STATE OF MARYLAND
THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION
AND
THE CONSUMER PROTECTION DIVISION OF THE
OFFICE OF THE ATTORNEY GENERAL

MARYLAND DEBT SETTLEMENT SERVICES STUDY ACT

REPORT TO
THE SENATE FINANCE COMMITTEE
AND
HOUSE ECONOMIC MATTERS COMMITTEE

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I. BACKGROUND

On May 4, 2010, Governor Martin O'Malley signed Chapters 338 (Senate Bill 701) and 339 (House Bill 392), the Maryland Debt Settlement Services Study Act (the "Act"), which became effective on July 1, 2010. The Act required the Office of the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation (the "Commissioner") in consultation with the Consumer Protection Division of the Office of the Attorney General (the "Division"), to conduct a study of the debt settlement services industry. The objectives of the study included the determination of how the debt settlement services industry would best be regulated in the State, including the option of establishing a licensure requirement and the fiscal impact of regulating the industry if licensure were required.

In conducting its study, the Commissioner and the Division were tasked with establishing a workgroup comprised of representatives of relevant stakeholders, including:

- The Commissioner;
- The Division;
- The debt settlement services industry, including representatives of the various debt settlement services providers with differing models of debt settlement services practices;
- The Maryland Consumer Rights Coalition;
- The debt management industry; and
- Any other person that the Commissioner or the Division considers appropriate.

The Act required the Commissioner and the Division to report, in accordance with § 2–1246 of the State Government Article, their findings and recommendations, including draft legislation, if any, to the Senate Finance and House Economic Matters committees of the General Assembly by December 1, 2010. This report ("Report") has been produced by the Commissioner and the Division in conformity with that requirement.

The initiation of the study and subsequent workgroup meeting were delayed until the Federal Trade Commission ("FTC") finalized proposed amendments to the Telemarketing Sales Rule ("TSR"). At the time that the study was mandated, the FTC had issued proposed amendments to the TSR and comments were being submitted by all interested parties for review. As proposed, and ultimately adopted, the amendments have a substantial impact on the structure and operations of the industry. Therefore, the Commissioner, the Division and the parties involved in the workgroup all agreed that it was premature to analyze the structure and potential regulation of the debt settlement industry prior to the amendments being finalized.

As detailed herein, the TSR amendments were finalized on July 29, 2010 and became fully effective on October 27, 2010 ("FTC Final Rule").[1] The Commissioner convened the workgroup to participate in this study ("Workgroup") shortly thereafter. The Workgroup met on September 23, 2010, in Baltimore, Maryland, and identified key issues for review in light of the

[1] 75 Fed. Reg. 48458 (2010). As referred to in this Report, the "FTC Final Rule" includes both the amendments to the TSR codified at 16 C.F.R. part 310 and the Overview and Background commentary preceding the text of the amended TSR as published in the Federal Register.

FTC Final Rule. The Commissioner and the Division solicited and evaluated written input from Workgroup participants on these key issues in preparing this Report.

II. DEBT RELIEF SERVICES INDUSTRY AND DEBT SETTLEMENT

Demand for debt relief services has been driven by dramatic growth in consumer credit and, more recently, increases in the rate of delinquency, particularly following the financial crisis. According to the Board of Governors of the Federal Reserve, consumer credit outstanding grew more than 70% from approximately $1.4 billion in 1999 to $2.5 billion in 2009.[2] While the amount of consumer credit outstanding increased during that 10-year period, consumers have also experienced increasing difficulty paying their debts. The proportion of outstanding balances that are 90 days or more delinquent has roughly doubled from approximately 7% to approximately 14% from 1999 to 2010.[3]

The increasing number of consumers holding unsecured debt that they cannot pay has created elevated demand for debt relief services. Both for-profit and nonprofit providers have emerged offering services designed to assist consumers in resolving their delinquent accounts in some form or fashion for compensation. Depending on the assets and income of the consumer, as well as other factors, the range of potential solutions and providers available to resolve outstanding delinquencies differs. Possible solutions may range from bankruptcy to full and/or partial repayment of outstanding obligations or counseling to assist the consumer in better handling his or her finances.

A. Debt Management

Consumers who are able to repay all of their debt over time with some accommodation from their creditors can typically enroll in a debt management plan. With the assistance of a credit counselor or some other debt management service provider, an agreement is entered into between the consumer and the consumer's creditors that provide full repayment over time in exchange for concessions by the creditors. Creditor concessions may include a combination of reduced interest rate, waiver of default or delinquency fees, and reduced monthly payments that are less than the contractual amount. This agreement is referred to as a debt management plan ("DMP").

The consumer typically sends monthly payments to the debt management services provider and the provider then distributes the funds to the consumer's creditors pursuant to the DMP. In exchange for this service, the consumer pays the debt management services provider a monthly maintenance fee. Under Maryland's Debt Management Services Act,[4] the debt management provider must be licensed and is subject to examination.[5] Further, the monthly fee in the DMP is capped at $8 per creditor, not to exceed $40 in total per month, and certain

[2] Board of Governors of the Federal Reserve, QUARTERLY CONSUMER CREDIT STATISTICS 1999 and 2010.
[3] Federal Reserve Bank of New York, QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT (Aug., 2010).
[4] MD CODE ANN., FIN. INST. §§ 12-901 through 12-931.
[5] *Id.* at §§ 12-906 and 12-924.

disclosures must be provided.[6] The debt management services agreement must itemize fees retained by the service provider, inform the consumer that a voluntary contribution to the provider may not be provided, and disclose that the execution of the agreement may impact the consumer's credit rating and credit scores, among other disclosures.[7]

B. Debt Settlement

Consumers who cannot pay all of their debts in full, or cannot afford the payments required under a DMP, may alternatively be able to avoid bankruptcy through a debt settlement plan. Debt settlement companies purport to offer consumers the opportunity to obtain lump sum settlements with creditors for less than the full amount of the outstanding balance of their unsecured debt. In the typical scenario, however, the consumer lacks the initial funds to engage in a settlement immediately. As a result, consumers enroll one or more of their unsecured debts under a program developed by the provider, ostensibly to accrue funds for a future settlement and begin making payments into a dedicated bank account established by the provider but owned by the consumer. Although the account is technically owned by the consumer, the debt settlement services provider typically has the contractual authority to withdraw funds both to pay itself fees, to pay creditors from the account and, in practice, controls the account.

According to industry representatives, debt settlement providers assess each consumer's financial condition and, based on that individualized assessment and the provider's experience, calculate a single monthly payment that the consumer must make to save for settlements and pay the provider's fee. The providers typically tell consumers that the monthly payments – often in the hundreds of dollars – will accumulate until there are sufficient funds to offer a settlement to the creditor. The provider generally will not begin negotiations with creditors until the consumer has saved money sufficient to fund a possible settlement of the debt. The provider pursues settlements on an individual, debt-by-debt basis as the consumer accumulates sufficient funds for settlement of each debt. Unlike the DMP described above, debt settlement is structured to settle outstanding debts by repaying only a portion of the total amounts owed. If the consumer fails to make sufficient payments into the settlement account and/or otherwise drops out of the settlement program, then no settlement will be reached though the monthly fees to the provider will be incurred as scheduled.

Since the providers of debt settlement programs described above do not "receive funds periodically from consumers . . . for the purpose of distributing the funds among the consumer's creditors," Maryland's Debt Management Services Act does not apply.[8] The debt settlement providers have not been subject to licensure or examination in this State. Likewise, the contract terms governing the obligations of consumers and providers are not regulated by State law.

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[6] *Id.* at § 12-918.
7 *Id.* at § 12-916.
[8] *Id.* at § 12-901(g).

C. Credit Counseling and Bankruptcy

Many consumers do not belong in either a DMP or a debt settlement program. Some consumers who are experiencing difficulty merely require assistance with handling their finances better and a credit counselor may be able to assist them with budgeting. Conversely, consumers who are not in a position to make the payments required under a DMP or debt settlement program may be best served by filing bankruptcy to discharge their unsecured debts.

III. ABUSIVE PRACTICES RELATING TO DEBT SETTLEMENT SERVICES

A. Federal Trade Commission Concerns

The FTC has noted significant consumer protection concerns relating to the debt settlement services industry over a period of years as evidenced by consumer complaints, testimony and enforcement actions. In April, 2010, as it was considering the proposed rule amending the TSR, the FTC staff conducted a review of some 100 websites offering debt settlement services. According to the FTC, 86% of the sites reviewed "represented that the provider could achieve a specific level of reduction in the amount of debt owed."[9] In addition, the FTC Final Rule cited a Government Accounting Office survey of 20 debt settlement firms which found that 17 of the firms "were making highly dubious success rate and other claims."[10]

In the FTC Final Rule, the FTC reported that it found the advertisements and ensuing telemarketing pitches of many debt settlement service providers:

> Include false, misleading, or unsubstantiated representations, including claims that
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> - The provider will or is highly likely to obtain large debt reductions for enrollees, e.g., a 50% reduction of what the consumer owes;
> - The provider will or is highly likely to eliminate the consumer's debt entirely in a specific time frame, e.g., 12 to 36 months;
> - Harassing calls from debt collectors and collection lawsuits will cease;
> - The provider has special relationships with creditors and expert knowledge about available techniques to induce settlement; and
> - The provider's service is part of a government program, through the use of such terms as "Credit relief act," "government bailout," or "stimulus money."[11]

[9] 75 Fed. Reg. at 48461 n. 50.
[10] *Id.* at 48481 n. 325.
[11] *Id.* at 48463 (citations omitted).

The FTC similarly found troubling the practice that:

> Many providers also tell consumers that they can, and should, stop paying their creditors, while not disclosing that failing to make payments to creditors may actually increase the amounts consumers owe (because of accumulating fees and interest) and will adversely affect their creditworthiness. The rulemaking record establishes that a large proportion of consumers who enter a debt settlement plan do not attain results close to those commonly represented. [12]

B. Maryland Consumer Complaints

Since January 1, 2007, the Division has handled 239 consumer complaints filed against 247 businesses that indicate that the abuses relating to debt settlement services in Maryland are consistent with those reported by the FTC. Likewise, the pace of complaints has accelerated. While the Division handled 21 complaints against debt settlement companies in 2007 and 25 complaints in 2008, those numbers skyrocketed to 98 complaints in 2009 and 95 complaints to date in 2010.

Based on these complaints, the Division has concluded that many Maryland consumers have been enrolled in debt settlement plans for whom such plans are not appropriate. Moreover, the complaints reflect that consumers have not been given accurate information by debt settlement service providers, and in some instances have instead been provided with misleading information about what to reasonably expect as an outcome.[13] A common complaint received by the Division is that after signing up with a debt settlement program, creditors continue to harass, and in some cases file suit against, the enrolled consumer, although the debt settlement company told the consumers that their creditors would hold off because they were in the program. Another frequent complaint is that when consumers seek to cancel because they cannot continue to make the payments while being pursued by their creditors, they find that the payments they have made are kept by the debt settlement company as the company's fee and that they do not have funds available to pay their creditors.[14] Many consumers report that, even though the debt settlement company is collecting fees every month, they do not see the company doing anything and companies do not respond to their inquiries.[15]

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[12] *Id.*

[13] 16 complaints allege false or misleading statements, or misrepresentations or omissions of material fact.

[14] 39 complaints allege failure to honor a refund or cancellation request or improper billing.

[15] 81 complaints allege failure to provide the services promised. An additional 91 complaints allege breach of contract. In one particularly egregious such case, the Division brought an action against Richard A. Brennan, an attorney from Frederick, Maryland who collected more than $2.6 million from consumers for debt settlement services he failed to provide. The Division has only been able to recover a small portion of the amount he took from consumers.

IV. MARYLAND LEGISLATIVE HISTORY

In its 2005 session, the General Assembly enacted Chapter 574, which, among other things, required that the Commissioner and Division jointly:

- Study the regulatory mechanisms employed and proposed elsewhere in the country for the regulation of debt management, debt settlement, debt adjustment and similar services; and
- Recommend appropriate changes, if any, to the Maryland Debt Management Services Act and regulations adopted under that Act.

In the resulting Study,[16] the Division recommended that, based on consumer complaints showing harm to consumers, debt settlement services be banned in Maryland. In the alternative, the Division recommended that the industry be regulated in the same manner as credit repair businesses under the Maryland Credit Services Businesses Act,[17] including a prohibition on collecting fees in advance of providing services.[18] The then-Commissioner of Financial Regulation noted that at the time of the Study the debt settlement industry was "relatively small" and recommended registration of debt settlement businesses operating in the State "by which debt settlement companies can be monitored and information regarding an appropriate regulatory framework may be gathered."[19] No legislation related to debt settlement service providers was enacted as a result of this Study.

In the 2008 session of the General Assembly, Delegate Brian Feldman introduced House Bill 1223, which would have required debt settlement companies to be licensed by the Commissioner, prohibited fees in advance of settling consumers' debts, capped the fees charged at 15% of the amount the company saved the consumer, and required certain disclosures in debt settlement contracts and advertising. HB 1223 was supported by both the Division, the newly appointed Commissioner of Financial Regulation, Sarah Bloom Raskin, and consumer advocacy organizations but opposed by industry representatives. The House Economic Matters Committee voted to send HB 1223 to interim study.

In the 2009 session of the General Assembly, Delegate Elizabeth Bobo introduced House Bill 1269, which would have prohibited debt settlement companies from operating in Maryland. The legislation was supported by the Division, the Commissioner, and consumer advocacy organizations with amendments that would have allowed debt settlement companies to operate in a manner similar to House Bill 1223, except that the amendments did not provide for licensing. Both HB 1269 and the proposed amendments were opposed by industry representatives. The House Economic Matters Committee gave HB 1269 an unfavorable report.

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[16] Maryland Debt Management Services Act, Report to the Senate Finance Committee and House Economic Matters Committee (2006) (hereafter referred to as the "Study').
[17] MD. CODE ANN., COM. LAW, §14-1901, *et seq.*
[18] Study at 32-36.
[19] Study at 38-39.

In the 2010 session of the General Assembly, Delegate Michael Vaughn sponsored House Bill 392 and Senator Catherine Pugh sponsored Senate Bill 701, which would have prohibited debt settlement companies from collecting fees in advance of settling consumers' debts, capped the fees at 15% of the amount the company saved the consumer, and required certain disclosures in debt settlement contracts and advertising. The legislation was supported by the Division, the Commissioner, and consumer advocacy organizations, but opposed by industry representatives. After extensive negotiations failed to reach a consensus on compromise legislation, both HB 392 and SB 701 were amended to require the Commissioner and Division to convene a workgroup to conduct the subject study. The amended bills were enacted as Chapters 338 and 339, which resulted in this Report.

