committees).
[207] See, e.g., Complaint at 9, ¶¶ 60-62, Colorado v. Johnson Law Grp. (noting that State law requires limitations on Powers of Attorney which were not included in the instruments used by the defendant).
[208] Complaint at 15, ¶¶ 63-64, Maine v. Credit Solutions Am., No. BCD-WB-CV-10-02 (Me. Super. Ct. 2009).

A defining feature of debt settlement was that the overwhelming majority of consumers would invariably and inevitably "drop out" of the program, particularly once creditors began to file debt collection lawsuits against them and they experienced wage garnishment and damaged credit.[209] This would occur all-too-often after consumers lost substantial amounts of the funds they had paid as advance fees to debt settlement operators.[210] On a routine basis, consumers complained and law enforcement agencies charged that debt settlement companies refused to refund consumers' money after they dropped the programs.[211] Arbitration and forum selection clauses affected consumers' recourse when this occurred: debt settlement service providers routinely included arbitration clauses in contracts with consumers,[212] while other contracts—

[209] See infra Part 3.c (discussing impact on consumers and completion rates); see also Affirmation of Avinoam Erdfarb at 6, ¶ 11, New York v. CSA – Credit Solutions of Am., Inc., 401225/09 (N.Y. Sup. Ct. Sept. 22, 2011) (analyzing data from 20,660 New York customers from July 2, 2005 through June 24, 2010 and finding that 4% of customers "completed" CSA's program and that only 3% realized any savings) (on file with the Committees); COLO. DEP'T OF LAW, 2010 ANNUAL REPORT—COLORADO DEBT-MGM'T SERVICES PROVIDERS 2 (2012), available at http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2010%20DMSA%20Annual%20Report.pdf (reporting that in 2010, out of 2,982 debt settlement agreements, only 1.71% were completed, 54.59% were active, and 43.70% were terminated) (last visited May 7, 2012) [hereinafter 2010 ANNUAL REPORT].

[210] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,473 (Aug. 10, 2010) ("[A] major concern with debt settlement services is that most consumers drop out of the program after paying large, unrefunded fees to the provider.").

[211] See, e.g., In re Allegro Law, 2010 WL 2712256 (Bankr. M.D. Ala. 2010) (describing the "deluge" of calls and letters from former customers seeking refunds, noting that the "level of anger and frustration shown by the Allegro customers is unprecedented in the history of this Court"); Complaint at ¶ 131, West Virginia v. Morgan Drexen, Inc., No. 11-C-829 (W. Va. Cir. Ct. May 20, 2011) ("Morgan Drexen sometimes refuses to refund money to West Virginia consumers even though it has not procured any debt settlements for consumers nor has it improved any consumer's credit history, score or rating."); Pl.'s Original Pet. at ¶ 35(E), Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. May 20, 2009) (defendants failed to refund fees); Complaint at 26, FTC v. Debt-Set, 2007 WL 6969886, No. 1:07CV00558 (D. Colo. Mar. 20, 2007).

[212] Assurance of Discontinuance at 5, ¶ 13, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 2011) ("Prior to 2008, [defendant's] standard consumer contract included a mandatory arbitration provision, requiring [New York] consumers to submit any dispute to binding arbitration to be held in San Francisco, California."); Complaint at 15, ¶ 41(i), Minnesota v. Morgan Drexen, No. 10-3105 (Minn. D. Ct. Feb. 18, 2010) (noting that the defendant's service agreement contained provisions "expressly prohibited" by state statute, including "a mandatory arbitration clause; and a choice of law provision stating that the agreement is to be construed in accordance with the laws of California") (on file with the Committees).

with and without arbitration clauses—required consumers to file disputes in the company's home state, such as California[213] or Texas.[214]

3(a)(iii) Ownership and Organization of Debt Settlement Companies

During the 2000 to 2010 period, debt settlement operators typically formed corporations and limited liability companies, many of which were interrelated.[215] Available sources indicate that debt settlement companies, by and large, were privately held and controlled by either a single owner or a small number of individuals.[216] In a review of complaints, consent orders, and cease and desist orders from attorneys general, state enforcement agencies, and the FTC, the Committees did not find one example of a debt settlement company that was not privately held. One challenge for both consumers and regulators was that these companies can be difficult to track down and disappear with regularity.[217]

Nationwide Asset Services, which was the subject of multiple enforcement actions, illustrates the interrelationships between debt settlement companies.[218] This company, an

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[213] Assurance of Discontinuance at 5, ¶ 13, Freedom Debt Relief, No. 10-167; Complaint at 15, ¶ 41(i), Morgan Drexen, No. 10-3105.

[214] Complaint at 17, ¶¶ 78-79, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Super. Ct. 2009) ("The Agreement provides that Texas law governs and that consumer disputes must be resolved in Texas . . . [and] requires that a consumer waive the right to present disputes with [the defendant] to a Maine court.").

[215] See Appendices B & C. See also Complaint at ¶ 10, FTC v. Media Innovations, No. 8:11CV00164, 2011 WL 334345 (D. Md. Jan. 20, 2011) ("Defendants have conducted the business practices . . . through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, and have commingled funds."); Complaint at ¶ 12, Debt Set, No. 1:07CV00558, 2007 WL 6969886 ("The Corporation Defendants . . . and Individual Defendants . . . operated as a common enterprise . . . ."); Complaint at ¶ 13, FTC v. Connelly, No. SA CV 06-701 (C.D. Cal. Aug. 3, 2006) ("Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, and business functions").

[216] See Appendix B (Chart of Ownership and Organization of Debt Settlement Companies in State Enforcement Actions) & Appendix C (Chart of Ownership and Organization of Debt Settlement Companies in FTC Enforcement Actions).

[217] See, e.g., GAO 2010 REPORT, supra note 151, at 18 (noting that investigators "were unable to determine the actual relationship, if any between Company 1, its affiliates, or the other company the owner claimed he runs").

[218] New York v. Nationwide Asset Servs., 888 N.Y.S.2d 850, 854-55 (N.Y. Sup. Ct. 2009) (noting the inter-related nature of the defendant entities); Complaint at 2-3, ¶¶ 10-14, Florida v. Nationwide Asset Servs., Inc. (Fla. Cir. Ct.). As of February 23, 2012 Nationwide had a website and call center. See Nationwide Asset Services, Inc., http://www.nationwideasset.com (last visited May 7, 2012).

Arizona corporation, paid ServiceStar, an Arizona corporation, to provide personnel to conduct business.[219] Both corporations shared the same address. [220] A third Arizona corporation, Universal Debt Reduction, also shared the same address as the other two corporations.[221] Freedom Debt Relief, LLC provides another example. The California Attorney General's Complaint against this debt settlement company named two individuals and at least six separate inter-connected companies;[222] the two individuals were "officers, directors, managers and operations principals" of all the named corporate defendants.[223]

Perhaps the most exhaustive and detailed examination of the operations of a self-standing debt settlement entity is a receiver's report of National Consumer Council,[224] the predecessor operation of at least one of the owners of Morgan Drexen.[225] The report described the affiliations and functions of seven inter-connected entities, all controlled and owned by three individuals.[226] Inter-related companies conducted almost all of the business activities of the enterprise. One entity had an automated dialing system, which "completed hundreds of thousands of recorded telephone calls to consumers throughout the United States on a daily basis."[227] The company identified itself misleadingly as a non-profit; the "nonprofit" was promoted on television through paid "public service announcements."[228] Another company

[219] Complaint at 2-3, ¶ 11, Florida v. Nationwide Asset Servs., Inc.
[220] Id.
[221] Id. at 3, ¶ 12.
[222] Complaint at 3-7, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) (on file with the Committees).
[223] Id. at 7.
[224] ROBB EVANS & ASSOCS., supra note 156.
[225] See Appendices B & C (entries for cases involving Morgan Drexen and National Consumer Council).
[226] ROBB EVANS & ASSOCS., supra note 156.
[227] Id. at 3.
[228] Id.

operated a call center with employees who functioned as "pre-screeners."[229] Consumers who signed contracts were assigned to one of several companies.[230]

Enforcement agency documents indicate that debt settlement operators were frequently located in Arizona, California, Florida, and Texas.[231] The fifty-two (52) enforcement actions reviewed by the Committees involved eighty-six (86) entities, forty-one (41) of which were or are located in one of these states.[232] Complaint data from the New York City Department of Consumer Affairs and the New York State Office of the Attorney General likewise showed companies from these states as predominating. Of 791 complaints against debt settlement companies that New Yorkers filed with the Attorney General, seventy-seven percent (77%) were against Arizona, California, Florida, New York, and Texas companies combined.[233] Of the seventy-five (75) complaints New York City consumers filed with the New York City Department of Consumer Affairs, eighty-four percent (84%) were against California, Florida, New York, and Texas companies combined.[234] Notably, some companies accounted for high numbers of complaints and may cause some of the states listed above to be over-represented.[235]

The practices described above were often conducted by large companies that enrolled tens of thousands of consumers. For example:

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[229] Id.
[230] Id.
[231] See Appendices B, C, & D.
[232] See Appendix D.
[233] See Appendix D (showing that 23 complaints were against Arizona companies, 149 complaints against California companies, 105 complaints against Florida companies, 230 complaints against New York companies, and 116 complaints against Texas companies).
[234] See id. (showing that 24 complaints were against California companies, 17 complaints against Florida companies, 15 complaints against New York companies, and 7 complaints against Texas companies).
[235] For example, New Yorkers filed 52 complaints against CSA – Credit Solutions America (a Texas entity) with the Attorney General's Office, accounting for a large proportion of the complaints against Texas entities.

- Legal Helpers Debt Resolution, a "law firm affiliated" debt settlement company, had enrolled over 10,000 consumers nationwide as of October 1, 2010.[236]
- Debt Settlement USA, a privately held company that in 2008 was headquartered in Scottsdale, Arizona, had maintained all operations in one building and had serviced over 17,000 consumers.[237]
- National Consumer Council, a company the FTC shut down in 2004, had enrolled 44,844 consumers with outstanding debt balances of $1.3 billion.[238] At the time the company shut down, the auto-dialer initiated about one million recorded messages per day and the enterprise mailed about 150,000 solicitations per day.[239]
- Freedom Debt Relief claimed that it had managed over one billion dollars in consumer debt and had enrolled over 50,000 clients nationwide.[240]
- Credit Solutions of America, Inc., which was sued by six attorneys general,[241] had advertised that it had enrolled more than 200,000 consumers nationwide and had approximately 90,000 active clients.[242]

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[236] Complaint at ¶ 82, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) ("As of October 1, 2010, over 10,000 consumers nationwide had entered into agreements with the defendant."). See also In re Kinderknecht, No. 09-13443, 8 (Bankr. D. Kan. Apr. 13, 2012), available at http://scholar.google.com/scholar_case?case=2409429033738162107&q=Kinderknecht&hl=en&as_sdt=2,33&as_yl o=2012 (noting that one of the "field attorneys" had 500 clients).

[237] FTC 2008 Workshop, supra note 19, at 87-88. The President asserted further that Debt Settlement USA had experienced "a more than 50 percent increase in the number of consumers who [had] turned . . . to debt settlement." Id.

[238] ROBB EVANS & ASSOCS., supra note 156, at 5.

[239] Id.

[240] Assurance of Discontinuance at 3, ¶ 6, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 2011) (on file with the Committees); see also Complaint at 14, ¶ 59, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) (estimating that Defendant's unlicensed activities in California resulted in revenues exceeding $150,000 million) (on file with the Committees).

[241] Order Granting Pl.s' M. Summ. J., Vermont v. CSA – Credit Solutions of Am., No. 484-7-10 (Vt. Super. Ct. Mar. 21, 2012), available at http://www.atg.state.vt.us/assets/files/CSA%20Order.pdf (last visited May 7, 2012); Complaint at 7, ¶ 21, Florida v. CSA – Credit Solutions of Am., Inc., No. 8:2009cv02331(Fla. Cir. Ct.) (noting that as of the date of the filing of the Florida complaint, CSA had been sued by the Attorneys General of Texas, New York, Missouri, and Illinois). See also Order Granting Pl.'s Summ. J. Motion, New York v. CSA – Credit Solutions Am., No. 401225/2009 (N.Y. Sup. Ct. Apr. 30, 2012) (finding that Plaintiff had established that Defendant had misled consumers) (on file with the Committees).

3(b) Regulation of Debt Settlement During the 2000's

During the 2000's, several state legislative developments occurred related to debt settlement and this section provides an overview of them. This section discusses the development of the Uniform Debt-Management Services Act, legislative activity in several states, and the law in New York State governing debt settlement.

3(b)(i) The Uniform Debt-Management Services Act

The National Conference of Commissioners on Uniform State Laws (later re-named the Uniform Law Commission) issued the Uniform Debt-Management Services Act ("UDMSA") in July 2005.[243] The UDMSA was promoted by the debt settlement industry in various states and has been widely acknowledged as an "industry" bill.[244] Proponents described the UDMSA as a comprehensive act that "provides guidance and regulation to the consumer credit counseling and debt settlement industries." It sets forth a regulatory scheme for states to follow in regulating

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[242] Complaint at 4, ¶ 15, Florida v. CSA – Credit Solutions of Am., Inc., No. 8:2009cv02331 (Fla. Cir. Ct.); see also Plaintiff's Original Petition at ¶ 17.H, Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009) (stating that defendant's website contained the followings statement: "More than 200,000 people from every walk of life have entrusted us to help them become debt-free. Credit Solutions is the industry leader, managing more than $2.25 billion of debt for our clients.").

[243] UNIFORM DEBT-MANAGEMENT SERVICES ACT (Amended 2011), http://www.law.upenn.edu/bll/archives/ulc/UCDC/UDMSA_FINAL_2011_2.htm (last visited May 7, 2012).

[244] See UNIFORM DEBT-MANAGEMENT SERVICES ACT, http://www.udmsa.org/index.htm [hereinafter UDMSA website] (last visited May 7, 2012) (linking to United States Organization for Bankruptcy Alternatives ("USOBA") and The Association of Settlement Companies ("TASC") websites and noting that both groups are "[w]orking with and lobbying State Legislators who are introducing the UDMSA on issues specific to the Debt Settlement industry"); see also FTC, Transcript of the Public Forum on Debt Relief Amendments to the Telemarketing Sales Rule 18 (Nov. 4, 2009) [hereinafter "FTC TSR Public Forum"], available at http://www.ftc.gov/bcp/rulemaking/tsr/tsr-debtrelief/transcript.pdf (statement of Gail Hillebrand, Senior Att'y, Consumers Union) (noting that industry has "actively promoted" a particular fee model in state legislatures, which has been adopted in some states) (last visited May 7, 2012). Some industry players have denied that the UDMSA is an industry bill, noting that they are not the actual drafters. See id. at 37 (statement of John Ansbach, USOBA Legislative Comm. Chairman) ("[T]he UDMSA is not the industry's bill. We back the UDMSA. It is promoted by NCCUSL, the Uniform Law Commission."). Other industry players, while not referring to the UDMSA as an "industry bill," acknowledge that they are pursuing its passage in various states and working with the NCCUSL to pass the bill. See id. at 98 (testimony of Robert Linderman, Gen. Counsel, Freedom Fin. Network) (stating that "we work both at the Freedom Debt level and at the TASC level, of which I am proud to be a board member as well, very closely with [Michael Kerr, Legislative Director for the National Conference of Commissioners on Uniform State Laws] on passing the UDMSA in various states" and noting that "we have had great success over the last 18 months and we anticipate continued success"). See also supra note 141 (describing the role of a debt-relief lobbyist in the development of the UDMSA).

these entities.[245] The UDMSA provides for registration and bonding of debt management and debt settlement services providers.[246] Notably, the 2005 version of the UDMSA gave states an option of permitting both for-profit and non-profit debt counseling and debt management services or of limiting them to non-profits.[247] In 2011, the UDMSA was amended "to eliminate provisions barring for-profit entities from providing debt-management services."[248]

The UDMSA also includes provisions requiring the following: pre-agreement disclosures and warnings;[249] contract requirements;[250] limitations on the timing and amount of

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[245] See UNIFORM DEBT-MANAGEMENT SERVICES ACT (Amended 2011), available at http://www.law.upenn.edu/bll/archives/ulc/UCDC/UDMSA_FINAL_2011_2.htm (last visited May 7, 2012).
[246] Id. § 4 (Registration Required) & § 13 (Bond Required).
[247] See UDMSA Prefatory Note 2005, supra note 26 (history of the draft).
[248] Id. (2011 Addendum).
[249] Id. § 17 (prerequisites for providing debt-management services). Among other things, a provider must give the consumer the following disclosures:
(1) a description of services to be provided, id. § 19(a)(6)(A);
(2) "the amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual," id. § 19(a)(6)(B);
(3) "the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment," id. § 19(a)(6)(C);
(4) "an itemized list of goods and services and the charges for each," id. § 17(a);
(5) services through a "certified counselor or certified debt specialist" who has:
    (a) "provided the individual with reasonable education about the management of personal finance";
    (b) conducted a financial analysis including income, assets and debt; and
    (c) where a consumer is required to make regular payments, has conducted a plan for the individual, a determination that the plan is suitable for the individual based on the financial analysis, and a determination that the individual's creditors will accept payments from the individual pursuant to the plan, id. § 17(b); and
(6) various specific warnings about the effect of participating in a debt management services plan, including :
    (a) that such a program is not right for all individuals and that the individual may ask for information about bankruptcy and "other ways to deal with" their debts;
    (b) that nonpayment of debts may hurt a consumer's credit rating, lead to creditors' increasing finance and other charges, and lead creditors to undertake collection, including lawsuits; and
    (c) that reduction of debt under a program may result in taxable income to the consumer. Id. §§ 17(d) & (e).
[250] Id. § 19 (Form and Contents of the Agreement). "An agreement must be in a record." Id. § 19(a). In addition to some of the disclosures addressed above, the UDMSA requires, *inter alia*, that that the provider may terminate the agreement for good cause, and that the individual may do so by giving written or electronic notice. Id. §§ 19(a)(6)(G) & (H). Upon such notice of termination, the individual will receive all unexpended money that the provider or its designee has received from or on behalf of the individual for payment of a creditor and, except to the extent they have been earned, the provider's fees. Id. § 19(a)(6)(H). The contract must also make specific disclosures regarding the use of a trust account. Id. § 19(d). Additionally, the provider must notify the consumer no later than five days after learning of a creditor's final decision to reject or withdraw from a plan and must inform the consumer of the creditor's identity and of the consumer's right to modify or terminate the agreement. Id. § 19(d)(2). The contract specifically may not provide for the application of the law of another state, modify or limit available forums or procedural rights (except for arbitration), or release the debt management entity from liability for nonperformance or violation of the UDMSA. Id. § 19(f).

allowable fees, including a thirty percent (30%) fee cap on allowable debt settlement fees (calculated as thirty percent (30%) of the savings incurred through the settlement process, measured as the principal amount of the debt minus the settlement amount to be paid);[251] regulations for the use of debtor settlement accounts;[252] prohibitions on misrepresentations in advertising and marketing practices;[253] penalties for noncompliance by providers, including civil monetary penalties and a private right of action;[254] and exemptions, including for attorneys.[255]

3(b)(ii) State Regulation of Debt Settlement in the 2000's

During the 2000's a number of changes occurred in the regulation of debt settlement by states.

Since 2005, a number of states have adopted the UDMSA and legislators have introduced it in other states. The following six states have adopted some variation of the UDMSA: Colorado, Delaware, Nevada, Rhode Island, Tennessee, and Utah.[256] The Act has been

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[251] Id. § 23 (Fees and Other Charges). For debt settlement services, where an installment plan for the payment of the debt is agreed to, the debt settlement fee may be paid in installments or upon the payment of the final installment. Id. § 23(d)(3)(B). When the fee is paid in installments the number of times a fee is paid is the same as the number of installments and in the same ratio that each payment bears to the total settlement amount. Id. § 23(d)(4)(B). "Compensation for services in connection with settling each debt may not exceed, with respect to each debt, 30 percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the settlement." Id. § 23(d)(3).

[252] Id. § 22 (Trust Account and Independently Administered Account).

[253] Id. § 30 (Advertising) (requiring that operators disclose the provisions of Section 17(d)(3) and (4) of the Act that "a plan may adversely affect the individual's credit rating or credit scores" and "that nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation").

[254] Id. § 33 (Administrative Remedies). Violations are punishable by a civil penalty of $10,000 per violation or $20,000 per knowing violation. Id. § 33(a). A person bringing a private right of action may recover actual damages, statutory damages, and attorney's fees. Id. § 35. There is a good faith error provision in the law excusing unintentional violations, though legal errors are not considered good faith error. Id. § 35(e).

[255] Id. § 3 (Exempt Agreements and Persons). The definition of "debt management services" does not include "legal services provided in an attorney-client relationship, if the services are provided by an attorney who (1) is licensed or otherwise authorized to practice law in this state, and (2) provides legal services in representing the individual in the individual's relationship with a creditor, and there is there is no intermediary between the individual and the creditor other than the attorney or an individual under the direct supervision of the attorney." Id. § 2 (10)(A).

[256] See Appendix E, Current State Regulation of Debt Settlement, providing basic information on the following statues: COLO. REV. STAT. § 12-14.5-201 et seq. (2012) (Uniform Debt-Management Services Act, effective Jan. 1, 2008); DEL. CODE ANN. tit. 6, § 2401A et seq. (2012) (Uniform Debt-Management Services Act, effective Jan. 17, 2007); NEV. REV. STAT. § 676A.010 et seq. (2011) (Uniform Debt-Management Services Act, effective July 1, 2010); R.I. GEN. LAWS § 19-14.8-1 et seq. (2012) (Uniform Debt-Management Services Act, effective March 31, 2007); TENN. CODE ANN. § 47-18-5501 et seq. (2012) (Uniform Debt-Management Services Act, effective July 1,

introduced in current sessions of state legislatures in New York,[257] Massachusetts,[258] and West Virginia.[259] Other bills permitting debt settlement for a fee have been introduced in Connecticut,[260] Florida,[261] Minnesota,[262] and New Jersey.[263]

The debt settlement industry claims that legislative campaigns to ban modern-style debt settlement were defeated in ten states.[264] North Carolina,[265] North Dakota,[266] and Tennessee[267] previously banned for-profit debt settlement and now permit it—albeit with some consumer protections still in place.[268] Many states retained have retained bans against for-profit debt settlement, including Arkansas,[269] Hawaii,[270] Louisiana,[271] New Jersey,[272] and Wyoming.[273]

2010); UTAH CODE ANN. § 13-42-101 et seq. (2011) (Uniform Debt-Management Services Act, effective July 1, 2007, amended effective 2012, available at http://le.utah.gov/~code/TITLE13/htm/13_42_010200.htm).

[257] S. 3735, 2011-2012 Reg. Sess. (N.Y. 2011) ("Establishes the Uniform Debt-Management Services Act"), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=S03735&term=2011 (last visited May 7, 2012).

[258] H.B. 291, 187th Gen. Ct. (Mass. 2011), available at http://www.malegislature.gov/Bills/187/House/H00291 (last visited May 7, 2012).

[259] S.B. 375, 80th Leg., 2d Sess. (W. Va. 2012) (introduced Jan. 20, 2012); H.B. 4278, 80th Leg., 2d Sess. (W. Va. 2012) (introduced Jan. 24, 2012).

[260] S.B. 362, Feb. Sess. (Conn. 2012) (permitting a debt negotiator to charge a maximum fee of 30% of the amount by which the debt negotiator reduces a consumer's debt), available at http://www.cga.ct.gov/2012/TOB/S/2012SB-00362-R00-SB.htm (last visited May 7, 2012).

[261] C.S./S.B. 336, Sess. 2012 (Fla. 2012) (permitting up to 30% of the amount saved calculated as the difference between the amount owed at the time the debtor enrolled in the debt settlement plan and the amount actually paid to satisfy the debt), available at http://www.myfloridahouse.gov/Sections/Bills/bills.aspx?SessionId=70. This bill died in committee on March 9, 2012. See THE FLORIDA SENATE, http://www.flsenate.gov/Session/Bill/2012/0336 (last visited on May 7, 2012).

[262] H.F. 2500, 87th Leg. Sess. (Minn. 2012), available at https://www.revisor.mn.gov/bin/bldbill.php?bill=H2500.0.html&session=ls87 (last visited May 7, 2012); S.F. 2141, 87th Leg. Sess. (Minn. 2012), available at https://www.revisor.mn.gov/bin/bldbill.php?bill=S2141.1.html&session=ls87 (last visited May 7, 2012).

[263] A. 601, 215th Leg. 2012 Sess. (N.J. 2012), available at http://www.njleg.state.nj.us/2012/Bills/A1000/601_I1.PDF (last visited May 7, 2012).

[264] See THE ASS'N OF SETTLEMENT COS., available at http://www.tascsite.org/index.cfm?event=history (last visited May 7, 2012) (claiming that The Association of Settlement Companies successfully prevented legislative bans of for-profit debt settlement in the following states: Colorado, Iowa, Idaho, Maryland, Michigan, Missouri, Minnesota, New Mexico, Pennsylvania, and Texas). See also 63 PA. CONS. STAT. ANN. § 2403 et seq. (2008), which required licensure for debt settlement but was struck down by USOBA v. Dep't of Banking, 991 A.2d 370 (Pa. 2010).

[265] Compare North Carolina Outlaws Debt Adjustment Companies, supra note 80, at 83-84 with N.C. GEN. STAT. § 14-423 et seq. (2011) (effective 1963, amended effective Sept. 20, 2005).

[266] N.D. CENT. CODE § 13-11-01 et seq. (2011) (effective Jul. 1, 2011) repealed chapter 13-06, which banned the practice. See H.B. 108, ch. 108 62nd Leg. Assem. (N.D. 2011).

[267] Compare Tennessee and Maryland Enact Prohibitory Debt Pooling Laws, supra note 98, at 83 with TENN. CODE ANN. § 47-18-5501 et seq. (2012) (effective Jul. 2, 2010).

[268] For example, North Carolina makes it a misdemeanor to charge more than a 10% settlement fee. N.C. GEN. STAT. § 14-423 et seq. (2011). The statute has been successfully applied to curb unscrupulous practices by debt settlement

A number of states have either amended measures to add consumer protections in light of the debt settlement practices of the 2000's or have enacted entirely new measures to govern debt settlement.[274] Enforcement agencies successfully applied recently added or amended statutes in

companies. See Consent J., North Carolina v. Hess Kennedy, No. 08 CV 002310 (N.C. Super. Ct. May 1, 2009) (on file with the Committees).

[269] ARK. CODE ANN. §§ 5-63-301-305 (2011) (effective 1967) (governing "debt adjusting," defined as including "acting or offering or attempting to act for a consideration as an intermediary between a debtor and the debtor's creditors for the purpose of settling . . . any debt . . . .").

[270] HAW. REV. STAT. § 446-2 (2011) (effective 1967, amended effective 1984) (governing "debt adjusting," defined as "a person who for a profit engages in the business of acting as an intermediary between a debtor and his creditors for the purpose of settling, compromising or in any way altering the terms of payments of any debts of the debtor.").

[271] LA. REV. STAT. ANN. § 14:331 (2011) (effective 1972) (prohibiting "debt adjusting," defined as including "contracting with the debtor for a fee to (a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor").

[272] N.J. STAT. ANN. § 17:16G-2(a) (2012) (effective Feb. 8, 1979, amended effective Jan. 11, 2010) ("No person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster.").

[273] WYO. STAT. ANN. § 33-14-102 (2011) (effective 1957) ("It shall be unlawful for any person to engage in the business of debt adjusting.").

[274] See Appendix E, Chart of Current State Regulation of Debt Settlement.

Georgia,[275] Idaho,[276] South Carolina,[277] and Vermont.[278] Connecticut,[279] Indiana,[280] and Maryland[281] also reformed their legislation.

Notably, in 2010, Illinois adopted the Debt Settlement Consumer Protection Act,[282] which includes a settlement fee cap of fifteen percent (15%) of the difference between the amount of debt enrolled in the program and the amount for which the debt is settled.[283] In 2007, Maine adopted the Debt Management Services Act,[284] which defines debt management service broadly to include debt settlement[285] and likewise sets a fee cap of fifteen percent (15%) of the "amount by which the consumers' debt is reduced as part of each settlement."[286]

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[275] GA. CODE ANN. § 18-5-1 et seq. (2011) (effective 1956, amended effective Jul. 1, 2003). See Press Release, Georgia Governor's Office of Consumer Affairs, Debt Relief USA to Pay Georgia Consumer Over $500,000 in Refunds (Mar. 18, 2009), available at http://ocp.ga.gov/atd_pressreleases/atd_pressreleases/view/debt-relief-usa-to-pay-georgia-consumers-over-500-000-in-refunds (citing debt adjustment act in settlement with debt settlement company) (last visited May 7, 2012).

[276] IDAHO CODE ANN. § 26-2223 et seq. (2012) (effective 1970, amended effective Jul. 1, 2008). See Order to Cease & Desist, Idaho v. Debtpro123, No. 2011-9-13 (Idaho Dep't. of Fin. Oct. 18, 2011), available at http://finance.idaho.gov/consumerfinance/Actions/Administrative/DebtPro_123,LLC-Order_to_Cease_and_Desist-2011-9-13.pdf (citing statute in order against debt settlement company) (last visited May 7, 2012), and Consent Order, Idaho v. Debt Settlement Solutions, No. 2011-9-04 (Idaho Dep't. of Fin. Mar. 29, 2011), available at http://finance.idaho.gov/consumerfinance/Actions/Administrative/DebtSettlementSolutions,Inc.-ConsentOrder-2011-9-04.pdf (same) (last visited May 7, 2012).

[277] S.C. CODE ANN. § 37-7-101 et seq. (2011) (effective Jul. 1, 2005). See Lexington Law Firm v. S.C. Dep't of Consumer Affairs, 677 S.E.2d 591 (S.C. 2009) (interpreting attorney exemption provision and finding that debt settlement law firm violated the statute).

[278] VT. STAT. ANN. tit. 8, § 2752 et seq. (2012) (effective Mar. 23, 1970, amended effective Jul. 1, 2009). See Order Granting Pl.s' M. Summ. J., Vermont v. CSA – Credit Solutions of Am., No. 484-7-10 (Vt. Super. Ct. Mar. 21, 2012); Assurance of Discontinuance at 2, In re Debt Settlement USA, No. 867-11-09 (Vt. Super. Ct. Oct. 9, 2009) (stating that debt settlement company violated debt adjusters act).

[279] CONN. GEN. STAT. § 36a-655 et seq. (2012) (effective 1958, amended effective 2009) (governing "Debt Adjusters and Debt Negotiation"). See Press Release, Connecticut Banking Dep't, State Banking Comm'r Howard F. Pitkin Announces Schedule of Fees for Debt Negotiators Under New Public Act (Sept. 28 2009), available at http://www.ct.gov/dob/cwp/view.asp?a=2245&q=447726 (noting that the definition includes debt settlement) (last visited May 7, 2012).

[280] IND. CODE ANN. § 24-5-15-2.5 (2012) (adding a definition of "debt settlement services," which does not require distribution of funds, effective July 1, 2010).

[281] See Maryland Debt Settlement Services Act, MD. CODE ANN. FIN. INST. §§ 12-901 et seq. (2012) (effective Oct.1, 2011).

[282] 225 ILL. COMP. STAT. § 429/1 et seq. (2012) (effective Aug. 3, 2010).

[283] Id. 429/125(c).

[284] ME. REV. STAT. tit. 32, § 6171 et seq. (2011) (effective 1999, amended 2007).

[285] Id. § 6172(2)(D) (including in the definition of "debt management service" "[a]cting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation").

[286] Id. § 6174-A(2)(B).

3(b)(iii) New York State Legal Framework

New York's current regulatory scheme does not expressly mention the term "debt settlement." As discussed above, New York's budget planning law, enforced by the New York State Department of Financial Services,[287] prohibits budget planning except when conducted by attorneys or licensed non-profit organizations.[288] The budget planning law broadly defines "budget planning" in relevant part as:

> the making of a contract . . . whereby . . . the debtor agrees to pay a sum or sums of money . . . [which] the person or entity engaged in the business of budget planning distributes, or supervises, coordinates or controls the distribution of . . . among certain specified creditors in accordance with a plan agreed upon . . . .[289]

In 2009, the New York Banking Department, the predecessor agency of the Department of Financial Services, expressed the position that debt settlement companies do not fall within the definition of budget planning.[290] The Banking Department concluded that "entities that don't directly handle or supervise consumer funds for disbursement . . . are not required to be licensed in New York and currently operate outside any regulatory framework."[291] Moreover, in the Committees' review of state enforcement actions, none of the New York State Attorney General's lawsuits alleged a violation of the state's budget planning law as a cause of action.

However, a reasonable reading of the plain language of the budget planning statute would appear to cover debt settlement activities. In the only reported case determining whether a debt settlement company was subject to the budget planning law—Pavlov v. Debt Resolvers USA,

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[287] New York State created the New York State Department of Financial Services in October 2011 by combining the New York State Banking and Insurance Departments, with the aim to "modernize regulatory oversight of the financial services industry." See NYS DEP'T OF FIN. SERVS., http://www.dfs.ny.gov/ (last visited May 7, 2012).
[288] See N.Y. GEN. BUS. LAW §§ 455-457 (2012); see also N.Y. BANKING LAW § 579 (2012).
[289] N.Y. GEN. BUS. LAW § 455(1) (2012).
[290] See Jane Azia, Dir. of Non-Depository Institutions and Consumer Protection, Banking Dep't, Testimony Before the New York Assembly Comms. on Consumer Affairs and Protection, Banks and Judiciary on Debt Management Industry (May 14, 2009), available at http://www.dfs.ny.gov/about/speeches/sp090514.htm (last visited May 7, 2012).
[291] Id.

