



## The Debt Settlement Industry

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### What Is Debt Settlement?

Debt settlement is a rapidly growing industry in which companies advertise that they can eliminate consumer debt by negotiating reduced debt payoffs with a consumer's creditors, usually for unsecured debt such as credit card debt and medical bills.

### What's the Problem?

*Flawed model:* The debt settlement model is an inherently flawed one, in that it requires consumers who are deep in debt (typically \$20,000-\$30,000 worth, if not more) to save significant sums of money to settle each individual debt, but requires them to pay hefty up-front fees and monthly fees that leave the consumer with little savings left for settlements. 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.

*No incentives for service:* The debt settlement industry, largely through its trade associations TASC (The Association of Settlement Companies) and USOBA (United States Organizations for Bankruptcy Alternatives), is pushing for legislation that would authorize debt settlement companies to collect hefty fees whether or not they provide any settlement (or other) services. Specifically, they are pushing fee models that allow the companies to charge 4-5% of total debt right up front (*e.g.*, \$800-\$1,500 based on the above debt numbers), and total fees (charged monthly) of 18-20% of the debt (*e.g.*, \$3,600-\$6,000), regardless of whether any debt is settled. This fee model provides absolutely no financial incentive for the companies to do anything for the consumer.

### What does the Performance Data Show?

The data shows that few consumers benefit while many are harmed. Even the data touted by the industry to support that debt settlement provides real benefits, actually reveal that success rates are low, while fees are high and often, at least some debt (and commonly substantial debt) remains.

- **TASC Survey (FTC Letter 10/26/09)<sup>1</sup>**
  - **65.6% of those enrolled had terminated before completion**
  - 24.6% of consumers had completed the program (defined as at least 70% of debt settled)
  - 9.8% of consumers were still actively enrolled
  - Settlement savings versus fees shows fees were a hefty 51% of savings (not taking into account increased fees/interest on other accounts, and other harms)

- **Richard A. Briesch “Study” of one debt settlement company (Aug. 6, 2009)<sup>2</sup>**
  - *60% of those enrolled (~2,700 consumers) cancelled within two years (higher rate 64.5% for those with the most debt).*
    - These consumers alone paid *at least* \$1.3 million in set-up fees
  - For the 40% who did not cancel, detail is provided about the size and frequency of offers and settlements *only* for those consumers who had at least one settlement or offer of settlement (without disclosing the size of this group, or how many consumers had no settlements or offers at all).
    - After one to two years of paying fees, even those consumers who had at least one debt settled still owed money on 48% of the enrolled accounts and still owed 46% of the total debt enrolled (plus whatever amount that debt had grown to during the interim).
  
- **Colorado AG Data (Oct. 15, 2009)**
  - *More than 50% of consumers who had signed up in 2006 or 2007 had already terminated as of Dec. 31, 2008.*<sup>3</sup>
  - Only 7.81% of those who had enrolled 2-3 years earlier (in 2006) had completed the program
  - Less than 10% of total enrollees had completed the programs.
  - Enrollees had already paid an average of \$1,666.<sup>4</sup>
  
- **Judgment (Court Findings) Against Nationwide Asset Services, Inc.<sup>5</sup>**
  - 1,981 consumers were defrauded
  - Only 1/3 of 1% of enrollees received promised savings (25-40% debt reduction)
  - 180 consumers who completed the program paid more in fees and settlements than the amounts they saved.<sup>6</sup>
  
- **FTC Case Against National Consumer Council, Inc. (2004)<sup>7</sup>**
  - Only 1.4% of consumers enrolled in a debt settlement plan obtained the promised results.
  
- **Florida Complaint Against Nationwide Asset Services, Inc. and Others**
  - Alleged that 227 Floridians had enrolled over six years, but only 30 of those consumers completed the program, which is a *completion rate of less than 13.5%*.
  
- **FTC Case Against Debt Solutions, Inc. (2006)<sup>8</sup>**
  - Alleged that Defendants failed to achieve promised interest rate reductions for 99.5% of sample of accounts and failed to achieve any interest rate reductions in 80.4 percent of the accounts

### Who is Taking Action?

- The Federal Trade Commission (FTC) and 41 state attorneys general agree that substantial fees paid to debt settlement companies in advance of performance are unjustified and harmful to consumers. The FTC has proposed a complete ban on compensation until the provider settles a consumer’s debt.