V. LEGISLATIVE/REGULATORY STRUCTURES IN OTHER STATES

Thirty-nine states have enacted legislation related to the debt settlement industry. Seven states bar debt settlement by for-profit entities.[20] Six states have adopted the Uniform Debt-Management Services Act, which provides for licensing of debt settlement companies.[21] Eighteen other states also require that debt settlement companies be licensed or registered.[22]

Many states limit the fees that debt settlement companies may charge consumers:

- Arizona allows a retainer fee of $39 and monthly payments equal to three-quarters of one percent, whichever is less;[23]
- In California, the fee may not exceed in the aggregate 12% for the first $3,000, 11% for the next $2,000, and 10% for any remaining payments distributed to the creditors of a debtor;[24]
- Georgia limits fees to7.5% of the amount paid monthly by a debtor to the debt settlement company for distribution to creditors and North Dakota limits fees to 15%;[25]
- Illinois limits fees to a $50 setup fee and 15% of the amount saved by the consumer;[26]
- Iowa permits a setup fee of $50 and 15% of the amounts distributed to creditors, if the debtor's funds are held, and 18% of the principal amount, if not holding the

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[20] ARK. CODE ANN. § 5-63-301, *et seq.*; HAW. REV. STAT. ANN. §446-2; LA. REV. STAT. § 14:331; MASS. GEN. LAWS ANN. CH. 180 § 4A; N.J. STAT. ANN. §17:16G-2; N.D. CEN. CODE § 13-06-02; WYO. STAT. ANN. §33-14-102.

[21] COLO. REV. STAT. ANN.. § 12-14.5-201, *et seq.*; DEL. CODE ANN., TIT. 6, § 2401A, *et seq.*; NEV. ST. § 676A.010, *et seq.*; RI GEN. LAWS §19-14.8-1, *et seq.*; TENN. CODE ANN. § 47-18-104(B)(39)(A); UT. CODE § 13-42-101, *et seq.*

[22] ALA. CODE § 8-7-1, *et seq.*; A.R.S. ANN. § 6-701, *et seq.*; CAL. FIN. CODE § 12100, *et seq.*; CONN. GEN. STAT. ANN. § 36A-655, *et seq.*; IDAHO CODE § 26-2201, *et seq.*; 205 ILL. PUBLIC ACT 096-1420 § 15, *et seq.*; IOWA CODE ANN. § 553A.1, *et seq.*; KAN. STAT. ANN. § 50-1116, *et seq.*; KY. REV. STAT. ANN. § 380.010, *et seq.*; ME. REV. STAT. ANN. Tit. 32 § 6171, *et seq.*; MINN.STAT.ANN. § 332B.02, *et seq.*; MISS. CODE ANN., § 81-22-1, *et seq.*; N.H. REV. STAT. ANN., Tit. XXXVI, § 399-D:1, *et seq.*; N.J. STAT. ANN. § 17:16G-2, *et seq.*; 63 PA. STAT. ANN. § 2401, *et seq.*; S.C. CODE ANN. § 37-7-101, *et seq.* (1976); TEX. FIN. CODE § 394.204; 8 VT. STAT. ANN. tit.. § 2751, *et seq.*

[23] AZ. REV. STAT. ANN., § 6-708

[24] CAL. FIN. CODE § 12314

[25] GA. CODE ANN., § 18-5-2; N.D. STAT. ANN. § 13-07-06

[26] IL PUBLIC ACT 096-1420 § 125

debtor's funds;[27]

- Kansas permits a setup fee of $50 and a maintenance fee of the lesser of $20 per month or $5 per creditor listed in the agreement;[28]
- Kentucky permits a $75 setup fee and either 8.5% of the amount paid by the debtor each month for distribution to creditors or $30;[29]
- Maine allows a setup fee of $75 and allows a "reasonable fee not to exceed 15% of the amount by which the consumer's debt is reduced;"[30]
- Minnesota permits a setup fee of between $200 and $500 depending on the amount of debt enrolled and whether the fee charged is a flat fee or percentage of savings; the fee is capped at 15% of the total debt or 30% of the savings;[31]
- Mississippi allows a setup fee of $75 and maintenance fee of $30 per month;[32]
- Missouri limits the fee to the greater of $35 per month or 8% of the amount distributed each month to creditors;[33]
- Montana limits the fee to not more than 20% of the principal amount of the debt;[34]
- New Hampshire limits fees to 10% of the amount required to pay indebtedness when the plan of payment is for a period of 10 months or less; 12.5% when the plan of payment is for more than 10 but less than 18 months; and 15% when the plan of payment is for 18 months or more;[35]
- New Jersey limits fees to 1% of the gross monthly income of the debtor, not to exceed $15 per month;[36]
- Ohio allows a setup fee of $75 and a periodic fee of not more than 8.5% of the amount paid for distribution to creditors or $30, whichever is greater;[37]
- South Carolina permits a setup fee of up to $50 and a monthly maintenance fee of up to $10 per creditor, not to exceed $50 per month;[38]
- Texas allows a setup fee of $100 and a monthly fee of up to 10% of the consumer's scheduled monthly payment to creditors, with a minimum of $10 and a maximum of $50;[39]
- Vermont allows a setup fee of $50 and up to 10% of any payment received from the debtor for the purpose of distribution to creditors;[40]
- Washington limits the fee to not more than 15% of the debt enrolled in the contract;[41]and

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[27] IA. CODE ANN. § 553A.9
[28] KAN. STAT. ANN. § 50-1126
[29] KY. REV. STAT., Title XXXI, § 380.040
[30] ME. REV. STAT. ANN. tit. 32, § 6174-A.
[31] MINN. STAT. ANN. § 332B.09
[32] MISS. CODE ANN. § 81-22-13
[33] MO. ANN. STAT. § 425.010.
[34] MT. CODE ANN., § 30-14-2103.
[35] N.H. REV. STAT. ANN., TITLE XXXVI, § 399-D:14(III)
[36] N.J. STAT. ANN. § 17:16G-9
[37] Ohio REV. CODE ANN. § 4710.02
[38] S.C. ADMIN CODE § 28-700(2)(C)
[39] TEX. ADMIN CODE § 88-306
[40] VT. STAT. ANN., tit. 8 § 2762
[41] WASH. REV. CODE ANN. § 18.28.080

- West Virginia limits the fee to not more than 2% of the amount deposited by the consumer for distribution to creditors.[42]

The Uniform Debt-Management Services Act permits a setup fee of up to the lesser of $400 or 4% of the amount of the debt enrolled and a monthly service fee not to exceed $10 per month per each creditor remaining in the plan, up to $50 per month. The Act caps the settlement fee at 30% of the amount of the principal saved, but the setup and monthly fees are to be deducted from the fee. States that have adopted the Act have enacted variations. For example, Colorado and Delaware cap the settlement fee at 18% of the principal amount of the debt enrolled;[43] Utah allows either a flat fee of 17% of the principal amount of the debt enrolled or 30% of the amount of principal saved by the consumer, although the total aggregate fees may not exceed more than 20% of the amount of debt enrolled at the plan's inception.[44]

It is unclear what impact the FTC Final Rule will have on these limits, particularly in states that allow setup fees and fees that are earned monthly.

With respect to whether attorneys are subject to the restrictions applicable to debt settlement companies:

- 8 states exempt attorneys licensed to practice in the state;[45]
- 12 states exempt "attorneys . . .acting in the ordinary practice of their profession" or similar language;[46]
- 6 states exempt "legal services provided in an attorney-client relationship;"[47]
- Idaho's law exempts attorneys where the services are "incidental to the practice of law... [but] shall not apply to an attorney engaged in a separate business conducting the activities authorized by this act;" Similarly, 8 other states exempt attorneys where the settlement is incidental to the practice of law;[48] and 3 exempt attorneys who are "not principally engaged in the business of debt adjusting;"[49]
- Maine exempts attorneys except to the extent that "debt management services constitute the exclusive activity of that attorney;"[50]
- Texas exempts attorneys "unless the attorney holds the attorney's self out to the public as

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[42] W. VA. CODE § 61-10-23

[43] COLO. REV. STAT. ANN. § 12-14.5-223; DEL. CODE ANN., tit. 6, § 2423S

[44] UT. CODE ANN. § 13-42-123

[45] ARK. CODE ANN. § 5-63-305(1); HAW. REV. STAT. ANN., § 446-3; IND. CODE ANN. § 28-1-29-12; MASS. GEN. LAWS ANN., 221 §46C; MO. ANN. STAT. 425.040(1); N.M. STAT. ANN., § 56-2-4; S.C. CODE § 37-7-101(2)(B)(I); W. VA. CODE § 61-10-23

[46] MT CODE ANN., § 30-14-2101(1)(B)(I); see also, CT GEN. STAT. ANN., §36A-663; GA. CODE ANN., §18-5-3; IL PUBLIC ACT 096-1420, § 10(1); MN. STAT. ANN., § 332.13(2)(C)(1); NEV. REV. STAT. § 676A.100(1); N.H. REV. STAT. ANN., Title XXXVI, § 399-D:4(I); Ohio REV. CODE ANN., Title XLVII, § 4710.03(B); 63 PA. CONS. STAT. § 2404(A)(5); S.C. CODE § 37-7-101(2)(B)(I); 8 VT. STAT. ANN. § 2763(1); WYO. STAT. § 33-14-102(B).

[47] COL REV. STAT. ANN., § 12-14.5-202(10)(A); DEL. CODE ANN., tit. 6, § 2402(A)(9)(A); NEV. REV. STAT. ANN. § 676A.140(1); RI GEN. LAWS § 19-14.8-2(9)(A); TENN. CODE ANN. § 47-18-5502(10)(A); Utah CODE ANN. § 13-42-102(9)(A).

[48] IDAHO CODE, § 26-2239(1); AZ. REV. STAT. ANN., § 6-702(1); IOWA CODE ANN., § 533A2(2)(A); KAN. STAT. ANN., § 21-4402(B); LA. REV. STAT. ANN., § 14:331(C)(1); MS. CODE ANN., § 81-22-3(C)(I); N.D. CENT. CODE § 13-06-03(1); S.D. CODIFIED LAWS. § 37-34-2(1); WASH. CODE ANN. § 18.28.010(2)(A).

[49] ARIZ. REV. STAT. ANN., §6-702(1); KY. REV. STAT. ANN., § 380.030(1); N.J. STAT. ANN., § 17:16-G-1(C)(2).

[50] ME. REV. STAT. ANN., tit. 32§ 6172(3)(C).

a provider or is employed, affiliated with, or otherwise working on behalf of a provider;"[51]

- California's law provides that its statute does not apply to "[t]he services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney-at-law, *and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller."* (Emphasis added);[52]

A table comparing state laws is provided at Appendix A.

VI. THE FTC FINAL RULE AND ITS EFFECT ON DEBT SETTLEMENT INDUSTRY

To protect consumers from deceptive or abusive practices in the telemarketing of debt relief services, the Federal Trade Commission proposed amendments to the TSR on August 19, 2009. The FTC received comments from several hundred interested parties and, on November 4, 2009, held a public forum to discuss comments. The FTC adopted the FTC Final Rule on July 29, 2010. As amended, the TSR (16 C.F.R. Part 310) defines "debt relief service" as:

> 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.[53]

This definition covers all forms of debt relief services, including debt settlement, debt negotiation, and debt management, as well as lead generators for these services.[54]

The FTC Final Rule prohibits debt relief providers from collecting fees until after services have been provided. Also under the FTC Final Rule, debt relief services are required to make specific disclosures of material information about offered debt relief services, and are further prohibited from making specific misrepresentations about material aspects of debt relief services. The FTC Final Rule extended coverage to include inbound calls made to debt relief companies in response to general media advertisements.

The FTC Final Rule became effective on September 27, 2010, except for § 310.4(a)(5), which became effective October 27, 2010. The FTC Final Rule is intended to curb deceptive and abusive practices in the telemarketing of debt relief services through the following provisions that:

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[51] TEX. FIN. CODE § 394.203(C)(1).
[52] CA FIN. CODE ANN., § 12100(2)(C).
[53] 75 Fed. Reg. at 48467.
[54] *Id.*

- Prohibit debt relief service providers from collecting a fee for services until a debt has been settled, altered, or reduced;
- Require certain disclosures in calls marketing debt relief services;
- Prohibit specific misrepresentations about material aspects of the services; and
- Extend the TSR's coverage to include inbound calls made to debt relief companies in response to general media advertisements.

The prohibition against collecting a fee until a debt has been settled, altered or reduced will have a significant impact on the debt settlement industry. In reviewing comments, the FTC Final Rule noted that the trade association USOBA, which purports to represent a significant number of debt settlement providers, submitted a survey indicating that 85% of members would stop offering debt settlement services if an advance fee ban was implemented.[55] While questioning the reliability of the survey and noting that numerous other professionals, such as realtors, operate on a success-fee basis, the FTC acknowledged that debt settlement providers would need to more substantially capitalize their businesses, at least initially. In adopting the prohibition, the FTC was "not persuaded that an advance fee ban would make it infeasible for legitimate debt settlement providers to operate their businesses."[56]

VII. MARYLAND DEBT SETTLEMENT WORKGROUP

A. Composition and Scope of Study Workgroup

As noted above, Chapters 338 and 339 required the Office of the Commissioner and the Division to establish a workgroup comprised of representatives from relevant stakeholders to study the debt settlement industry and the regulation thereof. The Bills specified that the workgroup consist of the following:

- The Commissioner;
- The Division;
- The debt settlement services industry;
- The Maryland Consumer Rights Coalition;
- The debt management industry; and
- Any other person considered appropriate.

The initiation of the study and subsequent meeting of the Workgroup was delayed until the FTC completed the FTC Final Rule. At the time that the study was mandated in May 2010, the FTC amendments to the TSR had already been proposed and final action was expected imminently. As noted, industry representatives had repeatedly indicated that the proposed rule, particularly the advance-fee ban, would have a major impact on the structure of the industry and could severely reduce the number of providers, and operations of the industry. Therefore, the

[55] *Id.* at 48477.
[56] *Id.* at 48478.

Commissioner, the Division and the parties involved in the Workgroup collectively determined that it was premature to analyze the structure and potential regulation of the industry prior to the amendments being finalized.

As previously mentioned, the TSR amendments were finalized on July 29, 2010 and became fully effective by October 27, 2010; the Workgroup was convened shortly thereafter. In addition to staff members from the Office of the Commissioner, Office of the Attorney General, and Department of Legislative Services, the Workgroup included seven consumer representatives, ten industry representatives, and one academic from the University of Maryland School of Law. Additionally, an attorney from the FTC was in attendance at the Workgroup meeting to provide a summary of the FTC Final Rule and its scope in the context of debt settlement services, and to answer questions from the stakeholders in attendance.