Inc[292]—the court held that the company was engaged in activity for which a license was required. The court found that although the debt settlement company did not "distribute," "supervise" or "control" the funds paid by the consumer within the meaning of the budget planning law, the company "coordinated" the payment of creditors on behalf of debtors for a fee so as to constitute debt settlement subject to regulation under the budget planning law.[293]

As discussed in this Paper, debt settlement companies in the modern era follow a model in which they do not directly control the accounts from which funds are disbursed to creditors. Nonetheless, they clearly purport to "coordinate" the distribution of funds. The Committees find the reasoning in the Pavlov case to be persuasive and, accordingly, suggest that the Department of Financial Services may wish to reexamine the question of whether debt settlement companies fall under the budget planning law.

3(c) Impact on Consumers

This section details the impact on consumers involved with debt settlement programs in the 2000's.

3(c)(i) Direct and Indirect Harm to Consumers

In the 2000's, debt settlement operators targeted consumers who were financially distressed.[294] These consumers paid significant fees, received no value for their fees, and made these payments at significant personal cost and hardship.[295] Public records show that one category of consumer enrolled in debt settlement could never have benefitted from participation:

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[292] 28 Misc.3d 1061, 907 N.Y.S.2d 798 (N.Y. Civ. Ct. Richmond Cty. 2010).
[293] Id. at 1073; 907 N.Y.S.2d at 807.
[294] See GAO 2010 REPORT, supra note 151, at 11 ("[According to the industry groups TASC and USOBA,] most consumers entering debt settlement programs are in extreme financial hardship . . . ."); WHITE, supra note 132, at 5-6 ("[C]onsumers who enter these programs are often those who are least likely to benefit from this type of service since they are already facing financial distress."); see also Complaint at ¶ 12, FTC v. Media Innovations, No. 8:11CV00164, 2011 WL 334345 (D. Md. Jan. 20, 2011) ("Defendants are lead generators that target the millions of Americans who are struggling to pay their credit card debt.").
[295] See supra notes 194-214 and accompanying text.

persons whose income is exempt from collection.[296] Strong considerations of public policy have led the federal government and states to protect income from certain sources from seizure or garnishment.[297] Individuals whose income consists principally or entirely of income exempt from collection should not be enrolled in debt settlement plans. These sources barely provide subsistence levels of income for basic survival.

In addition, some of the financially distressed consumers that debt settlement companies targeted may have been candidates for personal bankruptcy.[298] Enforcement agency complaints detailed advertising campaigns that disparaged bankruptcy and promised to help consumers avoid filing for personal bankruptcy.[299] Some evidence also exists that some debt settlement companies targeted consumers who were unemployed.[300] A six-month case file review of visitors to a limited legal advice clinic for unrepresented consumers in Bronx County, New York, revealed that nearly half (21 of 44) of individuals involved with debt settlement companies were either unemployed or had exempt income.[301]

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[296] See, e.g., Complaint at ¶ 91, McPherson v. Fin. Consulting Servs., No. 1:2010cv02840, 2010 WL 3164327 (E.D.N.Y. June 21, 2010) (plaintiff is a recipient of SSI benefits) (on file with the Committees); Motion for Preliminary Injunction at Exhibit 2, Illinois v. Legal Helpers Debt Resolution, No. 2011CH 286 (Ill. Cir. Ct. Mar. 3, 2011) (affiant is a recipient of SSI benefits) (on file with the Committees).

[297] Examples of income exempt from collection includes, among other sources: social security, supplemental security (SSI), and social security disability (SSD), 42 U.S.C. § 407; unemployment insurance, N.Y. LAB. § 595(2); worker's compensation, N.Y. WORKERS' COMP. LAW § 33; payment from pensions and retirement accounts, N.Y. C.P.L.R. § 5205(d)(1); N.Y.C. ADMIN. CODE § 13-375; spousal and child support; N.Y. C.P.L.R. § 5205(d)(3); and other kinds of public assistance. N.Y. C.P.L.R. § 5205(l)(2).

[298] Complaint at ¶ 74, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) (noting that some consumers who enrolled in the program experienced such substantial increase in their debt that they filed for bankruptcy).

[299] Pl.'s Original Pet. at ¶ 15, Texas v. BC Credit Solutions (Tex. Dist. Ct. May 20, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/052009bccredit_pop.pdf (noting inaccurate statements) (last visited May 7, 2012).

[300] The National Consumer Law Center reported that some debt settlement companies "will work only with insolvent customers, defined in some cases to mean consumers who are unemployed." See NAT'L CONSUMER LAW CTR., AN INVESTIGATION OF DEBT SETTLEMENT COMPANIES: AN UNSETTLING BUSINESS FOR CONSUMERS, supra note 25, at 4. The same report quotes one company as stating explicitly that "[debt settlement] is not for people who are gainfully employed . . . ." Id.; see also Schwenk, supra note 26, at 1174-75 ("[O]f the three debt-settlement clients described in a recent New York Assembly committee hearing on the problems within the industry, not one was employed.").

[301] Bronx CLARO Case File Review (Aug. 2011) (on file with the Committees).

The public record provides extensive evidence of the negative impacts of debt settlement on consumers. Detailed evidence is found, in part, in documents related to the 2010 FTC rule amendments, a congressional hearing, the 2010 GAO Report, and court filings of enforcement actions.[302] Committee members have also witnessed the direct and lasting harms of debt settlement—financial and otherwise—in their work providing direct services to consumers.

The debt settlement model was premised on the idea that creditors would be more willing to settle if accounts were delinquent.[303] Under prevailing industry practice of the 2000's, debt settlement companies told consumers to stop paying their creditors and, instead, to send payments to the debt settlement company.[304] Indeed, some companies asserted that paying creditors "interfere[d] with the entire process" and undermined the ability of the debt settlement company to negotiate settlements.[305]

Defaulting on accounts "is unavoidably harmful to consumers."[306] The resulting harms include damaged creditworthiness, increased debt, and significant financial sacrifice and have

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[302] See, e.g., Enhanced Consumer Financial Protection After the Financial Crisis: Hearing Before the S. Banking, Housing and Urban Affairs Comm., 112th Cong. 14 (2011), available at http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=1980c90b-c8f9-4278-b509-d9de43e8506a&Witness_ID=3cb65047-012f-4110-991a-ec0463ae648d (statement of Michael Calhoun, President, Ctr. for Responsible Lending) (last visited May 9, 2012); GAO 2010 REPORT, supra note 151, at 26, 29-32; FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,482-83, 48,487 (Aug. 10, 2010); FTC 2009 TSR Proposed Rule Amendments, 74 Fed. Reg. at 41,995-96; The Debt Settlement Industry: The Consumer's Experience: Hearing Before the S. Comm. on Commerce, Sci. and Transp., 111th Cong. 51-57 (2010) (statement of Philip A. Lehman, Assistant Att'y Gen. N.C. Dep't of Justice).

[303] ROBB EVANS & ASSOCS., REPORT OF TEMPORARY RECEIVER'S ACTIVITIES, supra note 156, at 7 ("business operated on the assumption that creditors are much more willing to consider a compromise when a debt was six or seven months delinquent than when it was only 30 or 60 days past due").

[304] See GAO 2010 REPORT, supra note 151, at 9 ("Representatives of nearly all the companies we called—17 out of 20—advised us to stop paying our creditors, by either telling us that we would have to stop making payments upon entering their programs or by informing us that stopping payments was necessary for their programs to work, even for accounts on which we said we were still current."). See also New York v. Nationwide Asset Servs., 888 N.Y.S.2d 850, 855 (N.Y. Sup. Ct. 2009) (noting that customers are instructed to cease all payments to creditors).

[305] NAT'L CONSUMER LAW CTR., AN INVESTIGATION OF DEBT SETTLEMENT COMPANIES: AN UNSETTLING BUSINESS FOR CONSUMERS, supra note 25, at 5.

[306] Schwenk, supra note 26, at 1174.

been documented in enforcement action filings,[307] congressional hearings,[308] reports by advocacy organizations,[309] and in law review[310] and newspaper articles.[311]

Damaged Creditworthiness. The record shows that debt settlement operators routinely misled consumers about the impact of enrollment on creditworthiness: participation invariably

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[307] See In re Allegro Law, 2010 WL 2712256 (Bankr. M.D. Ala. 2010) (concluding that respondent "deceived his clients, took their money, failed to provide the promised services . . . leaving them all much worse off that they had been previously"); Complaint at ¶¶ 4, 27, Duran v. Hass Grp., 2010 WL 4236649 (E.D.N.Y. Oct. 5, 2010) ("[The] business practices of the Defendants have devastating consequences to consumers by increasing debt, ruining credit, and exacerbating debt collector harassment"; "[C]ustomers often end up being sued by their creditors, resulting in additional monetary penalties, adverse legal judgments, wage garnishment, and frozen bank accounts") (on file with the Committees); Complaint at ¶ 2, Chase Bank USA v. Allegro Law, 2009 WL 4473978 (E.D.N.Y. Apr. 10, 2009) ("The myriad risks inherent in a debt settlement program can have catastrophic effects on the consumer, including . . . an increase in the amount owed by the consumer due to the addition of interest, late fees and penalties on any accounts that are not being paid, . . . an increase in collection calls, . . . a drop in the consumer's credit score, and . . . an increase in tax liability because any debt forgiveness that may occur as part of the settlement is taxable as income.") (internal quotes omitted) (on file with the Committees); Mem. of Law in Support of Verified Pet. at 3, New York v. Nationwide Asset Servs., Inc., No. 2009-5710 (N.Y. Sup. Ct. May 20, 2009) ("As a result of [Nationwide Asset Services'] program, many, if not most of their customers suffered constant harassment, and lawsuits by creditors and collectors and destroyed credit ratings. For these disastrous results, New York consumers paid . . . more than $1,000,000 in fees.") (on file with the Committees); Complaint at ¶ 18, Florida v. Credit Solutions of Am., Inc., No. 8:2009cv02331, 2009 WL 4992665 (Fla. Cir. Ct. 2009) ("[Once payments are stopped the consumer faces] lawsuits, garnishments, judgments, and increased collection calls and activities.").

[308] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,484 (August 10, 2010) ("not paying creditors leads to late fees, penalties, impaired credit ratings, lawsuits and other negative consequences."); Enhanced Consumer Financial Protection After the Financial Crisis: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs Committee, 111th Cong. 11 (2011), available at http://banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Hearing&Hearing_ID=1980c90b-c8f9-4278-b509-d9de43e8506a (testimony by Michael Calhoun, Ctr. for Responsible Lending) ("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.") (citing an Am. Bankers Ass'n comment letter to the FTC) (last visited May 9, 2012).

[309] See, e.g., The Debt Settlement Industry, CTR. FOR RESPONSIBLE LENDING, available at http://www.responsiblelending.org/other-consumer-loans/debt-settlement/research-analysis/the-debt-settlement-industry.html ("Often, enrolling in a debt settlement service puts consumers in a worse position, i.e., facing increased debt, higher risk of (or actual) bankruptcy, ruined creditworthiness, heightened collections efforts and even lawsuits.") (last visited May 13, 2012); WHITE, supra note 132, at 6 (2010) ("[B]y the time they leave the program, many have had their credit scores damaged, faced increased collection activity, and lost time and money dealing with the debt settlement company."); NAT'L CONSUMER LAW CTR., AN INVESTIGATION OF DEBT SETTLEMENT COMPANIES: AN UNSETTLING BUSINESS FOR CONSUMERS, supra note 25, at 3-5.

[310] Schwenk, supra note 26, at 1174 ("Moreover, debt-settlement companies encourage debtor default—either explicitly or implicitly—a strategy that is unavoidably harmful to consumers . . . . But payment default has a profoundly negative impact on the debtor more generally: creditors often impose additional finance charges, delinquency fees and may undertake collection activity, including litigation . . . .) (internal quotes omitted); McCune Donovan, supra note 148, at 226 (The consequences of [stopping payment] are dire. Failure to pay debts . . . exposes consumers to growing debt, deteriorating credit scores, collection actions, civil liability, and even wage garnishment.").

[311] Peter S. Goodman, Peddling Relief, Firms Put Debtors in Deeper Hole, N.Y. TIMES, June 18, 2010, available at http://www.nytimes.com/2010/06/19/business/economy/19debt.html?pagewanted=all (last visited May 7, 2012); Reuven Blau, City Taking Hard Look at Debt-Help Companies, N.Y. DAILY NEWS, Aug. 10, 2011, at 12.

meant damaged credit.[312] Harm to consumers' creditworthiness has debilitating consequences given the importance of access to credit and the role of credit reports in today's economy. Stopping payment to creditors can reduce a consumer's credit score up to 125 points and negative information in credit reports remains for many years.[313] Worsened credit, in turn, impairs consumers' ability to obtain employment, rent or purchase housing or a car, insurance rates, and even access to healthcare.[314]

Increased Debt. The FTC reported that, according to advocates, consumers who became involved with debt settlement programs often ended up with increased amounts owed due to late and non-payment fees and increased interest rates.[315] The agency noted that "[o]nce they drop

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[312] In its report , the GAO stated as follows:

> Stopping payments to creditors results in damage to consumers' credit scores. According to FICO (formerly the Fair Isaac Corporation), the developer of the statistically based scoring system used to generate most consumer credit scores, payment history makes up about 35 percent of a consumer's credit score. Moreover, the damage to credit scores resulting from stopping payments is generally worse for consumers who have better credit histories—such as consumers who maintained good payment histories prior to entering a debt settlement program that required them to stop making payments. In its notice, FTC also discussed the harmful effect that stopping payments has on consumers' credit scores.

See GAO 2010 REPORT, supra note 151, at 10; see also Assurance of Discontinuance at ¶ 12, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 2011) ("[T]he failure to make minimum payments significantly damages a consumer's credit rating and credit scores.").

[313] See, e.g., FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,470 n.179 (August 10, 2010) (if a creditor charges off the debt or sends it to a collection agency, it will likely have a "severe negative impact" on a consumer's credit score); Enhanced Consumer Financial Protection After the Financial Crisis: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs Committee, 111th Cong. 11 (2011), available at http://banking.senate.gov/public/index.cfm?Fuseaction=Hearings.Hearing&Hearing_ID=1980c90b-c8f9-4278-b509-d9de43e8506a (testimony by Michael Calhoun, Ctr. for Responsible Lending) ("stopping payments to creditors as part of a debt settlement plan can reduce a consumer's credit score anywhere between 65 and 125 points. Missed payments can remain on a consumer's credit report for seven years, even after a debt is settled.") (last visited May 7, 2012); GAO 2010 REPORT, supra note 151, at 14 (statement of Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations, U.S. Gov't Accountability Office). Judgments can remain on credit reports until the statute of limitations expires, which in some states is longer than seven years. See 15 U.S.C. § 1681c(a)(2) (2012) (providing that civil judgments "that antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period" must be excluded from consumer reports).

[314] Complaint at ¶ 18, Florida v. CSA – Credit Solutions of Am., Inc., No. 8:09CV02331, 2009 WL 4992665 (Fla. Cir. Ct. Nov. 16, 2009).

[315] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,484. See also Complaint at ¶ 73, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) ("By [the time consumers drop out or cancel] most consumers find that the balances on the accounts they trusted defendants to settle have increased substantially as a result of penalties, fees, interest and other charges."); Complaint at ¶ 2, Chase Bank USA v. Allegro Law, No. 08-CIV-4039, 2009 WL 4473978 (E.D.N.Y. Apr.10, 2009) ("The myriad risks inherent in a debt

out, these consumers often end up with higher debt balances than they had before, among other detrimental results, thereby suffering substantial injury."[316] One example helps illustrate this point.[317] In McPherson v. Financial Consulting Services, a case filed by a consumer against a debt settlement company, the plaintiff alleged that the interest rates on one of her credit card accounts rose from 18.24% to 26.24% in one month.[318] "This, together with late payment/over-limit penalty fees of $39.99 per month, increased her debt . . . by $1,175.58 over six months."[319] The debt on another account increased by nearly twenty percent (20%) over nine months as a result of fees and penalties related to non-payment.[320] Had the consumer paid even the minimum payment on these accounts, her debt would have *decreased* rather than increasing by almost $2,500.[321]

Thus, after making hundreds or thousands of dollars in payments to debt settlement companies—many times in advance fees—consumers dropped out only to face substantially increased debt.[322]

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settlement program can have catastrophic effects on the consumer, including . . . an increase in the amount owed by the consumer due to the addition of interest, late fees and penalties on any accounts that are not being paid"); Complaint at ¶ 18, Florida v. CSA – Credit Solutions of Am., Inc., No. 8:09CV02331, 2009 WL 4992665 ("[consequences include] increased debts, increased interest rates, default interest rates upwards of 30%, increased payments, credit limit reductions, interest accrual, late fees, other charges or penalties on debts"); Complaint at ¶ 18, FTC v. Better Budget Fin. Servs., Inc., No. 04-12326 (D. Mass. Nov. 2, 2004) ("[C]onsumers who have retained defendants' services have . . . increased the amount of their debt by incurring late fees, finance charges and overdraft charges, causing their financial situation to worsen.").

[316] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,484.

[317] This consumer received assistance from a limited legal advice clinic that operates in Bronx County, New York, and that is co-sponsored by the Committees. The consumer was then referred to a legal services attorney and now member of the Civil Court Committee who represented her in a lawsuit filed on her behalf.

[318] Complaint at ¶ 91, McPherson v. Fin. Consulting Servs., No. 1:2010cv02840, 2010 WL 3164327 (E.D.N.Y. 2010) (on file with the Committees).

[319] Id.

[320] Id. ¶ 92.

[321] Id. ¶ 91-92 (showing that the Bank of America debt "would have *decreased* by $180 rather than increased by $1,175,58" and that the HSBC debt "would have decreased by $639 rather than increasing by almost $1,300.").

[322] See Complaint at ¶ 74, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 02, 2011) ("Some consumers who have retained the defendant law firm for the purpose of improving their financial situation have experienced such a substantial increase in their debt that they have filed for protection under the bankruptcy laws.").

Increased Debt Collection Activity by Creditors. A consumer's involvement with a debt settlement company did not prevent creditors from engaging in traditional collection activities from letters and phone calls to commencing lawsuits for non-payment.[323] For example, the FTC found that one-third of debt settlement customers of a California company were sued.[324] Adding to the hardship was the fact that in some cases consumers did not learn of the lawsuits until there was wage garnishment or bank account restraints.[325] In addition, many law enforcement actions alleged that operators routinely did not contact creditors.[326]

Financial Sacrifice. Debt settlement firms often set payment schedules at levels impossible for consumers to maintain. For example, the terms of one debt settlement agreement set payment to the company so that the consumer had only $41.00 remaining of the monthly budget.[327] The consumer in this case was a taxi driver with $2,500 monthly income.[328] After subtracting exclusively for housing, utilities, groceries, auto, and insurance, $350 remained. Of this, the debt settlement company required $309.[329] In another example involving a person with

[323] Assurance of Discontinuance at ¶ 12, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 2011) ("[T]he failure of consumers to pay creditors also causes some consumers to be subject to debt collection efforts by their creditors, including lawsuits, which can result in adverse legal judgments, wage garnishments, and seized bank accounts."); Complaint at ¶ 37, FTC v. Connelly, No. SA CV 06-701 (C.D. Cal. Aug. 3, 2006) ("In numerous instances, after consumers who enroll in defendants' program have ceased making payments and defendants have failed to contact the consumer's creditors to offer a settlement, consumers are sued by one or more of their creditors or by one or more debt collection agencies attempting to collect on their accounts."); Complaint at ¶ 21, FTC v. Better Budget Fin. Servs., Inc., No. 04-12326 (D. Mass. Nov. 2, 2004) ("Often, the failure of consumers to make payments on their debts has resulted in litigation by the creditor or debt collection agency against the consumer.").
[324] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,463 n.75 (Aug. 10, 2010).
[325] See supra notes 196-197.
[326] See, e.g., Complaint at ¶ 50, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) ("Often Defendants did not even contact all of consumers' creditors to negotiate a settlement.") (on file with the Committees). See also In re Kinderknecht, No. 09-13443, 22 (Bankr. D. Kan. Apr. 13, 2012) (noting that an assigned field attorney "did no negotiating with any creditors").
[327] NEW PATH FIN., DEBT SETTLEMENT ENROLLMENT FORM AND AGREEMENT (July 2009) ("Financial Information Sheet") (on file with the Committees). See also In re Kinderknecht, No. 09-13443 at 11 (noting that a consumer "had monthly disposable income of $22.90 to pay toward [his] unsecured debts[,]" yet the debt settlement company payment schedule required monthly payments of $162.90).
[328] NEW PATH FIN., DEBT SETTLEMENT ENROLLMENT FORM AND AGREEMENT.
[329] Id.

exempt income, the consumer borrowed from family and friends in order to try to maintain the payments.[330]

In addition to the direct harms discussed above, consumers involved with debt settlement experienced indirect harms. These negative impacts included the financial costs of mitigating the adverse effects of debt settlement involvement, opportunity costs, and non-financial harm to personal well-being.[331] For those who experienced consumer debt collection litigation because of debt settlement involvement, there was the shock of being sued by creditors,[332] and often additional hardships—including bank account seizures, wage garnishment, and the need to turn to family and friends for help. Some paid other professionals to clean up the mess.[333]

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[330] Telephone interview with Johnson Tyler, Staff Att'y, S. Brooklyn Legal Servs. (May 4, 2012).

[331] Complaint at ¶ 21, FTC v. Better Budget Fin. Servs., Inc., No. 04-12326 (D. Mass. Nov. 2, 2004) ("In numerous instances, the litigation against the consumer by the creditor or debt collection agency has resulted in the consumer paying the cost of litigation plus a settlement fee to the defendants.").

[332] See, e.g., Lasky Affirmation at ¶ 83, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/09 (N.Y. Sup. Ct. Sept. 23, 2011) ("While enrolled in CSA's program, I received service . . . for litigation related to at least four (4) different debts . . . . A CSA representative told me that . . . I would have to settle those lawsuits myself and/or pay any judgments against me."); id. ¶ 84 ("When I again called CSA about the judgments against me they told me that I would have to answer the summons and offer the creditor some money. This is what I understood CSA was supposed to do for me."); Pl.'s Mem. in Support of Summ. J. at 10, Credit Solutions of Am., Inc., No. 401225/09 (noting that "many of CSA's consumers, much to their surprise, are sued by these creditors."); Complaint at ¶ 50, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) ("[A]fter months of being told that Defendants were settling their accounts, many consumers found that creditors had sent their accounts to a collection agency, or had initiated legal actions against them.") (on file with the Committees); Amended Complaint at ¶ 76, Illinois v. Legal Helpers Debt Resolution, No. 2011-CH-286 ("Defendant, despite advertising that it provides 'all the legal and law-related services you need to resolve your debt,' does not . . . provide legal representation to Illinois consumers when they are sued by their creditors as a result of participation in defendant's purported debt resolution program."); Motion for Preliminary Injunction at Exhibit 6, ¶¶ 9-10, Legal Helpers Debt Resolution, No. 2011-CH-286 ("I was sued by four of my creditors. [] I notified LHDR when I was sued and spoke to a non-attorney who told me that LHDR would not provide me with legal representation."); id. at Exhibit 1, ¶ 10 ("LHDR did not represent me in court when I was sued by my creditor. Instead, I spoke directly to the lawyer who represented my creditor."); id. at Exhibit 136, ¶ 10 ("We notified LHDR when we were sued and spoke to a non-attorney who told us that we needed to respond to the summons ourselves or pay LHDR additional fees to do so on our behalf."); Schwenk, supra note 26, at 1174 ("Compounding the problem, many clients are unaware that they are subject to traditional collection measures once enrolled in debt-settlement programs, and debt-settlement companies provide no assistance with the consequences."); McCune Donovan, supra note 148, at 212 ("[When o]ne of his creditors threatened to sue[, the debt settlement company] was no help; 'Sorry' they said, 'we don't represent you on that. It's in the [120 page] contract.'").

[333] Complaint at ¶ 18, Florida v. Credit Solutions of Am., Inc., No. 8:09CV02331, 2009 WL 4992665 (M.D. Fla. Nov. 16, 2009).

Consumers also incurred opportunity costs because they forewent other alternatives such as, "filing for bankruptcy, borrowing money from a relative, [or] negotiating directly with creditors . . . ."[334] Many credit card companies—as a matter of policy—stated they did not negotiate with debt settlement companies and that debt settlement enrollment prevented them from negotiating abatements with consumers.[335] Ironically, payments toward debt settlement programs also meant that the consumer might not have the funds to pay a settlement offer made by a creditor.[336]

In addition to direct and indirect financial harms, Committee members have observed firsthand consumers who experienced impaired well-being as a result of their debt settlement experiences. A principal from a debt settlement company described the process for consumers as a "fire-walk."[337] Some programs engaged in practices that insulted consumers' dignity: for example, a list of ways to save money circulated by Credit Solutions of America included tips such as "Baby sit, Sell plasma, Ask for raise, Get off the station before your usual stop and walk, Cut down your drinking, Drink tap water, Buy frozen."[338]

3(c)(ii) Outcomes for Consumers and Effectiveness of Debt Settlement

This section reviews the record on debt settlement's effectiveness and outcomes for consumers.

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[334] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,473 (Aug. 10, 2010).

[335] The Committees interviewed a creditor who reported that the company policy is not to work with debt settlement companies. See also InsideARM Debt Settlement Survey: How Creditors Utilize the Debt Settlement Industry to Increase Collections (Oct. 2011) (noting that 40% of debt collectors reported that they do not work with debt settlement companies), available at http://www.insidearm.com/freemiums/debt-settlement-industry-collections/ (last visited May 7, 2012).

[336] See infra. Part 4.b.ii (Narrative #2) (describing how consumer was unable to accept a settlement offer from a creditor because her available funds were being deposited toward the debt settlement program).

[337] ROBB EVANS & ASSOCS., supra note 156, at 13 ("consumers are put through a 'fire walk' for 36 to 42 months to try to get a discounted resolution of their debts"); see also Desperate Debtors are Ripe Targets; Promises to Wipe Credit Slate Clean Often Prove Empty, CHI. TRIB., Aug. 3, 2008 ("[D]ebt settlement has brought salvation and heartbreak for troubled borrowers.").

[338] David Streitfeld, 2 Firms Accused of Fraud in Debt Settlement, N.Y. TIMES, May 19, 2009, at B1, available at http://www.nytimes.com/2009/05/20/business/20debt.html (internal quotes omitted) (last visited May 7, 2012).

Completion/Dropout Rates. Debt settlement operators explicitly premised success on completion of their "programs."[339] The record contains overwhelming evidence that completion rates—industry wide—were sufficiently low[340] as to justify deeming the industry model inherently flawed and harmful. For example:

- The Texas Attorney General stated that Credit Solutions of America ("CSA")'s data showed 80% of debts enrolled in the program did not settle.[341] The New York Attorney General analyzed CSA's data and concluded that "[o]f the 20,660 New York consumers who enrolled in CSA's program between July 2, 2005 and June 17, 2010, only 811 (3.93%) consumers completed the program by that latter date."[342] Moreover, of those who completed the program just .35% achieved the lowest savings rate advertised by CSA—forty percent (40%).[343]

[339] See Complaint at ¶ 36, Maine v. CSA – Credit Solutions of Am., Inc., No. BCD-WB-CV-10-02 (Me. Super. Ct. Nov. 2009) ("The length of CSA's debt settlement program depends on the amount of a consumer's debt. For debts between $6,000 and $20,000, it has been 36 months; for debts of $20,000 or more, it has been 48 months.").

[340] See, e.g., Complaint at ¶ 30, FTC v. Debt Relief USA, Inc., No. 3:11-CV-2059 (N.D. Tex. Aug. 17, 2011) ("Few consumers enrolled in Defendants' debt relief service ever completed the service and received the promised result."); Complaint at ¶ 73, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) ("Many consumers who have retained the defendant law firm for the purpose of improving their financial situation realize their financial situation is not improving but instead is getting worse. Therefore, consumers often cancel or drop out after they have paid most or all of their fees to defendant . . . .").

[341] Plaintiff's Original Petition at ¶ 25, Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/032509csa_op.pdf ("CSA does not disclose that the cost of getting out of debt will most likely be far higher than the numbers it uses to sell its program. In fact, CSA's own data show that over 80% of the debts enrolled in the program do not settle. The small percentage of enrolled debts for which CSA obtains settlements settle on average for far more than 40% of the enrolled amount.") (last visited May 8, 2012).

[342] Lasky Affirmation at ¶ 56, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/09 (N.Y. Sup. Ct. Sept. 23, 2011) (on file with the Committees).

[343] The New York State Attorney General stated as follows:

> CSA falls woefully short of delivering on its advertised savings claims. Only 72 of the 768 consumers (9.38%) who completed the program during the applicable period achieved a 40% reduction in their debt (the *lowest* savings rate advertised by CSA), as measured against the Aggregate Original Debt and taking account of CSA's fees. This amounts to just .35% of the 20,660 New York consumers who enrolled during this period.

Id. ¶ 69.

- The New York Supreme Court found that the Attorney General established a prima facie case of deceptive advertising based on data showing that, over a five-year period, only 768 of 20,660 consumers completed CSA's "program."[344]
- The New York Attorney General determined that Nationwide Asset Services, Inc.'s data showed that, from January 1, 2005 to May of 2008, only sixty-four (64) out of 1,981 New Yorkers completed the program, a completion rate of approximately three percent (3%).[345]
- In a lawsuit involving Allegro Law, a court found that only fifty-eight (58) of 5,453 accounts were settled for less than the full amount of the debt and that of these fifty-eight (58), thirty (30) were settled directly by the consumers, without any input from the defendants.[346]

Many sources report completion rates from "less than ten percent"[347] to as little as between one and two percent.[348] An audit conducted by the FTC of nearly 45,000 records from a single debt settlement company revealed that less than two percent (2%) (638 customers) completed the program.[349]

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[344] Order Granting Pl.'s Summ. J. Motion at 4, New York v. CSA – Credit Solutions of Am., No. 401225/09 (N.Y. Sup. Ct. Apr. 30, 2012) (on file with the Committees).
[345] Attorney Affirmation of James M. Morrissey at ¶ 46, New York v. Nationwide Asset Servs., Inc., No. 2009-5710 (N.Y. Sup. Ct. May 13, 2009) (on file with the Committees); see also id. (stating that "of the 64 New York consumers who reportedly completed the NAS program, only six (about three out of every 1,000) realized savings of 25% or more"). The New York State Supreme Court relied upon this data in reaching the conclusion that the debt settlement company engaged in deceptive business practices and false advertising. New York v. Nationwide Asset Servs., Inc., 888 N.Y.S.2d 850, 862-63 (N.Y. Sup. Ct. 2009).
[346] In re Allegro Law, 2010 WL 2712256 4 (Bankr. M.D. Ala. 2010).
[347] GAO 2010 REPORT, supra note 151, at 6. ("FTC and state investigations have typically found that less than 10 percent of consumers successfully complete these programs.").
[348] See, e.g., ROBB EVANS & ASSOCS., supra note 156, at 7 ("Statistics from the LEADS database, presented in greater detail in a following section, document that 638 consumers, or 1.4% of the 44,844 consumers that entered the program, have completed the debt reduction program."); COLO. DEP'T OF LAW, 2010 ANNUAL REPORT, supra note 209, at 2 (reporting that only 1.71% of agreements were completed in 2010); Schwenk, supra note 26, at 1172 (citing an NCLC report that "only 1.4% of consumers completed a debt-settlement program after enrolling").
[349] Press Release, Federal Trade Comm'n, Debt Services Operations Settle FTC Charges (Mar. 30, 2005), available at http://www.ftc.gov/opa/2005/03/creditcounsel.shtm (last visited May 8, 2012).

The industry's own reporting maintained that almost two-thirds of enrollees dropped out before completing the program.[350] Notably, many consumers dropped out before any debts were settled. There is evidence that consumers tend to drop out within two to twelve months after enrollment in a debt settlement program.[351] Industry numbers cited in a New York case reveal that sixty percent (60%) of those who dropped out did so before a single debt was settled.[352] This number was confirmed by industry surveys.[353]

There are several possible explanations for these low completion rates. First, as noted previously, some credit card issuers refused to deal with for-profit debt settlement companies.[354] Second, some operators routinely failed to contact creditors.[355] Third, consumers tended to drop out after experiencing creditors' debt collection efforts, damaged creditworthiness, and increased debt—exactly the outcomes they had hoped to avoid through the debt settlement programs—and once they realized that the article of goods the debt settlement programs promised and peddled was illusory.

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[350] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,484 (August 10, 2010) (citing a TASC Survey showing that "over 65% dropped out of the programs within the first three years"); see also GAO 2010 REPORT, supra note 151, at 10-11.

[351] In a recent court decision, a bankruptcy judge noted as follows:

> The success rate of Persels clients is dubious at best. During the one year period from October 2008 to October 2009, Persels enrolled 681 Kansas residents . . . . 320 participants terminated within six months and 465 participants dropped out of the program within one year.

In re Kinderknecht, No. 09-13443, at 9 (Bankr. D. Kan. Apr. 13, 2012), available at http://scholar.google.com/scholar_case?case=2409429033738162107&q=Kinderknecht&hl=en&as_sdt=2,33&as_yl o=2012) (last visited May 9, 2012). See also Mot. for Prelim. Inj. at Exhibit 1-15, Illinois v. Legal Helpers Debt Resolution, No. 2011-CH-286 (Ill. Cir. Ct. Sept. 30, 2011) (on file with the Committees).

[352] New York v. Nationwide Asset Servs., Inc., 888 N.Y.S.2d 850, 859 (N.Y. Sup. Ct. 2009).

[353] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,473 (reporting that 65.2% leave debt settlement programs before any settlement is made).

[354] Lasky Aff. at ¶ 56, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/09 (N.Y. Sup. Ct. Sept. 23, 2011) ("[S]ome creditors refuse to negotiate with CSA entirely.") (on file with the Committees); see also FTC 2008 Workshop, supra note 19, at 94 (representative from the American Bankers Association stating that credit card issuers "do not see the debt settlement industry as a necessary player").