- The 41 State attorneys general add that a “prohibition on advance fees will prevent the substantial monetary losses suffered by consumers, level the playing field, discourage unscrupulous operators from flocking to this industry and facilitate efficient and timely enforcement.”
- “Over the past five years, 21 States have brought 128 enforcement actions against 84 debt relief companies (including members of TASC and/or USOBA) for unfair and deceptive trade practices.”

### **Are There Advance Fee Bans in Other Contexts?**

*Federal:* The FTC already bans advance fees for mortgage brokers, credit repair services, and offers of a loan or other extension of credit, the granting of which is represented as “guaranteed” or having a high likelihood of success.<sup>9</sup>

*States:* Several states ban for profit debt settlement all together. Other states strictly limit advance fees to a nominal amount (\$75 or less) and other fees that debt settlement companies can charge. Moreover, numerous states have recently enacted laws banning all advance fees by a similar industry – loan modification service providers who claim to help homeowners save their homes from foreclosure by changing their mortgage loan terms.

### **What Does the Industry Say?**

*(1) Argument: Debt Settlement Provides a Real Benefit to Consumers.* The evidence set forth above shows otherwise.

*(2) Argument: Advance Fees are Needed to Cover Costs.* The FTC addresses this argument by noting that “the industry’s own reports suggest that it is marketing, lead generation and referral costs that drive the debt settlement industry’s zeal for up-front fees,” and not service to consumers. Moreover, the FTC remarked that “the actual benefit of allowing entities to recover these costs largely rests on their ability to deliver represented results – an ability that still remains largely unsupported by the record.”

*(3) Argument: Industry Risks Nonpayment Without Front-Loaded Fees.* “[T]he proposed [FTC] Rule’s allowance for legitimate, third-party escrow services is intended to ensure that debt relief service entities will be able to obtain payment if, and once, they have completed their represented services.”

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<sup>1</sup> Letter from the Association of Settlement Companies (TASC) to the Federal Trade Commission, commenting on the FTC’s proposed amendments to the Telemarketing Sales Rule on the marketing of debt relief services at 9-11 (Oct. 26, 2009), available at <http://www.ftc.gov/os/comments/tsrdebtrelief/543670-00202.pdf>.

<sup>2</sup> See Richard A. Briesch, *Economic Factors and the Debt Management Industry* (Aug. 6, 2009), available at: <http://www.consumercreditchoice.org/files/ACCC-Dr.%20Briesch%20Study%20Report%20on%20Debt%20Management%20Industry.pdf>. This study was issued by Americans for Consumer Credit Choice, a membership group made up of those in the consumer finance industry.

<sup>3</sup> See “Press Release: Attorney General Unveils First Annual Report On Debt Settlement, Credit Counseling Business Practices,” available at [http://www.coloradoattorneygeneral.gov/press/news/2009/10/15/attorney\\_general\\_unveils\\_first\\_annual\\_report\\_debt](http://www.coloradoattorneygeneral.gov/press/news/2009/10/15/attorney_general_unveils_first_annual_report_debt)

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[\\_settlement\\_credit\\_counseling](http://coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf); *2008 Annual Report – Colorado Debt Management Service Providers*, available at <http://coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf>.

<sup>4</sup> See “Press Release: Attorney General Unveils First Annual Report On Debt Settlement, Credit Counseling Business Practices,” available at

[http://www.coloradoattorneygeneral.gov/press/news/2009/10/15/attorney\\_general\\_unveils\\_first\\_annual\\_report\\_debt\\_settlement\\_credit\\_counseling](http://www.coloradoattorneygeneral.gov/press/news/2009/10/15/attorney_general_unveils_first_annual_report_debt_settlement_credit_counseling); *2008 Annual Report – Colorado Debt Management Service Providers*, available at <http://coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf>.

<sup>5</sup> See “Press Release: Attorney General Cuomo Obtains Court Order Barring Debt Settlement Company That Ripped Off Thousands Of NY Consumers From Operating In NYS Unless It Meets Strict Requirements” (Oct. 15, 2009), available at [http://www.oag.state.ny.us/media\\_center/2009/oct/oct15b\\_09.html](http://www.oag.state.ny.us/media_center/2009/oct/oct15b_09.html)

<sup>6</sup> *Id.*

<sup>7</sup> See *FTC v. Nat’l Consumer Council, Inc.*, No. SACV04-0474 CJC(JWJX) (C.D. Cal. 2004)

<sup>8</sup> See *FTC v. Debt Solutions, Inc.*, No. 06-0298 JLR (W.D. Wash. Mar. 6, 2006) at 15 (App. for T.R.O.).

<sup>9</sup> 16 C.F.R. 310.4(a)(2)-(a)(4)