B. Pre and Post-Study Workgroup Activities

Following the adoption of the FTC Final Rule, the Commissioner met with staff from the Division to begin substantive work on the study. The Commissioner and the Division held initial discussions with stakeholders in which it was suggested to wait several weeks for the FTC to clarify its positions on the various provisions of the FTC Final Rule before holding the Workgroup meeting. Consequently, the Workgroup meeting was held on September 23, 2010. The Workgroup participants were provided with a meeting agenda outlining possible topics for discussion. The Workgroup meeting was co-chaired by the Commissioner and the Division. The topics covered included a recap of the 2010 legislative effort, the study mandate, the FTC Final Rule generally, and what amendments to Maryland law should be made, if any, to supplement or extend the coverage of the FTC Final Rule to Maryland consumers. More particularly, the Workgroup identified seven issues specifically related to the possible regulation of the debt settlement services industry in Maryland, including:

- Registration/licensing;
- Internet, face-to-face meetings, and intrastate application of the FTC Final Rule;
- Regulation of Nonprofit debt settlement service providers;
- Regulation of third-party lead generators;
- Fee caps;
- Maryland-specific disclosures; and
- Coverage of attorneys.

The meeting concluded and Workgroup members were asked to reflect on the discussions held and instructed to provide written comments to be incorporated in the study. On October 5, 2010, the Commissioner and the Division issued a joint letter soliciting comments from all Workgroup participants. The request for comment outlined the broad issues discussed at the September meeting and requested specific feedback on the particular topics outlined above, as well as relating to any additional areas not covered or discussed. The letter further asked the participants to make recommendations on any proposals for amending Maryland law under consideration. The letter is attached as Appendix B. Responses were due on or before October

18, 2010. The results of the Workgroup's comments and recommendations are discussed in the "Summary of Workgroup Comments" section of this Report below.

VIII. SUMMARY OF RESPONSES AND RECOMMENDATIONS

The Commissioner received comments from the following eight groups: United States Organizations for Bankruptcy Alternatives ("USOBA"), The Association of Settlement Companies ("TASC"), CareOne Services, Inc. ("CareOne"), Persels & Associates, LLC ("Persels"), Debt Shield, Inc. ("Debt Shield"), Consumer Credit Counseling Services ("CCCS"), the Maryland Consumer Rights Coalition (which also represented Civil Justice, Inc. and the Maryland CASH Campaign) ("MCRC"), and Debt Management Associates, Inc. ("Debt Management Associates"). The Commissioner and Division have carefully reviewed all comments submitted by the Workgroup participants. Both consumer representatives as well as industry members set-forth compelling and thoughtful responses in favor of, or in opposition to, proposed legislation regulating the industry that are discussed by topical area below. While participants addressed each of the issues directly, several provided commentary in opposition to any debt-settlement legislation in Maryland at this time. Summaries of the comments provided by the Workgroup participants are set forth below, followed by the recommendations of the Commissioner and the Division.[57] It is the goal of the recommendations contained herein to adequately protect consumers from abusive practices while balancing constraints placed upon the debt settlement services industry through increased regulation.

A. Registration/Licensing

1. Issue: The Workgroup acknowledged that there was considerable uncertainty in the debt settlement industry following the issuance of the FTC Final Rule. In particular, while the advance-fee ban is expected to reduce the number of providers and force recapitalization of others, the extent of the impact and size of the industry going forward is unclear. Therefore, the Workgroup considered whether legislation should be adopted to require registration of debt settlement service providers on an interim basis. Once the size and makeup of the industry could be determined, possible licensing alternatives could be more effectively evaluated. Registration on an interim basis would provide information on the number of debt settlement companies operating in Maryland and could be designed to provide the Commissioner with enforcement authority over the registrants.

2. Comments: Five commenters agreed that registration should be required for debt settlement companies on an interim basis and that licensing should be reevaluated once the impact of the FTC Final Rule can be determined. USOBA and TASC did not oppose interim

[57] The Commissioner and the Division endeavored to accurately summarize the positions of the Workgroup participants but could not circulate an advance copy of the final Report before its official submission pursuant to MD CODE ANN., STATE GOV. § 2-1246. To avoid any potential mischaracterization of comments, copies of all comments received have been included, in full, with this Report are attached as Appendix C.

registration. Persels argued against registration as it specifically related to law firms.[58] Debt Management Associates noted that registration requirements should not be overly burdensome or costly but should provide the Commissioner with adequate information to evaluate a licensing requirement at a later date. A number of commenters provided specific recommendations for the proposed registration process.[59] Two commenters argued that a bonding requirement should be included.[60] MCRC additionally provided detailed suggestions for a licensing scheme.[61]

3. **Recommendations**: The Commissioner and the Division recommend an interim registration of companies engaging in the business of debt settlement for a period of two years. During that interim period, the Commissioner will gauge the operations as well as the number of registrants in the State and make recommendations for a licensing scheme. The Commissioner and the Division believe that an immediate licensing recommendation would be premature at this time as more information about the industry in this State is needed. The Commissioner and the Division reference the sample registration form provide by USOBA, as used in Montana, as an example of a registration form that could be used by the Commissioner, as determined by regulation. It is recommended that registration be a requirement of conducting debt settlement business in Maryland.

The Commissioner and the Division recommend a registration regimen to include the following:

- A registration form that includes:
    1) General information about the registrant;
    2) The identity and contact information of a designated compliance contact;
    3) Copy of contract(s) and disclosures provided to Maryland consumers;
- An annual report of activities in the State filed with the Commissioner for the prior year;
- $500.00 annual registration fee paid to the Office of the Commissioner;
- Authority for the Commissioner to investigate and resolve consumer complaints;
- Authority for the Commissioner and the Division to seek injunctive relief to prohibit a person who has engaged or is engaging in a violation of the proposed law;
- Mandating that a violation of the proposed law is an unfair or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article (the State Consumer Protection Act) and is subject to the enforcement and penalty provisions contained therein.

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[58] Persels at 1 (arguing that registration "as it applies to attorneys is both unnecessary and unworkable....Every attorney who works with consumers at one time or another works to restructure debt. When would members of the Bar who work on compromises of their client's debt be required to register? What level of activity in the field would trigger registration?. . . Obviously, all attorneys are 'registered' and regulated by the Court of Appeals. Imposing a further requirement would open the door to the possibility of myriad other invasions of the practice of law which are constitutionally reserved to the State's highest court.")

[59] CCCS at 1 ("Registration should call for at minimum an annual reporting requirement to include audited financial statements, number of clients served and the dollars deposited and fees charged."); USOBA provided a sample registration form from Montana, which includes a $250 filing fee and a nine-part annual reporting requirement. Debt Shield at 2 ("suggests requiring a short registration application with a nominal fee that includes" eight parts, which "...is similar to registration requirements of other states."); MCRC at 4 (supports ". . . an interim registration period for one year to be followed by a report from the Commissioner of Financial Regulation . . . on the number and performance of debt settlement companies registered during that year as well as a recommendation for establishing a permanent procedure for licensing, registration, reporting, and bonding of debt settlement companies.").

[60] CareOne at 1; MCRC at 4.

[61] MCRC at 4-5.

It is anticipated that information obtained during the interim registration period will permit the Commissioner and the Division to make a recommendation regarding the scope of potential licensure, bond requirements, examination protocol, and other key components after a thorough assessment of the activities of the debt settlement service providers operating in the State

B. Internet, Face-to-Face Meetings, and Intrastate Application of the FTC Final Rule

1. Issue: The FTC Final Rule applies to debt settlement service providers using telemarketing to contact potential customers. In the FTC Final Rule, the TSR was expanded to cover not only outbound calls, but in-bound calls as well, in response to advertisements and other solicitations across state lines. However, the FTC Final Rule does not apply to services provided via the Internet or solely within a given state (intrastate calls) as the provision of services in this fashion falls outside the definition of telemarketing. The FTC Final Rule also does not apply to providers that meet customers face-to-face since this would not be a telemarketing activity. The Workgroup considered whether legislation should be adopted extending the consumer protections of the FTC Final Rule to consumers obtaining services from Internet providers, face-to-face providers, and providers operating solely on an intrastate basis within Maryland.

2. Comments: Four commenters agreed that the FTC Final Rule should be extended to apply to debt settlement services provided via the Internet, in face-to-face meetings, and solely within a given state (intrastate calls). The other three commenters did not explicitly disagree with this extension; rather, they expressed views that services would not be provided in these manners or that there was a *de facto* extension, and therefore argued that extensions in Maryland would be unnecessary, at least at this time.[62]

3. Recommendations: To ensure that full safeguards are provided to Maryland consumers and that a level playing field is created for businesses, the Commissioner and the Division recommend that the FTC Final Rule be extended to apply to debt settlement services provided via the Internet, in face-to-face meetings, and to those activities that take place solely within Maryland (intrastate). The Commissioner and Division note that the FTC's reach of providing consumer protections through the TSR as memorialized in the FTC Final Rule is limited to interstate transactions and telephonic solicitations. The Commissioner and the Division believe that it would be beneficial to Maryland consumers to extend the common sense

[62] USOBA at 2 ("...Internet, face-to-face meeting and intrastate exemptions are becoming increasingly difficult to qualify for and comply with....Internet transactions will likely be unsuccessful....Current interpretations of the FTC [R]ule require that the entire sales presentation occur face-to-face prior to contract....Intrastate exemptions appear to be only applicable if ***ALL*** sales functions occur within the state (original emphasis)."); TASC at 2 ("...It is unlikely that a transaction without any personal interaction would succeed. Personal interaction without using the phone in today's society does not seem possible. The broad application of the Interstate Commerce [C]lause also makes it highly unlikely that such an exemption based on intrastate commerce truly exists."); Debt Shield at 3 ("Per the Final [R]ule, there is no current issue with debt relief providers that only enroll via the Internet....A face-to-face meeting...helps limit potential problems the Final Rule is designed to remedy").

protections afforded consumers by the FTC Final Rule and those proposed herein to services provided to all State consumers, including those solely occurring within Maryland or those that are provided via the Internet or in face-to-face meetings.

C. Nonprofit Providers

1. Issue: The FTC Final Rule does not apply to 501(c)(3), tax exempt nonprofit debt settlement service providers because the FTC does not have jurisdiction over those providers. The Workgroup considered whether legislation should be adopted extending the consumer protections of the FTC Final Rule to cover nonprofit debt settlement service providers operating in this State.

2. Comments: All commenters agreed that the FTC Final Rule should be extended to cover nonprofit providers of debt settlement services operating in Maryland. MCRC further argued that any entity providing debt settlement services should be covered.[63]

3. Recommendations: To ensure that full safeguards are provided to Maryland consumers and that a level playing field is created for businesses, the Commissioner and the Division recommend that the FTC Final Rule be extended to cover nonprofit debt settlement service providers.

D. Lead Generators

1. Issue: The FTC Final Rule states that lead generators are likely covered under the TSR's primary provisions or provisions on assisting and facilitating debt settlement services. The Workgroup considered whether legislation should be adopted whereby all parties who receive compensation from a consumer related directly or indirectly to debt settlement services would be covered by any proposed registration or licensing scheme.

2. Comments: Persels, MCRC and CareOne agree that independent, affiliated or third party providers of lead generation services for debt settlement service providers should be subject to the same requirements as other debt settlement service providers.[64] USOBA, TASC and Debt Shield disagree, arguing that lead generators are covered under the FTC Rule and/or regulatory regimes, making additional regulation by Maryland unnecessary.[65]

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[63] MCRC at 6 ("...Banks, mortgage brokers and lenders, and other professional licensees that engage in the business of debt settlement (outside of discharging debts that they own) should be covered by any proposed regulations or licensing scheme.").

[64] Persels at 2; MCRC at 6; CareOne at 2

[65] TASC at 2 ("The concerns regarding lead generation are not debt settlement specific. Either existing regulation or new regulation specific to marketing practices used by lead generation companies for all industries, products or services is more appropriate. Further, the FTC rule covers lead generation providers as entities that assist debt relief providers."); DebtShield at 4 ("The FTC's Final Rule covers 'any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of rules addressing unfair, deception, or abusive act of practice, or any rule or order issued thereunder, shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.' See 16 CFR 310.3(b). Similarly, the CFPB's the

3. **Recommendation**: The Commissioner and the Division recommend that lead generation service providers be included in any proposed legislation. The FTC Final Rule may cover lead generation providers or affiliates assisting debt settlement service providers and although the commentary presumes coverage, there is some ambiguity.[66] In the interest of providing clarification, it is the view of the Commissioner and Division to extend reach of the recommend protections to third-party providers or affiliates that broker or connect consumers to debt settlement service providers. The recommended clarification is intended to ensure that anyone holding itself out as a provider of debt settlement services, whether such person directly offers the services or refers consumers to providers of the services, are within the scope of coverage of any potential Maryland debt settlement legislation.

E. Fee Caps

1. **Issue**: The FTC Final Rule requires certain disclosures relating to fees charged for services and prohibits an upfront fee of any amount. However, the FTC Final Rule does not cap the "success" fees that may be charged. While the FTC Final Rule is therefore silent on how any cap would be calculated, the disclosure of fees to be charged must be based on enrolled debt (versus settled debt which will be higher with accrued interest, etc). The FTC Final Rule also provides that any fees charged must either be a specified percentage of the savings or a fee that is proportional to the amount of the debt settled in comparison to the overall debt enrolled. The 2010 legislation as initially proposed included a fee cap based on settlement of enrolled debt of 15% and was ultimately increased to 30% during the legislative negotiations. The Workgroup considered whether legislation should be adopted that would impose a fee cap, and, if so, what the amount of a cap should be as a percentage of debt settled. There was no apparent consensus on the amount of a cap, if any.

2. **Comments**: Three commenters argued that debt settlement service providers should be subject to fee caps. CareOne recommended a cap of 30%, in line with the Uniform Debt Management Services Act (UDMSA).[67] A second commenter, CCCS, thought

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[sic] definition of 'covered persons' includes a broad range of organizations and activities."); USOBA at 2 ("The federal government and most states already have laws on the books that address marketing practices. It would likely be redundant and inappropriate to focus portions of a debt relief statute on a completely separate industry.).