[355] See, e.g., Complaint at ¶ 50, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) ("Often Defendants did not even contact all of consumers' creditors to negotiate a settlement.") (on file with the Committees).

Net Effect of Debt Settlement. For consumers who dropped out prior to any debt being settled, the advance fee structure meant unqualified loss. But even for those who had one or more debts settled, the available evidence indicates that there is a negative outcome for the consumer. For this group, while the industry reports that they "saved [consumers] $58.1 million in the aggregate . . . [t]hese dropouts paid $55.6 million in fees, however, which alone virtually cancel out the savings. When the other costs associated with the program (e.g., creditor late fees[,] interest[, and tax liability][356]) are factored in, it is likely that the costs exceed the benefits."[357] Outcomes were hardly better for the small numbers of consumers who did complete debt settlement programs; actual costs to the consumer were higher or canceled out once all of the costs were factored in.[358] This is exactly what then-Attorney General Andrew Cuomo found in New York v. Nationwide Asset Servs., Inc.: of the sixty-four (64) New York consumers that completed the debt settlement program,[359] according to the defendant in the case, twenty-seven (27), or almost half, paid ***more*** than the amount originally owed.[360]

State Agency Data on Completion Rates and Net Financial Effect. Several states require licensed or registered debt settlement operators to report information regarding completion rates, fee versus savings ratios, and other financial impact information. For example, the Illinois Debt Settlement Consumer Protection Act mandates detailed statistical disclosure in

[356] Involvement with debt settlement can result in unexpected tax liability for consumers. Under section 6050P of the Internal Revenue Code, if a creditor agrees to settle a debt for at least $600 less than the original amount, the savings is considered taxable income. See I.R.C. § 6050P (2012).
[357] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,473.
[358] The FTC cast serious doubt on industry claims of savings because of its failure to incorporate all related expenses into its calculations. See id. at 48,474 ("The calculations do not account for (1) interest, late fees, and other creditor charges that accrued during the life of the program; (2) the provider's fees; (3) consumers who dropped out or otherwise failed to complete the program; and (4) debts that were not settled successfully. By failing to account for these factors, the providers substantially inflate the amount of savings that consumers generally can expect.").
[359] Out of 1981 total enrollees between January 1, 2005 and May 5, 2008. New York v. Nationwide Asset Servs., Inc., 888 N.Y.S.2d 850, 856-57 (N.Y. Sup. Ct. 2009).
[360] Id. Many examples of this type of faulty and misleading accounting are provided in the complaint.

annual reports.[361] Requirements include, "for persons completing the program during the reporting period, the median and mean percentage of savings and the median and mean fees paid to the debt settlement service provider" and "for persons who cancelled, became inactive, or terminated the program during the reporting period, the median and mean percentage of the savings and the median and mean fees paid to the debt settlement service provider."[362] As of the publication of this White Paper, one company had obtained a license in Illinois to operate subject to the state law.[363] Texas also has a reporting requirement but the Committees were unable to find any available reports.[364]

Colorado has published annual data pursuant to its Debt Management Services Act for 2008, 2009, and 2010.[365] Unfortunately, the state has not published a report for 2011.[366] The 2008 Annual Report of Colorado Debt Management Services Providers showed that debt settlement operators entered into a total of 2,847 agreements with Colorado consumers, of which 0.84% were completed during the year, 70.78% were active, and 28.38% were terminated.[367] These agreements covered a total of over $72 million in consumer debt.[368] For debt settled in 2008, consumers had enrolled nearly $18 million, faced a balance of $21.6 million, and paid

[361] 225 ILL. COMP. STAT. 429/33(a) (2012) (effective Aug. 3, 2010).
[362] Id. §§ 429/33(a)(2)-(3); see also id. § 429/33(b) ("The Secretary may prepare and make available to the public an annual consolidated report of all the data debt settlement providers are required to report pursuant to subsection (a) of this Section.").
[363] Telephone interview with P. Williams, State of Illinois, Department of Financial & Professional Regulation, Consumer Credit Section (May 9, 2012).
[364] TEX. FIN. CODE. ANN. § 394.205(b) (2011) (effective Sept. 1, 2007) ("Each provider shall file a report with the commissioner at each renewal of the provider's registration."); id. § 394.205(e) ("The commissioner shall make the information provided under this section available to interested parties and to the public.").
[365] Ann. Rep. Data, COLO. ATT'Y GEN, DEP'T OF L., available at http://www.coloradoattorneygeneral.gov/departments/consumer_protection/uccc_cab/uccc/debt_management/annual_report_data (last visited May 8, 2012).
[366] See id.
[367] COLO. DEP'T. OF LAW, 2008 ANNUAL REPORT – COLORADO DEBT MGM'T SERVICES PROVIDERS (2009) 2, available at http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf [hereinafter 2008 ANNUAL REPORT] (last visited May 8, 2012).
[368] Id.

$11.1 in settlements.[369] The numbers for 2009 were even more striking. The 2009 Annual Report of Colorado Debt Management Services Providers showed that operators entered into a total of 4,101 agreements, of which only 1.1% were completed, 56.84% were active, and 42.06% were terminated.[370] These agreements covered an astounding $119.7 million in debt.[371] Again, the Annual Report shows that, for debt settled in 2009, consumers faced substantially more debt at the time of settlement than at the time of enrollment: $30.4 million to $25.4 million.[372]

Finally, the 2010 Annual Report of Colorado Debt-Management Services Providers shows a drop in total number of agreements entered into by consumers with debt settlement companies−to 2,982−due to the lapse in registration of one large company.[373] Completion, active, and termination rates continued to stay at comparable levels for the year, with the agency reporting a 1.71% completion rate, a 54.59% active rate, and a 43.70% termination rate.[374] The 2010 agreements covered $86,299,569 in debt and, as in prior years, consumers owed more at time of settlement than at the time of enrollment.[375]

Data on completion rates provides critically important information on the effectiveness of the debt settlement model. For this reason, any statutory regime that permits debt settlement services for a fee should include detailed reporting requirements by providers of aggregate data. Federal oversight agencies should require such reporting of debt settlement operators in states where debt settlement for a fee is permitted.

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[369] Id.
[370] COLO. DEP'T. OF LAW, 2009 ANNUAL REPORT – COLORADO DEBT MGM'T SERVICES PROVIDERS (2010), available at http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2009%20Annual%20Report.pdf [hereinafter 2009 ANNUAL REPORT] (last visited May 8, 2012).
[371] Id.
[372] Id.
[373] COLO. DEP'T. OF LAW, 2010 ANNUAL REPORT, supra note 209, at 2 & n.6.
[374] Id.
[375] Id.

Based on the aforementioned record, the Committees believe that there is conclusive evidence that the debt settlement model in the 2000's not only failed to effectively address consumers' debt but actually caused consumers to experience significant net financial and other harms. The vast majority of consumers involved in debt settlement ended up worse off after enrollment: they owed more to their creditors, paid substantial fees to debt settlement operators, damaged their credit, and experienced stepped up debt collection activity by creditors.

3(c)(iii) Debt Settlement Operators' Revenues

In contrast to the net harm experienced by consumers, debt relief operators will look back on the 2000's as a heyday of impressive revenues and, no doubt for some, sizable profits. Given the significant negative impacts of debt settlement on consumers, examining operators' revenues is especially important. The advance fee model no doubt contributed to the revenues described below. In addition, operators faced no barriers to entry; essentially anyone with a website and a telephone was able to set up a debt settlement operation.[376]

Because most debt settlement was conducted by privately-owned companies with limited or no reporting requirements, few comprehensive sources exist to gauge the revenues of operators and the profitability of the model. Nevertheless, available documents contain some reliable revenue data.

Debt settlement companies' revenue per consumer appeared to have varied widely, due in part to their percentage-based fee structures, but the Committees' estimates for several examples range from $1,560 to $2,930. This is somewhat higher than the Colorado data, which showed

[376] See FTC 2008 Workshop, supra note 19, at 249 (participant noting that "there's not a debt settlement person in this room right now that wouldn't really like some barrier to entry right now" and that "everybody . . . can start performing debt settlement, they think").

that average reported fees per customer in 2008 and 2009 to be $1,666 and $997.50, respectively.[377]

The Committees examined data from The Association of Settlement Companies ("TASC") (now known as the American Fair Credit Council), one of the debt settlement trade groups. As of mid-2009, a subset of the industry, representing "approximately 75% of the debt under management" by members of TASC, had collected fees of $126 million from over 43,000 consumers,[378] an average of roughly $2,930 per consumer.

The Committees also examined sources relating to other operators. A single debt settlement enterprise, the National Consumer Council described above,[379] collected approximately $69.9 million in debt settlement revenue over slightly more than two years[380] from 44,844 consumers,[381] roughly $1,560 per consumer. Another, the Connelly enterprise, collected approximately $41.4 million from 17,842 consumers in four-and-a-half years,[382] approximately $2,320 per consumer.

Other examples are outlined below:

- **CSA – Credit Solutions of America.** The New York Attorney General determined that CSA, from July 2, 2005 through June 17, 2010, enrolled approximately 20,660 New Yorkers and collected more than $32.4 million in fees,[383] or $1,568 per consumer. The

[377] See 2009 ANNUAL REPORT, supra note 370; 2008 ANNUAL REPORT, supra note 367; 2010 ANNUAL REPORT, supra note 209.
[378] TASC Comment Letter to the FTC, 2009, at 9-10 (on file with the Committees).
[379] See supra notes 223-229.
[380] ROBB EVANS & ASSOCS., supra note 156, at 4.
[381] Id. at 5.
[382] ROBB EVANS & ASSOCS., FTC V. CONNELLY, REPORT OF TEMPORARY RECEIVER'S AND MONITOR'S ACTIVITIES FOR THE PERIOD AUG. 10, 2006 THROUGH AUG. 31, 2006 1 (2006), available at http://www.robbevans.com/pdf/homelandreport01.pdf (last visited May 8, 2012).
[383] Lasky Affirmation at 5, ¶ 15, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/2009 (N.Y. Sup. Ct. Sept. 23, 2011) (affidavit in support of plaintiff's motion for summary judgment) (on file with the Committees). See also Morrissey Affirmation at 2 ¶ 3, New York v. Nationwide Asset Servs. (noting that defendant debt settlement company had gross sales of more than $6 million in 2006; see court decision regarding this case at 888 N.Y.S.2d 850 (N.Y. Sup. Ct. 2009)) (on file with the Committees).

Maine Attorney General alleged that from 2003 through November 2009, CSA enrolled at least 620 Maine consumers and charged fees totaling almost $2 million,[384] or $3,226 per consumer.

- **Consumer Law Group.** On October 1, 2010, the North Carolina Attorney General alleged in a complaint against The Consumer Law Group and co-defendants that 650 North Carolina consumers paid more than $1.6 million dollars (or $2,461 per consumer), of which only $202,000 was paid out to creditors and of which defendants retained at least $800,000 as advance fees (which fees were illegal at the time under state law).[385] The Attorney General further asserted that, from February 2008 through mid-July 2010, The Consumer Law Group "received approximately $34,000,000 in fees from consumers nationwide, which consist[ed] exclusively of fees retained by [the company] for debt settlement services as well as its referral fees for enrolling consumers in third party debt management programs."[386]
- **Morgan Drexen.** In 2011, the West Virginia Attorney General in its complaint against Morgan Drexen, Inc. alleged that the debt settlement company had collected more than $800,000 in advance fees from the more than 400 West Virginia consumers it had enrolled.[387] This represents $2,000 per consumer in fees.
- **Miracle Management Group.** Smaller operators also generated impressive revenues.[388]

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[384] Complaint at 5, ¶¶ 19-21, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Super. Ct. 2009), available at www.maine.gov/ag/consumer/docs/cas_complaint.doc (last visited May 7, 2012).
[385] Complaint at 2, ¶ 3, North Carolina v. Consumer Law Grp., No. 10 CV 016777 (N.C. Super. Ct. Oct. 1, 2010) (on file with the Committes). Notably, "defendants [also] collected over $1 million dollars in fees from approximately 25,000 North Carolina consumers for enrolling the consumers in debt management plans." Id. at 2, ¶ 4.
[386] Id. at 17-18, ¶ 57.
[387] Complaint at 11, ¶¶ 71-72, West Virginia v. Morgan Drexen, Inc., No. 11-C-829 11 (W. Va. May 20, 2011) (on file with the Committees).
[388] See, .e.g., Consent Order at ¶ 6, Idaho v. Debt Settlement Solutions, No. 2011-9-04 (Idaho Dep't of Fin., Mar. 29, 2011), available at http://finance.idaho.gov/ConsumerFinance/Actions/Administrative/DebtSettlementSolutions,Inc.-ConsentOrder-

On August 26, 2005, the Arizona State Banking Department entered into a Consent Order with the President of Miracle Management Group, Inc.[389] Defendants were ordered to refund amounts paid into special purpose accounts, minus any fees distributed to creditors.[390] Defendants were ordered to pay $95,871 in refunds to twenty-one (21) out-of-state residents[391] and $65,555.18 in refunds to sixteen (16) in-state residents,[392] averaging $4,362 per consumer. The company was operated by a husband-and-wife team who were later indicted for defrauding customers.[393]

Lead generators also appeared to have reaped considerable fees. The FTC's settlement with Dominant Leads LLC and other corporate and individual defendants included a judgment of $1,080,931.[394] The New York Attorney General determined that another lead generator had collected over $1.2 million in fees from 1,300 New York consumers.[395] This represents $923 in fees per enrolled customer.

As for debt settlement operators' profitability, little data exist. There is one notorious example of extraordinary compensation to principals. The receiver in the National Consumer Council case concluded that "between January 1, 2002 and April 23, 2004, the common

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2011-9-04.pdf (alleging that from 43 customers, respondent had collected at least $46,699 in fees, $1,086 in fees per consumer) (last visited May 8, 2012).

[389] Consent Order, In re Miracle Mgmt. Grp., Inc., No. 06F-BD002-BNK (Ariz. State Banking Dep't., Aug. 26, 2005) available at www.azdfi.gov/PR/Miracle_Consent_Order.pdf (last visited May 7, 2012).

[390] Id. at 5-6, ¶ 3.

[391] Id. at Exhibit A, ¶ 5.

[392] Id. at Exhibit A, ¶ 7.

[393] Press Release, U.S. Dep't of Justice, Husband and Wife Indicted for Fraud Related to Credit Card Debt Consolidation Company They Ran (Jan. 5, 2011), available at http://www.justice.gov/usao/txn/PressRel11/stanton_FFETF_indict_pr.html (last visited May 8, 2012).

[394] Stipulated Final Order for Permanent Injunction and Settlement of Claims at 11, FTC v. Dominant Leads, 1:10-cv-00997 (D.D.C. Aug. 9, 2011), available at http://www.ftc.gov/os/caselist/1023152/110825fedmortgagestip.pdf (last visited May 7, 2012).

[395] See Assurance of Discontinuance at 4, ¶ 7, New York v. Debtmerica, No. 11-040 (N.Y. Super. Ct. Aug. 18, 2011) (on file with the Committees).

enterprise paid $12,072,800 to its three ultimate owners / controllers, an average of approximately $435,000 per month."[396]

3(c)(iv) Recourse and Remedies

This section explores the recourse and remedies available to consumers who fell victim to fraudulent debt settlement.

Individual Consumer Action and Litigation. Unfortunately, the financial circumstances of many of the affected consumers were so dire that they did not have the wherewithal to sue companies individually.[397] Legal services providers, which frequently came into contact with victims, faced budget cuts and other limitations to bringing sizable numbers of lawsuits. Moreover, many debt settlement contracts contained arbitration and/or venue clauses that made it even more difficult for consumers to sue bad actors in great numbers.[398]

Consumer protection, thus, depended on assistance from and enforcement actions by the FTC and other state and local enforcement agencies. Complaint data from the New York State Office of the Attorney General and the New York City Department of Consumer Affairs show that these agencies obtained some restitution for a portion of the consumers who submitted complaints.[399]

Enforcement Actions. During the 2000's, the FTC and state agencies brought, collectively, tens if not hundreds of enforcement actions against debt settlement operators.[400] These actions secured penalties and restitution in consent judgments against small and large

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[396] ROBB EVANS & ASSOCS., supra note 156, at 10.

[397] A Westlaw search reveals just 11 cases brought by consumers, 5 of which were brought as class actions, against debt settlement companies from 2000 to 2010. The search produced an additional 7 class actions and 2 individual suits filed in 2011 and 2012 to date.

[398] See supra notes 212-214 and accompanying text.

[399] New York State Office of the Attorney General and New York City Department of Consumer Affairs data on file with the Committees.

[400] See Complaint at 3, ¶ 13, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (7th Cir. Ct. Ill. Mar. 2, 2011) (stating that "[h]undreds of enforcement actions have been filed by State Attorneys General, regulators, and the [FTC] alleging unfair and deceptive practices by debt settlement companies") (on file with the Committees).

operators that engaged in illegal practices.[401] In some cases, enforcement agencies appear to have disgorged significant monies from debt settlement companies of illegally obtained fees.[402] The following examples show that, unfortunately, the monetary sums provided for in some other consent orders have been substantially smaller than the fees estimated to have been extracted from consumers, whether because companies have limited liquidity, were going out of business, or because of the challenges confronted in prosecuting these actions.

- The California Attorney General sued Freedom Debt Relief, LLC and its two founders and sole owners in 2008.[403] The defendants represented that they had enrolled approximately $1 billion in consumer debt; the complaint stated that the defendants' unlicensed activities resulted in revenues exceeding $150 million.[404] Complaints in the case alone revealed overcharges in the aggregate of at least $300,000.[405] A consent judgment entered into on December 22, 2009 provided for civil penalties of $90,000, reimbursement of costs of $360,000, and a refund fund of $500,000.[406] The action was dismissed against the owners in their individual capacities.[407]

[401] See, e.g., Order to Cease & Desist at 8, In re JHass Grp., No. 12F-BD021-SBD (Ariz. Dep't of Fin. Insts., Sept. 29, 2011), available at http://www.azdfi.gov/Final/Forms/JHASS_Group_C&D_ULA_9-29-2011.pdf (last visited May 7, 2012) (ordering $50,000 in civil penalties) (last visited May 7, 2012); Consent Order at 6, ¶ 15, Idaho v. Debt Settlement Solutions, No. 2011-9-04 (Idaho Dep't of Fin., Mar. 29, 2011), available at http://finance.idaho.gov/ConsumerFinance/Actions/Administrative/DebtSettlementSolutions,Inc.-ConsentOrder-2011-9-04.pdf (providing for restitution of $46,699 to the 43 Idaho consumers with whom the defendant engaged in unlicensed debt settlement) (last visited May 8, 2012); Stipulated Final J. and Order for Permanent Injunction and Other Equitable Relief Against All Defendants at 16, FTC v. Better Budget Fin. Servs., Inc., No. 04-12326 (D. Mass. Feb. 25, 2005), available at http://www.ftc.gov/os/caselist/0412326/050330ord0412326.pdf (providing for a suspended judgment of $11,978,249) (last visited May 8, 2012).

[402] See Assurance of Discontinuance at ¶ 46, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 2011) (providing for $1,100,000 in restitution to consumers who terminated their contracts) (on file with the Committees); see also Consent Order at 6, ¶ 15, Idaho v. Debt Settlement Solutions, No. 2011-9-04) (requiring respondent to refund all of the fees obtained through unlicensed activity).

[403] Complaint at 3-7, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) (on file with the Committees).

[404] Id. at 14, ¶ 59.

[405] Id. at 23, ¶ 76.

[406] Consent J. at ¶¶ 5-6, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Dec. 16, 2009) (on file with the Committees).

[407] Id. ¶ 2.

- The Maine Attorney General sued CSA – Credit Solutions of America and its founder, sole shareholder, president and CEO for violations of Maine's Debt Management Services Act.[408] The complaint asserted that CSA had enrolled from the years 2003 to 2009 at least 620 Maine consumers and charged fees totaling almost two million dollars.[409] The consent judgment entered into on July 20, 2011 required payment of $150,000 by the defendants to the Maine Attorney General.[410] On September 23, 2011, the New York Attorney General affirmed that the founder testified that the company was winding down its business.[411]
- The Tennessee Attorney General entered into a settlement agreement with CareOne, a for-profit national debt management and debt settlement company, to conclude a multi-state investigation of the company, its parent company, and affiliated entities; this investigation was conducted by the attorneys general of twenty-one states.[412] The plaintiffs alleged that defendants violated the states' debt management laws.[413] Neither the complaint nor the settlement contained any information regarding the numbers of consumers affected by CareOne's allegedly illegal conduct or the amount of fees collected as a result of that conduct. The plaintiffs settled all claims for $4.5 million.[414]

[408] 32 ME. REV. STAT. tit. 32, § 6171 et seq. (2011).
[409] Complaint at 5, ¶ 21, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Super. Ct. 2009), available at www.maine.gov/ag/consumer/docs/cas_complaint.doc (last visited May 7, 2012).
[410] Consent J. at 2, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Super. Ct. Nov. 16, 2009) (on file with the Committees).
[411] Lasky Aff. at 42 ¶ 89, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/2009 (N.Y. Sup. Ct. Sept. 23, 2011) (on file with the Committees).
[412] Final J. and Permanent Injunction at 3, Tennessee v. AscendOne, 10 C 4310 (Tenn. Cir. Ct. Nov. 4, 2010), available at http://www.tn.gov/attorneygeneral/cases/ascendone/ascendoneafj.pdf (last visited May 8, 2012).
[413] Id. at 7-8, ¶¶ 23-24.
[414] Id. at 17, ¶ 61.

Other consent orders and judgments provided for full restitution for at least some consumers,[415] while at least one case provided only for the attorney's fees and investigative costs.[416] The approach of the Vermont Attorney General is particularly noteworthy. In consent agreements, the Office set the following conditions:

- automatic refund to Vermont customers who entered into contracts with companies engaged in unlicensed activities—as opposed to a claims-based approach—and payment to the Office for unclaimed funds;[417]
- liquidated damages in the amount of $2,000 to any Vermont client who entered into a debt settlement contract and who was sued by one or more creditors;[418] and
- imposition of statutory penalties and costs.[419]

The Committees conclude that, notwithstanding the extensive efforts by enforcement officials to sue debt settlement operators who conducted business illegally, these efforts did not curb deceptive, predatory, and abusive practices. These practices continued largely unabated for

[415] Order Granting Pls.' M. Default J. at 2, Colorado v. Enhanced Servicing Solutions, Inc., No. 2011CV3927 (Colo. Dist. Ct. May 31, 2011), available at http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2011/08/15/ess_judgment.pdf (in case involving debt settlement company apparently operated by a single owner, granting $90,363 in restitution in addition to $504,000 in civil penalties) (last visited May 8, 2012); Assurance of Voluntary Compliance at 2, North Carolina v. Howard & Nassiri, No. 00024 (N.C. Super. Ct. May 13, 2009) (providing for full restitution of all fees collected from former North Carolina consumers who terminated or withdrew from contracts) (on file with the Committees).

[416] Consent J. at ¶ 20A, North Carolina v. Hess Kennedy Chartered, No. 08 CV 002310 (N.C. Super. Ct. Dec. 19, 2008) (on file with the Committees).

[417] See, e.g., Assurance of Discontinuance at 3, ¶ 3, In re Debt Settlement Am., Inc., No. 56-1-10 WNCV (Vt. Super. Ct. Jan. 27, 2010) available at http://www.atg.state.vt.us/assets/files/Debt%20Settlement%20America%20AOD%20-%202010-1-27.pdf. (last visited May 7, 2012); Assurance of Discontinuance at ¶ 3, In re Debt Settlement USA, Inc., No. 867-11-09 WNCV (Vt. Super. Ct. Nov. 4, 2009), available at http://www.atg.state.vt.us/assets/files/Debt%20Settlement%20AODs.pdf (last visited May 7, 2012).

[418] See, e.g., Assurance of Discontinuance at 4, ¶ 4, Debt Settlement Am., No. 56-1-10 WNCV (Vt. Super. Ct. Jan. 27, 2010); Assurance of Discontinuance at 4, ¶ 4, Debt Settlement USA, No. 867-11-09 (Vt. Super. Ct. Nov. 4, 2009).

[419] See, e.g., Assurance of Discontinuance at 5, ¶ 7, Debt Settlement Am., No. 56-1-10 WNCV ($50,000 in civil penalties and costs); Assurance of Discontinuance at 5, ¶ 7, Debt Settlement USA, No. 867-11-09 WNCV ($70,000 in civil penalties and costs).

a decade, including in jurisdictions that licensed these businesses, such as Colorado, Texas, and Vermont, causing considerable harm to vulnerable consumers. These victims included persons dependent on income exempt from collection (such as seniors and individuals with disabilities) and individuals reeling from unemployment and other financial strains. Meanwhile, operators generated extraordinary revenues and no doubt some significant number profited handsomely.

Based on this in-depth review of the record in combination with their review of the history of debt relief, the Committees conclude that the experience of the 2000's shows that debt settlement for more than a nominal fee is an inherently flawed model and that the sector attracts fraudsters whose practices harm vulnerable consumers. The Committees agree with Justice Tom Chambers of the Washington State Supreme Court who, in his concurring decision in Carlsen v. Global Client Solutions, wrote as follows:

> As our legislature knew long ago, debt adjusting "is noted for its historic abuse and questionable practice and is outlawed or regulated in most States." Abuse of debtors has been so troubling historically that when the original 1967 legislation was set to sunset, then Attorney General Slade Gorton's consumer protection and antitrust division counseled the legislature that
>
> > [i]t is our considered opinion that debt adjusting for profit in this state should not be regulated but rather should be prohibited. While it is highly unusual for this office to recommend such a step in view of our strong support for competition and free enterprise with a minimum of regulation, our experience in this area indicates that this field, even with regulation, is open to abuse.
>
> . . . .
> Time has seemed to only make these numbers worse. According to the debt settlement industry's own statistics, the dropout rate is almost 66 percent. Of that 66 percent, 65 percent leave the programs with no settlements.
> . . . .
> Those who enter a debt adjustment program but eventually drop out are generally much worse off than if they had not participated in the program at all. Not only have they paid substantial fees to a debt adjuster, but their debt problems continue to grow and spiral out of control.
> . . . .
> This case illustrates the creativity of businesses attempting to circumvent regulation. As cats are drawn to cream, many for-profit debt adjusters will be attracted to the most unsophisticated of consumers. Despite the recent federal

> rule, I fear that until the Washington legislature prohibits debt adjusting for profit, consumers in Washington will continue to suffer. In my view, the chronic and systemic abuses in the Washington debt adjusting industry deserve the attention of the Washington State Legislature.[420]

3(d) Attorney Involvement with Debt Settlement Entities

For many practitioners, legitimate debt settlement negotiation comprises a part of their bona fide practice of law through which clients resolve debt issues. In consumer debt collection actions, for example, attorneys strive to reduce the amount of debt owed to a creditor or else assert genuine defenses to the creditor's claim that the client owes a debt. In fact, due to the increased need for legal assistance with consumer debt issues in the wake of historically high debt collection actions, many attorneys and law firms have expanded their practices to include consumer defense work. Some of these attorneys and law firms, appropriately, seek guidance and counsel from professional responsibility experts to understand potential ethical pitfalls related to debt settlement assistance and to ensure that their practices comply with professional norms. This form of legitimate law practice is distinct from the "purported attorney model" of debt settlement, which is the focus of this section. In this model, consumers are told that an attorney will represent them in negotiations with creditors to dramatically reduce their debts, but attorneys do not provide bona fide legal services.[421]

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[420] Carlsen v. Global Client Solutions, 256 P.3d 321, 328, ¶¶ 24-26 (Wash. May 12, 2011) (internal quotations and citations omitted).

[421] See, e.g., Cleveland Bar Ass'n v. Nosan, 840 N.E.2d 1073, 1075-77 (Ohio 2006) (suspending the respondent from the practice of law for six months (which was stayed on the condition that he commit no further misconduct within the suspension period and that he repay his client $425 within 60 days of the Order) based on his affiliation with a debt settlement company in which he shared fees with non-attorneys who conducted negotiations and set up payment plans with clients, with little to no involvement by the defendant, and whose letterhead was used on documents sent to clients); Consent to Immediate Disbarment at 6-7, Fl. Bar v. Hess, Nos. SC08-252, SC08-509, SC08-1785 (Fla. 2008) (listing facts and rule violations admitted by Respondent, including failure to communicate with and diligently represent clients).

In the wake of the TSR, this model appears to be becoming more prevalent.[422] Many New Yorkers have been affected by debt settlement law firms or debt settlement companies affiliated with attorneys. Such entities accounted for forty-three percent (43%) of debt settlement complaints New York consumers filed with the New York City Department of Consumer Affairs between May 2010 and October 2011[423] and for thirty-four percent (34%) of debt settlement complaints New York consumers filed with the New York State Office of the Attorney General between January 2009 and October 2011.[424]

In order to better understand the scope and breadth of the "purported attorney model," the Committees reviewed several types of court documents concerning lawyer-affiliated debt settlement operators, including: consent orders and settlements in enforcement actions by the FTC and state attorneys general against attorneys and law firms; receivership reports and bankruptcy decisions; and, especially, dispositions in disciplinary proceedings against attorneys improperly involved with debt settlement operations. In some instances, orders, dispositions, or findings were based on complaints that described particular conduct in more detail. The Committees also examined debt settlement contracts between consumers and attorneys involved with debt settlement entities and agreements between debt settlement services providers and

[422] "Since [the TSR and the Illinois Debt Settlement Consumer Protection Act] have taken effect, State Attorneys General are receiving numerous consumer complaints about debt relief services purportedly being performed by an attorney, when in fact all debt relief services are being provided by third parties." Complaint at 4, Illinois v. Legal Helpers Debt Resolution, No. 2011 CH 00286 (Ill. Cir. Ct. Mar. 2, 2011). The Committees reviewed sixty-four (64) actions against debt settlement companies, of which fifty-two (52) were filed by the FTC and attorneys general. The actions describe the involvement of forty-three (43) individual attorneys with debt settlement enterprises. Of the actions brought by the FTC and attorneys general, all of the debt settlement companies are alleged or were found to have engaged in at least one of the problematic activities described in this White Paper.

[423] New York City Department of Consumer Affairs data show that 32 of 75 (43%) complaints by consumers against debt settlement companies involved attorneys. The DCA received complaints against 54 entities, 20 of which (37%) were affiliated with attorneys. Chart of complaints pursuant to FOIL request, on file with the Committees.

[424] Data from the New York State Office of the Attorney General show that New Yorkers submitted complaints against 305 entities. Thirty percent (92) of these entities are affiliated with attorneys. New Yorkers filed a total of 791 complaints overall, an average 2.5 per entity. New Yorkers filed a total of 270 complaints against debt settlement companies involved with attorneys, 34% of all complaints and an average of 2.9 complaints per entity. Chart of complaints on file with the Committees.

attorneys, which government enforcement officials attached in complaints and other documents. Notably, the "purported attorney model" of debt settlement came up in every stakeholder interview conducted by the Committees. While the assertions in the attorney general complaints we cite have not been as yet upheld in court proceedings, they supplement court decisions, settlements, and other evidence, the total picture of which demonstrates that the "purported attorney model" is a cause for concern.

3(d)(i) Examples of the "Purported Attorney Model"

The crux of the "purported attorney model" of debt settlement services is the fraudulent and deceptive inducement of consumers into believing that attorneys will be providing legal assistance in helping them address consumer debts with creditors, while the attorneys involved, if any, do not deliver meaningful legal assistance to individual consumers. The Committees have identified a variety of business relationships between attorneys or law firms and debt settlement operators, which fall into two broad categories: debt settlement entities which make the first contact with the consumer and lawyers or law firms that advertise directly to consumers.[425] The examples below illustrate various aspects of these arrangements.

Allegro Law.[426] An attorney was the sole owner and operator of Allegro Law, which began doing business in April 2008.[427] Allegro Law operated as a debt management and debt

[425] Complaints from attorneys general and disciplinary bodies describe various business arrangements of attorney-affiliated debt settlement operators. See, e.g. Complaint at 4, Colorado v. Consumer Law Grp. (Colo. Dist. Ct., Apr. 13 2011), available at http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2011/04/28/jlg_pllc_complaint.pdf (last visited May 8, 2012); Complaint, Illinois v. Legal Helpers Debt Resolution, No. 2011CH 286 (Ill. Cir. Ct., Mar. 3, 2011) (on file with the Committees); Complaint, North Carolina v. Consumer Law Grp., No. 10CV016777 (N.C. Super. Ct. Oct. 1 2010) (on file with the Commitees); Complaint, West Virginia v. Morgan Drexen, Inc., No. 11-C-829 (W. Va., May 20 2011) (on file with the Committees). See also In re Kinderknecht, No. 09-13443 (Bankr. D. Kan. Apr. 13, 2012) (describing relationship between CareOne and Persels & Associates).

[426] In this example, the Committees relied primarily on the following sources: the conditional guilty plea entered by the principal in Allegro, Conditional Guilty Plea, In re Nelms, ASB No. 08-247(A), ASB No. 09-1481(A), CSP No. 09-1684(A) (Disciplinary B. of the Ala. State Bar Jun. 24, 2009) (on file with the Committees); the petition for interim suspension entered against the principal, Petition for Interim Suspension, In re Nelms, Pet. No. 09-1498

settlement firm.[428] The principal directly solicited consumers[429] and also paid lead generators to obtain referrals,[430] employing both the arrangements mentioned above. Allegro Law also functioned like a lead generator and referred clients to another debt relief company, from which it shared fees obtained from clients.[431] Allegro Law "employed two sets of retainer agreements that indicated that the client was hiring the respondent attorney and Allegro Law, LLC to provide legal services in the field of debt management and debt settlement services."[432] "Virtually all of the actual administrative work was outsourced" to "back end" companies.[433] The back end company was not a law firm.[434] Allegro Law and the back end company entered into a contract that provided that the back end company would "handle the servicing of all client accounts."[435] The company received a set-up fee and a monthly fee for each Allegro Law client,[436] and it handled the majority of initial and subsequent client communications and the majority of negotiations and settlements of Allegro Law clients.[437] The principal split and shared legal fees derived from Allegro Law clients with both the back end company and the other debt relief company to which it referred clients.[438] Notably, Allegro Law charged advance fees.[439] At the time Alabama officials shut down the operation, it was "servicing" more than 15,000 clients, the

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(Disc. Comm'n of the Ala St. Bar Apr. 21, 2009) (on file with the Committees); and the decision of the bankruptcy court in In re Allegro Law, 2010 WL 2712256 (Bankr. M.D. Ala. 2010).