[66] 75 Fed. Reg. 48466-48467. In comments received regarding the proposed Final Rule, the FTC noted that "[t]he National Association of Consumer Credit Administrators ("NACCA") emphasized that many providers of debt relief services purchase consumer contact information from so-called "lead generators" – intermediaries that produce and disseminate advertisements for debt relief services to generate "leads" that they then sell to actual providers. NACCA recommended that lead generators be covered by the Rule. *Id.* at 48466. After considering the comments, and other than the addition of the word "program," as noted in footnote 123, the FTC determined not to change the proposed rule's definition of "debt relief service." The FTC believes that this definition appropriately covers all current and reasonably foreseeable forms of debt relief services, including debt settlement, debt negotiation, and debt management, as well as lead generators for these services." *Id.* at 48467. *But see* FN 133 which goes on to say: "[d]epending on the facts, lead generators for debt relief services *may* be covered under the TSR's primary provisions or its assisting and facilitating provision." (emphasis added). *Id.*

[67] CareOne at 2 ("We believe that the settlement fee authorized by the [UDMSA], as modified by the FTC TSR, should be adopted by Maryland as its fee cap. While the UDMSA authorizes set up and monthly service fees, these

that 30% seemed high.[68] MCRC represented that a 15% cap would provide an incentive for the industry as well as an incentive for more consumers to seek out debt settlement services, therefore providing more business for providers.[69] Five commenters disagreed, arguing that the FTC Final Rule provides sufficient protections to consumers via disclosures and fee restrictions and expressed views that the new FTC fee structure is untested, recommending that the market be left to set appropriate pricing.[70] One of those commenters, Persels, additionally argued that fees charged by attorneys present constitutional issues and would be difficult to delineate, stating that attorneys often perform multiple services.[71]

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are to be offset against the settlement fee, which is intended as the principal compensation to debt settlement providers, and, of course, may not be imposed under the FTC TSR. The UDMSA authorizes a settlement fee of 30 percent...").

[68] CCCS at 1 ("30% seems high but am unsure of operating issues.").

[69] MCRC at 6 ("A 15 percent fee cap provides an incentive for the industry and enables them to remain profitable. Moreover, since consumers stand to recoup more of their savings under this model, it provides a greater incentive for consumers to seek out debt settlement services, leading to a greater volume of clients and generating a higher profit for debt settlement firms. While opponents may try to justify a higher percentage arguing that debt settlement firms cost more to operate than debt management firms or other nonprofit providers, TASC's own study noted that one important reason for these higher costs was the money spent on lead generation including email, telemarketing, television and radio ads, and contracts with lead-generation firms. Testimony from Debt Shield in 2010 reiterates this point. While it is true that it may cost more to run a debt settlement service, if companies reduce the amount that they spend on generating leads, they should still be able to remain highly profitable....A fee that is based on 15 percent of the amount a consumer saved provides a positive incentive for a debt settlement provider to settle. It rewards success and seems commensurate with the level of effort expended. Conversely, a higher fee seems disproportionate to the amount of work that most firms do to reduce a client's debt. Several states including Arkansas, Kentucky, Louisiana, New Jersey, and Wyoming, have chosen to simply ban for-profit debt settlement companies from operating in their states at all....Maine and Illinois law caps fees at 15 percent of savings. National legislation sponsored by Senator Schumer proposes a 5 percent cap on fees").

[70] TASC at 3 ("All previous fee cap discussions need to be reevaluated in light of the FTC rule. . . . The FTC rule imposes a fee structure that is completely untested. While some providers claim that they have used the 'no fees until settlement' model, TASC has learned that those providers did not use such model for all consumers, that insufficient time had passed to fully evaluate the model, and that such providers admit that some presumptions they had made about the model were wrong. It is simply too early to know what an appropriate fee cap would be for the FTC fee model. One thing is clear – the fees must be higher as work is performed for consumers who end up not paying. Under prior state regulation, consumers in unregulated states actually paid less than those in regulated states. Market forces do work especially when it comes to pricing."); USOBA at 3; Debt Shield at 4 ("...It takes approximately ten times more staff to administer debt settlement programs as it does to administer debt management programs. Furthermore, unlike credit counseling firms, debt settlement firms do not get leads or monies (direct or indirect) from creditors....[F]urther restricting this fee limitation by providing a cap of 15%...will without a doubt cause many Maryland debt settlement providers to go out of business."); Persels at 2 ("Having just changed to an entirely new system of compensation, market participants have little or no experience on which to base an empirical analysis of the costs of delivering the services. This presents the danger that an inappropriate restriction on fees will result in consumers having no access to services for debt relief other than bankruptcy. The reluctance of even the [FTC] to intervene in market forces in the setting of fees should provide ample justification for declining to regulate in this area."); Debt Management Associates at 2-3 ("We feel that the FTC Final Rule was correct in not restricting the amount that a Debt Settlement Services Provider can charge for its services...Additionally, the role of legislation in Maryland should not be to structure the cost of the services...it should rather be to remove any deceptive and abusive practices by the industry that will prevent a consumer from making an informed choice...With regard to whether the fee is calculated based on a flat fee or a percentage of the amount saved by the client we believe that both fee structures should be allowed.").

[71] Persels at 2 ("The setting of fee restrictions should the proposed regulation be applicable to attorneys would present significant constitutional issues. Fees charged by lawyers are regulated by the Court of Appeals and are subject to an elaborate system of mediating and arbitrating fee disputes. Rule 1.5 of the Maryland Rules of Professional Conduct sets out detailed guidelines by which the fairness of a fee can be judged....Fee caps would be

3. **Recommendations**: While the ban on upfront fees and additional disclosures are among the positive steps taken by the FTC in the FTC Final Rule, the Commissioner and the Division recommend a fee cap. The Commissioner and Division are amenable to a cap on fees of 30% of the savings against the enrolled debt. Such a cap is consistent with the recommendations made during the 2010 legislative session. Additionally, a 30% fee cap seems reasonable in light of the cap on fees provided in the Uniform Debt Management Services Act and the limits placed on fees by other states. The Commissioner and the Division recommend reevaluating the 30% cap after the 2 year interim registration period taking into account information reported back to the Commissioner on the annual report as well consumer complaints received during that time frame.

F. Disclosures

1. **Issue**: The 2010 legislative proposal initially included the following disclosures to be included in a debt settlement agreement, as well as in advertisements for debt settlement services:

- That the debt settlement services provider may not represent that it can settle a consumer's debt for a specified amount or percentage (Disclosure 1");
- That the consumer may be required to pay taxes on any amount by which the consumer's debt was reduced ("Disclosure 2");
- That a debt settlement service provider may not advise or require a consumer to stop paying creditors ("Disclosure 3");
- That the debt settlement services provider may not require a voluntary contribution from the consumer ("Disclosure 4");
- That entering into a debt settlement services agreement will not stop collection efforts by the consumer's creditors ("Disclosure 5"); and
- That participation in a debt settlement services program may impact the consumer's credit rating and scores ("Disclosure 6").

The FTC Final Rule requires four disclosures[72] in promoting debt relief services, in addition to the existing disclosures required by the TSR: (1) the amount of time it will take to obtain the promised debt relief; (2) with respect to debt settlement services, the amount of money or percentage of each outstanding debt that the customer must accumulate before the provider will make a bona fide settlement offer; (3) if the debt relief program entails not making timely payments to creditors, a warning of the specific consequences thereof; and (4) if the debt relief provider requests or requires the customer to place funds in a dedicated bank account, that the customer owns the funds held in the account and may withdraw from the debt relief service at any time without penalty, and receive all funds remitted to the account. The FTC Final Rule

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particularly troublesome when applied to attorneys who provide services other than the negotiation of compromises of debts. Services such as litigation support . . . and many others cannot be separated from the fees charged to the client for negotiating compromises.")

[72] 75 Fed. Reg. at 48518 (codified at 16 C.F.R. § 310.3(a)(viii)).

prohibits misrepresentations about material aspects of debt relief services, including success rates and a provider's nonprofit status.

The FTC Final Rule further states that savings claims in advertising must be based on actual experience of all customers, including those who dropped out or failed to complete the program. Additionally, savings claims must:

- Base the savings on the amount of debt enrolled at the beginning of the program;
- Include the impact of fees on the claimed savings; and
- Include all debts enrolled, not just those that were settled successfully.

The Workgroup considered whether legislation should be adopted to include these or any other disclosures that would be in addition to those required by the FTC Final Rule.

2. Comments: There was a wide range of responses from participants, including many commenters recommending specific disclosures. CCCS concurred with all six of the foregoing disclosures included in the 2010 legislative proposal.[73] MCRC submitted a standard disclosure form, which the commenter recommended all debt settlement companies use and that the disclosures be given orally as well; the form did not include the four disclosures included in the FTC Final Rule but did include the six disclosures from the 2010 legislation as well as four others.[74] Four commenters argued that creditor compensation to debt settlement companies be disclosed; the term "fair share" was used in varying ways in these responses.[75] USOBA understood the FTC's position to be that fewer, more complete disclosures would be better noticed by consumers, but stated that they: currently require Disclosures 1, 2, 5 and 6; do not oppose Disclosure 3; and think Disclosure 4 may be unnecessary.[76] Two commenters argued

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[73] CCCS at 2.

[74] MCRC at 7-8 ("'YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED;' 'NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION;' 'YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING;' 'THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES'" (original emphasis).). Disclosure 6 was changed to "YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED" (original emphasis).

[75] TASC at 3 ("One disclosure that was not considered, however, is that of any fair share payment or other compensation by a creditor to a provider. Without such disclosure the consumer would not know the true cost of the service and as such is an important one for the consumer."); CareOne at 2, 3 ("Because it does not regulate non-profit providers, the FTC did not consider whether consumers should be advised of the inherent conflict of interest posed by the receipt of grants, 'fair share' and other compensation from creditors by non-profit providers....[T]he provider also would disclose the compensation given by that creditor to the provider."); CCCS at 2 ("Creditor compensation to debt settlement companies should be disclosed. 'Fair share' is a term associated with nonprofit credit counseling and should not be confused with debt settlement."); Debt Management at 3 ("With regard to "fair share" compensation we do think that it would benefit the consumer to understand how a Debt Settlement Services Provider is being compensated...A consumer would almost certainly want to know that there could potentially be a conflict of interest with a Debt Settlement Services Provider that is receiving compensation from a creditor based on the amount of money they recover").

[76] USOBA at 3 ("[Disclosure] 4, while not harmful, may be unnecessary as voluntary contributions cannot be required.").

that the FTC Final Rule provided sufficient disclosures.[77] Debt Management Associates stated that disclosures should be used to remove deceptive and abusive practices and felt that the FTC Final Rule disclosures would provide a benefit to Maryland consumers. Debt Management Associates did not oppose including additional disclosures set-forth in the 2010 legislation even though some may be duplicative of those in the FTC Final Rule.[78] Persels concurred with all disclosures with the exception of Disclosure 3, from which they argue attorneys should be exempt.[79]

3. **Recommendations**: The Commissioner and the Division recommend the written disclosures set-forth in the FTC Final Rule to be provided to consumers both in advertisements about debt settlement services available or offered as well as in a detailed disclosure form provided to the consumer prior to the consummation of the debt settlement services agreement. It appears that the disclosures required by the FTC Final Rule encompass most of the disclosures that would have been required by the 2010 legislation. Clear and conspicuous disclosure of services available as well as potential credit and other consequences that may be incurred as a result of the use of debt settlement services must be provided to consumers.

G. Attorneys and Debt Settlement

1. **Issue**: The FTC chose not to specifically address attorneys in the FTC Final Rule, relying on the general elements of the TSR to determine coverage. As such, there is no general exemption from the FTC Final Rule for attorneys providing debt settlement services depending on the nature of the services. Coverage, or lack thereof, is determined by the manner in which the services are provided. Specifically, the FTC Business Guide published in conjunction with the FTC Final Rule notes *"most attorneys are likely to fall outside the Rule for at least two reasons. First, the TSR applies only to providers who use interstate tele-marketing. Second, providers – including attorneys – who meet face-to-face with their customers before signing them up are likely exempt from most of the Rule's provisions"*. The Workgroup considered whether attorneys should enjoy an exemption from any legislation that might be adopted to regulate debt settlement companies doing business in Maryland. The legislation proposed in 2010 would have exempted an attorney who is "admitted to practice in the state and is not principally engaged in debt settlement services."

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[77] Debt Shield at 4 ("Between the Final Rule, the [new Consumer Final Protection Bureau], TASC and USOBA, all feasible material disclosures regarding debt relief services are already provided to consumers currently."); CareOne at 2 ("After much study and investigation, the FTC concluded that [those in the Final Rule] were the important disclosures and discarded several proposed disclosures, including some that were included in last year's Maryland legislation.").

[78] Debt Management Associates at 3.

[79] Persels at 2 ("In the context of a lawyer-client relationship the question of whether a lawyer may suggest to a consumer that any particular debt should or should not be paid is strictly with the discretion of the attorney and should not be the subject of government regulation....Indeed, in many instances the standard of care owed to the client by an attorney may compel the giving of such advice. For example, an attorney advising a client with limited resources that he should satisfy a creditor with a judgment and an enforceable garnishment pending before making a payment to an unsecured creditor who has not begun a judicial process would be in violation of the restrictions of the proposed law. Yet, such advice would be clearly within the scope of the attorney's right and need to properly advise his client.").

2. **Comments**: USOBA expressed support for the provision in the 2010 legislation but preferred to defer to the ABA for further guidance.[80] MCRC agreed without exception to the 2010 legislative language. This commenter argued that lawyers who run, or principally run, debt settlement firms should be subject to the same rules as other firms and that any contemplated exemption should only apply to attorneys acting within the scope of their license.[81] Several commenters expressed concern about the potential of "overlapping" regulation of an "already-highly regulated occupation," arguing that: current enforcement against unscrupulous attorneys is working; attorneys provide additional services and should not be regulated the same as non-attorneys; and that other states have exempted attorneys.[82] One commenter recommended exempting from any legislation attorneys in an attorney-client relationship with a consumer.[83] TASC felt that attorneys would be covered both by the FTC Final Rule and the Consumer Financial Protection Bureau (CFPB).[84]

3. **Recommendations**: The Commissioner and the Division support the language used in the legislation proposed in 2010 in which an attorney who is "admitted to practice in the state and is not principally engaged in debt settlement services" is exempt from licensing/registration. Implementing the standard in the 2010 legislative proposal would borrow from the Credit Services Business Act[85] to say that anyone who performs debt settlement is required to be licensed/registered, except for "an individual admitted to the Bar of the Court of Appeals of Maryland when the individual renders services within the course and scope of practice by the individual as a lawyer and *does not engage in the [debt settlement services] business on a regular and continuing basis.*" (emphasis added and text changed as indicated).[86] Additionally, as discussed above, a number of other state laws do cover attorneys unless the debt settlement is "incidental" or include other similar limitations. It is important to note the distinction between an attorney engaged in the regular practice of law, in which the settlement of certain debts is incidental to the subject law practice, compared to a debt settlement company

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[80] USOBA at 3.
[81] MCRC 8, 9.
[82] TASC at 3 ("To date, all [states] have taken a conservative approach in deferring to the attorney's own licensing requirements, bar standards and ethics rules. Otherwise, the overlapping jurisdiction with the lawyer licensing body may cause conflicts. Further, enforcement against attorneys who are causing problems is working. Richard Brennan…was prosecuted, disbarred and imprisoned for violations under existing Maryland law and bar rules. There is also the risk of how regulation of attorneys might impact other types of practices including bankruptcy, consumer law and collections law."); Persels at 3 ("[T]he organized Bar is the only institution in the State that has a fully funded system to compensate clients who are the victims of unscrupulous attorneys. . . . [L]awyers are providing services that the non-lawyer competitors are not and cannot provide. They should not be ruled by the same regulatory scheme. This is the reason why virtually every state that has considered his issue has elected to provide an exemption for attorneys when engaged in the practice of law. By our count this includes 43 jurisdictions."); Debt Shield at 5 ("…Maryland case law requires heightened scrutiny under an analysis of Article 24 of the Maryland Declaration of Rights pertaining to any legislation posing a significant interference with the right to practice law.").
[83] TASC at 4.
[84] Debt Shield at 5 ("…[I]mplicit in the FTC's 'guidance' is a clear indication of the FTC's view that the Final Rule applies to attorneys and law firms that provide debt relief services to clients….The CFPB does provide a limited exemption for attorneys subject to certain preconditions, which may make it difficult for attorneys engaged in credit counseling, debt management and debt settlement to assert an exemption from regulations enacted by the CFPB.").
[85] MD CODE ANN., COM. LAW § 14-1901, et seq.
[86] MD CODE ANN., COM. LAW § 14-1901 (e)(3)(vi).

that may have one or more lawyers on staff or as principals of the company but primarily exists to perform debt settlement services.

H. Other Issues

1. **Issue/Comment**: CareOne recommended that Maryland law explicitly distinguish debt settlement and debt management services.[87]

2. **Recommendation**: The Commissioner and the Division recommend that the Maryland legislation distinguish between debt settlement and debt management similar to the FTC's Final Rule. Debt management services are separate and distinct from debt settlement services and are governed pursuant to the Maryland Debt Management Services Act.[88]

IX. SUMMARY OF RECOMMENDED LEGISLATION

- **Interim Registration Period**
  - Two-year registration term.
  - Data collection on registrants by Commissioner during the registration term culminating in report to the Senate Finance Committee and House Economic Matters Committee on final licensing recommendation.
  - $500 per-year registration fee (collected as a single $1,000 2-year payment) to cover the Commissioner's costs of implementing registration and other components of the proposed law.

- **Application of FTC Final Rule and Maryland Enhancements to Internet, Face-to-Face Meetings, and Intrastate Activities**
  - Extend the application of the FTC Final Rule and any Maryland enhancements thereto to internet solicitations, face-to-face meetings and Maryland intrastate debt settlement activities.

- **Inclusion of Nonprofit Providers**
  - Include nonprofit debt settlement service providers within the scope of the proposed debt settlement law.

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[87] CareOne at 2 ("We also note that Maryland law will need to be clarified as to the applicability of the Maryland Debt Management Services Act and any new debt settlement law. The FTC TSR distinguishes between debt settlement and debt management according to whether the objective is to settle a debt for less than the full amount ('[u]nlike a traditional DMP, the goal of a debt settlement plan is for the consumer to repay only a portion of the total owed.'...).").

[88] MD. CODE ANN,. FIN. INST. § 12-901 *et seq.*

- **Inclusion of Lead Generators**
  - Include debt settlement lead generators within the scope of the proposed debt settlement law.

- **Fee Cap**
  - Include a cap on fees of no more than 30% of the amount of debt settled based on the amount of debt initially enrolled in the debt settlement program.

- **Disclosures**
  - Require the disclosures set-forth in the FTC Final Rule to be provided to consumers in advertisements for debt settlement services. This is in addition to the disclosures being provided prior to the consummation of the debt settlement services agreement as required by the FTC Final Rule.

- **Exemption for Certain Attorneys**
  - Exempt from the scope of the proposed debt settlement law an attorney who is "admitted to practice in the state and is not principally engaged in debt settlement services."

- **Enforcement—Applicability of the Maryland Consumer Protection Act and Authority to Seek Injunction**
  - Deem that a violation of the proposed debt settlement law is also a violation of the Maryland Consumer Protection Act. Also provide the Commissioner and the Division with the authority to seek judicial injunctive relief to stop any ongoing violations of the proposed law.

X. CONCLUSION

The Commissioner and the Division believe that although the FTC Final Rule is an important tool in protecting Maryland consumers, it is not in itself sufficient. Legislation is needed incorporating the recommendations of the Commissioner and the Division set forth above to supplement and extend the FTC Final Rule to provide more robust protections to Maryland consumers. At least for the near term, however, any legislation should include a registration requirement rather than a licensing requirement to provide an opportunity to see how the debt settlement industry will fare under the FTC Final Rule and how many debt settlement companies continue to do business in Maryland.

Appendix A

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Alabama	AL 'ST 8-7-1 et seq.						A corporate surety bond in the principal sum of $10,000 for the principal office plus an additional principal sum of $5,000 for each additional location, office, or agency of such applicant in this state at which the business is to be conducted, but in no event shall the bond be required to be in a principal sum in excess of $50,000. If the bond accompanying the application is in a principal sum less than $50,000, the application shall also be accompanied by a list of the locations, offices, and agencies at which the business is to be conducted. AL ST § 8-7-7.	Yes. AL ST § 8-7-3.	Investigation made prior to issuance of license. AL ST § 8-7-8.	Revocation of license. AL ST § 8-7-13. Criminal penalties. AL ST § 8-7-15.	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Arkansas	AR ST 5-63-301, et seq.	Yes									Prohibits debt adjusting. Exempts attorneys and non-profits providing debt management services for no fee or at actual cost
Arizona	AZ ST § 6-701, et seq.			Retainer fee may be charged up to $39 after all creditors on debtor's application have been notified. AZ ST § 6-709.	All fees must be agreed upon in advance in the contract; monthy payments cannot exceed 3/4 of 1% of total indebtedness or $50, whichever is less. AZ ST § 6-709.	Yes. AZ ST § 6-709.	Less than 100K disbursements/yr: 5K bond; 100-250K disbursements/yr: 10K bond; 250,001-500K disbursements/yr: 15K bond; 500,001-1M disbursements/yr : 20K bond; greater than 1M disbursements/yr: 25K bond. Fidelity bond may be required. AZ ST § 6-704.	Yes. AZ ST § 6-703.	Annual investigations are authorized. AZ ST § 6-707.	Denial, suspension or revocation of license. AZ ST § 6-708.	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
California	Cal.Fin.Code § 12000 et seq.		Cannot collect any fees before consent to at least 51% of debts is received. § 12315	Origination fee of $50	Not to exceed the aggregate of: 12% of the first $3,000, 11% of the next $2,000, 10% of the remaining payments. § 12314 Origination fee not to exceed $50. § 12314 Cancellation fee not permitted. § 12314.1	Yes. §§ 12300.3-12300.6	$25,000. § 12205 Commissioner can require fidelity bond. § 12222	Yes. § 12200	Commissioner has discretion to investigate. §§ 12106, 12305	Revocation of license. § 12400	While not specific to debt settlement companies, statute has been used to investigate debt settlement companies in the past.
Colorado	C.R.S.A 12-14.5-201 (2009).			Cannot exceed 4% of the principal amount of the debt. 12-14.5-223	Total fees cannot exceed 18% of principal debt; total fees collected over at least half of the length of the plan 12-14.5-223	Yes. 12-14.5-222	$50,000; Can substitute insurance, irrevocable letter of credit 12-14.5-213; 12-14.5-214	Registration required. 12-14.5-204	Investigation authorized. 12-14.5-232	Private enforcement 12-14.5-235	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Connecticut	C.G.S.A. 36a-656, et seq.		No fees for services can be taken until the services have been fully performed. C.G.S.A. § 36a-671b			Yes. C.G.S.A. § 36a-659	The principal amount of the bond shall be the greater of (A) $40,000, or (B) (i) twice the amount of the average daily balance of the payments received by the applicant from Connecticut debtors in connection with the applicant's debt adjustment activity during the preceding twelve months ending July thirty-first of each year, or (ii) in the case of an applicant that has acquired the business of a predecessor debt adjuster, the lesser of the amount of the predecessor's debt adjustment activity during such preceding period or one million dollars. C.G.S.A. § 36a-664	Yes. C.G.S.A. § 36a-656	Investigation authorized upon complaint. C.G.S.A. § 36a-671a	Fines of not more than $1000 per violation or one year imprisonment per violation. C.G.S.A. § 36a-665	
Delaware	Del. Code Ann. tit 6, ' 2401A et. seq. (2009).				Total fees cannot exceed 18% of the principal amount of the debt. 2423S	Yes. 2422A	$50,000; May substitute irrevocable letter of credit 2413A; 2414A	License required. 2404A	Annual examination authorized. 2432A	$50,000 per violation; private enforcement 2433A; 2435A	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Georgia	Debt Adjusting, Ga. Code Ann., § 18-5-1				Cannot receive any combination of fees in excess of 7.5% of the amount paid monthly by the debtor. § 18-5-2	Yes. 18-5-3.2	Insurance not less than $100,000 or 10% of the monthly average of all deposits. § 18-5-3.1			Misdemeanor. Fines of $50,000 and $5,000 + all fees and contributions paid by the debtor for various violations. § 18-5-4	"Debt pooling" included in the definition of debt adjusting, question of whether or not this is relevant.
Hawaii	Haw. Rev. Stat. , Title 25, sec. 446-1, et seq.	Yes. Prohibits debt adjusting by for-profit businesses									Exempts attorneys and non-profits, who may collect "nominal" sums as reimbursement for expenses

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Idaho	Idaho Code 62-222, et seq.			No more than 20% of the principal amount of the debtor's unsecured debt. In the event of cancellation of the contract by the debtor prior to its successful completion, the debt counselor or credit counselor shall refund fifty percent (50%) of any collected fees associated with the amount of debt remaining unsettled at the time of the termination of the contract. I.C. § 26-2229 3(b).	No more than 15% of the amount received at any one time. No other charge shall me made for such services. I.C. § 26-2229 3(a).	Yes. I.C. § 26-2233.	$15,000; Upon renewal of license, bond amount is the greater of $15,000 or 2x the average monthly payment but no more than $100,000. I.C. § 26-2232A (2) & (3).	License required. I.C. § 26-2223.	Annual examinations authorized or more frequently at the director's discretion. Public and private investigations authorized at director's discretion. I.C. § 26-2234.	Criminal penalties. I.C. § 26-2238; Cease and desist orders & civil penalties: $5000 per violation. I.C. § 26-2244.	
Illinois			No up front fees except for the initial $50.	$50 initial fee.	Fees cannot exceed 15% of the savings. Cannot collect until debt has been settled.	Trust fund required.	$100,000	License required.	Examination authorized.		Creates Debt Settlement Consumer Protection Fund

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Indiana	24-5-15.1 et seq.		Prohibited from receiving advance fees unless the company has posted a surety bond or established an irrevocable line of credit. 24-5-15-5				$25,000 24-5-15-8				CSO defined as, in part, providing debt settlement services

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Iowa	I.C.A. 533A.1 et seq.			$50. 533A.9	If licensee holds money for debtor, total fees may not exceed the $50 initiation fee plus 15% of the amounts actually applied to the debtor's accounts with the creditors. If not holding money for debtor, fees cannot exceed 18% of principal amount of debts, must be collected in equal monthly payments over the first two-thirds of the contract. 533A.9	Yes. 533A.8	$25,000 per office. 533A.2	License required. 533A.2; 533A.13	Investigation of applicants; examination authorized. 533A.3; 533A.10	Fine of $5,000 per violation 533A.7	Debt settlement included in definition of debt management

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Kansas	KS ST '50-1116, et seq.			A fee, not to exceed $50, may be charged for a counseling session, an educational program, or materials and supplies if the consumer does not enter into a debt management services agreement with the registrant. K.S.A. 50-1126.	A one-time consultation fee not exceeding $50 may be charged; A maintenance fee may be charged equal to the lesser of $20 per month, or $5 per month for each creditor of a consumer that is listed in the debt management services agreement. K.S.A. 50-1126.	Yes. K.S.A. 50-1122.	The amount of the bond shall be $25,000. The amount of the bond may be increased up to $1,000,000, as further defined by rules and regulations adopted by the commissioner. K.S.A. 50-1119.	Registration required. K.S.A. 50-1118.	Investigation and examination as commissioner deems necessary. K.S.A. 50-1128.	$10,000 per violation. K.S.A. 50-1129. Criminal penalty, misdemeanor. K.S.A. 50-1131. Consumer retains private right of action. K.S.A. 50-1133. Revocation of license. K.S.A 50-1127.	
Kentucky	KY Rev. Stat. 380.010, et seq.			Initial fee of up to $75. 380.040(2)	Fee of up to $50 per year or periodic fee not to exceed 8.5% of amount paid each month for distribution to creditors or $30. 380.040(2)	Funds held in trust account. 380.040(1)	25000. 380.040(8)	Registration required. 380.040(5)	Annual audit required. 380.040(6)		

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Louisiana	LSA-RS 14:331	Yes. Prohibits debt adjusting when conducted for profit. LSA-R.S. 14:331									
Maine	32 M.R.S.A. 6172 et seq.			Initial fee of $75. 6174-A	Reasonable fee not to exceed 15% of the savings. 6174-A	Funds held in trust account. 6175	$50,000. 6174	Registration required. 6173	Examination authorized. 6178		Debt management service defined in part as "acting as an intermediary . . . for the purpose of . . . settling . . . the obligation."
Mass.	M.G.L.A. 221 sec. 46C	Debt adjusting by non-lawyers is prohibited: M.G.L.A. 221 sec. 46C.									

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Minnesota	M.S.A. § 332B.02 et seq.			If fees calculated by percentage of total debt, origination fee of $200 for debt of $20,000 or less, $400 for debt of $20,000 or more. If fees calculated by percentage of savings, can charge $300 on debt less than $20,000, $500 on debt more than $20,000. 332B.09	15% of total debt or 30% of total savings. 332B.09	Must be held in trust. 332B.06	Bond required. 332B.04	Must register. 332B.03	Investigation authorized. 332B.14	Private right of action; $5,000 in statutory damages. 332B.13	
Mississippi	Miss. Code Ann. § 81-22-1 et seq.			One-time set up fee of $75. 81-22-13	Maintenance fee not to exceed $30; various other allowable fees for specific actions. 81-22-13	Funds must be deposited into federally insured escrow account. 81-22-9	$50,000. 81-22-7	Must obtain license. 81-22-5	Examination authorized. 81-22-17	Fine of $500. 81-22-23	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Missouri	V.A.M.S. 425.010 et seq.			$50 initial set-up fee. 425.010	Greater of $35 per month or 8% of the amount distributed monthly to creditors. 425.010		$100,000. 425.027				Debt adjusting defined in part as acting as an intermediary to settle debts
Montana	MCA 30-14-2101 et seq.			5% of the principal amount of the debt. 30-14-2103	Total fees no more than 20% of the principal amount of the debt. 30-14-2103		$100,000 insurance coverage. 30-14-2102				Does not apply to debt settlement companies that hold, receive, or disburse funds.