[427] Conditional Guilty Plea at ¶¶ 1.b, 1.c, In re Nelms, ASB No. 08-247(A), ASB No. 09-1481(A), CSP No. 09-1684(A); see also In re Allegro Law, 2010 WL 2712256, at *2.

[428] In re Allegro Law, 2010 WL 2712256, at *2.

[429] Conditional Guilty Plea at ¶ 1(j), In re Nelms, ASB No. 08-247(A), ASB No. 09-1481.

[430] Id. ¶¶ 1(h)-(i).

[431] Id. ¶ 1(j).

[432] Id. ¶ 1(f).

[433] In re Allegro Law, 2010 WL 2712256, at *2. See supra notes 163 to 170 and accompanying text (describing back end companies).

[434] Id.

[435] Conditional Guilty Plea at ¶ 1(k), In re Nelms, ASB No. 08-247(A), ASB No. 09-1481 (Disciplinary B. of the Ala. State Bar Jun. 24, 2009) (on file with the Committees).

[436] Id.

[437] Id. ¶ 1(l).

[438] Petition for Interim Suspension at ¶ 4, In re Nelms, Pet. No. 09-1498 (Disc. Comm'n of the Ala St. Bar Apr. 21, 2009) (on file with the Committees).

[439] Id. ¶ 5.

majority of whom were located in states other than Alabama.[440] From January 2009 through October 2011, New Yorkers filed 58 (out of 791) complaints with the Office of the New York State Attorney General against Allegro Law.[441]

The Consumer Law Group / Hess Kennedy.[442] The Florida-based Consumer Law Group and Hess Kennedy Chartered, LLC involved numerous individuals and inter-related entities in another "purported attorney model" debt settlement operation.[443] The attorneys general of Florida, North Carolina, and West Virginia sued some or all of these entities.[444] Two principals, both attorneys, were the subject of disciplinary proceedings, one of which led to disbarment,[445] and a receiver was appointed.[446] The Consumer Law Group and related entities operated in a virtually identical manner to that of other debt settlement operators—such as using lead generators[447] and third-party payment processors,[448] engaging in extensive and deceptive

[440] Conditional Guilty Plea at ¶ 1(d), In re Nelms, ASB No. 08-247(A), ASB No. 09-1481.
[441] Complaint data from the Office of the New York State Attorney General (on file with Committees).
[442] In their review of The Consumer Law Group and Hess Kennedy cases, the Committees examined and relied upon the following documents: Conditional Guilty Plea for Consent J., Fla. Bar v. Campos, 2008-51,003(17E) (Fla. Mar. 23, 2009) (on file with the Committees); Consent to Immediate Disbarment, Fla. Bar v. Hess, SC08-252 (Fla. Oct. 13, 2008), available at http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DISACTVIEW/C034EC87F0243A07852579E400067A43/$FILE/280940_4539.PDF (last visited May 8, 2012); Initial Receiver's Report, Florida v. Hess, No. 007686 (Fla. Cir. Ct. 2008) (on file with the Committees); Consent J., North Carolina v. Hess Kennedy Chartered, 08 CV 002310 (Gen. Ct. N.C. Dec. 19, 2008) (on file with the Committees); Consent J., North Carolina v. Consumer Law Grp., No. 10 CV 016777 (N.C. Super. Ct. Jan. 20, 2010) (on file with the Committees). Since the parties entered into a consent judgment in the latter action, the Committees also relied on the complaint in North Carolina v. Consumer Law Grp., No. 10 CV 016777. Complaint, North Carolina v. Consumer Law Grp., No. 10 CV 016777 (N.C. Super. Ct. Oct. 1, 2010) (on file with the Committees).
[443] One principal created and incorporated the Campos Chartered Law Firm and was involved with Hess Kennedy and the Consumer Protection Law Center. Conditional Guilty Plea for Consent J. at ¶ A, Campos 2008-51,003(17E).
[444] Consent J., North Carolina v. Hess Kennedy Chartered, 08 CV 002310.
[445] Consent to Immediate Disbarment, Hess, SC08-252; Conditional Guilty Plea for Consent J., Fla. Bar v. Campos, 2008-51,003(17E).
[446] Initial Receiver's Report, Florida v. Hess, No. 007686.
[447] Consent to Immediate Disbarment at 8, ¶ 7 (F), Hess, SC08-252 ("Respondent solicited her services to obtain clients indirectly through numerous third-party 'referral agents' that referred clients to the respondent for purported debt settlement services. In exchange for referring clients to the respondent, the respondent's agents were compensated either by the respondent or by collecting a fee directly from clients, in violation of Rules Regulating The Fl. Bar 4-7.4(a)."); Consent J. at ¶ 3, North Carolina v. Hess Kennedy Chartered, 08 CV 002310 ("The defendants . . . marketed their services . . . through third party 'referral agents'. . . .").
[448] Complaint at 8, ¶ 24, North Carolina v. Consumer Law Grp., No. 10CV016777 (N.C. Super. Ct. Oct. 1, 2010) ("Consumers' funds are debited by a third party payment processor called Global Client Solutions, LLC; however,

marketing,[449] relying on non-legal personnel for the handling of all aspects of consumer services,[450] and charging advance fees.[451] The critical difference between The Consumer Law Group and related entities and other debt settlement operators was the putative involvement of attorneys.

Of note is the manner in which this enterprise recruited attorneys to affiliate with them outside of Florida. An "of counsel" agreement between The Consumer Law Group and a North Carolina attorney provided that The Consumer Law Group would pay the attorney's bar dues and provide malpractice insurance for debt settlement cases as well as a nominal yearly sum of $1,000, in exchange for "an electronic signature to be used on correspondence and forms that have been pre-approved by Attorney" and "nothing more than episodic phone calls . . . not [to] exceed a total of three hours time per year."[452] An email exchange between a recruiter for The Consumer Law Group and a prospective attorney provided as follows:

> As I imparted to you during our discussion, The Consumer Law Group needs "of counsel" attorneys in a few states, including North Carolina. You are only needed for signatory purposes, and no court appearances or legal drafting are required. Furthermore, your signature will not appear on any documents which you have

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[Consumer Law Group] is authorized under its agreements with consumers to collect its fees from consumers' deposits before any settlements are obtained.") (on file with the Committees).

[449] Consent J. at ¶ 3, 08, North Carolina v. Hess Kennedy Chartered, 08 CV 002310 ("[T]he defendants purported to offer 'debt settlement' or 'debt negotiation' services to financially distressed consumers who were seeking a means to pay off their credit card debts and avoid bankruptcy. The defendants, who marketed their services over the Internet and through third party 'referral agents,' represented that they could drastically reduce consumers' unsecured credit card debts in a very short time through the defendants' 'debt settlement' program."); see also Consent J. at 5-6, ¶ 14, North Carolina v. Consumer Law Grp., No. 10 CV 016777 ("As an example of [Consumer Law Group's] deceptive marketing practices, [the defendant], . . . solicited consumers through an Internet advertisement and website under the name 'North Carolina Relief Act'.").

[450] Consent to Immediate Disbarment at 6-7, ¶ E, Hess, SC08-252 ("Respondent's law firm underwent dramatic growth, quickly retaining thousands of clients. Consequently, 'boiler plate' letters were sent out to creditors without her client's authorization or knowledge, resulting in the failure of respondent to communicate with clients and diligently represent them, in violation of Rules Regulating The Fl. Bar 4-1.1."); see also Complaint at 9, ¶ 27, Consumer Law Grp., No. 10CV016777 ("Upon information and belief, [Consumer Law Group's] employees have no significant training, experience or expertise in the areas of credit counseling, debt management, or bankruptcy law. The defendants' sales agents are primarily directed to sell the defendants' program . . . .").

[451] See Consent J. at ¶ 6, North Carolina v. Hess Kennedy Chartered, 08 CV 002310 ("As their fee, the defendants typically charged between 15 and 25 percent of the consumer's total unsecured debt placed in the program. Further, the defendants collected their fees in advance, prior to their performance of any purported services . . . .").

[452] Complaint at Exhibit 4, Consumer Law Grp., No. 10CV016777 ("Of Counsel Agreement"); see also id. ¶¶ 33-34.

> not first reviewed and approved. Consistent with our conversation, I have attached a sample Debt Settlement Agreement, along with our "Of Counsel Agreement."
>
> We are prepared to send you $1,000 immediately, followed by annual checks of $1,000 each. The only function we need you to serve is to have your signature appear instead of mine on the North Carolina client agreements. Perhaps the greatest aspect of this program is how it will serve as a consistent referral engine for your practice. For example any time a client is in need of a North Carolina attorney for any reason, we will be recommending your office . . . .[453]

Like regular debt settlement clients, consumers who signed retainer agreements with The Consumer Law Group authorized automatic bank account debits on a monthly basis, were instructed to cease all payments on their debts and to cease all communications with their creditors, and paid advance fees ranging from twelve percent (12%) to over twenty-three percent (23%) of their debt.[454] Despite being led to believe that attorneys would represent them in their consumer debt cases, when consumers were actually sued, The Consumer Law Group did not even refer the consumers to the "affiliated" in-state attorneys. Instead, the outfit sent consumers form pleadings for them to file *pro se*.[455] These consumers experienced the same outcomes and harms as other debt settlement clients: consumers found themselves deeper in debt, having paid advance fees and facing harassing phone calls from collection agencies as well as collection actions from creditors.[456] Not surprisingly, consumers often dropped out of the programs before any debts were settled.[457]

Financial Services Management Corporation. Smaller entities have also had similar arrangements with attorneys. A Nevada entity "leased office space for [its] associated attorneys,

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[453] Id. at Exhibit 4.
[454] See id. at 8-9, ¶¶ 22-25.
[455] Id. at 10, ¶¶ 31-32 (citing an example of this practice). Committee members also saw this practice with a number of attorney model debt settlement operators.
[456] See id. ¶¶ 28-32.
[457] Consent to Immediate Disbarment at 7-8, ¶ 21, Fla. Bar v. Hess, SC08-252 (Fla. Oct. 13, 2008).

arranged advertising for their services, and provided support staff."[458] An affiliated attorney kept an office in Cleveland where "a nonlawyer intake interviewer" enrolled clients in debt settlement programs, using documents which the attorney did not prepare but which bore his letterhead.[459] The attorney "rarely talked with any of the clients who signed up for the [program] that the intake interviewer provided in conjunction with the [debt settlement company]."[460] The attorney charged an enrollment fee, 75% of which he transferred to the debt settlement company.[461]

Sworn Statements by Attorneys. State attorneys general have filed complaints against other large lawyer-affiliated debt settlement operations and have supported their cases with sworn statements by attorneys involved. To date, these cases have not resulted in findings by a court or disciplinary authority. The Committees include the attorneys' statements to help illustrate the inner workings of the "purported attorney model."

One attorney swore in a deposition that she contracted with a national "legal support" company to act as local counsel for debt settlement clients in the state in which she was admitted to practice and performed some minimal services for several clients.[462] She testified that she never contacted creditors,[463] did not recognize the names of her clients,[464] and that she was "a rubber stamp" on settlements negotiated by non-lawyers.[465] She described her relationship to the entity and its customers: the law firm advertised several phone numbers. Individuals calling these numbers were greeted with "Law Office of [attorney]." The attorney did not know that

[458] Cleveland Bar Ass'n v. Nosan, 840 N.E.2d 1073, 1075 (Ohio. 2006) (ordering stayed suspension).
[459] Id.
[460] Id.
[461] Id.
[462] Deposition transcript provided by an attorney general dated Dec. 22, 2010. The Committees omit the citation to the underlying complaint to avoid revealing the name of the entity and the attorney involved (on file with the Committees).
[463] Id. at 32, 69.
[464] Id. at 184.
[465] Id. at 81-82.

these phone numbers purportedly connected clients to her solo practice.[466] She further testified that the law firm even executed retainer agreements listing her firm name without her knowledge.[467] The company was the subject of many consumer complaints to the New York State Attorney General and the New York City Department of Consumer Affairs filed between July 2009 and August 2011[468]

Another attorney employed by a national debt settlement law firm swore that he was instructed to "sign up every client [he met] with" at an initial client meeting, after which he would not have further contact with the client.[469] The law firm was the subject of many consumer complaints to the New York State Attorney General and the New York City Department of Consumer Affairs filed between October 2010 and October 2011.[470]

The cases described above comprise some of the more notorious examples of the "purported attorney model" debt settlement operations prior to the TSR. The Committees, however, reviewed disciplinary decisions resulting in suspension or disbarment involving other attorneys, including solo and small law firm practitioners, who engaged in attorney model debt settlement schemes, i.e., induced consumers to sign up for their programs and to pay advance fees and then failed to provide not only bona fide legal services but any meaningful services whatsoever.[471]

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[466] Id. at 95-96.
[467] Id. at 146-47.
[468] Chart pursuant to FOIL request (on file with the Committees).
[469] Sworn affidavit of attorney, exhibited in a Motion for Preliminary Injunction filed Sept. 30, 2011. The Committees omit the citation to the underlying complaint to avoid revealing the name of the entity and the attorney involved (on file with the Committees).
[470] Chart pursuant to FOIL request, on file with the Committees.
[471] See, e.g., In re Sinnott, 36 A.D.3d 129, 824 N.Y.S.2d 331 (N.Y. App. Div. 2d 2006) (disbarring attorney for felony conviction as described in In re Sinnott (Vt. 2005), which discussed the attorney's felony conviction in connection to misappropriation of client funds relating to his involvement in a for-profit debt reduction program); Fla. Bar v. Johnson, No. 2011-31,008[09B]) (Fla. 2011) (suspending attorney based on misappropriation of client funds stemming from his debt consolidation and settlement practice) (on file with the Committees); In re Mezey, 903 N.Y.S.2d 276 (N.Y.App. Div. 3d 2010) (disbarring attorney); In re Daly, 32 A.D.3d 176 (N.Y. App. Div. 3d Dept. 2006) (disbarring attorney for felony misappropriation of client funds); Atty. Grievance Comm'n of Md. v.

3(d)(ii) Legal Framework Governing the Attorney Model of Debt Settlement

All of the forty-three (43) state statutes which ban or regulate for-profit debt settlement[472] exempt attorneys, save two.[473] These statutes range from extremely broad and general to quite narrow and specific.

Several states have strikingly broad provisions. Arkansas's statute exempts "an attorney at law,"[474] and West Virginia's exempts "licensed attorneys."[475] Four statutes include blanket exemptions for any attorneys licensed or authorized to practice in the state.[476]

A number of states exempt attorneys who are "engaged in the practice of law,"[477] acting in the course or scope of the practice of law,[478] or providing debt settlement "in an attorney-client relationship."[479] Eight states exempt debt settlement that is "incidental to the practice of law."[480]

Brennan, 964 A.2d 209 (Md. 2009) (ordering disbarment); Conditional Guilty Plea, In re Nelms, ASB No. 08-247(A), ASB No. 09-1481(A), CSP No. 09-1684(A) (Disciplinary B. of the Ala. State Bar Jun. 24, 2009) (on file with the Committees); North Carolina State Bar v. Erickson, 702 S.E. 2d 555, 2010 WL 5135873, 5-6 (N.C. Ct. App. 2010) (ordering five-year license suspension).

[472] See Appendix E.

[473] ALA. CODE § 8-7-1 et seq. (2012) (effective1961) (see In re Allegro Law, No. 2010 WL 2712256 (Bankr. M.D. Ala. 2010) (noting that the debt settlement law firm violated the "Alabama Sale of Checks Act," ALA. CODE § 8-7-1 et seq.)); WIS. STAT. § 218.02 (2012) (effective 1935, amended effective Jul. 1, 2008) (see JK Harris Fin. Recovery Sys. v. Dep't of Fin. Insts., 718 N.W.2d 753, 756 (Wis. 2006) (affirming administrative determination that debt settlement company was an "adjustment service company" within the meaning of the licensing statute)).

[474] ARK. CODE ANN. § 5-63-305 (2011) (effective 1967).

[475] W. VA. CODE, § 61-10-23 (2012) (effective 1957).

[476] HAW. REV. STAT. § 446-3 (2011) (effective 1967); MO. REV. STAT. § 425.040 (2012) (effective 1963); N.M. STAT. ANN. § 56-2-4 (2012) (effective 1965); VA. CODE ANN. § 6.2-2001 (2011) (effective Oct. 1, 2010).

[477] See, e.g., 225 ILL. COMP. STAT. 429/10 (2012) (effective Aug. 3, 2010); N.D. CENT. CODE § 13-11-01 (2011) (effective Jul. 1, 2011).

[478] DEL. CODE ANN. tit. 6 § 2402A (2012) (effective Jan. 17, 2007); FLA. STAT. § 817.803 (2012) (effective Jul. 1, 2004); GA. CODE ANN., § 18-5-3 (2011) (effective 1956, amended effective Jul. 1, 2003); IND. CODE § 24-5-15-2 (2012) (effective 1990, amended effective 2012); KAN. STAT. ANN. § 50-1116 (2011) (effective 2004); MINN. STAT. § 332A.02 (2012) (effective Jul. 1, 2008); MONT. CODE ANN. § 30-14-2101 (2011) (effective Oct. 1, 2009); NEV. REV. STAT. ANN. § 676A.270 (2011) (effective Jul. 1, 2010); N.H. REV. STAT. ANN. § 399-D:4 (2012) (effective Sep. 9, 2004); OHIO REV. CODE ANN. § 4710.03 (2011) (effective Nov. 5, 2004, amended effective Mar. 29, 2007); S.C. CODE ANN. § 37-7-101 (2011) (effective Jun. 2, 2005); VT. STAT. ANN. tit. 8, § 2763 (2012) (effective Mar. 23, 1970, amended effective Jul. 1, 2009).

[479] MD. CODE ANN., FIN. INST. § 12-1003 (2012) (effective Oct. 1, 2011); R.I. GEN. LAWS § 19-14.8-2 (2012) (effective Mar. 31, 2007); TENN. CODE ANN. § 47-18-5502 (2012) (effective Jul. 1, 2010).

[480] ARIZ. REV. STAT. § 6-702 (2012) (effective 1968); CONN. GEN. STAT. § 36a-663 (2012) (effective 1958, amended effective 2009); IDAHO CODE ANN. § 26-2239 (2012) (effective 1970, amended effective Jul. 1, 2008); IOWA CODE

Several states exempt attorneys who are not "exclusively"[481] or "principally"[482] engaged in debt settlement. Idaho's exemption does not apply "to an attorney engaged in a separate business conducting [debt settlement] activities."[483] A few states exclude lawyers employed by or professionally affiliated with debt settlement companies from their attorney exemptions.[484]

The 2008 version of the model UDMSA included the exemption for "legal services provided in an attorney-client relationship" by a lawyer authorized to practice in the state.[485] The latest version includes the further limitation that "there is no intermediary between the individual and the creditor other than the attorney or a person under the direct supervision of the attorney."[486]

New York's current budget planning statute exempts attorneys admitted in New York, but requires attorneys engaged in budget planning to "negotiate directly with creditors," deposit customer funds into client trust accounts, and "offer budget planning services through the same

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§ 533A.2 (2012) (effective Jul. 1, 1967); LA. REV. STAT. ANN. § 14:331 (2011) (effective 1972); MISS. CODE ANN. § 81-22-3 (2011) (effective Jul. 1, 2003, amended effective Jul. 1. 2008); OR. REV. STAT. § 697.612 (2012) (effective 1983, amended effective Jan. 1, 2010); WASH. REV. CODE § 18.28.10 (2012) (effective 1967, amended effective Jul. 7, 2012) available at http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202012/6155.SL.pdf.

[481] ME. REV. STAT. ANN. tit. 32, § 6172 (2011) (effective 1999, amended 2007).

[482] ARIZ. REV. STAT. § 6-702 (2012) (effective Jul. 1, 1968); CONN. GEN. STAT. § 36a-663 (2012) (effective 1958, amended effective 2009); KY. REV. STAT. ANN. § 380.030 (2011) (effective Jun. 18, 1970, amended effective Jul. 15, 2010); N.J. STAT. ANN. § 17:16G-1 (2012) (effective Feb. 8, 1979, amended effective Jan. 11, 2010).

[483] IDAHO CODE ANN. § 26-2239 (2012) (effective 1970, amended effective Jul. 1, 2008).

[484] CAL. FIN. CODE § 12100 (2012) (effective 1951, amended 1989) (prohibiting fee sharing between attorneys and regulated entities); COLO. REV. STAT. § 12-14.5-202 (2012) (effective Jan. 1, 2008, amended effective Jul. 1, 2011) ("exemptions . . . do not apply to any person who directly or indirectly provides any debt management services on behalf of a licensed attorney . . . if that person is not an employee of the licensed attorney . . . ."); N.C. GEN. STAT. § 14-426 (2011 effective 1963, amended effective Sept. 20, 2005) (exempting attorneys who are "not employed by" debt settlement companies); TEX. FIN. CODE ANN. § 394.203 (2012) effective Sept. 1, 2005) (not applying exemption to attorneys who "hold [themselves] out to the public as a [debt settlement] provider or are employed, affiliated with, or otherwise working on behalf of a provider"); UTAH CODE ANN. § 13-42-102 (2011) (effective Jul. 1, 2007, amended effective 2012) available at http://le.utah.gov/~code/TITLE13/htm/13_42_010200.htm (applying exemption to legal services provided in an attorney-client relationship where there is no intermediary between the individual and the creditor other than an attorney or an individual under the direct supervision of an attorney); WYO. STAT. ANN. § 33-14-101 (2011) (effective 1957) (applying exemption to copartnerships and professional corporations "all members of which are admitted to the bar in this state").

[485] UNIFORM DEBT-MANAGEMENT SERVICES ACT § 2(9)(A) (Last Revised or Amended in 2008), available at http://www.ftc.gov/bcp/workshops/debtsettlement/UDMSA_Final.pdf (last visited May 8, 2012).

[486] UNIFORM DEBT-MANAGEMENT SERVICES ACT § 2 (10)(A)(ii) (Amended 2011), http://www.law.upenn.edu/bll/archives/ulc/UCDC/UDMSA_FINAL_2011_2.htm (last visited May 7, 2012).

legal entity that the attorney uses to practice law."[487] Senate Bill 5215, Assembly Bill 8341, and the nearly identical Assembly Bill 8212, exempt New York attorneys "acting in the ordinary practice of law and through the entity used by the attorney in the ordinary practice of law, and not holding himself or herself out as a debt settlement company, and not providing debt settlement services, except as incidental to legal representation," but omit the requirements of negotiating directly with creditors and depositing funds into trust accounts.[488]

As noted previously, the FTC amended the TSR in 2010, banning some of the most harmful debt settlement practices, including, among others, a prohibition on advance fees and better regulation of clients' trust accounts.[489] The TSR contains no general attorney exemption: the FTC concluded that attorneys are likely to fall outside of the TSR because they do not typically engage in interstate telemarketing or provide services to consumers in multiple states.[490] Further, the FTC reasoned that attorneys are sufficiently regulated by the ethical rules of the profession in each state.[491]

3(d)(iii) Violations of Rules of Professional Conduct

This sub-section describes how the New York Rules of Professional Conduct ("N.Y. RPC")[492] would apply to the "purported attorney model" of debt settlement.

Fees and Client Funds. The N.Y. RPC prohibits attorneys from entering into arrangements for, charging, or collecting special non-refundable retainer fees or fees prohibited

[487] N.Y. GEN. BUS. LAW. § 455.
[488] S.B. 5215 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A08212&term=2011&Summary=Y&Text=Y; A. B. 8341, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=8341&term=2011&Summary=Y&Text=Y; A. B. 8212, 2011-2012 Reg. Sess. (N.Y. 2011).
[489] 16 C.F.R. § 310.4(a).
[490] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,467-69 (Aug. 10, 2010).
[491] Id.
[492] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 (2009).

by law or rule of court.[493] Attorneys in several states have been disciplined for charging non-refundable fees and for failing to refund unearned fees.[494] For example, one law firm used a contract which provided that service fees were nonrefundable if the client failed to comply with any of the financial portions of the agreement, and the principal attorney was disciplined for violating the applicable prohibition against charging improper fees.[495]

Rule 1.15 of the N.Y. RPC prohibits misappropriation or comingling of client funds or property, and requires safeguarding client property in an escrow account in the name of the lawyer or law firm. [496] Disciplinary decisions against one New York and one Maryland attorney cited violations of rules regarding client accounts as one of the bases for the discipline.[497]

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[493] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0, Rule 1.5(a); Rule 1.5(d)(2), (4). The New York Court of Appeals found that "[i]f special nonrefundable retainers are allowed to flourish, clients would be relegated to hostage status in an unwanted fiduciary relationship . . . ." In re Cooperman, 83 N.Y.2d 465, 473-474, 633 N.E.2d 1069, 1072, 611 N.Y.S.2d 465, 468-69 (1994). The Court's holding, like the offending attorney in the case, acknowledges that "the essential purpose of the nonrefundable retainer [is] to prevent clients from firing the lawyer, a purpose which . . . directly contravenes the Code" and public policy. Id. at 83 N.Y.2d at 474, 633 N.E.2d at 1073, 611 N.Y.S.2d at 469.

[494] See In re McCormick, No. 10-O-00264, 10 (State Bar C. of Cal. 2010); In re Nelms, No. 09-1498, 3 (Ala. State Bar Disciplinary Comm'n 2009); Cleveland Bar Assoc. v. Nosan, 840 N.E.2d 1073, 1076 (Ohio. 2006) (ordering stayed suspension).

[495] Complaint at Exhibit 1, Fla. Bar v. Hess, Nos. SC08-252, SC08-509, SC08-1785 (Fla. 2008) ("any fees paid by Client after three (3) days of signing the agreement, shall be non-refundable. If either party terminates the agreement, accrued fees shall be immediately due and payable."). The attorney was subsequently disbarred. Consent to Immediate Disbarment at ¶ F, at 8, Fla. Bar v. Hess, SC08-252 (Fla. Oct. 13, 2008).

[496] Rule 1.15(a) of the N.Y. RPC makes an attorney "in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law" a fiduciary who must not "misappropriate such funds or property or commingle such funds or property with his or her own." Rule 1.15(b) sets out, in detail, the standards and practices by which such fiduciary attorneys will set up and maintain separate to protect the integrity of client funds.

[497] In re Mezey, 903 N.Y.S.2d 276, 75 A.D.3d 751 (N.Y. App. Div. 3d Dept. 2010) (citing pre-2009 N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.46 [c] [4] and current N.Y. COMP. CODES R. & REGS. tit. 22, § § 1200.0 rule 1.15); Att'y Grievance Comm'n of Md. v. Brennan, 964 A.2d 209 (Md. 2009) (ordering disbarment for violations described in the Commission's annual report). The report described "various violations, including . . . misappropriation of client funds in connection with his "debt settlement" business, in violation of Maryland Rule[] of Professional Conduct 1.16," a rule analogous to N.Y. RPC 1.15. The Att'y Grievance Comm'n of Maryland 34th Annual Report 8 (2009), available at http://www.courts.state.md.us/attygrievance/pdfs/annualreport09.pdf (last visited May 8, 2012). The attorney was jailed for contempt for continuing to engage in debt settlement. Press Release, Maryland Att'y Gen., Richard A. Brennan Jailed for Contempt: Brennan Ordered to Pay More Than $2.5 Million in Restitution (July 31, 2009), available at http://www.oag.state.md.us/press/2009/073109.htm (last visited May 8, 2012).

The TSR permits debt settlement providers to require that clients make regular deposits into a third-party account, provided that all funds remain the property of the consumer and the provider does not charge a penalty for terminating the agreement.[498] An ethics opinion regarding budget planning concludes that New York lawyers must maintain client funds in an escrow account, even if non-lawyers engaged in a similar business may properly hold client funds in a third-party account.[499]

Contracts with a national debt settlement law firm signed July 19, 2010 and August 30, 2010 provide that clients will authorize "Special Purpose Accounts" administered by a third party which will be the client's "sole and exclusive property."[500] However, the provisions of the Special Purpose Account Applications give the debt settlement law firm and the third-party payment processor control over the account, including the ability to directly debit fees.[501] Thus, a New York lawyer who used such a contract could be subject to discipline under Rule 1.15.

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[498] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,490-91 (Aug. 10, 2010.

[499] N.Y. GEN. BUS. LAW § 455 permits budget planning, defined as:

> the making of a contract between a person or entity engaged in the business of budget planning with a particular debtor whereby (i) the debtor agrees to pay a sum or sums of money in any manner or form and the person or entity engaged in the business of budget planning distributes, or supervises, coordinates or controls the distribution of, or has a contractual relationship with another person or entity that distributes or supervises, coordinates or controls such distribution of, the same among certain specified creditors. . . .

The ethics opinion recognized the potential for abuse and demanded strict compliance with measures meant to protect client funds, and clearly stated that attorneys engaged in budget planning must deposit client funds in trust accounts. Nassau Cnty. Bar Op. 97.2 (1997).

[500] The agreement includes a Global Client Solutions LLC Special Purpose Account Application. Legal Helpers Debt Resolution Retainer Agreements of July 2010 and August 2010 (on file with the Committees). The agreement provides: "I understand that my Special Purpose Account, when established in accordance with this Application and Special Purpose Account Agreement, will be my sole and exclusive property; that only I (or Authorized Contact, if any) may authorize deposits to and disbursements from my Special Purpose Account; and that I (or Authorized Contact, if any) may withdraw funds from and/or close my Special Purpose Account at any time as provided for in the Agreement"). Id.

[501] The application: (1) empowers Global Client Solutions LLC to create the Special Purpose Account at an unidentified bank selected by Global Client Solutions LLC; (2) automatically authorizes the periodic deposits and disbursements by Global Client Solutions LLC, the bank selected by Global Client Solutions LLC, and the debt settlement law firm for the fees and charges outlined in the agreement; and (3) authorizes Global Client Solutions LLC, the bank selected by Global Client Solutions LLC, and the debt settlement law firm to "share information regarding my Special Purpose Account and my Program with each other to facilitate the transactions that I may initiate that involve my Special Purpose Account, and with any other party that is essential to the administration of my Special Purpose Account and/or my Program." Id.

Diligence and Competence. Failure to competently and diligently work to advance a client's objectives violates several fundamental provisions of the N.Y. RPC.[502] Attorney-affiliated debt settlement companies lure consumers with false promises of legal protection, but disciplinary decisions against attorneys involved in such enterprises have found that consumers did not receive competent legal services and in several cases did not receive any legal services at all.[503] At least one New York attorney has been disciplined for failing to perform meaningful legal work on behalf of debt settlement clients and for failing to communicate with clients or respond to clients' requests for information.[504]

The N.Y. RPC prohibits intentionally "fail[ing] to seek the objectives of the client" and "damag[ing] the client."[505] At least one attorney has been disciplined for allowing agents to instruct clients to stop making any payments to creditors, which causes debt loads to increase, credit ratings to decline, and can lead to creditor law suits.[506] An attorney was disciplined for providing "improper legal advice" and asserting frivolous pleadings on behalf of five debt settlement clients who had been sued by creditors on accounts the attorney was supposed to settle.[507]

Affiliations with Non-Lawyers. As described above, many debt settlement lawyers work with or through non-law firm debt settlement companies. The N.Y. RPC prohibits partnerships between lawyers and non-lawyers, the sharing of legal fees with non-lawyers, and

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[502] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.00 Rules 1.1(a), 1.1(c)(1), 1.1(c)(2), 1.3.
[503] See North Carolina State Bar v. Erickson, 702 S.E. 2d 555, 2010 WL 5135873, 5-6 (N.C. Ct. App. 2010) (affirming five year suspension); Fla. Bar v. Hess, Nos. SC 08-252, SC08-509, SC08-1785 6-7 (Fla. 2008) (consent to disbarment).
[504] In re Mezey, 903 N.Y.S.2d 276 (N.Y. App. Div. 3d 2010) (citing, inter alia, N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 Rule 1.3(b) and Rule 1.4).
[505] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 Rule 1.1(c).
[506] In re McCormick, No. 10-O-00264, 9 (State Bar C. of Cal. 2010). See infra Part 3.c for discussion of the negative consequences of ceasing payments to creditors.
[507] Erickson, 702 S.E.2d 555, 2010 WL 5135873 at 5-6.

certain referral fees.[508] A New York ethics opinion noted that it would be improper for a law firm to bill clients and then compensate a debt consolidation company based on the volume of business it developed. [509] Attorneys have been disciplined for forming improper partnerships and referral arrangements with non-lawyers.[510]

The N.Y. RPC prohibits lawyers from aiding the unauthorized practice of law,[511] and makes attorneys responsible for properly supervising the work of subordinate attorneys.[512] Debt settlement attorneys have allowed non-attorneys to counsel clients without supervision.[513] Through the "customer service" and "administrative support" provided by non-lawyer debt settlement companies,[514] which in actuality comprise the full scope of client contact, at least two "purported attorney model" debt settlement operators have contracted with thousands of consumers.[515] As a judge described one enterprise: "[t]o put the matter plainly, [attorney] was 'fronting' his law license for [the debt settlement company]."[516]

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[508] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 Rules 5.4(a), 5.4(b), 7.2(a).
[509] N.Y.S.B.A. Comm. on Prof'l Ethics, Op. 633--5/3/92 (29-91).
[510] See Conditional Guilty Plea, Fla. Bar v. Campos, 2008-51,003(17E) (Fla. Mar. 23, 2009) (noting Campos's admission of violations of Rule Regulating the Fla. Bar 4-5.4(c) (analogous to N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 Rule 5.4(b)); Erickson, 702 S.E.2d at 555 (finding that an attorney who accepted referrals from and followed the instructions of a debt settlement and mortgage company violated N.C. RPC. 1.8(f), 2.1, and 5.4(c)).
[511] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 Rules 5.5; See also in re Scheck, 574 N.Y.S.2d 372, 372 (N.Y. App. Div. 2d 1991) (suspending an attorney affiliated with a debt collection agency who "allowed the agency to use his name, letterhead, and signature without actually reviewing letters sent out under his name," in violation of pre-2009 DR 3-101(A), analogous to current N.Y. COMP. CODES R. & REGS. tit. 22 § 1200.0, Rule 5.5).
[512] See, e.g. id. at 372-73 (noting disciplined attorney's failure to supervise collection agency's employees).
[513] See Cleveland Bar Assoc. v. Nosan, 840 N.E.2d 1073, 1076 (Ohio 2006) (finding violation of DR 3-101(A) (analogous to 2 N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 Rule 5.5)).
[514] Complaint at 3, Consumer Law Grp. v. Florida, No. 50 2011 CA 567 (Fla. Cir. Ct., Jan. 13, 2011) (describing a debt settlement law firm's business arrangements, in a complaint filed by the debt settlement law firm and affiliated company, asserting that the entire enterprise is outside the Attorney General's jurisdiction).
[515] See Report of Referee, at 10, Fla. Bar v. Johnson, No. 11-622 (Fla. 2011) (discussing the 13,230 clients with "trust accounts" managed by the Johnson Law Group, a firm which lists the names of two attorneys on its website, http://www.johnsonlawgroup.us/debt.htm) (last visited May 8, 2012); in re Allegro Law, 2010 WL 2712256 1 (Bankr. M.D. Ala. 2010) (discussing the 15,000 individuals signed up by one attorney).
[516] In re Allegro Law, 2010 WL 2712256, at 2.

Deceptive Conduct. The N.Y. RPC prohibits deceptive conduct generally and misleading advertisements specifically.[517] One New York ethics opinion noted that using a law firm's name on "boiler plate" letters sent to creditors by an affiliated company is misleading,[518] a practice which was cited in disciplinary actions against the two Florida lawyers previously discussed.[519] Between May 2010 and September 2011, the New York City Department of Consumer Affairs received complaints against twelve lawyer-affiliated debt settlement companies regarding misrepresentations or misleading advertising.[520] At least one New York lawyer and attorneys in other states have been disciplined for "conduct involving dishonesty, fraud, deceit or misrepresentation" in violation of N.Y. RPC 8.4(c) and analogous rules.[521]

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On the one hand, when considering the total number of licensed attorneys in New York State (and other jurisdictions), the review of available disciplinary proceedings and other cases indicate that the number of attorneys involved in impermissible conduct related to debt settlement operations has been relatively small.

On the other hand, government enforcement officials, consumer protection experts, and consumer law practitioners almost universally report the emergence of the "purported attorney model," particularly in the wake of the TSR amendment. In addition, data from the New York State Office of the Attorney General and the New York City Department of Consumer Affairs

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[517] N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0, Rules 8.4(b), 7.1(a).
[518] N.Y.S.B.A. Comm. on Prof'l Ethics, Op. 633 - 5/3/92 (29-91) (noting that "use of the law firm's name in [the debt relief company's] letters to creditors would be misleading").
[519] Consent to Immediate Disbarment at 6-7, Fla. Bar v. Hess, SC08-252 (Fla. Oct. 13, 2008), available at http://www.floridabar.org/DIVADM/ME/MPDisAct.nsf/DisActFS?OpenFrameSet&Frame=DisActToC&Src=%2FDIVADM%2FME%2FMPDisAct.nsf%2FdaToc!OpenForm%26AutoFramed%26MFL%3DLaura%2520L%2520Hess%26ICN%3D200750983%26DAD%3DDisbarment (last visited May 8, 2012); Conditional Guilty Plea for Consent J. at ¶ 7(D), Fla. Bar v. Campos, 2008-51,003(17E) (Fla. Mar. 23, 2009) (on file with the Committees).
[520] Chart of complaints pursuant to FOIL, on file with the Committees.
[521] See, e.g., Consent to Immediate Disbarment at 7-8, Hess, Nos. SC 08-252, SC08-509, SC08-1785; in re Mezey, 903 N.Y.S.2d 276 (N.Y. App. Div.3d 2010).

show that New Yorkers have filed 272 complaints about lawyer-affiliated debt settlement operators.[522] Moreover, as described above, across the country, thousands of consumers have been harmed by such entities.

Attorneys involved in debt settlement operations who purport to be acting as attorneys should not be, and need not be, subject to a statutory scheme regulating debt settlement practices, as the misconduct described in this White Paper can be regulated under the Rules of Professional Conduct. The Committees recommend education of attorneys on the ethical pitfalls that may be present in practices involved with debt settlement operations. Discipline of attorneys who violate the Rules through conduct connected with debt settlement is imperative to ensure that the public—particularly vulnerable and financially distressed consumers—is protected appropriately. To the extent attorneys engaged in these enterprises are not acting as attorneys, their conduct would fall outside the scope of the Rules of Professional Conduct and would be appropriate for statutory regulation.

4) Debt Settlement After October 2010

In late 2010, the FTC responded to the growing record of abusive and deceptive practices in the debt settlement sector by amending the TSR and heightening consumer protections.[523] These reforms (discussed further below) established greater protections for consumers and created a sea change in the debt settlement sector.

The major reforms involved a qualified ban on advance fees by debt settlement and other debt relief businesses:[524] under the FTC's amended rule, so long as telemarketing is involved,

[522] Charts of complaints pursuant to FOIL request, on file with the Committees.
[523] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458 (Aug. 10, 2010); Federal Trade Comm'n, 16 C.F.R. pt. 310; FTC 2009 TSR Proposed Rule Amendments, 74 Fed. Reg. 41,988, 41,990 (Aug. 19, 2009).
[524] 16 C.F.R. § 310.4(a)(5) (prohibiting advance fees by debt relief services).

businesses can collect a fee only after the consumer and creditor have entered into a settlement agreement and the consumer has made a payment to the creditor.[525] Other key reforms include required disclosures to consumers and protections with regard to third-party accounts.[526] In addition, the FTC rule applied to outbound and, for the first time, inbound calls by consumers in response to advertising.[527]

Nevertheless, the TSR left unregulated several important loopholes. As the FTC's regulatory authority does not extend beyond telemarketing, the TSR does not apply to debt settlement contracts that involve face-to-face or Internet transactions.[528] As outlined above, debt relief businesses have deep roots in modern American history. This history reveals that business models adapt to regulators' efforts to check fraud and deception and to protect vulnerable and financially distressed consumers.[529] The profit motive in debt relief, however, practically ensures that business models will emerge and proliferate.

Stakeholder interviews with New York State and New York City consumer protection officials and personnel at other states' attorneys general offices and enforcement agencies reveal that the TSR has without question stemmed 2000's-style debt settlement operators.[530] At the

[525] Id. § 310.4(a)(5)(i).
[526] Id. §§ 310.3(a)(1)(viii), 310.4(a)(5)(ii).
[527] Id. §§ 310.2 (cc), (dd) (defining "telemarketer" and "telemarketing." See also FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,458 (noting that the amended provisions "extend the TSR's coverage to include inbound calls made to debt relief companies in response to general media advertisements").
[528] Id. at 48,481 (noting that the "Commission conclude[d] that the abusive and deceptive practices in the debt relief services industry should be addressed through amendments to the TSR" and rejecting the suggestion that reforms extend to cover Internet and face-to-face transactions).
[529] Linfield, supra note 116, at 51-61 (providing a history of four generations of debt relief models and the abuses and reforms that marked some of their histories); see also Krivinskas, supra note 26, at 59-61 (providing an overview of the history of debt relief); McCune Donavan, supra note 148, at 217-19 (same).
[530] Notably, in the aftermath of the FTC's regulatory reforms, in November 2011, TASC's website listed only fifty-seven members. THE ASSOC. OF SETTLEMENT COS., available at http://www.tascsite.org/index.cfm?event=Members (last visited May 7, 2012). Since then trade organizations across the board have experienced steep declines in membership and TASC has reconstituted itself as The American Fair Credit Council. Elizabeth Ody, Debt Firms Play 'Whack-a-Mole' to Skirt Fee Ban, BLOOMBERG, Sept. 30, 2011, http://www.bloomberg.com/news/2011-09-30/debt-firms-play-whack-a-mole-to-skirt-fee-ban.html (noting that USOBA's membership declined from more than 200 to about 30 and that TASC's membership declined from 220 to about 35) (last visited May 8, 2012).

same time, officials with whom the Committees spoke indicated that the "purported attorney model" of debt settlement appears to be growing. While not entirely clear, the causes for this surge in the model may be not only the decline in debt settlement operators, but also increased industry scrutiny that has driven operators to hide behind attorney exemptions and to seek the veneer of professionalism.

4(a) The TSR and Other Regulation

This section reviews the legal framework governing debt settlement following the TSR amendments and the available evidence regarding emerging trends and practices.

4(a)(i) The TSR

Until the TSR, no federal regulation specifically addressed the abuses of debt settlement operators. In recent years the FTC challenged such abuses by bringing enforcement actions related to false advertising, pursuant to Section 5(a) of the FTC Act,[531] which gives the FTC broad power to enjoin deceptive acts and practices affecting interstate commerce.[532]

As discussed above, 2010 saw a major shift in federal regulation of the debt settlement sector, with the FTC's amendment of the TSR,[533] which governs telemarketing practices pursuant to the Consumer Fraud and Abuse Prevention Act.[534] The amended TSR, different provisions of which went into effect in September 2010 and October 2010, effectively expanded the Rule to apply to for-profit debt relief service providers who engage in telemarketing campaigns. The TSR defines "debt relief service" as:

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[531] 15 U.S.C. § 45(a).
[532] See, e.g., Appendix C (compiling list of FTC enforcement actions).
[533] See 16 C.F.R. pt. 310; FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458 (Aug. 10, 2010).
[534] See 15 U.S.C. §§ 6101-6108. The Consumer Fraud and Abuse Prevention Act was enacted in 1994, and the original Telemarketing Sales Rule was promulgated in 1995. Prior to the 2010 amendment concerning debt relief services, the TSR was amended in 2003 and in 2008, when it established the National Do Not Call Registry. FTC 2010 Final Rule amendments, 75 Fed. Reg. at 48,458. The TSR applies to virtually all ''telemarketing,'' defining telemarketing to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call." 16 C.F.R. § 310.2(dd).

> any service or program represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.[535]

The TSR's definition of "debt relief service" applies to for-profit debt settlement companies and debt negotiation companies.[536] Lead generators are also subject to the TSR.[537] TSR exempts non-profit entities and does not apply in situations where a payment or authorization of payment is not required of the consumer until after a face-to-face meeting.[538]

The amended TSR generally establishes four types of limitations on debt relief services: (1) a qualified ban on the imposition of advance fees; (2) specific disclosure requirements; (3) a prohibition of misrepresentations to consumers; and (4) an extension of the TSR to include inbound calls made to debt relief companies in response to general media advertisements.[539]

The amended TSR sets three conditions that must be met before a debt relief service provider may charge a fee for settling a debt.[540] First, the seller or telemarketer must have "renegotiated, settled, reduced, or otherwise altered the terms of at least one debt, pursuant to . . . [a] valid contractual agreement executed by the customer."[541] Such an agreement may consist of a settlement agreement or debt management plan.[542] Second, the customer must have made "at least one payment pursuant to" that contract between the customer and creditor or debt

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[535] Id. § 310.2(m) (2011).
[536] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,465-66 ("[T]he FTC Act exempts nonprofit entities, and, pursuant to the Telemarketing Act, this jurisdictional limit applies to the TSR.").
[537] Lead generators likely fall within the purview of 16 § C.F.R. 310.3(b), which targets practices assisting or facilitating deceptive telemarketing practices.
[538] 16 C.F.R. § 310.6(b)(3).
[539] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,458.
[540] The original TSR rule banned abusive practices in debt collection, pursuant to 15 U.S.C. § 6102(a)(1). 16 C.F.R. § 310.4 bans abusive practices, including the collection of advance fees as described in 16 C.F.R. § 310.4(a)(5)(i). 16 C.F.R. § 310.4(a)(5)(i).
[541] 16 C.F.R. § 310.4(a)(5)(i)(A).
[542] Id.

collector.[543] Third, the rule sets up two alternative formulas to determine when fees can be collected; the rule "places no restriction on the amount of fees that providers can charge or mandate a formula for calculating fees."[544] The rule requires that the fee:

> (1) [bear] 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 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.[545]

With regard to dedicated bank accounts set up for the purpose of collecting fees, the TSR permits debt relief providers to require consumers to place funds designated for the company's fees and for payment to the consumer's creditors or debt collectors in a dedicated bank account, only when the following five conditions are met:

> (A) the funds are held in an account at an insured financial institution;
>
> (B) the customer owns the funds held in the account and is paid accrued interest on the account, if any;
>
> (C) the entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;
>
> (D) the entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and
>
> (E) the customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with

[543] 16 C.F.R. § 310.4(a)(5)(i)(B).
[544] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,489.
[545] 16 C.F.R. § 310.4(a)(5)(i)(C).

§ 310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.[546]

In addition to the qualified ban on advance fees, the TSR also requires that four specific disclosures be made relating to debt relief services. These additions supplement the older TSR rule prohibiting deceptive practices. Under the older rule, an act is deceptive if "(1) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that representation or omission is material to consumers."[547]

The new TSR requires much more extensive disclosures than before. It states that "in a clear and conspicuous manner, before the customer consents to pay," the provider must disclose:

(1) the amount of time necessary to achieve the results as represented by the provider, including the amount of time it will take for a provider to make a settlement offer;

(2) the amount of accrued savings or percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer;

(3) where the program results in customers not making timely payments, the fact that failure to make payments may negatively impact the customer's creditworthiness, may trigger collections or legal action, and may increase the amount owed because of late fees and interest; and

(4) where a debt relief provider requests or requires that a dedicated account be created for purposes of the program, that the customer owns the funds held in the account, that the customer may withdraw from the service at any time without penalty, and that if a

[546] Id. § 310.4(a)(5)(ii).
[547] FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,497.

customer withdraws, that the customer must receive all funds in the account other than those earned by the debt relief service in compliance with the TSR's limitation on fees.[548]

The amended TSR expands the prohibition of misrepresentation to inbound calls from consumers in response to advertising related to debt relief services and also imposes new prohibitions. A number of prohibitions on misrepresentations already in place prior to the 2010 amendment have been expanded to the sale of debt relief services. They include:

(1) misrepresentations regarding total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the offer;

(2) misrepresentations regarding material restrictions, limitations, or conditions to purchase, receive, or use the offered goods or services;

(3) misrepresentations regarding any material aspect of the performance, efficacy, nature, or central characteristics of the offered goods or services;

(4) misrepresentations regarding any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(5) misrepresentations regarding the seller's or telemarketer's affiliation with, or endorsement or sponsorship by any person or government entity; and

(6) false or misleading statements to induce any person to pay for goods or services.[549]

Additionally, the new TSR adds an additional provision prohibiting specific types of misrepresentations unique to debt relief services (these prohibited misrepresentations run parallel to the disclosure requirements discussed above). The new provision prohibits sellers or telemarketers of debt relief services from making misrepresentations regarding any material aspect of any debt relief service, including the following:

[548] 16 C.F.R. § 310.3(a)(1)(viii).
[549] Id. §§ 310.3(a)(2) and 310.3(a)(4).

(1) misrepresentations of the amount of money or the percentage of the debt amount that a customer may save by using such service;

(2) the amount of time necessary to achieve the represented results;

(3) the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness;

(4) the effect of the service on the collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a service is offered or provided by a non-profit entity.[550]

One concern expressed by both advocates and government officials post-TSR has been the possible growth of regional, as opposed to national, debt settlement operators. As noted above, debt settlement operators who engage in face-to-face transactions are not subject to the TSR.[551] The Committees interviewed several New York City consumers who became involved in debt settlement scams involving face-to-face transactions and were subjected to advance fees.[552]

4(a)(ii) Other Regulation

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established the Consumer Financial Protection Bureau ("CFPB")[553] to "implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that . . . markets for consumer financial products and services are fair, transparent, and

[550] Id. § 310(a)(2)(x).
[551] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. at 48,481 (noting that the TSR does not cover Internet and face-to-face transactions).
[552] See infra Part 4.b.ii for case narratives.
[553] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 1021, 124 Stat. 1376, 1979 (2010) (codified at 12 U.S.C.A. § 5491 et seq.).

competitive."[554] The CFPB may enforce the Telemarketing and Consumer Fraud Prevention Act,[555] and has authority to supervise "larger participants" in the non-bank financial services sector.[556] While the CFPB's current list of regulatory priorities does not yet include debt relief services,[557] there is potential for the Bureau to oversee significant debt settlement operators in order to curb debt settlement abuses.[558]

In stakeholder interviews, some enforcement officials mentioned coordination and information sharing among state enforcement agencies and the FTC related to debt settlement. The Committees anticipate and hope that the CFPB will be involved in these activities, which can help enforcement agencies identify trends and track significant operators engaged in abusive and deceptive practices.

Following the TSR, the Uniform Law Commission amended the UDMSA to conform with its fee provisions.[559] The Commission also amended the UDMSA "to eliminate provisions barring for-profit entities from providing debt-management services."[560]

As noted previously, in current legislative sessions, bills have been introduced to license debt settlement for a fee in Connecticut,[561] Florida,[562] Massachusetts,[563] Minnesota,[564] New

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[554] 12 U.S.C.A. § 5511.
[555] Id. § 5581 (5)(B); see also Supervision and Examination Manual, CONSUMER FIN. PROTECTION BUREAU, 2 n.8 (Oct. 2011), available at http://www.consumerfinance.gov/wp-content/themes/cfpb_theme/images/supervision_examination_manual_11211.pdf (stating that "[t]he CFPB may enforce the Telemarketing and Consumer Fraud and Prevention Act") (last visited May 8, 2012).
[556] 12 U.S.C.A. § 5514 (a) (1) (providing that the Bureau's rulemaking authority extends to "larger participant[s] of a market for other consumer financial products or services").
[557] Fall 2011 Statement of Regulatory Priorities, CONSUMER FIN. PROTECTION BUREAU, http://www.consumerfinance.gov/regulations/fall-2011-statement-of-regulatory-priorities/ (last visited May 8, 2012).
[558] See, e.g., CONSUMERS UNION, DEFINING LARGER PARTICIPANTS IN CERTAIN CONSUMER FINANCIAL PRODUCTS AND SERVICES MARKETS (Aug. 15, 2011), available at http://defendyourdollars.org/CUcomment_largerparticipant_FINAL.pdf (last visited May 8, 2012) (comment letter).
[559] UNIFORM DEBT-MANAGEMENT SERVICES ACT (Prefatory Note 2011 Addendum), available at http://www.law.upenn.edu/bll/archives/ulc/UCDC/UDMSA_FINAL_2011_2.htm (last visited May 8, 2012).
[560] Id. (Prefatory Note 2011 Addendum).
[561] S.B. 362, Feb. Sess. (Conn. 2012), available at http://www.cga.ct.gov/2012/TOB/S/2012SB-00362-R00-SB.htm (permitting a debt negotiator to charge a maximum fee of 30% of the amount by which the debt negotiator reduces a consumer's debt) (last visited May 8, 2012).

Jersey,[565] New York,[566] and West Virginia.[567] Notably, Maryland adopted the Debt Settlement Services Act in May 2011.[568]

To date, no city or locality has passed legislation seeking to regulate the debt settlement services. However, on November 18, 2010, shortly after the implementation of the amended TSR, the Consumer Affairs Committee of the New York City Council held hearings on debt settlement. At those hearings, a representative from the New York City Department of

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[562] C.S./S.B. 336, Sess. 2012 (Fla. 2012) (permitting up to 30% of the amount saved calculated as the difference between the amount owed at the time the debtor enrolled in the debt settlement plan and the amount actually paid to satisfy the debt), available at http://www.cga.ct.gov/2012/TOB/S/2012SB-00336-R00-SB.htm (last visited May 8, 2012). This bill died in committee on March 9, 2012. See THE FLORIDA SENATE, available at http://www.flsenate.gov/Session/Bill/2012/0336 (last visited on May 8, 2012).

[563] H.B. 291, 187th Gen. Ct. (Mass. 2011), available at http://www.malegislature.gov/Bills/187/House/H00291 (last visited May 8, 2012).

[564] H.F. 2500, 87th Leg. Sess. (Minn. 2012), available at https://www.revisor.mn.gov/bin/bldbill.php?bill=H2500.0.html&session=ls87 (last visited May 8, 2012); S.F. 2141, 87th Leg. Sess. (Minn. 2012), available at https://www.revisor.mn.gov/bin/bldbill.php?bill=S2141.1.html&session=ls87 (last visited May 8, 2012).

[565] A. 601, 215th Leg. 2012 Sess. (N.J. 2012), available at http://www.njleg.state.nj.us/2012/Bills/A1000/601_I1.PDF (last visited May 8, 2012).

[566] See N.Y. A944, 2011-2012 Reg. Sess. (N.Y. 2011) ("Establishes the Uniform Debt Management Services Act"); A8341 2011-2012 Reg. Sess. (N.Y. 2011) (same); S5215, 2011-2012 Reg. Sess. (N.Y. 2011); S03735, 2011-2012 Reg. Sess. (N.Y. 2011).

[567] S.B. 375, 80th Leg., 2d Sess. (W. Va. 2012) (introduced Jan. 20, 2012), available at http://www.legis.state.wv.us/bill_status/bills_text.cfm?billdoc=sb375%20intr.htm&yr=2012&sesstype=RS&i=375 (last visited May 8, 2012); H.B. 4278, 80th Leg., 2d Sess. (W. VA. 2012) (introduced Jan. 24, 2012).

[568] Maryland Debt Settlement Services Act, signed into law as Chapter 281 by Governor in May 2011. See MD. CODE ANN. FIN. INST. §§ 12-901-12-931 (2011). Other states where bills were introduced following the TSR amendments taking effect include: California, S.B. 708, 2011-2012 Sess. (Cal. 2011) ("Debt Settlement Consumer Protection Act"), available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0701-0750/sb_708_bill_20110218_introduced.pdf (last visited May 8, 2012); Connecticut, S.B. 362, Feb. Sess. 2012 (Conn. 2012), available at http://www.cga.ct.gov/asp/CGABillStatus/CGAbillstatus.asp?selBillType=Bill&bill_num=SB362 (last visited May 8, 2012); Delaware, H.B. 72, 146th Gen. Assem. (Del. 2011) (introduced Mar. 3, 2011), available at http://www.legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+72/$file/legis.html?open (last visited May 8, 2012); Florida, H.B. 67, 2011-2012 Sess. (Fla. 2011) (introduced Aug. 3, 2011, died in committee Mar. 9, 2012), available at http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=47082 (last visited May 8, 2012); Minnesota, H.F. 2500, 87th Leg.2011-2012 Reg. Sess. (Minn. 2012), available at https://www.revisor.mn.gov/bin/bldbill.php?bill=H2500.0.html&session=ls87 (last visited May 8, 2012); New Mexico, H.B. 313, 50th Leg. 2011 Reg. Sess. (N.M. 2011), available at http://www.nmlegis.gov/Sessions/11%20Regular/bills/house/HB0313.pdf (last visited May 8, 2012); North Dakota, H.B. 108, 62nd Leg. Assem. (N.D. 2011); Ohio, H.B. 222 and S.B. 251, 129th Gen. Ass. 2011-2012 Reg. Sess. (Ohio 2011) (introduced Nov. 18, 2011), available at http://www.legislature.state.oh.us/BillText129/129_HB_222_I_Y.pdf (last visited May 8, 2012); Pennsylvania, S.B. 1193, 2011-2012 Reg. Sess. (Pa. 2011), available at http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=S&billTyp=B&billNbr=1193&pn=1478 (last visited May 8, 2012); Virginia, S.B. 930, 2011 Reg. Sess. (Va. 2011).

Consumer Affairs described the industry as, "by its very nature, predatory"[569] and, in response to a question posed regarding the possibility of licensing debt settlement companies, expressed concern about "legitimizing" an industry that "should not be present at all."[570]

In August 2011, DCA announced that, as part of a broad investigation into the debt settlement industry, it had issued subpoenas to fifteen (15) debt settlement companies, all of which were the subjects of complaints by New Yorkers and / or were based in the New York City area.[571]

In addition, DCA has undertaken a citywide campaign titled "Protect Your Money." This comprehensive public education campaign includes warnings to consumers regarding unscrupulous debt settlement operators. DCA encourages residents to seek services through the City's Financial Empowerment Centers, which contract with non-profit credit counseling organizations to provide free services to New Yorkers, including assistance with consumer debt and dealing with creditors.[572]

In addition to the services provided through the Financial Empowerment Centers, other services, options, and models exist for assisting financially distressed consumers address their debt crises. These alternatives do not pose the threat to consumer safety and protection posed by debt settlement for a fee. They include:

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[569] Hearing Before the N.Y.C. Council Comm. on Consumer Affairs, 7 (Nov. 18, 2010) (statement of Cathie Mahon, Deputy Comm'r for Fin. Empowerment, N. Y. C. Dep't of Consumer Affairs), available at http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=800532&GUID=50B9F7D5-1E85-4E2F-8E6F-452FA7011B0E&Options=&Search= (last visited May 8, 2012).
[570] Id. at 31.
[571] See Press Release, N.Y.C. Dep't of Consumer Affairs, Department of Consumer Affairs (DCA) Launches Investigation into Debt Settlement Companies (Aug. 9, 2011), available at http://www.nyc.gov/html/dca/html/pr2011/pr_080911.shtml (last visited May 8, 2012).
[572] See Protect Your Money, N.Y.C. DEP'T OF CONSUMER AFFAIRS, http://www.nyc.gov/html/ofe/html/policy_and_programs/protect_your_money.shtml (last visited May 8, 2012).

- Legal services programs that serve low- and moderate-income communities and help consumers assess their best available options, including attempting negotiation with creditors or, if necessary, filing for bankruptcy.
- Innovative models operated by grassroots organizations that aim to help low-income consumers improve their financial lives based on peer support, financial coaching, and behavioral economics. Such programs have shown the potential to help consumers address debt and deal with creditors directly.[573]

4(b) Debt Settlement Practices Following the TSR Amendments

While it may be too soon to reach definitive conclusions regarding the post-October 2010 landscape, certain discernable trends have emerged. Post-TSR, the ban on advance fees prevents operators (who engage in telemarketing) from capitalizing their operations in the same way as they did and perhaps from operating on the very large scale that some did.[574] Some, but not all, state enforcement officials with whom the Committees spoke reported marked drops in debt settlement activity and one reported that lead generators have declined. Nonetheless, the tremendous profit motive remains and many will skirt the law to profit from the most vulnerable and economically distressed consumers. Notably, in New York State, complaints to the Attorney

[573] Consumers clearly already negotiate directly with creditors. Some creditors will only negotiate with consumers or their legal representatives. Moreover, even debt settlement customers appear to end up negotiating directly with creditors. For example, 58 out of 5,453 accounts at issue with one creditor were settled for less than the full amount; of these, "30 were settled directly by the consumers, without any input from [lawyers or the debt settlement company]." In re Allegro Law, 2010 WL 2172256 (Bankr. M.D. Ala. July 6, 2010) (citing order granting a permanent injunction, Ala. v. Allegro Law, No. CV-09-125-F (Ala. Cir. Ct. Feb. 11, 2010)).

[574] See FTC 2010 TSR Final Rule Amendments, 75 Fed. Reg. 48,458, 48,478 (Aug. 10, 2010) (noting that "under an advance fee ban, providers [will] have to capitalize their businesses, at least initially, until they [begin] settling debts and collecting fees"); see also Order to Cease & Desist at ¶ 12, In re JHass Grp., No. 12F-BD021-SBD (Ariz. Dep't. of Fin. Insts. Sept. 29, 2011) ("According to JHASS's website, JHASS 'ha[d] grown from a single office in the home to an enterprise with nearly 100 offices nationwide [with its] Scottsdale office now occupy[ing] an entire floor of the building and employ[ing] 50+ support staff . . .'" (alterations in original)).

General filed between January 2011 and October 2011 exceeded complaints filed in all of 2009.[575]

In 2011, debt settlement operators appeared to have continued some of the practices of the 2000's. Some evidence exists that deceptive advertising and marketing have continued. The FTC sued a lead generator who used the Internet extensively and who misrepresented associations with federal government agencies in connection with debt relief.[576] In addition, the "purported attorney model" appears to be using the diverse and sophisticated telemarketing of 2000's-style operators.[577] Some companies appear to be using additional marketing, recruitment, and retention strategies. In interviews with Committee members, New York City residents reported:

- Being solicited by mail for mortgage modification followed by solicitation face-to-face for debt settlement at a follow up meeting;[578]
- Being solicited by telephone, which involved three repeated calls by the telemarketer even after the resident had twice indicated no interest in debt settlement;[579]

[575] Chart of complaints pursuant to FOIL request, on file with the Committees.
[576] Complaint at ¶ 6, FTC v. Mallett, No. 1:11-cv-01664 (D. D.C. Sept. 14, 2011), available at http://www.ftc.gov/os/caselist/1123105/110922usdebtcarecmpt.pdf (last visited May 7, 2012); see also id. ¶ 14 ("One website operated by Defendant, gov-usdebreform.net, has displayed the heading 'Department of Consumer Services Protection Commission' and the following: The Consumer Services Protection Commission (CSPC) is a National consumer protection agency and works For the Consumer to help avoid fraud, deception, and/or unfair business practices in the financial assistance marketplace."); see also id. ¶ 12 ("After providing their contact information, consumers who have sought services from one of the websites or organizations depicted on Defendant's websites typically have been subsequently contacted by third parties, including companies that sell debt relief services.").
[577] See Amended Complaint at ¶¶ 28-35, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Dec. 6, 2011) (describing defendant's marketing and "sales pitch" and stating that defendant "markets . . . on a website . . . and engages marketing companies that generate debt settlement leads through direct mail advertising, e-mail and telemarketing") (on file with the Committees); Complaint at 4, Ohio v. Nelson Gamble & Assocs., No. 12CV003049 (Ohio Ct. Common Pleas, Mar. 8, 2012), available at http://cdn.caveatemptorblog.com/wp-content/uploads/2012/03/2012-03-08-Nelson-Gamble-Complaint-FILE-STAMPED.pdf (describing law firms' website advertising and telephone solicitations) (last visited May 8, 2012).
[578] See infra Part 4.b.ii (Narrative #1).