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Nevada	N.R.S. 676A.010 et seq.				If fee determined based on overall amount of debt, cannot exceed 17% of the total debt at the inception of the agreement, must be assessed in equal monthly payments over not less than half the length of the agreement. If fee calculated as a percentage of total savings, may not exceed 30% of the savings; total amount of fees may not exceed 20% of the principal amount of debt present	Funds must be held in trust. 676A.570	$50,000. Can substitute other forms of collateral, such as insurance, irrevocable letter of credit, or bonds. 676A.390; 676A.400	Registration required. 676A.300	Investigation authorized. 676A.730		
State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
New Hampshire	NH ST 399-D:2 et seq.	No.	No.	May not exceed $25; to be put in escrow. §399-D:14	Based on the amount required to pay indebtedness and shall not exceed: 10% when the plan of payment is for a period of 10 months or less; 12.5% for a period of more than 10-18 months; 15% for a period of 18 months or more. §399-D:14	Separate account for all payments from debtors for creditors. § 399-D:21	Yes - $25,000. §399-D:6	Yes. §399-D:3	Examination authorized. §399-D:22	Suspended/ revoked license §399-D:23. Up to $2500 for knowing violations and $1500 for negligent violations of the Commissioner's rules. Up to $2500 fine for violating the law. Injunction - enforced by a fine of $10,000 or imprisonment. §399-D:24	Debt adjusting defined in part as acting as intermediary to settle debts
New Jersey	N.J.S.A. 17:16G-1, et seq.	Only nonprofit social service agency or nonprofit consumer credit counseling agency may act as debt adjuster. §17:16G-2			Fee cannot exceed 1% of the gross monthly income of the debtor, in no case more than $15 per month. §17:16G-6	Funds must be maintained in a separate trust account. §17:16G-9	Bond required, determined by Commissioner. § 17:16G-5	Yes. §17:16G-2	Examination authorized. §17:16G-5(f)	Fine of $1000 for the first offense and $5000 for subsequent offenses; debtor may bring civil action; Commissioner may bring a summary action. § 17:16G-8	Debt adjusting defined in part as acting as intermediary to settle debts.

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
New Mexico	N. M. S. A. 1978, § 56-2-1 et seq	Yes. § 56-2-2									
North Carolina	N.C.G.S.A. 14-423 et seq.	Yes. Debt adjusting prohibited. §14-424									
North Dakota	NDCC, 13-06-01, et seq.	Yes. NDCC, 13-06-01									There are exemptions, including for non profit debt adjusters. NDCC, 13-06-03
Ohio	R.C. §4710.01, et seq.	No.	No.	Cannot exceed $75. R.C. § 4710.02	No more than $100 per year; cannot accept periodic fee of more than 8.5% of the amount paid by the debtor each month for distribution to the creditors or $30. whichever is greater.	Yes. R.C. § 4710.02	$100,000 in insurance, with a deductible that does not exceed 10% cent of the face amount of the policy coverage. Insurer must be rated at least A- or its equivalent by a nationally recognized rating organization and must give 30 days advance written notice be given to the attorney general before coverage is terminated.	No.	Annual audit required. R.C. § 4710.02	An unfair/deceptive act or practice consumer action can be brought against adjuster; $10,000 fine. R.C. § 4710.04	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
PA	63 P.S. 2401 et seq.	No.	No.	$50 for initial consultation. §2415	No statutory limit.	Yes. 63 P.S. § 2414	Equal to or greater than the total amount of PA consumer funds that are held by licensee. §2407	License required. 2403	Investigation authorized with application. §2408	$10,000 fine for each violation. §2416	The requirement of 63 P.S. § 2403(b) that debt settlement services providers operate "in accordance with regulations promulgated by the department regarding the conduct of debt settlement services" was held unconstitutional
Rhode Island	Gen.Laws 1956, § 19-14.8-1	No.	No.	Initial fee not exceeding the lesser of $400 or 4% of the principal amount of the debt. §19-14.8-23	Monthly service fee not to exceed $10 times the number of creditors remaining in the plan, capped at $50 per month. 0% of the excess principal over the amount paid to the creditor. §19-14.8-23	Funds must be held in trust account. §19-14.8-22	$50,000. May substitute a certificate of insurance, irrevocable letter of credit, or bonds of the US. §§ 19-14.8-13; 19-14.8-14	Registration required. §19-14.8-4	Investigation authorized. § 19-14.8-32	$10,000 per violation; Private enforcement. §§ 19-14.8-33; 19-14.8-35	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
South Carolina	Code 1976 § 37-7-101 et seq.	No.	If 45 days after establishing the debt management plane, the lack of consent from creditors makes it unsuitable, fee must be returned. §37-7-109	Setup fee determined by the Department by regulation. §37-7-109	Fees set by regulation. §37-7-112	Trust account. §37-7-111	Equal to or greater than the total amount of SC clients' funds in licensee's trust account at the time of application. §37-7-103	License required. §37-7-102	Annual report required. §37-7-115	$500 fine or imprisonment of up to 6 months or both. Authorizes private remedy. §37-7-117	
South Dakota	SDCL § 37-34-1, et seq.	Yes.									

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Tennessee	T.C.A. 47-18-5501 et seq.	No.	No.	Initial fee of the lesser of $400 or 4% of the principal amount of the debt. §47-18-5523	Monthly service fee of $10 per creditor remaining, not to exceed $50 per month. If settlement fee determined based on overall amount of debt, total fees may not exceed 17%. Assessed in equal monthly payments over at least half the length of the contract. If settlement fee determined as a percentage of savings, cannot exceed 30% of the savings on each debt. Billable only as debts are	Money must be held in trust account. §47-18-5522	$50,000 or what administrator decides; May substitute a certificate of insurance, irrevocable letter of credit, or bonds of the US. §§ 47-18-5513; 47-18-5514	Registration required. §47-18-5504	Examination authorized. §47-18-5532	$10,000 per violation; private action. §§ 47-18-5533; 47-18-5535	

State	Statute	Prohibition?	Ban on Up-Front Fees?	Cap on Up-Front Fees?	Limitation on Total Fees?	Trust Account?	Bond Required?	License Required?	Exam?	Available Sanctions	Notes
Texas	V.T.C.A., Finance Code § 394.001	No.	Must be fair and reasonable. TX FIN §394.210	Must be fair and reasonable. TX FIN §394.210.	Must be fair and reasonable. TX FIN 394.210.	Yes. TX FIN 394.211	An amount equal to the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond, or in the case of an initial application, in an amount determined by the commissioner, but not less than $25,000 or more than $100,000. TX FIN § 394.206.	Registration required. TX FIN 394.204	Commissioner can investigate and examine books and records. TX FIN 394.213	Registration may be revoked, cease and desist order may be issued, case may be referred to AG for prosecution. TX FIN 294.214. Private remedies are available. TX FIN 394.215	
Vermont	8 V.S.A. 2751 et seq.	No.	No.	$50 setup fee. §2762	Fee retained may not be greater than $50 set up fee plus 10% of any payment received. §2762	Separate bank account at FDIC institution. §2760	Yes, $50,000. §2755	License required. §2752	Examination authorized. §2761	$1,500 fine or imprisonment up to 2 years or both. §2764	
Washington	RCWA 18.28.010, et seq.	No.	No.	No more than $25, which counts toward total. §18.28.080	May not exceed 15% of the total debt §18.28.080	Yes. §18.28.150	No.	No.	Yes. § 18.28.165	$1000 fine; injunction; violation of consumer protection act. §§ 18.28.180; 190; 210; 220	
West Virginia	WV. ST 61-10-23	Yes.									
Wyoming	WY ST 33-14-101, et seq.	Yes.									

Appendix B

DEBT SETTLEMENT WORKGROUP

Request for Comments

October 5, 2010

Thank you for participating in the Debt Settlement Services workgroup meeting on September 23, 2010. As you are aware, pursuant to SB 701 and HB 392 as adopted, the Office of the Commissioner of Financial Regulation, in consultation with the Office of the Attorney General, was tasked with conducting a study of the debt settlement industry. In particular, the study shall "determine how the debt settlement services industry would best be regulated in the state, including the option of establishing a licensure requirement, and the fiscal impact of regulating the industry if licensure were required."

The Office of the Attorney General with the Office of the Commissioner of Financial Regulation will put forth recommendations in a final report. A copy of the report will be circulated prior to it going to the General Assembly. As discussed during the meeting, we will include your recommendations and formal comments in the final report.

As discussed during the meeting, the FTC Final Rule has changed the face of the debt settlement services industry. Effective October 27, 2010, the FTC Final Rule will serve as a new floor for providing protections to Maryland consumers employing debt settlement services going forward. In proceeding with the study in light of these significant changes, the group sought to identify remaining areas where additional legislative or regulatory action should be considered. The discussion revealed a number of topics that stem from, or remain unaffected by, the FTC Final Rule, which create potential gaps in the view of certain participants. In certain cases, there appears to be consensus on additional steps that may be warranted. In other instances, members of the working group expressed differing views. Through the efforts of the work group and the resulting report, we hope to put forth appropriate recommendations for implementing certain facets of the FTC Final Rule and addressing any remaining gaps in order to ensure adequate protection for Maryland consumers. Your assistance is greatly appreciated.

Set forth below is a summary of the initial issues identified by the workgroup at the September 23rd meeting. We are soliciting your written comments on those issues. Kindly provide your comments no later than October 18, 2010 on any or all of the substantive areas itemized below:

A. "Consensus" Issues

1. Registration/Licensing.

Notes: There was general acknowledgement of the uncertain industry environment following the issuance of the FTC Final Rule, in particular uncertainty over the number of debt settlement companies that will continue to operate after the FTC Rule becomes effective. This uncertainty creates difficulty in designing an appropriate licensing program.

Consequently, there appeared to be consensus from the meeting participants for registration of debt settlement service providers on an interim basis and for a subsequent re-evaluation of licensing once the impact of the FTC Rule on the number of providers and extent of services offered by the industry in Maryland can be determined. Registration will provide information on the number of debt settlement companies operating in Maryland and provide the Commissioner of Financial Regulation with enforcement and investigative authority over the registrants.

Comment: Please comment on the concept of registration described above. Suggestions regarding enactment and implementation of an interim registration requirement are welcome along with any suggested models or designs as implemented in other jurisdictions.

2. Internet, Face-to-Face Meetings, and Intrastate Application.

Notes: The FTC representative indicated that the FTC Final Rule applies to debt settlement service providers using telemarketing to contact potential customers. The Rule also was expanded to cover not only outbound calls but in-bound calls as well in response to advertisements and other solicitations across state lines. However, the Rule does not apply to services provided via the Internet or solely within a given state (intra-state calls). The Rule also does not apply to providers that meet customers face-to-face since this would not be a telemarketing activity. There appeared to be consensus in favor of extending the consumer protections of the FTC rule and any other elements that may be adopted in Maryland law to consumers obtaining services from Internet providers, face-to-face providers and providers operating solely on an intra-state basis within Maryland in order to create a level playing field.

Comment: Please comment on any suggestions regarding enactment and implementation of legislative provisions extending coverage to internet, face-to-face providers and intrastate debt settlement service providers.

3. Nonprofit Providers.

Notes: The FTC Final Rule does not apply to 501(c)(3), tax exempt nonprofit debt settlement service providers because the FTC does not have jurisdiction over those providers. There appeared to be consensus on extending the consumer protections of the FTC Rule to cover nonprofit debt settlement service providers.

Comments: Please comment on any suggestions regarding enactment and implementation of legislative provisions extending coverage to nonprofit debt settlement service providers.

4. Lead Generation.

Notes: There was some uncertainty as to whether independent, affiliated or 3rd party providers of lead generation services for debt settlement service providers would be covered

by the FTC Final Rule. However, the FTC commentary on the Final Rule states that lead generators may be covered under the TSR's primary provisions or provisions on assisting and facilitating. There appeared to be consensus in considering all parties who receive compensation from a consumer related directly or indirectly to debt settlement services to be covered by any proposed registration or licensing scheme.

Comments: Please comment on any suggestions regarding enactment and implementation of provisions to ensure coverage of providers of lead generation services.

B. "Non-Consensus" Issues

1. Fee caps.

Notes: The FTC Final Rule requires certain disclosures relating to fees charged for services and prohibits an upfront fee of any amount. However, the FTC Final Rule does not cap the "success" fees that may be charged. While the Final Rule is therefore silent on how any cap would be calculated, we note that disclosure of fees to be charged must be based on enrolled debt (versus settled debt which will be higher with accrued interest etc). The Final Rule also provides that any fees charged must either be a specified percentage of the savings or a fee that is proportional to the amount of the debt settled in comparison to the overall debt enrolled. The 2010 legislation as initially proposed included a fee cap based on settlement of enrolled debt of 15% and was ultimately amended to 30% during the legislative process. There was no apparent consensus on the amount of a cap, if any.

Comments: Please comment on the following: (a) whether you recommend a fee cap and any level you believe appropriate – include the rationale for that level; (b) if a cap is recommended, please clarify your recommendation regarding how the fee cap is calculated; and (c) if you do not recommend a fee cap provide the rationale for that position. Please include any supporting information or material in your comments, including examples from other jurisdictions and models available.

2. Disclosures.

Notes: The FTC Final Rule requires sellers and telemarketers, whether making outbound calls to consumers or receiving inbound calls from consumers, to provide certain material information. The disclosures may be oral or in-writing and must be clear and conspicuous. The FTC Final Rule requires debt relief service providers to disclose, clearly and conspicuously, before the consumer consents to pay, the following:

1. the amount of time necessary to achieve the represented results;
2. the amount of savings needed before the settlement of a debt;
3. if the debt relief program includes advice or instruction to consumers not to make timely payments to creditors, that the program may affect the consumer's creditworthiness,

result in collection efforts, and increase the amount the consumer owes due to late fees and interest; and

4. if the debt relief provider requests or requires the customer to place funds in a dedicated bank account at an insured financial institution, that the customer owns the funds held in the account and may withdraw from the debt relief service at any time without penalty, and receive all funds in the account.

The 2010 legislative proposal also initially included the following disclosures to be contained in the debt settlement agreement:

1. that the debt settlement services provider may not represent that it can settle a consumer's debt for a specified amount or reduce a consumer's debt by a specified percentage;

2. that the consumer may be required to pay taxes on any amount by which the consumer's debt was reduced;

3. that a debt settlement service provider may not advise or require a consumer to stop paying creditors;

4. that the debt settlement services provider may not require a voluntary contribution from the consumer;

5. that entering into a debt settlement services agreement will not stop collection efforts by the consumer's creditors; and

6. that participation in the a debt settlement services program may impact the consumer's credit rating and scores.