- Being offered to receive a financial incentive if they recruited others to the debt settlement program;[580] and
- Being pressured to remain in debt settlement even after settling accounts on their own and attempting to cancel the contract.[581]

With regard to contracting practices, service providers seem to continue requiring consumers to sign limited powers of attorney.[582] It appears that debt settlement websites and contracts now disclaim any implication or encouragement that consumers should stop paying creditors.[583] The Committees reviewed some contracts that now require consumers to affirm that, for example, the debt settlement company "ha[s] not implied or encouraged you to stop paying the debts covered in our Program or any other debt."[584] Even so, whether a consumer is counseled to stop paying their creditors or not, there is no practical difference for financially distressed consumers. Because people involved with debt settlement companies are experiencing serious financial difficulties, very few are "capable of making simultaneous payments to a reserve account and to their creditors."[585] In addition, they typically cannot sustain such payment schedules. For example, the Committees interviewed a Bronx resident who entered into a post-TSR debt settlement contract following a face-to-face meeting.[586] This 56-year old

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[579] See infra Part 4.b.ii (Narrative #3).
[580] See infra Part 4.b.ii (Narrative #3).
[581] See infra Part 4.b.ii (Narrative #2).
[582] Complaint at ¶ 47, Legal Helpers Debt Resolution, No. 2011CH00286 ("Defendant is authorized to settle consumers' accounts because the consumers execute a special limited power of attorney appointing [defendant] as their attorney-in-fact which gives [defendant] authority to negotiate and settle accounts with creditors.") (on file with the Committees).
[583] See, e.g., Express Debt Settlement Inc. Debt Negotiation Agreement, ¶ 15 (dated Nov. 27, 2010) (on file with the Committees) ("At no time is Express Debt Settlement Inc., advising the client to stop paying their creditors what is owed to them.") (emphasis omitted).
[584] Fingo Group, Inc. Contract, at 2 (dated Sept. 8, 2011) (on file with the Committees); see also Express Debt Settlement Inc. Debt Negotiation Agreement ¶ 17c (dated Nov. 27, 2010) (on file with the Committees).
[585] McCune Donovan, supra note 148, at 216 ("[B]ecause most consumers enter into debt-settlement plans for the very reason that they are already unable to pay their monthly bills, it is unlikely that very many individuals are capable of making simultaneous payments to a reserve account and to their creditors.").
[586] See infra Part 4.b.ii (Narrative #1).

immigrant works as an office cleaner and speaks no English.[587] Under the contract, the debt settlement operator had debited from her special purpose account one-third of her monthly net pay.[588]

In September 2011, the Illinois Attorney General filed a motion for a preliminary injunction against Legal Helpers Debt Resolution ("LHDR") and attached several affidavits as exhibits.[589] One individual called and spoke with a client service representative in response to a direct mail solicitation received in February 2011.[590] An LHDR paralegal brought a contract to the individual's house on February 21, 2011.[591] The paralegal and the individual met for approximately 20 minutes, and the individual signed the contract.[592] Between February and April 2011, when she cancelled the contract, the individual paid LHDR approximately $1,260 in fees even though LDHR did not settle any accounts and she never met with an LHDR attorney.[593]

An attorney employed by LHDR was informed on October 26, 2010—one day before the TSR's ban on advance fees went into effect—that he would "soon be taking appointments with potential clients."[594] The attorney met with two[595] individuals, neither of whom "signed up," and then was no longer permitted to meet with potential LHDR clients.[596]

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[587] Id.
[588] Id.
[589] Motion for Preliminary Injunction at Exhibits 2-17, Illinois v. Legal Helpers Debt Resolution, No. 2011-CH-286 (Ill. Cir. Ct. Sept. 30, 2011) (on file with the Committees).
[590] Id. at Exhibit 4.
[591] Id.
[592] Id.
[593] Id.
[594] Complaint at Exhibit 17, Legal Helpers Debt Resolution, No. 2011-CH-286 (on file with the Committees).
[595] The attorney swore:

> I met with the first LHDR client in or around November 2010 and reviewed his financial situation. It was my professional judgment that the LHDR debt settlement program was not advisable or appropriate for this client. I shared that professional advice with the client and the client chose not to sign an agreement with LHDR.
> I met with a second LHDR client in or around December 2010, and after fully explaining the LHDR Debt settlement program and responding to questions, that client made an informed decision not

Morgan-Drexen provided a schedule of fees charged to West Virginia consumers to the West Virginia Attorney General in November, 2010.[597] The schedule lists ten consumers who enrolled after October 27, 2010 and who paid "engagement fees" ranging from $1,000 to $3,250.[598]

A New Debt Settlement Model. The Fingo Group Inc. ("Fingo") is a non-profit organization, which was incorporated in Arizona two months before the TSR went into effect.[599] The company is located at the same address as the J. Hass Group, LLC [600] an entity which has been the subject of at least one state enforcement action[601] and at least one private lawsuit regarding abusive debt settlement practices and which is also affiliated with "The Law Office of Jason Hass."[602] The initial board of directors for the Fingo Group included a board member of and the registered agent of the J. Hass Group.[603] In September 2010, all three members of the board of Fingo resigned and were replaced.[604]

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to sign an agreement with LHDR.
Id. ¶¶ 9-10.
[596] Id.
[597] Morgan Drexen Fees Spreadsheet produced in connection with West Virginia v. Morgan Drexen, Inc. No. 11-C-829 (W. Va. Cir. Ct. May 20, 2011) (on file with the Committees).
[598] Id.
[599] Corporate Inquiry, Fingo Group, Ariz. Corp. Comm'n, available at http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-id=16234623&type=CORPORATION (last visited May 8, 2012). Administrative dissolution is pending because the company's first annual report has been delinquent since August 24, 2011. Id.
[600] Compare id. with Corp. Inquiry, J. Hass Grp., ARIZ. CORP. COMM'N, available at http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-id=L14325284&type=L.L.C.#ScannedDocuments (last visited May 8, 2012).
[601] Order to Cease & Desist, In re JHass Grp., No. 12F-BD021-SBD (Ariz. Dep't of Fin. Insts., Sept. 29, 2011), available at http://www.azdfi.gov/Final/Forms/JHASS_Group_C&D_ULA_9-29-2011.pdf (last visited May 7, 2012).
[602] See Complaint, Duran v. Hass Grp., 2010 WL 4236649 (E.D.N.Y. Oct. 5, 2010) (on file with the Committees). See also Corp. Inquiry, Law Office Of Jason D. Hass, PLC, ARIZ. CORP. COMM'N, available at http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-id=P12846865&type=PROFESSIONAL%20L.L.C. (last visited May 8, 2012), and JDH & Associates, available at http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-id=L14367386&type=L.L.C. (last visited May 8, 2012).
[603] Corp. Inquiry, J. Hass Grp., ARIZ. CORP. COMM'N. The board members listed in the articles of incorporation were three individuals, who all appear to be related.
[604] Corp. Statement of Change, Inquiry, Fingo Grp., ARIZ. CORP. COMM'N, available at http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-

According to a signed "Consumer Agreement for Debt Settlement Services" dated September 8, 2011, consumers who enroll with Fingo pay a "Non-Discounted Settlement Fee," which is "calculated at 30% of the total enrolled debt or the maximum allowable in your state whichever is less . . . ." [605] The agreement provides that about ten percent (10%) of a consumer's monthly deposit "will be held in escrow as a Settlement Fee until the total Settlement Fee has been satisfied and a settlement has been fulfilled on an account."[606] Thus, the agreement does not provide for any advance fees. However, the agreement describes an arrangement with an affiliate, and the affiliate can collect fees from consumers enrolled with Fingo before any debts are settled.[607]

The agreement states that "Fingo has provided discounts to various organizations and associations," and mentions discounts for members of "Atlas Consumer Cooperative" ("Atlas").[608] A "Membership Agreement for Coop Educational Services & Products" on Atlas's letterhead,[609] also dated September 8, 2011, states that Atlas "does not provide debt relief; however, as a member of the Coop you shall receive an eighty-five percent (85%) discount with the Fingo Group, Inc."[610] There is a "onetime signup and initiation fee of $300" and the "monthly recurring membership fee [of] $150" required for membership in the "Coop."[611] The

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id=16234623&type=CORPORATION, document number 03211190 (last visited May 8, 2012). The board members listed in the articles of incorporation overlapped with that of J. Hass group by one person and the designated agent. The current board includes an individual who appears to be related and shares the same last name as previous individuals on the J. Hass board of directors.

[605] Fingo Group, Inc. Contract (dated Sept. 8, 2011) (on file with the Committees).

[606] Id.

[607] Id.

[608] Id.

[609] Atlas Consumer Cooperative Agreement (Sept. 8, 2001) (on file with the Committees).

[610] Id.

[611] Id. at 2.

listed benefits of membership include: "Budgeting Education, . . . Impact Plus MasterCard, 40% discount for FINGO Debt Relief Plan, . . . [and] Usage of Coop Trust Account . . . ."[612]

Other provisions of both the Fingo Agreement and the Atlas Agreement resemble those in debt settlement contracts that predate the TSR. The Fingo Agreement provides that consumers will deposit funds into a "reserve" account.[613] The Atlas Agreement includes an ACH Authorization, which permits Atlas to deduct funds from a consumer's bank account.[614] The Fingo Agreement includes a limited power of attorney.[615] Both agreements include arbitration clauses and class action waivers.[616] Both agreements also provide that "by entering this agreement, you agree that you will not make electronic postings about this Program or our services."[617]

In addition to the emergence of the "purported attorney model," debt settlement operators will no doubt take advantage of loopholes and try to avoid the restrictions of both the TSR and state provisions.

4(b)(i) Scope of Debt Settlement Following the TSR Amendments

A few of the states that regulate debt settlement companies require oversight agencies to publicize the companies that are licensed or registered.[618] Colorado and Illinois statutes permit regulators to publish annual reports.[619] Texas and New Jersey mandate annual reports from debt

[612] Id. It is unclear why the agreement lists two different discount percentages in two clauses on one page of the agreement.
[613] Fingo Group, Inc. Contract.
[614] Atlas Agreement.
[615] Fingo Group, Inc. Contract.
[616] Atlas Consumer Cooperative Agreement; Fingo Group, Inc. Contract.
[617] Fingo Group, Inc. Contract.
[618] See, e.g., COLO. REV. STAT. § 12-14.5-204(c) (2012) (effective Jan. 1, 2008) ("The administrator shall maintain and publicize a list of the names of all registered providers."); MINN. STAT. § 332B.04(5) (2012) (effective Jul. 1, 2009) ("The commissioner must maintain a list of registered debt settlement services providers. The list must be made available to the public in written form upon request and on the Department of Commerce Web site.").
[619] COLO. REV. STAT. § 12-14.5-211(c)(8) (2012) (stating that registrants seeking renewal of registration must "[p]rovide any other information that the administrator reasonably requires to perform the administrator's duties under this section"); 225 ILL. COMP. STAT. 429/33(a) (2012) (effective Jan. 1, 2008) ("A debt settlement provider

management service providers (for-profit in the case of Texas and non-profit for New Jersey); and that those reports be made publicly available.[620] Some limited additional information is available from such states[621] and it suggests that few debt settlement service providers may be registered or licensed in states with such requirements.

- **Colorado.** The Colorado Department of Law 2010 Annual Report reflected data from twelve registered debt settlement providers.[622] As of the publication of this White Paper, the Department had yet to publish an annual report for 2011. A May 8, 2012 listing of providers registered pursuant to Colorado's Debt-Management Services Act includes a total of sixty-three (63) entities, both non-profit and for-profit and with active, canceled, and expired statuses.[623] Of these sixty-three (63) entities, twenty (20) provided debt settlement services—eighteen (18) exclusively and two (2) along with credit counseling services.[624] Of these twenty (20) debt settlement companies, only nine (9) appeared to have active registrations.[625]

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must file an annual report with the Secretary . . . ."); § 429/33(b) ("The Secretary may prepare and make available to the public an annual consolidated report of all the data debt settlement providers are required to report pursuant to subsection (a) of this Section.").

[620] TEX. FIN. CODE ANN.§ 394.205(e) (2012) (effective Sept. 1, 2005) ("The commissioner shall make the information provided under this section available to interested parties and to the public."); N.J. STAT. ANN. § 17:16G-5(g) (2012) (effective Feb. 8, 1979, amended effective Jan. 11, 2010) ("The licensee shall make a copy of the annual report and audit available for public inspection at each of the licensee's locations.").

[621] Only one debt settlement company has become licensed with the State of Illinois. See supra note 363. Colorado also compiles and publishes data on debt settlement providers registered pursuant to the state's Uniform Debt Management Services Act. COLO. REV. STAT. § 12-14.5-201 et seq. (2012). The state's Department of Law, which enforces the Act, requires registered debt settlement providers to submit annual reports.

[622] 2010 ANNUAL REPORT, supra note 209, at 1 n.1 (reporting that for the reporting period there were 10 debt settlement providers and 2 providers that provided both credit counseling and debt settlement services).

[623] Registered Debt-Management Providers & Disciplinary History as of 5/8/2012, COLO. ATT'Y GEN. DEP'T OF LAW, http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/DMReport.pdf (last visited May 8, 2012).

[624] Id.

[625] Id.

- **Illinois.** As of May 2012, only one for-profit debt settlement company has become licensed pursuant to the State's Debt Settlement Consumer Protection Act.[626]
- **Maine.** The Maine Department of Professional and Financial Regulation publishes a roster of debt management service providers.[627] As of April 2012, the roster lists fifty-two entities, some of which are listed multiple times.[628]
- **Minnesota.** The Minnesota Department of Commerce publishes a list of licensed debt settlement companies. The list contained only eleven (11) operators.[629]

These low numbers suggest either that few debt settlement operators bother to register or become licensed or that there has been a decline in the number of such outfits or both.

4(b)(ii) Impact of Debt Settlement on Consumers Following the TSR Amendments

The Committees interviewed New York City residents who entered into contracts with debt settlement operators for a fee and include three case studies below. Two of the narratives involved post-TSR contracts for debt settlement services; all three highlight the devastating outcomes experienced by the consumers.

Narrative # 1: The Face-to-Face Loophole

One method the debt settlement companies use to do an end run around the TSR is to bring the client in for a face-to-face meeting on another topic—mortgage modification, in this case. Ms. A is a Hispanic woman in her late 50's who works as an office cleaner. Her monthly take-home pay is approximately $1,500 and her total unsecured debt is approximately $37,000.

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[626] See supra note 363.
[627] STATE OF ME. DEP'T. OF PROF'L & FIN. REGULATION, Consumer Credit Protection, Rosters (Apr. 27, 2012), http://www.maine.gov/pfr/consumercredit/rosters/ (last visited May 8, 2012).
[628] Id.
[629] Debt Settlement List – Ordered by City, Name, MINN. DEP'T OF COMMERCE (May 7, 2012), http://www.commerce.state.mn.us/FSLicensees/ds.html (last visited May 8, 2012).

She co-owns a home and had received many solicitations for mortgage modification in the mail. Because she wanted to lower her mortgage payments, she called one of these mortgage modification companies ("MMCs") and went to its office for an in-person appointment, accompanied by a family member. Told on the phone that it would cost $795 in cash to get started, she brought this amount in cash to the first meeting.

At this meeting the representative of the MMC discussed mainly mortgage modification, but also inquired as to Ms. A's credit card debt, and broached the topic of debt settlement, offering to help if she was interested. Ms. A said she needed time to think about the credit card issues. Her first language is Spanish, and the meeting with the representative of the MMC was conducted entirely through a translator provided by the MMC.

In November 2010, around the time Ms. A submitted the last of her modification payments, a debt settlement plan ("DSP") was discussed and agreed to (the "Agreement"). The Agreement with the debt settlement company ("DSC") was signed with the same MMC representative. The DSC and the MMC share the same office, address, phone and fax numbers and staff.

Ms. A's understanding of the arrangement with the DSC was that it would cut her $37,000 debt in half and that all of her debts would be paid off. The representative explained that the first two months of payments were the representative's fee, although the agreement the consumer signed indicates that the fee was substantially more than this. It is important to note that the conversation with the representative was conducted entirely through a translator in Spanish, but Ms. A was neither provided Spanish versions of the contract nor the other documents. They were in English only, and no offer to translate the documents was provided. The consumer also signed an agreement authorizing an FDIC-insured Special Purpose Account

Servicer ("SPAS") to establish a special purpose account, which debited her bank account the DSC's monthly fee along with its own monthly fee.

The monthly debit from Ms. A's bank account to her DSP account, held with the SPAS, was one-third of her monthly net pay.

In March 2011, Ms. A received a summons and complaint from one of the creditors covered under the Agreement, which she faxed to the representative. In May 2011, the representative sent Ms. A a document suggesting she contact an attorney about the lawsuit. During the period she was a client of the DSC and shortly thereafter, she was served in four lawsuits by creditors covered under the Agreement.

After the representative received the last of Ms. A's home modification payments, which were part cash, the representative had very little contact with her. Throughout the debt settlement process the only statements Ms. A received were from the SPAS, indicating that her account was being debited monthly. The DSC sent no accounting or statements. The DSC claimed it settled two debts for Ms. A, but did not provide proof of either.

The document the DSC sent to Ms. A stating it had settled the first debt suggests the debt was simply charged off by the creditor—a common step in a creditor's handling of unpaid credit card debt—not something initiated by the DSC. The DSC received the charge-off letter because it sent letters to all of Ms. A's creditors making the DSC her agent for communications with the creditors. Thus the DSC now received all mailings from Ms. A's creditors, including the charge-off letter, which in the normal course of business would have gone directly to the client. The DSC merely accepted the "settlement" offered by the creditor in the charge-off process and used this as justification to extract a fee from Ms. A. Ms. A's SPAS statement reflects an August 2011 debit to the creditor in the amount of the "settlement." The following day, and then six

days later, fees totaling 126% of the amount of the "settlement" were debited from her SPAS account.

Similarly, Ms. A's SPAS statement suggests the DSC "settled" with a second creditor in September 2011 for an amount approximately 11% higher than that offered directly to the client by the creditor in an unsolicited February 2011 mailing from the creditor's attorneys, during the period she was subject to the Agreement with the DSC, and which the DSC told her to reject. The DSC did not provide Ms. A with any paperwork on this settlement.

Prior to signing with the DSC, Ms. A had an agreement with a third creditor to pay $69 per month for five years ($4,140). The DSC told her to stop paying this creditor, which she did for three months. The creditor recently called Ms. A to offer a new payment plan, $127 per month for five years ($7,620)—an 84% increase!

When Ms. A tried to close her account with the SPAS by phone she was told to email or text the SPAS the request. Her July 2011 statement indicated a balance of $3,524.84. Ms. A's October 15, 2011 SPAS statement indicated a balance of $17.28. Ms. A described her experience: "I lost a lot of money—$3,500! I had trouble paying my bills, including my electric bill and my mortgage and my situation definitely got worse. I was able to connect with a legal services attorney who is now helping me deal with my credit card debt, including settling with creditors."

Following a complaint by the consumer to the New York State Office of the Attorney General, the Office reached out to the MMC inquiring whether it was involved in the business of debt settlement. In its written response, the MMC denied being in the business of debt settlement and denied that Ms. A was ever a client of the MMC. This is despite the fact that for all intents and purposes the MMC and DSC are one and the same entity.

Ms. A's DSC contains a poorly drafted arbitration clause requiring her to arbitrate any dispute arising under the contract in Nassau County, New York or the county in which she resides. This effectively bars her from seeking redress in a matter such as this in the courts.

Narrative # 2: Out of State Company Targets New York State Resident

The consumer, Ms. B, is a Bronx resident who enrolled with a New Jersey DSC pre-TSR. She enrolled approximately $12,000 in unsecured outstanding debt. Like another consumer interviewed for these narratives, her consultation was conducted entirely through a translator in Spanish, but documents were provided in English without translations.

Prior to entering into the agreement with the DSC, Ms. B had been making the minimum payment on all her credit cards; however, as instructed by the DSC, she stopped making payments on her accounts expecting they would be paid by the DSC as promised. During the first five months enrolled with the DSC, she received numerous calls from collection agencies and noticed, based on her bills, that the DSC was not making any payments to her creditors. When she contacted the DSC to inquire about this, she was informed she would need to accumulate funds for a year before they could make any payments to her creditors. She had not understood this when she enrolled. Although the DSC at this point had $700 of her money and she had no results, she continued with them because the DSC pressured her into staying with the program, telling her that she would be worse off if she did not.

Further, during this time Ms. B received offers from her creditors, but did not accept them because was she instructed not to by the DSC. In any event, she could not have taken advantage of the offers because she could not afford to pay <u>both</u> the DSC and creditors.

To make matters worse, Ms. B was subsequently served in a lawsuit for one of her debts that represented almost a third of the debt covered by the agreement. When she contacted the DSC about the lawsuit, she was told by her account representative (not an attorney) not to go to court or enter any settlements because the DSC was in charge of her settlement.

The DSC again used bully tactics after the client sent a termination letter drafted with the assistance of a limited legal advice program and copied to the FTC, the New York City Department of Consumer Affairs, and the New York State Office of the Attorney General. In response to the termination letter, the DSC told her she would "lose everything" if she terminated the agreement. Upon receipt of an inquiry into the matter from the Attorney General's Office, the DSC wrote to the Office and reported that the dispute with Ms. B had been amicably resolved.

Narrative # 3: New Yorkers With Moderate Incomes Also Targeted

The consumer, Ms. C, is a Bronx resident who began receiving calls from a New York DSC prior to the TSR and enrolled approximately $50,000 in unsecured debt post-TSR. To enroll Ms. C, this DSC used the tactic of repeated phone calls coupled with a home visit, thereby exploiting a loophole in the TSR. The DSC pitched the company's ability to negotiate reduced balances and "Obama's Program" that allows credit card companies to reduce interest rates. The DSC's materials also included an offer of $100 to any customer who provided a successful referral. At the home visit the representative of the DSC told Ms. C, among other things, that with a monthly payment of approximately $1,800 the DSC could negotiate settlements with all her creditors within two years and that her credit would "remain intact." Given the large amount

of debt she had outstanding at that point relative to her income, it is likely her credit was already severely damaged.

In addition to a welcome packet, Ms. C was also given a receipt for what is known as a DAAN transmitter module. This is a device that purportedly routes creditor calls to an attorney. The consumer never received such a device.

This DSC used an FDIC-insured third-party SPAS for their special purpose accounts. Ms. C noticed that, after a few months, there was no decrease in the number of collection calls she received and her balances with her creditors did not reflect any payments from the DSC, although the DSC via the SPAS was debiting approximately $1,800 from her bank account every month.

Like the other consumers interviewed for these narratives, Ms. C was sued on some of her debts covered by the agreement. When she contacted the DSC about one of the lawsuits, she was told that all the lawyers were out on assignment and one would get back to her shortly. No one ever did.

In another lawsuit, the DSC told Ms. C that the debt at issue in the lawsuit was one of the four they had settled for her. When she went to the DSC's offices to get an affidavit to this effect (i.e., proof requested by the court), she was told by a security guard that the company had changed its name and had moved offices. However, the DSC's website was still up and running under the DSC's original name.

At the time of Ms. C's interview with the Committees, eighteen debits of approximately $1,800 had been debited from her bank account into her SPAS account for an astonishing total of approximately $32,000, money she could have used to pay her creditors directly and will most likely never see again.

5) The Rationale for a Ban of Debt Settlement for a Fee that is More than Nominal

For debt settlement operators who are evading the advance fee ban and other TSR protections under the shield of face-to-face transactions, the Internet, and attorney exemptions, it is safe to say that they are continuing to target vulnerable, financially distressed consumers, and exacting considerable fees (including advance fees) while inflicting substantial financial harm. Stakeholder interviews with state enforcement officials in eight states suggest that such practices are taking place under the "purported attorney model" of debt settlement.

Even where for-profit debt settlement companies appear to comply with federal and, where applicable, state provisions, the Committees have concluded that debt settlement for more than a nominal fee cannot yield a net benefit to consumers as a class. For consumers who are current on accounts prior to enrollment and default after enrollment, evidence in the public record has shown the substantial harm to consumers that ensues, namely, damaged creditworthiness, increased debt, and increased debt collection activity by creditors. This is the most likely scenario for the vast majority of debt settlement customers, who only turn to debt settlement because they are financially distressed.

For consumers who remain current after enrollment (i.e., making minimum payments and paying into special purpose accounts, a highly unlikely scenario for financially distressed consumers), the industry has yet to produce any data to show that such consumers exist in any significant numbers or that operators generate net savings to consumers at rates that warrant legitimizing the industry.

The Committees posit that, given the overwhelming evidence of predatory, abusive, and deceptive practices in the debt settlement sector, especially pre-TSR but even post-TSR, and the historic risk of such practices continuing through adapted models, New York State should ban debt settlement for more than a nominal fee, whether by for-profit companies or non-profit

providers. With advance fees, the model overwhelmingly and conclusively did not generate net savings for consumers. Even without advance fees, however, the Committees' review of the record and available evidence leads them to conclude that providers that remain profitable cannot show net savings for consumers at sufficient rates to warrant regulatory oversight.

Conclusion and Recommendations

Pre-TSR, the public record is replete with examples of how debt settlement has harmed consumers. The FTC relied on the extensive evidence of consumer harms as support for amending the regulations governing telemarketing of debt relief services, including debt settlement. Where telemarketing is taking place, the regulatory amendments prohibit abusive and deceptive practices including advance fees and misleading representations. Post-TSR, law enforcement agencies and other observers and commentators have seen a sea change: 2000's-style debt settlement is in retreat. Unfortunately, however, a new generation of debt settlement is already emerging: the "purported attorney model" as well as other business models that capitalize on existing exemptions and other loopholes. These models sidestep the 2010 FTC protections and engage in some of the practices already shown to be harmful to consumers, such as advance fees and deceptive marketing.

After months of study of the available public record and numerous stakeholder interviews, the Committees conclude that even without advance fees, debt settlement operators cannot operate profitably and provide consumers as a class with net savings. The Committees further conclude that statutory regimes that regulate debt settlement providers legitimize a service model that is inherently flawed and has been historically harmful to consumers. The historical record has also shown that licensure spawns illegitimate actors that operate in the shadow of regulated actors. Finally, the Committees have found that other services exist to help

financially distressed consumers address their debt crises. These alternatives do not pose the threat to consumer safety and protection posed by fee-based debt settlement services and they include legal services organizations and free financial counseling and education programs.

Accordingly, the Committees' recommendations are as follows:

1. New York State should adopt a ban of debt settlement for a fee that is more than nominal.[630] More particularly, state legislators and Governor Andrew Cuomo should oppose bills currently introduced to license debt settlement operators.[631] Should a licensure regime be considered, at a minimum:
    - operators should not be permitted to enter into contracts with consumers with income exempt from collection; and
    - operators should not be permitted to charge as a fee more than 5% of savings calculated based on the amount of the debt initially enrolled less the settlement amount up to a modest fee cap.
2. New York State's Rules of Professional Conduct should be enforced against attorneys involved in debt settlement operations who purport to be acting as attorneys. To the extent attorneys engaged in these enterprises are not acting as attorneys, their conduct would fall outside the scope of the Rules of Professional Conduct and should therefore be included in the statutory scheme.

[630] The Committees do not make any recommendation on the amount that would constitute a nominal fee.
[631] See A. 944, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=A00944&term=2011; A. 8341, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=A08341&term=2011; S. 5215, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=S05215&term=2011; S. 3735, 2011-2012 Reg. Sess. (N.Y. 2011), available at http://assembly.state.ny.us/leg/?sh=printbill&bn=S03735&term=2011.

3. Whatever the statutory framework for governing debt settlement services, New York State should provide for a private right of action for violations of the law and attorney's fees.
4. New York State consumer protection agencies should undertake statewide campaigns to educate consumers regarding the dangers of unscrupulous debt settlement providers and to inform them of other no-fee alternative options available to them, such as the "Protect Your Money" campaign and the Financial Empowerment Centers of the New York City Department of Consumers Affairs.
5. New York City and New York State should expand free legal services, free financial education, and free financial and bankruptcy counseling to low-income and working-poor residents who are the target of unscrupulous debt settlement companies.
6. Bar associations throughout the state should undertake education efforts related to debt settlement such as: (a) informing consumers how to file complaints against unscrupulous debt settlement providers with enforcement agencies and, when attorneys are involved, with disciplinary committees; and (b) educating attorneys regarding the ethical obligations that are implicated by some of the practices of the "purported attorney model" of debt settlement.
7. The federal Consumer Financial Protection Bureau ("CFPB") should make oversight of the debt settlement industry a priority and should require that debt settlement providers collect and report aggregate data. The CFPB should make that data public.

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APPENDIX A - Compilation of Sources

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APPENDIX B - Ownership and Organization of Debt Settlement Companies in State Enforcement Actions

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Arizona Department of Financial Institutions	In re JHass Group L.L.C. a/k/a J. Hass Group, LLC, Jason D. Hass et al.[632]	JHass Group, LLC[633]	JHass Group, LLC—**Arizona** limited liability company[634]	Individuals—three individuals[635]
Arizona State Banking Department	In re Miracle Management Group, Inc. and Hyla Stanton President; and Risk Management Partners, Ltd.[636]	Miracle Management Group, Inc.	**Nevada** Corporation[637]	Individual[638]
California Attorney General	California v. Freedom Debt Relief, LLC[639]	• Freedom Debt Relief, LLC • At least six other related entities are mentioned[640]	Freedom Debt Relief, LLC—**Delaware** limited liability company[641]	Individuals—two co-owners[642]

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[633] Id. ¶ 1.
[634] Id.
[635] Id. ¶ 4.
[636] Consent Order, In re Miracle Mgmt. Grp., Inc., No. 06F-BD002-BNK (Ariz. State Banking Dep't., Aug. 26, 2005), available at www.azdfi.gov/PR/Miracle_Consent_Order.pdf (last visited May 7, 2012).
[637] See id. ¶ 1.
[638] See id. ¶ 2.
[639] Complaint, California v. Freedom Debt Relief, No. CIV477991 (Cal. Super. Ct. Oct. 30, 2008) (on file with the Committees).
[640] Id. at 3-7.
[641] Id. at 3, ¶ 6.
[642] Id.

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Colorado Attorney General	Colorado v. The Johnson Law Group, PLLC[643]	The Johnson Law Group[644]	**Florida** limited liability company[645]	Individual— one sole owner[646]
Colorado Attorney General	Colorado v. Enhanced Servicing Solutions, Inc.[647]	Enhanced Servicing Solutions, Inc.[648]	**New York** corporation[649]	Individual[650]
Florida Attorney General	Florida v. Credit Solutions of America[651] (also sued by the Maine, New York, Texas, and Vermont attorneys general)[652]	Credit Solutions of America	**Texas** corporation[653]	None mentioned

[643] Complaint, Colorado v. Johnson Law Grp. (Colo. Dist. Ct. Apr. 28, 2011) (on file with the Committees), available at http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2011/04/28/jlg_pllc_complaint.pdf.
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[648] Id. ¶ 4.
[649] Id.
[650] Id. ¶ 5.
[651] Complaint, Florida v. CSA – Credit Solutions of Am., No. 8:2009cv02331 (Fla. Cir. Ct. Nov. 16, 2009), available at http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7WYJAU/$file/CSAcomplaint.pdf (last visited May 7, 2012).
[652] Complaint, Maine v. CSA – Credit Solutions of Am., No. BCD-WB-CV-10-02 (Me. Super. Ct. 2010) (last visited May 7, 2012); Complaint, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/2009 (Sup. Ct. N.Y. May 13, 2009) (on file with the Committees); Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/032509csa_op.pdf (May 7, 2012); Order Granting Pl.s' M. Summ. J., Vermont v. CSA – Credit Solutions of Am., No. 484-7-10 (Mar. 21, 2012), available at http://www.atg.state.vt.us/assets/files/CSA%20Order.pdf (last visited May 7, 2012).
[653] Complaint at ¶ 9, Florida v. CSA – Credit Solutions of Am., No. 8:2009cv02331.

Enforcement Agency	Name of Case / Proceeding	Debt Settlement Company / Companies	Legal Structure	Ownership / Control
Florida Attorney General	Florida v. Consumer Law Group[654]	• Consumer Law Group, P.A., • American Debt Negotiators Inc.[655]	**Florida** for-profit corporations[656]	Three individuals[657]
Florida Attorney General	Florida v. Nationwide Asset Services et al.[658]	• Nationwide Asset Services Inc. • Service Star, LLC • Universal Debt Reduction LLC • ADA Tampa Bay, Inc. d/b/a American Debt Arbitration[659]	• Nationwide Asset Services, ServiceStar, LLC, Universal Debt Reduction are all **Arizona** corporations[660] • ADA Tampa Bay, Inc. is a **Florida** corporation[661]	Individual—Director of ADA Tampa Bay, Inc.[662]

[654] Complaint, Florida v. Consumer Law Grp., No. 12-00762 (Fla. Cir. Ct. Jan. 10, 2012) (on file with the Committees).
[655] Id. at 2.
[656] Id.
[657] Id. at 2-3.
[658] Complaint / Petition for Injunctive Relief, Florida v. Nationwide Asset Servs., Inc., available at http://myfloridalegal.com/webfiles.nsf/WF/KGRG-7WYJCD/$file/ADAcomplaint.pdf (last visited May 7, 2012).
[659] Id. ¶¶ 10-14.
[660] Id. ¶¶ 10-12.
[661] Id. ¶ 13.
[662] Id. ¶ 14.

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Idaho Department of Finance	Idaho Dep't of Fin. v. Debt Settlement Solutions, Inc.[663]	Debt Settlement Solutions, Inc.[664]	**Florida** corporation[665]	Individual—Owner, President[666]
Idaho Department of Finance	Idaho Dep't of Fin. v. Debtpro 123, LLC[667]	Debtpro 123, LLC[668]	**California** limited liability company[669]	None mentioned
Idaho Department of Finance	Idaho Dep't of Fin. v. Freedom Debt Solutions, LLC[670]	Freedom Debt Solutions, LLC[671]	**Texas** limited liability company[672]	Individual[673]
Illinois Attorney General	Illinois v. Legal Helpers Debt Resolution, LLC[674]	Legal Helpers Debt Resolution, LLC	**Nevada** limited liability corporation[675]	None mentioned
Maine Attorney General	Maine v. CSA – Credit Solutions of America, Inc.[676]	CSA – Credit Solutions of America, Inc.[677]	**Texas** corporation[678]	Individual—Founder, Sole Shareholder, President, CEO[679]

[663] Consent Order, Idaho v. Debt Settlement Solutions, No. 2011-9-04 (Idaho Dep't. of Fin. Mar. 29, 2011), available at http://finance.idaho.gov/ConsumerFinance/Actions/Administrative/DebtSettlementSolutions,Inc.-ConsentOrder-2011-9-04.pdf (last visited May 7, 2012).
[664] Id. ¶ 1.
[665] Id.
[666] Id.
[667] Order to Cease & Desist, Idaho v. Debtpro 123, No. 2011-9-13 (Idaho Dep't of Fin Oct. 18, 2011), available at http://finance.idaho.gov/ConsumerFinance/Actions/Administrative/DebtPro_123,LLC-Order_to_Cease_and_Desist-2011-9-13.pdf (last visited May 7, 2012).
[668] Id. ¶ 1.
[669] Id.
[670] Consent Order, Idaho v. Freedom Debt Solutions, No. 2009-9-17 (Idaho Dep't of Fin. Dec. 30, 2009), available at http://finance.idaho.gov/consumerfinance/Actions/Administrative/FreedomDebtSolutions_CO.pdf (last visited May 8, 2012).
[671] Id. ¶ 1.
[672] Id.
[673] Id.
[674] Complaint, Illinois v. Legal Helpers Debt Resolution, No. 2011CH00286 (Ill. Cir. Ct. Mar. 2, 2011) (on file with the Committees).
[675] Id. ¶ 5.
[676] Complaint, Maine v. CSA – Credit Solutions of Am., BCD-WB-CV-10-02 (Me. Super. Ct. 2010), available at www.maine.gov/tools/whatsnew/attach.php?id=85102&an=1 (last visited May 7, 2012).

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Minnesota Attorney General	Minnesota v. Morgan Drexen, Inc.[680]	Morgan Drexen Inc.	**California** corporation[681]	Individual—Founder[682]
New York Attorney General	New York v. CSA – Credit Solutions of America, Inc.[683]	CSA – Credit Solutions of America, Inc.[684]	**Texas** corporation[685]	None mentioned
New York Attorney General	New York v. Debtmerica LLC[686]	Debtmerica, LLC[687]	**Nevada** limited liability company[688]	None mentioned
New York Attorney General	New York v. Freedom Debt Relief, LLC[689]	• Freedom Debt Relief, LLC • Freedom Financial Network[690]	• Freedom Debt Relief, LLC—**Delaware** limited liability company • Freedom Financial Network—**Delaware** limited liability company[691]	• Individuals—two Co-Founders and Chief Executive Officers[692]

[677] Id. ¶3.
[678] Id.
[679] Id. ¶ 4.
[680] Complaint at ¶ 3, Minnesota v. Morgan Drexen, Inc., No. 10-3105 (Minn. Dist. Ct. Feb. 18, 2010) (on file with the Committees).
[681] Id.
[682] Id. ¶ 9.
[683] Complaint, New York v. CSA – Credit Solutions of Am., Inc., No. 401225/2009 (N.Y. Sup. Ct. May 13, 2009) (on file with the Committees).
[684] Id. ¶ 3.
[685] Id.
[686] Assurance of Discontinuance, New York v. Debtmerica, No. 11-040 (N.Y. Sup. Ct. Aug. 18, 2011) (on file with the Committees).
[687] Id. at 1.
[688] Id. ¶ 2.
[689] Assurance of Discontinuance, New York v. Freedom Debt Relief, No. 10-167 (N.Y. Sup. Ct. Mar. 3, 2011) (on file with the Committees).
[690] Id. at 1.
[691] Id. ¶ 2.
[692] Id. ¶ 3.

Enforcement Agency	Name of Case / Proceeding	Debt Settlement Company / Companies	Legal Structure	Ownership / Control
New York Attorney General	New York v. Nationwide Asset Services, Inc.	• Nationwide Asset Services, Inc. • Service Star, LLC • Universal Debt Reduction • FGL Clearwater d/b/a American Debt Arbitration [693]	• Nationwide Asset Services, Inc.— **Arizona** corporation • ServiceStar, LLC— **Arizona** corporation • Universal Debt Reduction— **Arizona** corporation • FGL Clearwater d/b/a American Debt Arbitration— **Florida** corporation [694]	• Nationwide Asset Services, Inc., • ServiceStar, LLC, Universal Debt Reduction Individuals— two Officers and Directors [695] • FGL Clearwater— None mentioned
New York Attorney General	New York v. New Horizons Debt Relief, Inc. [696]	New Horizons Debt Relief, Inc.	None mentioned	Individual— one Principal [697]

[693] Verified Petition ¶¶ 5-8, New York v. Nationwide Asset Servs., Inc. (N.Y. Sup. Ct. 2009) (on file with the Committees).
[694] Id.
[695] Attorney Affirmation ¶¶ 3, 5-6, New York v. Nationwide Asset Servs., Inc. (N.Y. Sup. Ct. 2009) (on file with the Committees).
[696] New York v. New Horizons Debt Relief, Inc., No. 402646/2010 (N.Y. Sup. Ct. Oct. 22, 2010) (on file with the Committees).
[697] Id. ¶ 1.

Enforcement Agency	Name of Case / Proceeding	Debt Settlement Company / Companies	Legal Structure	Ownership / Control
North Carolina Attorney General	North Carolina v. Hess Kennedy Chartered LLC et al.[698]	• Hess Kennedy Chartered LLC • The Consumer Law Center, LLC[699]	None mentioned	None mentioned
North Carolina Attorney General	North Carolina v. The Consumer Law Group[700]	• The Consumer Law Group, P.A. • American Debt Negotiators Inc.[701]	• The Consumer Law Group, P.A.—**Florida** corporation[702] • American Debt Negotiators, Inc.—**Florida** corporation[703]	• Individual—Managing Principal of CLG[704] • Individual—Manager of CLG[705] • Individual[706]

[698] Consent J., North Carolina v. Hess Kennedy Chartered, No. 08 CV 002310 (N.C. Super. Ct. Dec. 19, 2008) (on file with the Committees).
[699] Id. at 1.
[700] Complaint, North Carolina v. Consumer Law Grp., No. 10 CV 016777 (N.C. Super. Ct. Oct. 1, 2010) (on file with the Committees).
[701] Id. ¶¶ 7, 9.
[702] Id. ¶ 7.
[703] Id. ¶ 9.
[704] Id.
[705] Id. ¶ 10.
[706] Id. ¶ 11.

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Tennessee Attorney General	Tennessee v. AscendOne Corp. et al.[707]	• AscendOne Corp. • Amerix Corp. • CareOne Services, Inc. • Freedom Point Financial Corp. • 3C, Inc.[708]	• AscendOne Corp.—**Maryland** corporation • Amerix Corp.—**Maryland** corporation • CareOne Services, Inc.—**Maryland** corporation • Freedom Point Financial Corp.—**Maryland** corporation • 3C, Inc.—**Maryland** corporation[709]	• Individual—President, Chief Executive Officer[710]
Texas Attorney General	Texas v. BC Credit Solution, LLC[711]	BC Credit Solution, LLC	**Texas** limited liability company[712]	Individual—Founder[713]
Texas Attorney General	Texas v. CSA – Credit Solutions of America, Inc.[714]	Credit Solutions of America, Inc[715]	**Texas** for profit corporation[716]	Individual—Founder and Chief Executive Officer[717]

[707] Complaint, Tennessee v. AscendOne Corp., No. 10C 4310 (Tenn. Cir. Ct. Nov. 4, 2010), available at http://www.tn.gov/attorneygeneral/cases/ascendone/ascendonecomplaint.pdf (last visited May 8, 2012).
[708] Id. ¶¶ 12-16.
[709] Id.
[710] Id. ¶ 17 (noting that one individual owns approximately 85% of the stock of AscendOne).
[711] Plaintiff's Original Petition, Texas v. BC Credit Solutions (Tex. Dist. Ct. May 20, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/052009bccredit_pop.pdf (last visited May 7, 2012).
[712] Id. ¶ 9.
[713] Id.
[714] Plaintiff's Original Petition, Texas v. CSA – Credit Solutions of Am., Inc., No. D-1-GV-09-000417 (Tex. Dist. Ct. Mar. 26, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/032509csa_op.pdf (last visited May 7, 2012).
[715] Id.
[716] Id.¶ 9.
[717] Id. ¶ 14.

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Texas Attorney General	Texas v. HABR, LLC d/b/a Debtor Solution [718]	HABR, LLC d/b/a Debtor Solution[719]	**Kentucky** limited liability company[720]	Individual—Founder[721]
Texas Attorney General	Texas v. Four Peaks Financial Services, LLC[722]	Four Peaks Financial Services, LLC[723]	**Arizona** limited liability company[724]	None mentioned
Vermont Attorney General	In re Boston Debt Solutions, LLC[725]	Boston Debt Solutions, LLC[726]	**Massachusetts** corporation[727]	None mentioned
Vermont Attorney General	In re Century Negotiations, Inc.[728]	Century Negotiations, Inc.[729]	**Pennsylvania** corporation[730]	None mentioned
Vermont Attorney General	In re Clear Your Debt, LLC[731]	Clear Your Debt, Inc.[732]	**Texas** limited liability corporation[733]	None mentioned

[718] Plaintiff's Original Petition, Texas v. Debtor Solution (Tex. Dist. Ct. May 20, 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/052009debtsolution_pop.pdf (last visited May 7, 2012).
[719] Id.
[720] Id. ¶ 9.
[721] Id.
[722] Plaintiff's Original Petition, Texas v. Four Peaks Fin. Servs., No. D-1-GV-09-000900 (Tex. Dist. Ct. 2009), available at https://www.oag.state.tx.us/newspubs/releases/2009/052009fourpeaks_pop.pdf (last visited May 7, 2012).
[723] Id. ¶ 10.
[724] Id.
[725] Assurance of Discontinuance, In re Boston Debt Solutions, No. 1302-09 (Vt. Super. Ct. Feb. 26, 2009), available at http://www.atg.state.vt.us/assets/files/Boston%20Debt%20Solutions%202-26-09.pdf (last visited May 8, 2012).
[726] Id. at 1.
[727] Id.
[728] Assurance of Discontinuance, In re Century Negotiations, Inc., No. 489-7-09 (Vt. Super. Ct. Jul. 2, 2009) available at http://www.atg.state.vt.us/assets/files/Century%20Negotiations%20-%207-2-09.pdf (last visited May 8, 2012).
[729] Id. at 1.
[730] Id.
[731] Assurance of Discontinuance, In re Clear Your Debt, No. 538-7-09 (Vt. Super. Ct. July 23, 2009) available at http://www.atg.state.vt.us/assets/files/2009-7-23%20Clear%20Your%20Debt%20AOD.pdf (last visited May 8, 2012).
[732] Id. at 1.
[733] Id.

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Vermont Attorney General	Vermont v. CSA – Credit Solutions of America, Inc.[734]	CSA – Credit Solutions of America, LLC.[735]	Limited liability corporation[736]	One individual co-defendant[737]
Vermont Attorney General	In re Credit Alliance Group, Inc.[738]	Credit Alliance Group, Inc.[739]	**Texas** corporation[740]	None mentioned
Vermont Attorney General	In re Debt Remedy Solutions, LLC[741]	Debt Remedy Solutions, LLC	**Texas** limited liability corporation	None mentioned
Vermont Attorney General	In re Debt Settlement USA, Inc.[742]	Debt Settlement USA, Inc.[743]	**Arizona** corporation[744]	None mentioned
Vermont Attorney General	In re Debt Settlement America, Inc.[745]	Debt Settlement America, Inc.[746]	**Texas** corporation[747]	None mentioned

[734] Order Granting Pl.s' M. Summ. J., Vermont v. CSA – Credit Solutions of Am., No. 484-7-10 (Mar. 21, 2012), available at http://www.atg.state.vt.us/assets/files/CSA%20Order.pdf (last visited May 7, 2012).
[735] Id. at 1.
[736] Id.
[737] Id.
[738] Assurance of Discontinuance, In re Credit Alliance Grp., Inc., No. 172-3-10 (Vt. Super. Ct. Feb. 23, 2010) available at http://www.atg.state.vt.us/assets/files/Credit%20Alliance%20Group%20AOD.pdf (last visited May 8, 2012).
[739] Id. at 1.
[740] Id.
[741] Assurance of Discontinuance, In re Debt Remedy Solutions, No. 377-5-09 (Vt. Super. Ct. May 27, 2009) available at http://www.atg.state.vt.us/assets/files/Debt%20Remedy%20Solutions%20LLC.pdf (last visited May 8, 2012).

[742] Assurance of Discontinuance, In re Debt Settlement USA, Inc. No. 867-11-09 (Vt. Super. Ct. Nov. 4, 2009), available at http://www.atg.state.vt.us/assets/files/Debt%20Settlement%20USA%20Inc%20AOD.pdf (last visited May 7, 2012).
[743] Id. at 1.
[744] Id.
[745] Assurance of Discontinuance, In re Debt Settlement Am., Inc., No. 56-1-10 WNCV (Vt. Super. Ct. Jan. 27, 2010), available at http://www.atg.state.vt.us/assets/files/Debt%20Settlement%20America%20AOD%20-%202010-1-27.pdf (last visited May 7, 2012).
[746] Id. at 1.
[747] Id.

Enforcement Agency	**Name of Case / Proceeding**	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
Vermont Attorney General	In re Financial Freedom of America, Inc.[748]	Financial Freedom of America, Inc.[749]	**Texas** corporation[750]	None mentioned
Vermont Attorney General	In re Liberty Banc Mortgage Group, Inc. d/b/a Liberty Settlement Groups[751]	Liberty Banc Mortgage Group, Inc.[752]	**California** corporation[753]	None mentioned
Vermont Attorney General	In re The Mossler Law Firm, P.C.[754]	The Mossler Law Firm[755]	**Indiana** corporation[756]	None mentioned
Vermont Attorney General	In re SCF State Capital Financial, Inc.[757]	SCF State Capital Financial, Inc.[758]	**Florida** corporation[759]	None mentioned

[748] Assurance of Discontinuance, In re Fin. Freedom of Am., Inc., No. 897-11-09 (Vt. Super. Ct. Nov. 25, 2009), available at http://www.atg.state.vt.us/assets/files/Financial%20Freedom%20of%20America%20AOD.pdf (last visited May 8, 2012).
[749] Id. at 1.
[750] Id.
[751] Assurance of Discontinuance, In re Liberty Banc Mortgage Grp., Inc., No. 767-10-09 (Vt. Super. Ct. Oct. 9, 2009), available at http://www.atg.state.vt.us/assets/files/Liberty%20Banc%20dba%20Liberty%20Settlement%20AOD.pdf (last visited May 8, 2012).
[752] Id. at 1.
[753] Id.
[754] Assurance of Discontinuance, In re Mossler Law Firm, No. 496-7-10 (Vt. Super. Ct. Jul. 8, 2010), available at http://www.atg.state.vt.us/assets/files/In%20re%20Mossler%20Law%20Firm%20AOD.pdf (last visited May 8, 2012).
[755] Id. at 1.
[756] Id.
[757] Assurance of Discontinuance, In re SCF State Capital Financial, Inc., No. 511-7-10 (Vt. Super. Ct. July 16, 2010), available at http://www.atg.state.vt.us/assets/files/in%20re%20State%20Capital%20Financial%20AOD.pdf (last visited May 8, 2012).
[758] Id. at 1.
[759] Id.

Enforcement Agency	Name of Case / Proceeding	Debt Settlement Company / Companies	Legal Structure	Ownership / Control
West Virginia Attorney General	West Virginia v. Morgan Drexen, Inc.[760]	• Morgan Drexen, Inc. • Howard | Nassiri[761]	• Morgan Drexen – **Nevada** for-profit corporation[762] • Howard | Nassiri – **California** business / law partnership[763]	Individual, Founder, Chief Executive Officer, majority shareholder of Morgan Drexen[764]

[760] Complaint, West Virginia v. Morgan Drexen, Inc. No. 11-C-829 (W. Va. Cir. Ct. May 20, 2011) (on file with the Committees).
[761] Id. ¶¶ 2, 7.
[762] Id. ¶ 2.
[763] Id. ¶ 7.
[764] Id. ¶ 8 ("upon information and belief").

APPENDIX C - Ownership and Organization of Debt Settlement Companies in FTC Enforcement Actions

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Better Budget Financial Services, Inc.[765]	Better Budget Financial Services, Inc.[766]	**Massachusetts** for-profit corporation[767]	Individual—President of Better Financial Services, Inc.[768]

[765] Complaint, FTC v. Better Budget Fin. Servs., Inc., No. 04-12326 (D. Mass. Nov. 2, 2004), available at http://www.ftc.gov/os/caselist/0423140/041115cmp0423140.pdf (last visited May 7, 2012).
[766] Id. at 1.
[767] Id. ¶ 5.
[768] Id. ¶ 6.

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Dennis Connelly et al.[769]	• Freedom First Financial, LLC • Homeland Financial Services • National Support Services, LLC • United Debt Recovery, LLC • USA Debt Co., LLC[770]	• Freedom First Financial, LLC— **Wyoming** corporation[771] • Homeland Financial Services— A **California** Corporation[772] • National Support Services, LLC— **California** limited liability company[773] • United Debt Recovery, LLC— **Nevada** limited liability company[774] • USA Debt Co., LLC— **Wyoming** limited liability company[775]	• Individual – Co-Founder of Homeland Financial Services, National Support Services, United Debt Recovery, and Freedom First Financial[776] • Individual— doing business as Prosper Financial Solutions[777] • Individual— Co-Founder of Homeland Financial Services, National Support Services, United Debt Recovery and Chief Executive Officer, President, Director of Homeland[778]

[769] Complaint, FTC v. Connelly, No. SA CV 06-701 (C. D. Cal. Aug. 3, 2006), available at http://www.ftc.gov/os/caselist/0523091/060921cmp0523091.pdf (last visited May 7, 2012).
[770] Id. ¶¶ 8 -12.
[771] Id. ¶ 11.
[772] Id. ¶ 8.
[773] Id. ¶ 9.
[774] Id. ¶ 10.
[775] Id. ¶ 12.
[776] Id. ¶ 5.
[777] Id. ¶ 7.

Name of Case / Proceeding	Debt Settlement Company / Companies	Legal Structure	Ownership / Control
FTC v. Credit Restoration Brokers, LLC[779]	• Credit Restoration Brokers, LLC • Debt Negotiation Associates, LLC • Kurt A. Streyffeler, P.A. [780]	• Credit Restoration Brokers, LCC— **Florida** limited liability company • Debt Negotiation Associates, LLC— **Florida** limited liability company • Kurt A. Streyffeler, P.A.— **Florida** profit corporation[781]	• Individual—Owner, Officer and Director of Credit Restoration Brokers and Debt Negotiation Assocs.[782] • Individual—Owner, Officer and Director of Kurt A. Streyffeler, P.A.[783]

[778] Id. ¶ 6.
[779] Complaint, FTC v. Credit Restoration Brokers, No. 2:10CV00030, 2010 WL 1230609 (M.D. Fla. Jan. 9, 2010), available at http://www.ftc.gov/os/caselist/0823001/100318skycmpt.pdf (last visited May 7, 2012).
[780] Id. ¶¶ 6-7, 9.
[781] Id.
[782] Id. ¶ 8.
[783] Id. ¶ 10.

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Debt Relief USA, Inc. et al.[784]	Debt Relief USA, Inc. [785]	Debt Relief USA, Inc. – **Florida** for profit corporation[786]	• Individual—President and 52 percent shareholder of Debt Relief USA[787] • Individual—Executive Vice President and 20 percent shareholder of Debt Relief USA[788] • Individual—Chief Operating Officer and 20 percent shareholder of Debt Relief USA[789] • Individual—Director of Marketing and 3 percent shareholder of Debt Relief USA[790]

[784] Complaint for Permanent Injunction and Other Equitable Relief, FTC v. Debt Relief USA, Inc., No. 3:11-CV-2059 (N.D. Tex. Aug. 17, 2011), available at http://www.ftc.gov/os/caselist/0923052/110823debtreliefcmpt.pdf (last visited May 7, 2012).
[785] Id. ¶ 6.
[786] Id.
[787] Id. ¶ 7.
[788] Id. ¶ 8.
[789] Id. ¶ 9.
[790] Id. ¶ 10.

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Debt Set, Inc.[791]	• Debt Set, Inc. • Debt-Set • Resolve Credit Counseling, Inc.[792]	• Debt Set , Inc.— **Colorado** for-profit corporation[793] • Debt-Set— **Nevada** for-profit corporation[794] • Resolve Credit Counseling Inc.— **Colorado** for-profit corporation[795]	• Individual— Chief Executive Officer of Debt Set Colorado and President of Debt Set Nevada[796] • Individual— Sole Director of Resolve Credit Counseling[797] • Individual— Secretary of Debt-Set Nevada[798] • Individual— Treasurer of Debt-Set Nevada[799]

[791] Complaint, FTC v. Debt Set, Inc., No. 1:07CV00558, 2007 WL 6969886 (D. Colo. Mar. 20, 2007), available at http://www.ftc.gov/os/caselist/0623140/070327cmp0623140.pdf (last visited May 7, 2012).
[792] Id. ¶¶ 5-7.
[793] Id. ¶ 5.
[794] Id. ¶ 6.
[795] Id. ¶ 7.
[796] Id. ¶ 8.
[797] Id. ¶ 9.
[798] Id. ¶ 10.
[799] Id. ¶ 11.

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Dominant Leads, LLC[800]	• Dominant Leads, LLC • Mad TJ Holdings LLC [801]	• Dominant Leads, LLC— **California** limited liability company[802] • Mad TJ Holdings LLC— **California** limited liability company[803]	• Individual—Manager of Dominant Leads, LLC and Mad TJ Holdings[804] • Individual—Manger and Chief Financial Officer of Dominant Leads[805] • Individual—Principal of Mad TJ Holdings[806]

[800] Compliant, FTC v. Dominant Leads, No. 1:10-cv-00997 (D. D.C. Jun. 15, 2010), available at http://www.ftc.gov/os/caselist/1023152/100617fedmortgagecmpt.pdf (last visited May 8, 2012).
[801] Id. ¶ 6-7.
[802] Id. ¶ 6.
[803] Id. ¶ 7.
[804] Id. ¶ 8.
[805] Id. ¶ 9.
[806] Id. ¶ 10; see also id. ¶ 11 ("Corporate defendants have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, business functions, and employees.").

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Edge Solutions, Inc.[807]	• Edge Solutions, Inc. [DE] • Edge Solutions, Inc. [N.Y.] • Money Cares, Inc. • Pay Help, Inc.[808]	• Edge Solutions, Inc.—**Delaware** corporation[809] • Edge Solutions, Inc.—**New York** corporation[810] • Money Cares, Inc.—**Florida** corporation[811] • Pay Help, Inc.—**New York** corporation[812]	• Individual—President of Money Cares, Chief Financial Officer of Pay Help[813] • Individual—Director of Money Cares, Chief Executive Officer of Pay Help and Edge NY, and President of Edge DE[814]
FTC v. Financial Freedom Processing, Inc.[815]	• Financial Freedom Processing, Inc. • Debt Consultants of Am., Inc. • Debt Professionals of America, Inc.[816]	None mentioned	Five individuals described as "involved in the operations" of the interrelated entities[817]

[807] Complaint, FTC v. Edge Solutions, Inc., No. CV-07-4087 (E.D. N.Y. Oct. 1, 2007), available at http://www.ftc.gov/os/caselist/0723025/071001edgesolutionscmplt.pdf (last visited May 7, 2012).
[808] Id. ¶¶ 5-8.
[809] Id. ¶ 5.
[810] Id. ¶ 6.
[811] Id. ¶ 7.
[812] Id. ¶ 8.
[813] Id. ¶ 9.
[814] Id. ¶ 10.
[815] Complaint, FTC v. Fin. Freedom Processing, NO. 3:10-CV-2446-N (N.D. Tex. Mar. 12, 2012), available at http://www.ftc.gov/os/caselist/0923056/101202ffcmpt.pdf (although the District Court did not find that Defendants had engaged in deceptive acts in violation of the FTC act, the description of Defendants' business practices is similar to the debt settlement business model outlined in the body of this White Paper) (last visited May 8, 2012).
[816] Id. at 1.
[817] Id. at 1, 2.

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Innovative Systems Technology, Inc.[818]	• Innovative Systems Technology, Inc. • Debt Resolution Specialists, Inc.[819]	• Innovative Systems Technology, Inc.—**California** corporation[820] • Debt Resolution Specialists, Inc.—**California** corporation[821]	• Individual—President, Chief Executive Officer, and Owner of Innovative Systems Technology, Inc.; President and Owner of Debt Resolution Specialists[822] • Individual—Principal and Owner of Innovative Systems Technology, Inc. until 2002[823]

[818] Complaint, FTC v. Innovative Sys. Tech. Inc., No. CV04-0728 (C.D. Cal. Feb. 4, 2004), available at http://www.ftc.gov/os/caselist/0323006/040213comp0323006.pdf (last visited May 8, 2012).
[819] Id. ¶¶ 5-6.
[820] Id. ¶ 5.
[821] Id. ¶ 6.
[822] Id. ¶ 7.
[823] Id. ¶ 8.

Name of Case / Proceeding	Debt Settlement Company / Companies	Legal Structure	Ownership / Control
FTC v. Jubilee Financial Services, Inc.[824]	• Jubilee Financial Services, Inc. • Jabez Financial Group, Inc.[825] • Debt Relief Counselors of America, P.C.[826]	None mentioned	None mentioned
FTC v. Christopher Mallett[827]	• d/b/a Department of Consumer Services Protection Commission • U.S. Debt Care • World Law Debt • U.S. Mortgage Relief Counsel[828]	None mentioned	Individual[829]

[824] Stipulation and Final Order of Permanent Injunction, FTC v. Jubilee Fin. Servs., Inc., No. 02-6468 ABC(Ex) *1 (C.D. Cal. Dec. 22, 2004) available at http://www.ftc.gov/os/caselist/jubilee/jubilee.shtm (last visited May 9, 2012).
[825] Id.
[826] Id. (noting that a first amended complaint added Debt Relief Counselors of America, P.C., among others).
[827] Complaint, FTC v. Mallett, No. 1:11-cv-01664 (D. D.C. Sept. 14, 2011), available at http://www.ftc.gov/os/caselist/1123105/110922usdebtcarecmpt.pdf (last visited May 7, 2012).
[828] Id. ¶ 6.
[829] Id.

Name of Case / Proceeding	**Debt Settlement Company / Companies**	**Legal Structure**	**Ownership / Control**
FTC v. Media Innovations, LLC[830]	• Media Innovations, Inc. • Hermosa Group, LLC • Financial Future Network, LLC[831]	• Media Innovations, Inc.— **Maryland** limited liability company[832] • Hermosa Group, LLC— **Maryland** limited liability company[833] • Financial Future Network, LLC— **Maryland** limited liability company[834]	• Individual—President and Sole Officer of Media Innovations, Hermosa Group, and Financial Future Network[835]

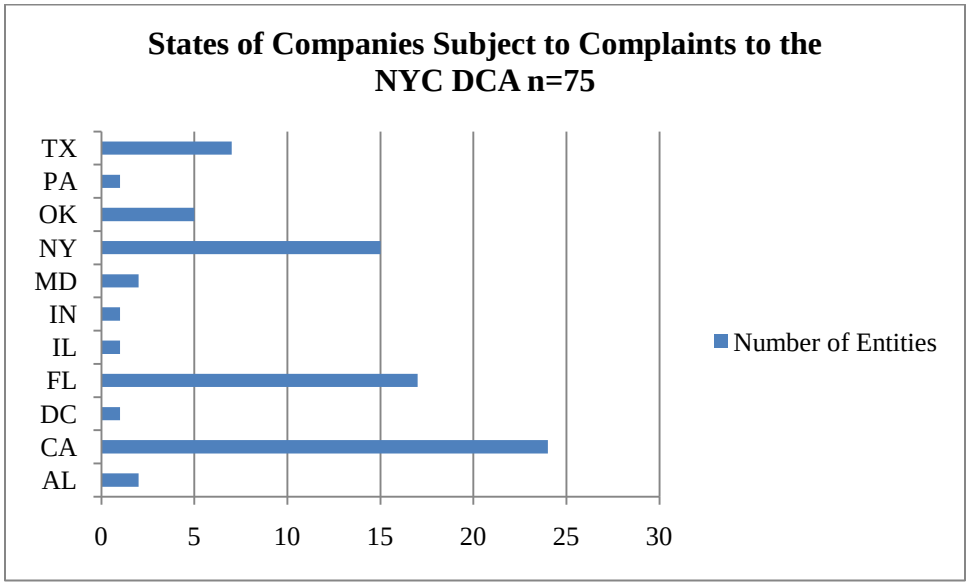
[830] Complaint, FTC v. Media Innovations, No. 8:11CV00164, 2011 WL 334345 (D. Md. Jan. 20, 2011), available at http://www.ftc.gov/os/caselist/0923054/110120hermosacmpt.pdf (last visited May 7, 2012).
[831] Id. ¶¶ 6-8.
[832] Id. ¶ 6.
[833] Id. ¶ 7.
[834] Id. ¶ 8.
[835] Id. ¶ 9.

FTC v. National Consumer Council, Inc. et al.[836]	• National Consumer Council, Inc. [AZ] • National Consumer Council, Inc. [CA] • National Consumer Council, Inc. [NV] • London Financial Group • National Consumer Debt Council, LLC • Solidium, LLC • United Consumers Law Group, PC • J.P. Landis, LLC • Financial Rescue Services, Inc. • Signature Equities, LLC[837]	• National Consumer Council, LLC—**Arizona** corporation • National Consumer Council, LLC—**California** corporation • National Consumer Council, LLC—**Nevada** corporation • London Financial Group— **Nevada** corporation • National Consumer Debt Council, LLC—**California** limited liability company • Solidium LLC—**California** limited liability company • United Consumers Law Group, PC—**California** professional law corporation • J.P. Landis, LLC—**California** limited liability company[838] • Financial Rescue Services, Inc.—**California** corporation • Signature Equities, LLC—Delaware limited liability company. [839]	• Individual—owner of United Consumers Law Group, LCC and National Consumer Debt Council, LLC[840] • Individual—Co-Owner of London Financial Group and National Consumer Debt Council, LLC[841] • Individual—Co-Owner of London Financial Group and National Consumer Debt Council LLC[842] • Individual—President, Vice-President and Director of NCC-AZ; President, Secretary and Director of NCC-NV; Chief Executive Officer, Secretary, and Chief Financial Officer of NCC-CA.[843] • Individual—Co-Owner for Financial Rescue Services, Inc.[844] • Individual—Co-Owner for Financial Rescue

APPENDIX D – Home States of For-Profit Debt Settlement Companies

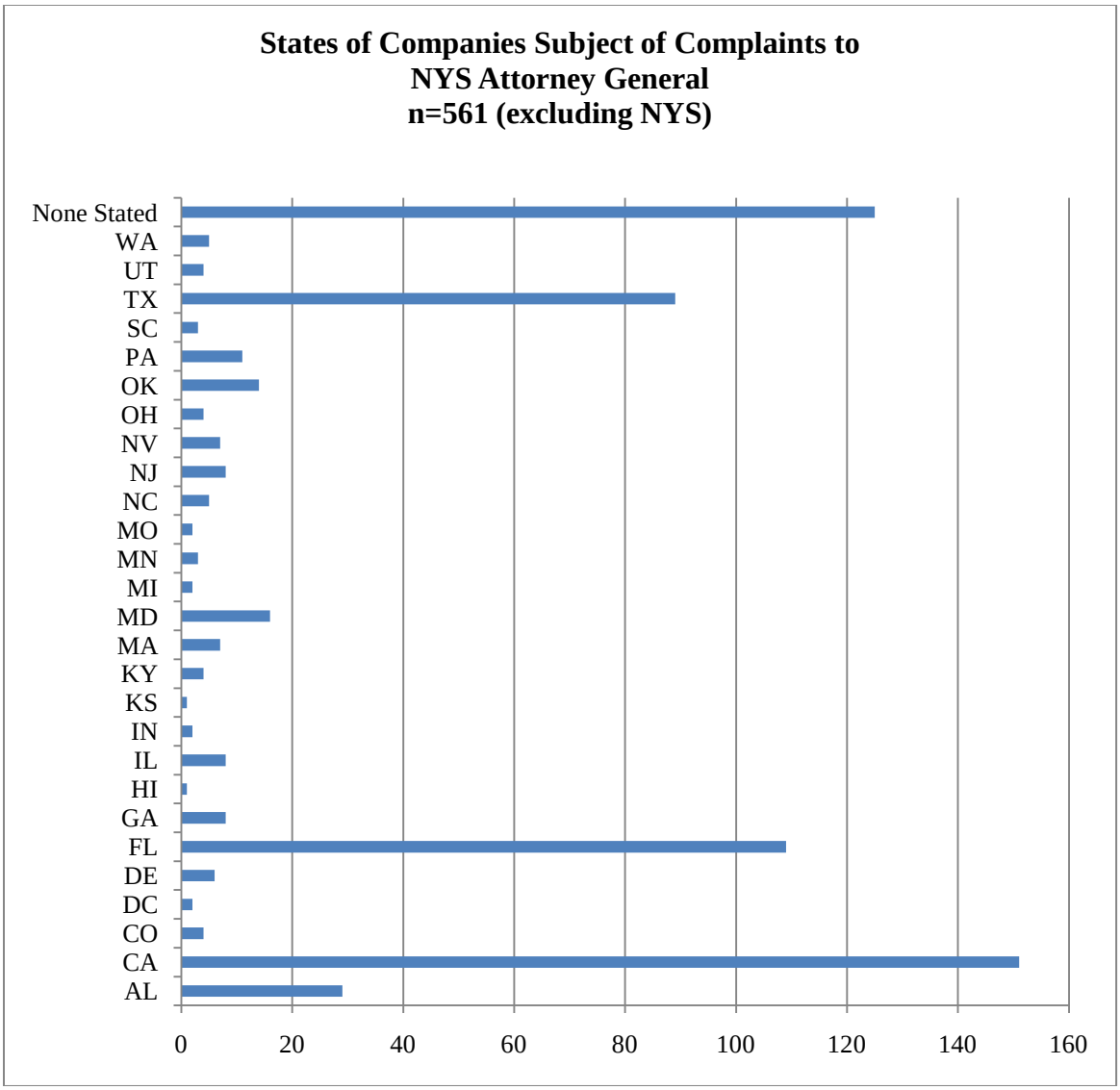
The Subcommittee obtained complaint data from the New York City Department of Consumer Affairs ("NYC DCA") and from the New York State Office of the Attorney General ("NYSAG").

The NYC DCA data covered the period from May 2010 to October 2011.



[836] Complaint, FTC v. Nat'l Consumer Council, Inc., No. 04-0474, 2004 WL 1064199 (C. D. Cal. Apr. 23, 2004) (on file with the Committees).
[837] Id. ¶¶ 5-14.
[838] Id. ¶ 12 (defendant "provides marketing services, including advertising by direct mail and radio, for other defendants").
[839] Id.
[840] Id. ¶ 18.
[841] Id. ¶ 19.
[842] Id. ¶ 20.
[843] Id. ¶ 21.
[844] Id. ¶ 22.
[845] Id. ¶ 23.

The NYSAG data covered the period from 2009 through October 25, 2011. During that period, consumers filed 791 complaints against debt settlement companies. Complaint data show that companies were located nationwide—from at least twenty-eight states, including New York State.