The 2010 legislation also initially required that any advertisement for debt settlement services include the foregoing disclosures.

Comments: Please comment on the adequacy of debt settlement disclosures under the FTC Final Rule, including whether additional disclosures should be required for Maryland consumers. These may include disclosures related to advertising debt settlement services and disclosure of the "fair share" compensation paid under debt settlement service provider contracts (both issues were raised). If you recommend additional disclosures, please comment on the suggested content and format of such disclosure.

3. Attorneys and Debt Settlement.

Notes: The FTC chose not to specifically address attorneys in the Final Rule, relying on the general elements of the telemarketing sales rule to determine coverage. As such, there is no general exemption from the FTC Final Rule for attorneys providing debt settlement services depending on the nature of the services. Coverage or lack thereof is determined by the manner in which the services are provided. Specifically, the FTC Business Guide published in conjunction with the Final Rule notes *"most attorneys are likely to fall outside the Rule for at least two reasons. First, the TSR applies only to providers who use interstate tele-*

marketing. Second, providers – including attorneys – who meet face-to-face with their customers before signing them up are likely exempt from most of the Rule's provisions".

Comments: Assuming Maryland adopts a form of registration and licensing based on the apparent consensus noted above, debt settlement service providers will be required to hold a license. Attorneys providing debt settlement services would, therefore, be required to hold a license unless specifically exempted. For example, the legislation proposed in 2010 would have exempted an attorney who is "admitted to practice in the state and is not principally engaged in debt settlement services." Please comment on whether you recommend: (a) the standard articulated in the 2010 legislation and if so, why; (b) another standard for attorneys and, if so, why, or (c) not addressing attorneys specifically and, if so, why.

4. Other Issues.

Please feel free to comment on any other relevant issues not addressed in this summary.

Thank you again for taking the time to participate in the debt settlement workgroup. Please send your comments electronically in Word to Michael Jackson at MJackson@DLLR.state.md.us and Mark Kaufman at Mkaufman@dllr.state.md.us no later than October 18, 2010.

Appendix C

Response - CCCS of MD & DE, Inc.

Debt Settlement Workgroup

Request for comments

A. "Consensus" Issues

1. Registration/Licensing

Until licensing can be properly evaluated registration should be required for debt settlement companies providing services to Maryland residents. Registration should call for at minimum an annual reporting requirement to include audited financial statements, number of clients served and the dollars deposited and fees charged.

2. Internet, Face-to-Face Meetings, and Intrastate Application

Consumer protection should be afforded to all consumers receiving services from debt settlement providers regardless of delivery method.

3. Nonprofit Providers

If a provider of debt settlement services is nonprofit or for profit is not the real issue. The issue is whether or not deceptive and abuses practices are being employed by the provider. All providers of debt settlement services should be subject to legislative rule.

4. Lead Generation

B. "Non-Consensus" Issues

1. Fee Caps

Unsure how to response to fee caps. The proposed 2010 legislation seems to coved. 30% seems high but am unsure of operating issues.

2. Disclosures

Concur with FTC disclosure requirements and the disclosure requirements as stated in the 2010 legislative proposal. Disclosure requirements listed in the 2010 legislative proposal should supersede FTC rule language where more consumer protection is afforded. Creditor compensation to debt settlement companies should be disclosed.

"Fair share" is a term associated with nonprofit credit counseling and should not be confused with debt settlement.

3. Attorneys and Debt Settlement

4. Other Issues

October 18, 2010

Mark A. Kaufmann
Commissioner of Financial Regulation
500 North Calvert St.
Baltimore, MD 21202
mkaufman@dllr.state.md.us

Dear Commissioner Kaufman:

Thank you for the opportunity to comment on the initial issues identified by the Debt Settlement Services Workgroup meeting on September 23. CareOne Services, Inc., is a licensee under the Maryland Debt Management Act and offers debt management services in 39 other states as well. We currently offer debt settlement services in nine (9) states, with plans to expand our offerings to additional states. Our debt relief services are offered in full compliance with the Federal Trade Commission's Telemarketing Sales Rule amendments as they become effective.

Each of our comments is set out under the substantive areas identified in your October 5 Request for Comments.

Registration/Licensing. Given the dramatic changes wrought by the FTC TSR, we agree that registration of debt settlement providers on an interim basis, with plans for subsequent re-evaluation, together with the grant of enforcement and investigative authority to the Maryland Commissioner of Financial Regulation is a sensible approach.

We believe that a bonding requirement also should be included in the new law. With a bonding requirement, consumers or regulatory authorities will be able to make a recovery in an enforcement action.

Internet, Face to Face Meetings, and Intrastate Application. We believe that the FTC TSR adopts important consumer protections that should be available to all consumers utilizing debt settlement services. Because of jurisdictional limitations and the idiosyncrasies of federal law, the FTC was unable to make the TSR protections apply across the board. We believe that Maryland should mandate that the consumer protections provided by the FTC TSR, should apply as well to transactions that are exempt from the FTC TSR, such as transactions conducted over the Internet, transactions consummated in face to face meetings, and providers operating solely on an intra-state basis.

Nonprofit Providers. Similarly, these consumer protections should be offered by *all* providers, whether or not the provider pays taxes. That a provider is exempt from the payment of taxes does not ensure that a Maryland consumer is protected.

Maryland's Debt Management Services Act was initially enacted to impose certain licensing and consumer protection requirements only on non-profit providers. It now applies both to tax paying and tax exempt organizations. The same approach should be taken with respect to debt settlement.

We also note that Maryland law will need to be clarified as to the applicability of the Maryland Debt Management Services Act and any new debt settlement law. The FTC TSR distinguishes between debt settlement and debt management according to whether the objective is to settle a debt for less than the full amount ("[u]nlike a traditional DMP, the goal of a debt settlement plan is for the consumer to repay only a portion of the total owed." 75 FR 48461(August 10, 2010).) If it is, the service is debt settlement, even if the provider requires a "dedicated bank account". *See* 16 CFR 310.4(a)(5). The same distinction also is made in S. 3264, the Debt Settlement Consumer Protection Act of 2010, introduced this year by Senators Schumer and McCaskill ("debt settlement service" means services for the primary purpose of seeking to obtain a settlement "of the consumer's debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt. . . . ") We believe that Maryland law should make a similar distinction.

Lead Generation. We agree that all parties who receive compensation from a consumer related to debt settlement services should be covered by any proposed registration or licensing scheme.

Fee Caps. We believe that the settlement fee authorized by the Uniform Debt-Management Services Act, as modified by the FTC TSR, should be adopted by Maryland as its fee cap. While the UDMSA authorizes set up and monthly service fees, these are to be offset against the settlement fee, which is intended as the principal compensation to debt settlement providers, and, of course, may not be imposed under the FTC TSR.

The UDMSA authorizes a settlement fee of 30 percent of the excess of the principal amount of the debt (*i.e.*, the amount of the debt when it is included in the plan) over the amount paid the creditor to settle the debt. *See* UDMSA Section 23(f).

Disclosures. The FTC TSR requires comprehensive disclosures, including disclosures that are personalized for the particular consumer (*e.g.*, estimates of when specific debts will settle and for how much.) After much study and investigation, the FTC concluded that these were the important disclosures and discarded several proposed disclosures, including some that were included in last year's Maryland legislation.

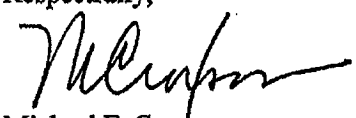
Because it does not regulate non-profit providers, the FTC did not consider whether consumers should be advised of the inherent conflict of interest posed by the receipt of grants, "fair share" and other compensation from creditors by non-profit providers. We believe that a

consumer should be told that a non-profit provider receives compensation from the creditors with which the provider will be negotiating on the consumer's behalf. This information clearly is material to a consumer's decision regarding which provider to choose.

In addition to the FTC TSR disclosures, we believe that consumers should be informed of the compensation provided by specific creditors when the FTC TSR disclosures about particular debts are provided. For example, when the provider gives a consumer its good faith estimate of the time necessary to settle a particular debt, and the amount that will need to be saved, the provider also would disclose the compensation given by that creditor to the provider. For example, "Regarding your XYZ Bank account, we estimate that you will need to save $XXX and we will be able to settle the account by DATE. XYZ Bank will pay us $X for settling the account/XYZ Bank paid us $XXX in grants last year."

Thank you again for the opportunity to participate in the Workgroup and to present these formal comments.

Respectfully,



Michael F. Croxson
President

Debt Management
Associates, Inc.

October 18, 2010

Mark Kaufman
Michael Jackson
Dept. Of Labor, Licensing And Regulation
500 North Clavert Street
Baltimore, MD, 21202

Dear Mr. Kaufman and Mr. Jackson,

Thank you for your invitation to provide my written commentary regarding the Debt Settlement Services Workgroup meeting of September 23, 2010. I have received your written Request For Comments related to the Debt Settlement Workgroup and offer the following comments for your review.

Section A – Consensus Issues

1. Registration/Licensing – We are in agreement with the comments made at the Debt Settlement Workshop regarding not creating a licensing requirement for Debt Settlement Services Providers and instead requiring a more simplified registration process for such companies. We feel that this would provide a framework for the DLLR to more accurately assess the state of the Debt Settlement industry and the need to create an intensive licensing framework to regulate the industry. As this is a registration requirement that is being considered, we feel that it should not be as burdensome as a licensing process. As such, we feel that the registration process should achieve several goals for the DLLR such as getting basic company demographic, geographic, and governance information that will allow the DLLR to re-evaluate the need for a licensing requirement. As the scope of the registration process as discussed at the Debt Settlement Workgroup was more limited to getting basic industry structure information we feel that the registration requirements should not create a burdensome cost to the Debt Settlement Services provider such as in requiring audited financials, bonding etc. as a precondition to registration. These types of requirements should be left for consideration in the licensing of Debt Settlement Services Providers if the registration process determines that licensing is appropriate for the industry.

Section B – "Non-Consensus" Issues

1. Fee Caps - We feel that the FTC Final Rule was correct in not restricting the amount that a Debt Settlement Services Provider can charge for its services. We feel that the FTC Final Rule spurs competition between Debt Settlement Services Providers. Pricing

11510 Notchcliff Road ◘ Glen Arm, MD 21057 ◘ (877)800-8030 ext. 10 phone ◘ (877)800-8030 fax

has always been a competitive factor in just about every industry and the FTC was correct in its determination that fees are best set by a competitive market. The FTC also correctly concluded that the elimination of advance fees and the payment of fees in proportion to debts settled were the best protections to keep consumers from having to pay large fees with little in return.

Additionally, the role of the legislation in Maryland should not be to structure the cost of the services of a Debt Services Settlement Provider for the consumer. It should rather be to remove any deceptive and abusive practices by the industry that will prevent a consumer from making an informed choice as to which Debt Settlement Services Provider to hire based on accurate and truthful information. As such, the disclosures required by the FTC Final Rule and additional disclosures contemplated in the 2010 legislative session in Maryland create a robust framework to eliminate abusive practices and inaccurate information. Under such a framework the fee that a Debt Services Settlement Provider charges just becomes a fact to the consumer – "Company A" charges 20% vs. "Company B" charges 40%. With the disclosures provided by the FTC rule, the consumer can now evaluate both Company A and Company B and make a determination as to which one offers the best value.

With regard to whether the fee is calculated based on a flat fee or a percentage of the amount saved by the client we believe that both fee structures should be allowed. Additionally, we feel that a combination of both of the fee structures should be allowed. In our business we use a combination of both of these fees. When a debt settles we charge 5% of the debt and 15% of the amount of the savings. The 5% flat fee provides us a small fee if a consumer cannot come up with a significant amount of money to settle the debt in full and would rather pay the debt back over time at a higher settlement amount. Additionally, the 15% performance fee provides the consumer with confidence that we are going to make our best effort to get the lowest possible settlement for them as it benefits the consumer at the same time that it provides for additional compensation to us. Our blended fee structure creates a win-win situation for both us and the consumer. If we are not able to settle a debt at a large discount our client will not pay a big fee to us. On the other hand if we get a large reduction in a consumer's debt they save significantly more money and pay us a bit more.

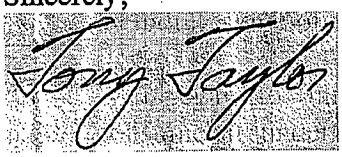
It should be noted that our blended fee model as described above had traditionally been calculated based on the amount of the debt at the time of settlement. The FTC Final Rule has clearly stated that fees now have to be calculated based on the amount of the debt at the time it is assigned to the Debt Settlement Services Provider. As a result of the FTC Final Rule we are currently evaluating our fee structure and may be increasing the percentages to maintain current revenue structures.

2 Disclosures – As we previously stated, the role of the legislation in Maryland should be to remove any deceptive and abusive practices by the debt settlement industry that will prevent a consumer from making an informed choice as to which Debt Settlement Services Provider to hire based on accurate and truthful information. As such, we feel that the adoption of the FTC Final Rule's disclosures would benefit Maryland consumers. And although we see overlap in some of the disclosures in last year's proposed legislation with the FTC Final Rule's disclosures we are not opposed to including some of the additional disclosures that were previously proposed.

With regard to "fair share" compensation we do think that it would benefit the consumer to understand how a Debt Settlement Services Provider is being compensated. There certainly could be a difference between a Debt Settlement Services Provider that is being compensated jointly by the consumer and a creditor based on the amount of money the Debt Settlement Services Provider recovers for the creditor and a Debt Settlement Services Provider who is compensated solely by the consumer based on the amount of money that it saves the consumer.

A consumer would almost certainly want to know that there could potentially be a conflict of interest with a Debt Settlement Services Provider that is receiving compensation from a creditor based on the amount of money they recover. In this case, the consumer's interest may be ignored by the Debt Services Settlement Provider if they feel they can get more compensation by settling a debt at a higher amount. The consumer should be made aware of this economic arrangement (the "fair share") in the spirit of full disclosure, and we support such a disclosure.

Sincerely,



Tony Taylor
President

Sent via Email (mjackson@dllr.state.md.us & mkaufman@dllr.state.md.us)
October 18, 2010

Mr. Michael Jackson
Mr. Mark Kaufman
Department of Labor, Licensing and Regulation
Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, MD 21202

Re: SB 701 & HB 392 Workgroup – Request for Comments

Dear Mr. Jackson and Mr. Kaufman:

Debt Shield, Inc. ("Debt Shield") appreciates this opportunity to comment on the initial issues identified by the September 23, 2010 workgroup meeting held the Office of the Commissioner of Financial Regulation ("Commissioner") in consultation with the Office of the Attorney General.

By way of background, Debt Shield is a debt settlement company headquartered in Columbia, Maryland since 2003 with 50 Maryland employees. We have settled over 100 million in debt saving our clients over 40 million dollars and have had over 3,000 clients graduate our program. We are accredited members of The Association of Settlement Companies ("TASC") and the United States Organizations for Bankruptcy Alternatives ("USOBA"). Each year, Debt Shield and its employees donate thousands of dollars and many hours to various Maryland charitable organizations and community groups.