APPENDIX E - Current State Regulation of Debt Settlement

State	Method of Debt Settlement Regulation	Key Fee Provisions	Data Collection and Reporting	Penalties and Rights
Alabama[846]	- Licensure[847] - Bond up to $50,000[848] (non-profits and for-profits)			Misdemeanor: fine, imprisonment, hard labor[849]
Alaska	- None			
Arizona[850]	- Licensure[851] (for-profits only)[852] - Bond $10,000-$25,000[853]	Enrollment fee cap[854]	Licensees submit annual reports[855]	Revocation of license[856]
Arkansas[857]	- Ban[858] on for-profit[859]			- Class A misdemeanor[860] - No private right of action[861]
California[862]	- Licensure (non-profits only)[863] - Bond - $25,000[864]	Fee cap - 8-12%[865]	Licensees submit audited financial statements annually[866]	- Civil penalties up to $10,000 and/or imprisonment[867] - No private right of action

[846] ALA. CODE § 8-7-1 et seq. (2012) (titled "Sale of Checks Act," effective 1961). See In re Allegro Law, 2010 WL 2712256 *4 (Bankr. M.D. Ala.) (noting that the AG sued Allegro for debt settlement without a license, in violation of the check seller's law).
[847] ALA. CODE § 8-7-3.
[848] Id. § 8-7-14.
[849] Id. § 8-7-15.
[850] ARIZ. REV. STAT. ANN. § 6-701 et seq. (2012) (effective Jul. 1, 1968, amended 1994, governing "debt management companies"). See Consent Order, In re Miracle Mgmt. Grp., Inc., No. 06F-BD002-BNK (Ariz. State Banking Dep't., Aug. 26, 2005), available at www.azdfi.gov/PR/Miracle_Consent_Order.pdf (last visited May 7, 2012) (citing statute and describing debt settlement); Order to Cease & Desist, In re JHass Grp., No. 12F-BD021-SBD (Ariz. Dep't of Fin. Insts., Sept. 29, 2011), available at http://www.azdfi.gov/Final/Forms/JHASS_Group_C&D_ULA_9-29-2011.pdf (last visited May 7, 2012) (same).
[851] ARIZ. REV. STAT. ANN. §§ 6-703, 6-715.
[852] Id. § 6-702(4).
[853] Id. § 6-704(B).
[854] Id. § 6-709.
[855] Id.
[856] Id. § 6-708.
[857] ARK. CODE ANN. § 5-63-301 et seq. (2011) (effective 1967, governing "debt adjusting," defined as including "acting or offering or attempting to act for a consideration as an intermediary between a debtor and the debtor's creditors for the purpose of settling . . . any debt . . . ."). Id. § 5-63-301(2)(B).
[858] Id. § 5-63-302.
[859] Id. § 5-63-305.
[860] Id. § 5-63-304.
[861] Id. § 5-63-303.

State	Method of Debt Settlement Regulation	Key Fee Provisions	Data Collection and Reporting	Penalties and Rights
Colorado[868]	UDMSA: - Registration - Bond - $50,000[869]	Advance fee ban[870]	Published list of registrants[871]	- Civil penalties - Private right of action[872]
Connecticut[873]	- Licensure[874] - Bond - $50,000[875]	Advance fee ban[876]		- Fine[877]
Delaware[878]	UDMSA: - Licensure[879] - Bond - $50,000[880]	18% settlement fee cap[881]	Published list of licensees.[882]	- Civil penalties[883] - Private right of action[884]

[862] CAL. FIN. CODE § 12000 et seq. (2012) (effective 1951, amended 1983, governing "prorating"). See Nationwide Asset Servs. v. DuFauchard, 164 Cal. App. 4th 1121 (2008) (noting that debt settlement company's activities constituted "prorating"). See also S.B. 2011 Reg. Sess. 708 (Cal. 2011) ("Debt Settlement Consumer Protection Act"), available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0701-0750/sb_708_cfa_20110531_123836_sen_comm.html (last visited May 8, 2012).
[863] CAL. FIN. CODE § 12104.
[864] Id. § 12104(g).
[865] Id. § 12104(d).
[866] Id. § 12102(j).
[867] Id. § 12102.
[868] COLO. REV. STAT. § 12-14.5-201 et seq. (2012) (UDMSA, effective Jan. 1, 2008).
[869] Id. § 12-14.5-213.
[870] Id. § 12-14.5-223.
[871] Id. § 12-14.5-204.
[872] Id. § 12-14.5-235.
[873] CONN. GEN. STAT. § 36a-655 et seq. (2012) (effective 1958, amended 2009, governing "Debt Adjusters and Debt Negotiation"). See Press Release, State Banking Comm'r Howard F. Pitkin Announces Schedule of Fees for Debt Negotiators Under New Public Act (Sept. 28 2009) (noting that the definition of debt negotiation includes debt settlement), available at http://www.ct.gov/dob/cwp/view.asp?a=2245&q=447726 (last visited May 7, 2012). See also S.B. 362, Feb. Sess. 2012 (Conn. 2012), available at http://www.cga.ct.gov/asp/CGABillStatus/CGAbillstatus.asp?selBillType=Bill&bill_num=SB362 (last visited May 8, 2012).
[874] CONN. GEN. STAT. § 36a-671(b).
[875] Id. § 36a-671d(e)(1).
[876] Id. § 36a-671b.
[877] Id. § 36a-671a(b).
[878] DEL. CODE ANN. tit. 6, § 2401A et seq. (2012) (USMSA effective Jan. 17, 2007).
[879] Id. § 2404A.
[880] Id. § 2413A.
[881] Id. § 2423A(d)(2)(C).
[882] Id. § 2404A(c).
[883] Id. § 2433A.
[884] Id. § 2435A.

Florida[885]	Prohibits exceeding fee caps[886]	- $50 enrollment fee cap - 7.5% fee cap[887]	Audited financial statements publicly available[888]	- Third-degree felony - Private right of action[889]
Georgia[890]	Prohibits exceeding fee caps[891]	7.5% fee cap[892]	Providers file audited financial statements annually[893]	- Misdemeanor, fines - Private right of action[894]
Hawaii[895]	Ban (for-profit)[896]			- Contract void & unenforceable - Debtor may recover all sums deposited - Fine of not more than $500 or imprisonment for not more than 6 months[897]
Idaho[898]	- Licensure[899] - Bond - $15,000[900]	- 20% fee cap[901]		- Felony or misdemeanor[902]

[885] FLA. STAT. § 817.801 et seq. (2012) (effective Jul. 1, 2004, amended effective Jul. 1, 2006, governing "[e]ffect[ing] the adjustment, compromise, or discharge of any unsecured account, note or other indebtedness . . . ."). See also H.B. 67, 2011-2012 Reg. Sess. (Fla. 2011) (introduced Aug. 3, 2011, died in committee Mar. 9, 2012), available at http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=47082 (last visited May 8, 2012).
[886] FLA. STAT. § 817.802.
[887] Id. § 817.802.
[888] Id. § 817.804.
[889] Id. § 817.806.
[890] GA. CODE ANN. § 18-5-1 et seq. (2011) (effective 1956, amended effective Jul. 1, 2003).
[891] Id. § 18-5-2.
[892] Id. § 18-5-2.
[893] Id. § 8-5-3.1.
[894] Id. § 18-5-4.
[895] HAW. REV. STAT. § 446-1 et seq. (2011) (effective 1967, amended 1984) (governing "debt adjusting," defined as "a person who for a profit engages in the business of acting as an intermediary between a debtor and his creditors for the purpose of settling, compromising or in any way altering the terms of payments of any debts of the debtor."). Id. § 446-1(2).
[896] Id. § 446-3.
[897] Id. § 446-2.
[898] IDAHO CODE ANN. § 26-2223 et seq. (2012) (effective 1970, amended effective Jul. 1, 2008). See Order to Cease & Desist, Idaho v. Debtpro123, No. 2011-9-13 (Idaho Dep't. of Fin., Oct. 18, 2011) (citing statute in order against debt settlement company), available at http://finance.idaho.gov/consumerfinance/Actions/Administrative/DebtPro_123,LLC-Order_to_Cease_and_Desist-2011-9-13.pdf (May 8, 2012); and Consent Order, Idaho v. Debt Settlement Solutions, No. 2011-9-04 (Idaho Dep't of Fin., Mar. 29, 2011), available at http://finance.idaho.gov/consumerfinance/Actions/Administrative/DebtSettlementSolutions,Inc.-ConsentOrder-2011-9-04.pdf (last visited May 8, 2012) (same).

Illinois[903]	- Licensure[904] - Bond - $100,000[905]	- $50 enrollment fee cap - Advance fee ban - 5% of savings fee cap[906]	Annual client information report required.[907]	- Class 4 felony[908] - Civil penalties[909] - Private right of action[910]
Indiana[911]	Bond - $25,000[912]	- Advance fee ban[913]		- Civil penalties[914]
Iowa[915]	- Licensure (for-profit only)[916] - Bond - $25,000[917]	- $50 enrollment fee cap - 5-18% fee cap[918]		- Serious misdemeanor[919] or - Civil penalties[920]
Kansas[921]	- Registration[922] - Bond - $25,000[923]	- Advance fee ban - Cap on consultation and monthly maintenance and other fees[924]	Registrants file annual report[925]	- Class B nonperson misdemeanor[926] - Fines[927] - Private right of action[928]

[899] IDAHO CODE ANN. § 26-2223.
[900] Id. § 26-2232A.
[901] Id. § 26-2229(3).
[902] Id. § 26-2238.
[903] 225 ILL. COMP. STAT. 429/1, et seq. (2012) ("Debt Settlement Consumer Protection Act," effective Aug. 3, 2010).
[904] Id. § 429/15.
[905] Id. § 429/20.
[906] Id. § 429/125.
[907] Id. § 429/33.
[908] Id. § 429/80.
[909] Id. § 429/83.
[910] Id. § 429/155.
[911] IND. CODE § 24-5-15-1 et seq. (2012) (effective 1990, amended to include debt settlement in 2010).
[912] Id. § 24-5-15-8.
[913] Id. § 24-5-15-5.
[914] Id. § 24-5-0.5-4.
[915] IOWA CODE § 533A.1 et seq. (2012) (effective Jul. 1, 1967, amended 2009) (governing "debt management" defined as including "debt settlement").
[916] Id. § 533A.2.
[917] Id. § 533A.2(2)(g)(4).
[918] Id. § 533A.9.
[919] Id. § 533A.13.
[920] Id. § 533A.16.
[921] KAN. STAT. ANN. § 50-1116 et seq. (2011) (effective 2004) ("Kansas Credit Services Organization Act," governing "debt management" which includes "negotiating or offering to negotiate or defer or reduce a consumer's obligations . . . ."). See also Consumer Law Assocs. v. Stork, No. 106, 115, 2012 WL 975417 (Kan. Ct. App. 2012) (finding that "national law firms" were engaged in debt management and thus subject to regulation by the Bank Commissioner for violations of KAN. STAT. ANN. § 50-1116 et seq. and finding that the law firms did not fall under the statute's attorney exemption).

Kentucky[929]	- Registration (for-profit only)[930] - Bond - $25,000[931]	- Enrollment fee cap - 8.5% fee cap[932]	Registrants file audited financial statements.[933]	- Misdemeanor (fine and/or imprisonment) and civil penalties[934] - Private right of action[935]
Louisiana[936]	Ban (for-profit only)[937]			Misdemeanor (fine and/or imprisonment)[938]
Maine[939]	- Registration[940] - Bond - $50,000[941]	- Advance fee ban - 15% settlement fee cap[942]		- Private right of action - Civil penalties[943]

[922] KAN. STAT. ANN. § 50-1118.
[923] Id. § 50-1119.
[924] Id. § 50-1126.
[925] Id. § 50-1124.
[926] Id. § 50-1131.
[927] Id. § 50-1129.
[928] Id. § 50-1133.
[929] KY. REV. STAT. ANN. § 380.010 et seq. (2011) (effective Jun. 18, 1970, amended effective Jul. 15, 2010) (governing "debt adjusting," defined as including "debt settlement"). But see H.B. 166, 2010 Reg. Sess. (Ky. 2010) (introduced Jul. 15, 2010).
[930] KY. REV. STAT. ANN. § 380.030.
[931] Id. § 380.040(8).
[932] Id. § 380.040(2).
[933] Id. § 380.040(6).
[934] Id. § 380.990.
[935] Id. § 380.110.
[936] LA. REV. STAT. ANN. § 14:331 (2011) (effective 1972) (prohibiting "debt adjusting," defined as including "contracting with the debtor for a fee to . . . effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor . . . .").
[937] Id. § 14:331.
[938] Id. § 14:331.
[939] ME. REV. STAT. ANN. tit. 32, § 6171 et seq. (2011) ("Debt Management Services Act," effective 1999, amended 2007).
[940] Id. § 6173.
[941] Id. § 6174.
[942] Id. § 6174-A.
[943] Id. § 6181.

Maryland[944]	- Registration[945] - Bond - $50,000[946]	- Advance fee ban[947]	- Registrants file annual reports[948]	- Misdemeanor or civil penalties[949] - Private right of action[950]
Massachusetts	- Possible ban - Applicability unclear[951]			
Michigan	- None[952]			
Minnesota[953]	- Registration[954] - Bond - $5,000[955]	- Enrollment and maintenance fee cap - 15% fee cap[956]	- Published list of registrants[957] - Registrants file annual reports[958]	- Civil penalties[959] - Private right of action[960]
Mississippi[961]	- Licensure[962] - Bond - $50,000[963]	Set-up fee cap and $30 monthly maintenance fee cap[964]		- Civil penalties - Private right of action [965]

[944] MD. CODE ANN., FIN. INST. § 12-1001 et seq. (2012) ("Maryland Debt Settlement Services Act," effective Oct. 1, 2011).
[945] Id. § 12-1004.
[946] Id. § 12-1014.
[947] Id. § 12-1010.
[948] Id. § 12-1015.
[949] Id. § 13-411.
[950] Id. § 13-401.
[951] See MASS. GEN. LAWS ch. 180, § 4A (2012) (effective Oct. 1, 1971) (prohibiting credit counseling except by an attorney or non-profit) and MASS. GEN. LAWS ch. 221, § 46C (2012) (effective 1955) (prohibiting debt pooling except by an attorney). See Home Budget Serv., Inc. v. Boston Bar Ass'n, 335 Mass. 228 (1957) (describing debt pooling, which may include a lump-sum offer, and finding the statute constitutional). See also H.B. 291, 187th Gen. Ct. (Mass. 2011) (UDMSA introduced Jan. 18. 2011).
[952] Michigan's debt management law, MICH. COMP. LAWS § 451.414 (2012) (effective Jan. 1, 1976, amended Jun. 29, 2000), does not apply to debt settlement. The UDMSA was referred to committee in April 2010. See S.B. 1288, 95th Leg. 2010 Reg. Sess. (Mich. 2010).
[953] MINN. STAT. § 332B.02 et seq. (2012) (governing "Debt Settlement Services," effective Jul. 1, 2009). See also H.F. 2500, 87th Leg.2011-2012 Reg. Sess. (Minn. 2012), available at https://www.revisor.mn.gov/bin/bldbill.php?bill=H2500.0.html&session=ls87 (last visited May 8, 2012).
[954] MINN. STAT. § 332B.03.
[955] Id. § 332A.04.
[956] Id. § 332A.13.
[957] Id. § 332A.04.
[958] Id. § 332A.12.
[959] Id. § 332A.09.
[960] Id. § 332A.18.
[961] MISS. CODE ANN. § 81-22-1 et seq. (2011) ("Mississippi Debt Management Services Act," effective Jul. 1, 2003, amended effective Jul. 1, 2006).
[962] Id. § 81-22-5.
[963] Id. § 81-22-7.
[964] Id. § 81-22-13.
[965] Id. § 81-22-23.

Missouri[966]	Licensure[967]	- Enrollment Cap: $50 - Monthly fee caps: greater of $35 or 8%[968]		Misdemeanor[969]
Montana[970]	Prohibits exceeding fee caps[971]	- 5% setup fee cap - 20% total fee cap of amount enrolled[972]	Requires Annual Statement to AG[973]	Civil penalties[974]
Nebraska	n/a[975]			
Nevada[976]	UDMSA: - Registration[977] - Bond - $50,000[978]	- 4% enrollment fee cap - $50 monthly maintenance fee cap - 17% principal fee cap or 30% savings fee cap[979]	Published list of registrants[980]	- Civil penalties[981] - Private right of action[982]

[966] MO. REV. STAT. § 425.010 et seq. (2012) (effective 1963, amended 2011). See Summary of the Truly Agreed Version of the Bill, SCS HB 661 (explaining that the bill allows debt adjusters to enroll consumers in debt settlement plans, but bans debt adjusters from charging up-front fees and requires disclosures), available at http://www.house.mo.gov/billtracking/bills111/sumpdf/HB0661T.pdf.
[967] MO. REV. STAT. § 425.027.
[968] Id. § 425.010.
[969] Id. § 425.020.
[970] MONT. CODE ANN. § 30-14-2103 (2011) ("Regulation of Debt Settlement Providers," effective Oct. 1, 2009).
[971] Id. § 30-14-2103.
[972] Id. § 30-14-2103.
[973] Id. § 30-14-2102.
[974] Id. § 30-14-2104.
[975] Nebraska does not have laws regulating debt settlement and debt settlement is not covered under provisions regulating debt management. See NEB. REV. STAT. § 69-1203 (2011) (effective Jan. 1, 1969).
[976] NEV. REV. STAT. § 676A.010 et seq. (2011) (UDMSA effective Jul. 1, 2010).
[977] Id. § 676A.300.
[978] Id. § 676A.390.
[979] Id. § 676A.580.
[980] Id. § 676A.300.
[981] Id. § 676A.740.
[982] Id. § 676A.760.

New Hampshire[983]	- Licensure[984] - Bond - $25,000[985]	10-15% total fee cap[986]	Commissioner publish annual report[987]	- Misdemeanor (natural persons) - Felony (other persons)[988]
New Jersey[989]	- Ban (for-profit); licensure (non-profits)[990] - Bond requirement[991]	Waivable $15 monthly fee cap[992]	Licensees submit annual report[993]	- Civil penalties - Private right of action[994]
New Mexico[995]	Ban[996]			Misdemeanor[997]
New York	n/a			
North Carolina[998]	- Advance fee ban - Fee cap[999]	- $40 enrollment fee cap - Cap of 10% of monthly disbursements, up to $40/month[1000]		- Class 2 misdemeanor[1001] - Civil penalties[1002]

[983] N.H. REV. STAT. ANN. § 399-D:1 et seq. (2012) (effective Sep. 9, 2004) (governing "debt adjusting," defined as including "negotiating with one or more creditors on behalf of a consumer for direct or indirect compensation"). Id. § 399-D:2.
[984] Id. § 399-D:3.
[985] Id. § 399-D:6.
[986] Id. § 399-D:14.
[987] Id. § 399-D:28.
[988] Id. § 399-D:24.
[989] N.J. STAT. ANN. § 17:16G-1 et seq. (2012) (effective Feb. 8, 1979, amended effective Jan. 11, 2010) (prohibiting "debt adjusting," defined as "act[ing] or offer[ing] to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in anywise altering the terms of payment of any debts of the debtor; . . ."). Id. See also A. 601, 215th Leg. 2012 Sess. (N.J. 2012), available at http://www.njleg.state.nj.us/2012/Bills/A1000/601_I1.PDF (last visited May 8, 2012).
[990] N.J. STAT. ANN. § 17:16G-2.
[991] Id. § 17:16G-5.
[992] Id. § 17:16G-6.
[993] Id. § 17:16G-5.
[994] Id. § 17:16G-8.
[995] N.M. STAT. § 56-2-1 et seq. (2012) (effective 1965). See also H.B. 313, 2011 Reg. Sess. (N.M. 2011).
[996] N.M. STAT. § 56-2-2.
[997] Id. § 56-2-2.
[998] N.C. GEN. STAT. § 14-423 et seq. (2011) (effective 1963, amended effective Sept. 20, 2005). See Assurance of Voluntary Compliance, North Carolina v. Howard & Nassiri, No. 00024 (N.C. Super. Ct. May 13, 2009) (citing provision); Consent Order, North Carolina v. Hess Kennedy, No. 08 CV 002310 (N.C. Super. Ct. 2008) (same).
[999] N.C. GEN. STAT. § 14-423.
[1000] Id. § 14-423 (1963).
[1001] Id. § 14-424.
[1002] Id. § 14-425.

North Dakota[1003]	- Licensure[1004] - Bond - $50,000[1005]	- Advance and enrollment fee ban - 30% savings fee cap[1006]	- Licensees submit annual reports[1007]	- Class C felony. Civil fines[1008] - Private right of action[1009]
Ohio[1010]	Fee cap[1011]	Enrollment and periodic fee caps, the greater of 8.5% or $30 per month[1012]		- Misdemeanor[1013] - Civil fines[1014]
Oklahoma	n/a[1015]			
Oregon[1016]	- Licensure[1017] - Bond - $10,000[1018]	- Various fee caps including $50 enrollment fee cap - 7.5% savings fee cap[1019]		- Civil penalties[1020] - Private right of action[1021]
Pennsylvania	n/a[1022]			

[1003] N.D. CENT. CODE § 13-11-01 et seq. (2011) (governing "debt-settlement providers," effective Jul. 1, 2011).
[1004] Id. § 13-11-02.
[1005] Id. § 13-11-04.
[1006] Id. § 13-11-21.
[1007] Id. § 13-11-08.
[1008] Id. § 13-11-27.
[1009] Id. § 13-11-29.
[1010] OHIO REV. CODE ANN. § 4710.02 (2011) (effective Nov. 5, 2004, amended effective Mar. 29,2007). See Complaint, Ohio v. Nelson Gamble & Assocs., CV003049 (Ohio Ct. of Common Pleas Mar. 8, 2012) (applying the statute in a complaint against a debt settlement company).
[1011] OHIO REV. CODE ANN. § 4710.01.
[1012] Id. § 4710.02.
[1013] Id. § 4710.99.
[1014] Id. § 4710.04.
[1015] Oklahoma does not license or regulate debt settlement and the practice does not fit within the definition of debt pooling. See OKLA. STAT. tit. 24, § 15 (2012) (effective 1957).
[1016] OR. REV. STAT. § 697.602 et seq. (1983) (amended 2010).
[1017] Id. § 697.612.
[1018] Id. § 697.642.
[1019] Id. § 697.692.
[1020] Id. § 697.832.
[1021] Id. § 697.718.
[1022] In 2010, the Commonwealth Court of Pennsylvania struck down those provisions of Pennsylvania's Debt Management Services Act, 63 PA. CONS. STAT. ANN. § 2403 et seq. (effective Feb. 6, 2009), requiring licensure and imposing fee caps on debt settlement companies. USOBA v. Dep't of Banking, 991 A.2d 370 (Pa. 2010).

Rhode Island[1023]	UDMSA: - Registration[1024] - Bond - $50,000[1025]	- 4% or $400 enrollment fee cap, whichever is lower - $50 monthly maintenance fee cap - 30% savings fee cap[1026]		- Civil penalties[1027] - Private right of action[1028]
South Carolina[1029]	- Licensure[1030] - Bond - $25,000[1031]	$50 enrollment and monthly fee caps[1032]	Annual reports by licensees[1033]	- Misdemeanor - Private right of action[1034]
South Dakota	n/a[1035]			

[1023] R.I. GEN. LAWS § 19-14.8-1 et seq. (2012) (UDMSA, effective Mar. 31, 2007).
[1024] Id. § 19-14.8-4.
[1025] Id. § 19-14.8-13.
[1026] Id. § 19-14.8-23.
[1027] Id. § 19-14.8-33.
[1028] Id. § 19-14.8-35.
[1029] S.C. CODE ANN. § 37-7-101 et seq. (2011) (effective Jun. 2, 2005). See Lexington Law Firm v. South Carolina Dep't of Consumer Affairs, 677 S.E. 2d 591 (S.C. 2009) (interpreting attorney exemption provision and finding that debt settlement law firm violated the statute).
[1030] S.C. CODE ANN. § 37-7-102.
[1031] Id. § 37-7-103.
[1032] Id. § 37-7-112; S.C. CODE ANN. REGS. 28-700 (2005).
[1033] S.C. CODE ANN. § 37-7-115.
[1034] Id. § 37-7-117.
[1035] It is not clear whether debt settlement is covered under South Dakota's Debt Adjuster law, which bans debt adjustment with some exceptions. See S.D. CODIFIED LAWS § 37-34-1 et seq. (2011) (effective 1990). The term "debt adjusting" covers "the making of a contract . . . with a debtor whereby the debtor agrees to pay a . . . person engaged in the debt-adjusting business who shall, for consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management, or debt-pooling service or the holding of oneself out by words of similar import as providing services to debtors in the management of their debts and contracting with the debtor for a fee to effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor or receive from the debtor and disperse to his creditors any money or thing of value." Id.

Tennessee[1036]	UDMSA: - Registration[1037] - Bond - $50,000[1038]	- The lesser of 4% or $500 enrollment fee cap - $50 monthly maintenance fee cap - Settlement fee caps of 17% of principal or 30% of savings[1039]	Published list of registrants[1040]	- Civil penalties[1041] - Private right of action[1042]
Texas[1043]	- Registration[1044] - Bond - $50,000[1045]	- The lesser of 4% or $500 enrollment fee cap - $50 monthly maintenance fee cap - Settlement fee caps of 17% of principal or 30% of savings[1046]	Annual reports filed by registrants made publicly available[1047]	- Administrative penalties[1048] - Private right of action[1049]

[1036] TENN. CODE ANN. § 47-18-5501 et seq. (2012) (UDMSA effective Jul. 1, 2010).
[1037] Id. § 47-18-5504.
[1038] Id. § 47-18-5513.
[1039] Id. § 47-18-5523.
[1040] Id. § 47-18-5504.
[1041] Id. § 47-18-5533.
[1042] Id. § 47-18-5535.
[1043] TEX. FIN. CODE ANN. § 394.201 et seq. (2005) (amended 2011).
[1044] Id. § 394.204.
[1045] Id. § 394.206.
[1046] Id. § 394.210.
[1047] Id. § 394.205.
[1048] Id. § 394.214.
[1049] Id. § 394.215.

Utah[1050]	UDMSA: - Registration[1051] - Bond - $100,000[1052]	- Advance fee ban - Fees for settlement must be based on a percentage of savings and must be reasonable[1053]		- Civil penalties[1054] - Private right of action[1055]
Vermont[1056]	- Licensure[1057] - Bond - $50,000[1058]	- $50 enrollment fee cap - 10% total fee cap on amount enrolled[1059]	Licensees file annual reports[1060]	- Fine or imprisonment - Private right of action[1061]
Virginia[1062]	- Licensure[1063] - Bond - $25,000-$350,000[1064]	- $75 enrollment fee cap - Fee cap of lesser of $60 per month or 15%[1065]	Licensees file annual reports[1066]	- Class 1 misdemeanor[1067] - Civil penalties[1068] - Private right of action[1069]

[1050] UTAH CODE ANN. § 13-42-101 et seq. (2012) (UDMSA effective Jul. 1, 2007, amended 2012), available at http://le.utah.gov/~code/TITLE13/13_42.htm (last visited May 13, 2012).
[1051] Id. § 13-42-104.
[1052] Id. § 13-42-113.
[1053] Id. § 13-42-123.
[1054] Id. § 13-42-133.
[1055] Id. § 13-42-135.
[1056] VT. STAT. ANN. tit. 8, § 2752 et seq. (2012) (effective Mar. 23, 1970, amended effective Jul. 1, 2010). See Assurance of Discontinuance, In re Debt Settlement USA, No. 867-11-09 (Vt. Super. Ct. Nov. 25, 2009) (stating that debt settlement company violated the Debt Adjusters act).
[1057] VT. STAT. ANN. tit. 8, § 2752.
[1058] Id. § 2755.
[1059] Id. § 2762.
[1060] Id. § 2757a.
[1061] Id. § 2764.
[1062] VA. CODE ANN. § 6.2-2000 et seq. (2011) (amended effective Oct. 1, 2010) (governing "debt management," defined as including "debt settlement"). See also S.B. 930, 2011 Reg. Sess. (Va. 2011).
[1063] VA. CODE ANN. § 6.2-2001.
[1064] Id. § 6.2-2003.
[1065] Id. § 6.2-2015.
[1066] Id. § 6.2-2009.
[1067] Id. § 6.2-2022.
[1068] Id. § 6.2-2021.
[1069] Id. § 6.2-2023.

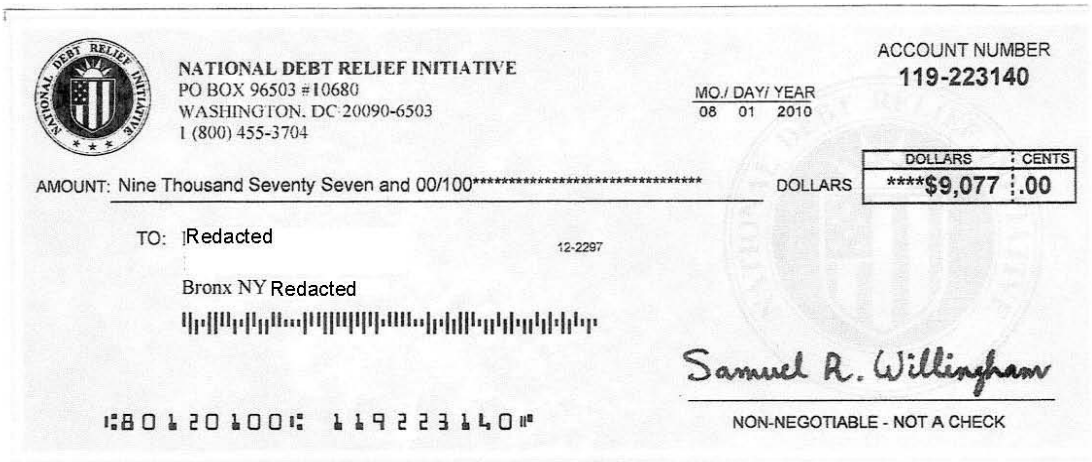
Washington[1070]	Prohibits exceeding fee caps[1071]	- $25 enrollment fee cap - 15% total fee cap on amount enrolled[1072] -		- Misdemeanor[1073] - Civil penalties[1074]
West Virginia[1075]	Prohibits exceeding fee cap[1076]	- Total fee cap: 2% of amount deposited (non-profits may charge additional 5%)[1077]		Misdemeanor[1078]
Wisconsin[1079]	- Licensure[1080] - Bond up to $5,000[1081]	- Enrollment fee cap - Lesser of 10% or $120 monthly fee cap - 15% of payments disbursed fee cap[1082]	Licensee must file annual report[1083]	Fine or imprisonment[1084]

[1070] WASH. REV. CODE § 18.28.010 et seq. (2012) (effective 1967, amended effective Jun. 7, 2012, available at http://apps.leg.wa.gov/RCW/default.aspx?cite=18.28.010 (last visited May 13, 2012). See Bronzich v. Perzels & Assoc's, 2011 WL 2119372 (E.D. Wa. 2011) (describing activities of debt settlement company involved with a law firm as falling under this statute)).
[1071] WASH. REV. CODE § 18.28.080.
[1072] Id.
[1073] Id. § 18.28.190.
[1074] Id. § 18.28.220.
[1075] W. VA. CODE, § 61-10-23 (2012) (effective 1957). See Complaint ¶ 67, West Virginia v. Morgan Drexen, Inc., No. 11-C-829 (Cir. Ct. W. Va. May 20, 2011).
[1076] W. VA. CODE, § 61-10-23.
[1077] Id. § 61-10-23.
[1078] Id. § 61-10-23.
[1079] WIS. STAT. § 218.02 (2012) (effective 1935, amended effective Jul. 1, 2008). See J.K. Harris Fin. Recovery Sys. v. Fin. Insts., 293 Wis. 2d 753 (Wis. App. 2006) (applying debt adjustment statute to debt settlement)).
[1080] WIS. STAT. § 218.02(2).
[1081] Id. § 218.02(3).
[1082] WIS. ADMIN. CODE DFI-Bkg § 73.01.
[1083] Id. § 73.03(7).
[1084] WIS. STAT. § 218.02(10).

Wyoming[1085]	Ban[1086]			Misdemeanor, imprisonment or fine[1087]

[1085] WYO. STAT. ANN. § 33-14-101 et seq. (2011) (effective 1957) (prohibiting "debt adjusting," defined as "contracting with a debtor for a fee to: Effect the adjustment, compromise, or any discharge of any account, note, or other indebtedness; . . .").
[1086] Id.
[1087] Id. § 33-14-103.

APPENDIX F - Redacted Copy of Debt Settlement Solicitation



NATIONAL DEBT RELIEF INITIATIVE
PO BOX 96503 #10680
WASHINGTON, DC 20090-6503
1 (800) 455-3704

ACCOUNT NUMBER
119-223140

MO./ DAY/ YEAR
08 01 2010

DOLLARS	CENTS
****$9,077	.00

AMOUNT: Nine Thousand Seventy Seven and 00/100********** DOLLARS

TO: Redacted

12-2297

Bronx NY Redacted

Samuel R. Willingham

⑈801201001⑈ 119223140⑈

NON-NEGOTIABLE - NOT A CHECK

Dear Redacted

This announcement is to inform you that you may be eligible for an estimated **$9,077** in debt relief through the National Debt Relief Initiative.

If you are interested in receiving debt relief, then please respond within 30-days from the date of this letter by calling **1 (800) 455-3704** to confirm that you meet all of the following conditions.

1) You **must** have at least $10,000 in unsecured debt from credit cards, collection accounts or lines of credit.
2) You **must** be employed or have some other source of earned income.
3) You **must** be behind on payments or only making minimum payments on this debt.

Please note that student loans, auto loans, mortgage and home equity loans DO NOT qualify as unsecured debt and cannot be considered for debt relief.

YOU MAY BE ELIGIBLE FOR DEBT RELIEF UP TO **$9,077**

If you meet all of the above conditions, then please contact us at **1 (800) 455-3704** Monday-Friday from 9am-8pm EST and Saturday from 10am-3pm EST.

When you call the National Debt Relief Initiative you will be connected with a professional debt negotiator who is able to contact your creditors on your behalf and negotiate your total enrolled debt down to an amount that can be paid off after sufficient funds have been allocated.

The attached imitation check is provided as a visual aid to help put into perspective the amount of debt relief that may be available to you through the National Debt Relief Initiative when you call **1 (800) 455-3704** and successfully complete the debt relief process.

Please have your account number ready along with all of your statements to confirm your total unsecured debt amount prior to calling the National Debt Relief Initiative at **1 (800) 455-3704** Monday-Friday from 9am-8pm EST and Saturday from 10am-3pm EST.

NATIONAL DEBT RELIEF INITIATIVE
PO BOX 96503 #10680 • WASHINGTON, DC 20090-6503
TELEPHONE: 1 (800) 455-3704
HOURS: MONDAY-FRIDAY 9AM-8PM EST & SATURDAY 10AM-3PM EST
*ANNOUNCEMENT DETAILS ON OTHER SIDE OF DOCUMENT