Debt Shield's track record with its legislative efforts; both federal and state, clearly demonstrates our wholehearted support of fair and reasonable regulation. We have also testified in support of Maryland registration of debt settlement firms since 2005. Further, we vocally supported the spirit and intent behind Federal Trade Commission's ("FTC") Amendments to the Telemarketing Sales Rule, 16 CFR Part 319 ("Final Rule") targeting debt relief service providers despite opposing the vehicle used by the FTC and the hardship the fee limitation will impose on Debt Shield's ability to continue to operate.

Unfortunately, we believe that the unintended consequences of this regulation will put many legitimate debt settlement companies out of business, limit consumer's options and drive up overall consumer fees. At the beginning of 2009, we employed over 130 employees; however, we were forced to retrench, in large part, due to these upcoming fee restrictions. I personally have spoken with countless debt relief companies that have chosen to stop enrolling new clients due to these fee restrictions, which potentially also jeopardize their future ability to service existing clients due to cash flow concerns.

Notwithstanding this, Debt Shield continues to support a requirement of registration for any debt relief firm that contracts with Maryland consumers. However, Debt Shield opposes the need for Maryland to take additional legislative or regulatory action *at this time*. Instead, Debt Shield recommends that Maryland adopt a "wait and see" approach to determine the necessity and most importantly the impact of such additional legislation and regulatory action. Amongst (a) the FTC's authority under Section 5 of the FTC Act, (b) the FTC's Final Rule (c) the Consumer Financial Protection Board ("CFPB") created under the "Consumer Financial Protection Act of 2010" Title X of the Dodd-Frank Act and (d)

Maryland's consumer protection laws, there is already expansive authority to regulate and enforce the initial issues addressed herein.

As discussed in more detail below, Debt Shield supports in part the initial issues raised by the workgroup.

I. Registration/Licensing

Debt Shield agrees with uncertainty of the debt relief industry following the FTC's Final Rule and the creation of the CFPB, which further supports Debt Shield's recommendation that Maryland adopt a "wait and see" approach. Moreover, Debt Shield is also in agreement with an interim registration process regulated by the Commissioner. An interim registration process will assist the Commissioner in identifying the number of debt relief companies operating in Maryland as well as identifying the bad actors in our industry. Debt Shield suggests requiring a short registration application with a nominal fee that includes:

(1) The applicant's name and address;
(2) Any assumed business names, trade names or other identities under which the applicant performs a debt relief service;
(3) A general description of the business activities the applicant undertakes or proposes to undertake;
(4) The names of any managing members, managing partners, executive officers, directors, principals or agents the applicant has;
(5) The name of the applicant's registered agent or the applicant's agent for the purpose of receiving service of legal process;
(6) The names *(provided confidentially)* of any external affiliated or external service provider that provides direct services to any Maryland clients. "Affiliate" is defined to include 10% ownership or receives more than $10,000 in any preceding, current or future year), whether directly or indirectly from the applicant or its Maryland clients. "Direct services" includes marketing, sales, enrollment, administration, customer service, negotiations or other services material to the services performed as contracted.
(7) Client trust account information; and
(8) A copy of the debt relief application packet and contract signed by the consumer, including the fee schedule, budget analysis and disclosures.

This abbreviated registration provides the Commissioner with the primary information relating to debt relief companies with minimal fiscal impact while affording additional protection to Maryland consumers. It is also similar to registration requirements of other states.

Once the impact of the Final Rule and the CFPB are known, the ability to tailor a more effective and comprehensive registration process will manifest itself. Until then, Debt Shield recommends focusing on a simple, yet effective registration process.

II. Internet, Face-to-Face Meetings & Intrastate Application

While Debt Shield supports the potential need for regulating Internet only, face-to-face meetings and intrastate transactions and certainly supports a level playing field, Debt Shield is not convinced that the immediacy and necessity exists for regulation *at this time*. Again, Debt Shield reiterates that the benefits of a "wait and see" approach will likely flush out these potential issues. We offer some specific comments below regarding these identified issues.

A. Internet Only

Per the Final rule, there is no current issue with debt relief providers that only enroll via the Internet as this is not a common practice in the debt relief industry. Nor is it likely that this will be a prolific approach given the personal interaction needed during the consultation due to each consumer having individual factual scenarios.

B. Face to Face Meetings

Face-to-face meetings and intrastate transactions are more personal by nature. A face-to-face meeting provides the consumer with more information about and direct contact with the company, and helps limit potential problems the Final Rule is designed to remedy by providing consumers with the added benefit and assurance of visiting the company. Moreover, the goal of the Final Rule is to protect consumers against deceptive or abusive practices that can arise when a consumer has no direct contact with an invisible and anonymous seller other than via telephone.

C. Interstate Application

While the TSR requires interstate telemarketing, this does not mean the FTC is without potential other enforcement provisions even within this Final Rule. For instance, the FTC may enforce the Final Rule under a "joint enterprise" theory.

In addition, state attorneys general may also enforce the CFPB and states will be able to petition the CFPB to issue a new or modified consumer protection regulation. Moreover, the CFPB has the authority to declare an act or practice by a provider of a consumer financial product or service to be an unfair, deceptive or abusive act or practice. As a federal statute, this authority may be used to negate activity otherwise authorized by the Final Rule and state laws.

If Maryland were to impose the same fee restrictions on Maryland companies servicing consumers only in our state, you would likely put most of the remaining Maryland companies out of business. Not only would this put even more Marylanders out of work, there is also a strong chance that many Maryland consumers who are currently receiving a valued service by these companies would then be left with no continued service.

III. Nonprofit Providers

Debt Shield supports a level playing field and the importance of including non-profit debt relief providers. However, Maryland already regulates many debt management firms, and we are not aware of any nonprofit debt settlement company. Furthermore, while the FTC lacks authority over legitimate nonprofit entities, the FTC has aggressively pursued companies that it determined were "operating for their own profit or that of their members," and thus fell outside the nonprofit exemption in the FTC Act. In other words, simply changing a company's corporate structure from for-profit to non-profit, without a corresponding change in the company's overall objectives, revenue structure and governance (that is, truly becoming a public benefit entity), will not eliminate the company as a potential target of regulatory enforcement. Further, the CFPB does not provide an exemption for nonprofit entities covered under the CFPB and has the authority to take enforcement action where the FTC does not.

IV. Lead Generation

The FTC's Final Rule covers "any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of rules addressing unfair, deceptive, or abusive act or practice, or any rule or order issued thereunder, shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided." See 16 CFR 310.3(b). Similarly, the CFPB's the definition of "covered persons" includes a broad range of organizations and activities.

V. Fee Caps

The issues and concerns surrounding fee caps is a known issue. Debt Shield, like all debt settlement providers, incurs significantly higher costs in administering a debt settlement program and servicing clients than similar costs for consumer credit counseling programs and debt management plans. There is no one size fits all, cookie cutter approach with debt settlement as there is with debt management plans and credit counseling programs. As a result, it takes approximately ten times more staff to administer debt settlement programs as it does to administer debt management programs. Furthermore, unlike credit counseling firms, debt settlement firms do not get leads or monies (direct or indirect) from creditors.

Again, Debt Shield fully supports reasonable regulation of debt settlement companies. After all, it's highly beneficial to all ethical debt settlement providers if the bad apples are weeded out. The fee limitation provided by the Final Rule is prohibitive in of itself for many debt settlement providers to stay in business, including Debt Shield. The transition alone by the October 2010 effective date has already created a significant hardship on the industry. That said further restricting this fee limitation by providing a cap such as 15% of the savings achieved will without a doubt cause many Maryland debt settlement providers to go out of business. As TASC, USOBA and other industry providers have pointed out numerous times, it is absolutely impossible to operate a debt settlement company under additional fee restrictions given the exponentially greater costs providers incur associated with the same. Moreover, the originally proposed fee restriction in SB 701 of 15% of the savings achieved by the consumer would equate to a smaller overall fee than received by consumer credit counseling companies administering debt management plans, which plans require far less work and exponentially less cost to administer than debt settlement programs. Thus, the result would be the further distancing of a level playing field amongst debt relief providers.

It is obviously not the intention of the Maryland General Assembly or the Commissioner to put legitimate Maryland companies out of business or otherwise prevent them from serving Maryland consumers in financial distress who have a real need for the service such companies provide. Unfortunately, implementing unreasonably low fee caps will do exactly that.

VI. Disclosures

Debt Shield does not feel that it is necessary to require additional disclosures to Maryland consumers. The CFPB has been given separate authority to require new disclosures for all consumer products and services. This authority would permit, for example, developing disclosures for debt management plans and debt settlement services. Further, TASC and USOBA each require its members to provide more comprehensive disclosures to consumers. Between the Final Rule, the CFPB, TASC and USOBA, all feasible material disclosures regarding debt relief services are already provided to consumers currently.

VII. Attorneys and Debt Settlement

Notwithstanding the language used by the FTC, implicit in the FTC's "guidance" is a clear indication of the FTC's view that the Final Rule applies to attorneys and law firms that provide debt relief services to clients. As such, the FTC's position will likely be that such relationships between attorneys and debt relief providers will not exempt or otherwise protect such companies from compliance with the requirements of the Final Rule. In addition, the FTC will scrutinize such business models very closely and will likely focus its early regulatory enforcement efforts on these issues.

Moreover, the CFPB's "covered persons" also includes "related persons," such as attorneys acting as joint venture partners, independent contractors, employees, managers or directors. The CFPB does provide a limited exemption for attorneys subject to certain preconditions, which may make it difficult for attorneys engaged in credit counseling, debt management and debt settlement to assert an exemption from regulations enacted by the CFPB.

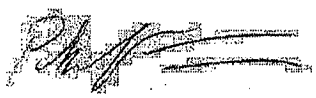
Most importantly, Maryland case law requires heightened scrutiny under an analysis of Article 24 of the Maryland Declaration of Rights pertaining to any legislation posing a significant interference with the right to practice law. See *Attorney General of Maryland v. Waldron*, 289 Md. 683, 722, 426 A.2d 929, 950.

As such, Debt Shield's continues to encourage that Maryland adopt a "wait and see" approach.

VIII. Conclusion

Debt Shield appreciates the opportunity afforded by the Commissioner to comment on the initial issues raised by the September 23, 2010 Workgroup. While Debt Shield supports fair, reasonable regulation, any of the proposed suggestions beyond registration are premature. Hopefully, the Commissioner will continue to work with the industry in promoting self regulation and consumer protection while the impact of the Final Rule and CFPB unfolds prior to enacting additional legislation concerning the debt settlement industry.

Respectfully submitted,



Philip J. Fewster Jr., esq.
Founder and CEO
Debt Shield, Inc.

MCRC
MARYLAND CONSUMER RIGHTS COALITION
1531 Park Avenue Baltimore MD 21217 marylandconsumers.org

October 18, 2010

Commissioner of Financial Regulation
500 North Calvert
Suite 401
Baltimore, MD 21202

Re: Comments for the Debt Settlement Services Workgroup

Dear Commissioner Kaufman:

Thank you for facilitating the September 23 meeting of the debt settlement workgroup. The Maryland Consumer Rights Coalition (MCRC), Civil Justice (CJ), and Maryland CASH Campaign submit the following comments regarding appropriate licensure and regulation of the debt settlement industry in Maryland.

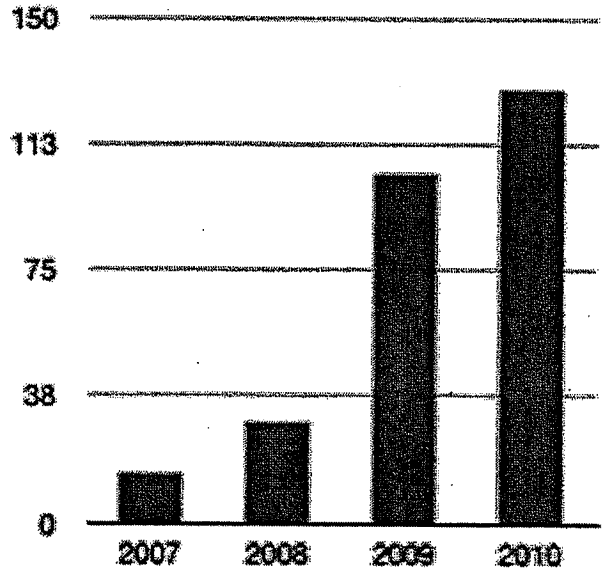
Overview

As described in our 2010 research report, *Debt Settlement in Maryland: Compounding Problems, Deepening Debt*, MCRC believes that debt settlement firms have created more problems than solutions for Maryland consumers. Many firms collected fees from consumers yet failed to negotiate on their behalf to settle their debt.

Debt settlement firms promise to reduce consumers' debts by negotiating a lump-sum payment to creditors. To accumulate funds to settle the debt, many firms encourage a consumer to stop paying down credit cards and to ignore calls from collection agencies. Not surprisingly, the consumer's debt mounts as late fees, higher interest rates, and penalties are added. The consumer's credit score declines and many consumers who've contracted with debt settlement firms either declare bankruptcy, have their wages garnished, or must pay off their debt as well as additional fees when they are taken to court by collection agencies.

Complaints about debt settlement firms have been on the rise. Since 2007, the number of complaints to the Maryland Attorney General's office about debt settlement firms has more than quadrupled (see Chart 1).

Chart 1: Debt Settlement Complaints 2007-2010



Source: Office of the Attorney General

A review of some consumer complaints filed in 2010 shows that 28 Maryland consumers lost more than $54,000 to unscrupulous debt settlement firms that collected advance fees but did not settle the consumers' debt.

The debt settlement industry's advance fee structure has been highly problematic for consumers. Consumers pay for services before the services are provided; consequently, many debt settlement firms fail to negotiate on a consumers' behalf or settle consumers debt once the company collects its fees.

In addition to the advance fee structure, other industry practices have generated consumer complaints, investigations by States Attorneys General, and lawsuits. Specifically, deceptive practices and poor disclosure policies serve to confuse consumers about the services they are receiving, the success rate of debt settlement programs, the average amount saved, and the potentially negative consequences of working with a debt settlement firm.

• **Deceptive Practices**

Debt settlement companies claim they can substantially reduce a consumer's debt; unfortunately, many of these claims cannot be substantiated. In New York, two debt settlement firms were sued for deceptive practices and false advertising. Credit Solutions of America (CSA) promised a 60 percent reduction in consumers' debt but on average, only 1 percent of CSA's New York clients realized any savings. CSA collected $17 million in fees from New Yorkers. Similarly, Nationwide Asset Services (NAS) promised to reduce clients' outstanding debt by between 25-40 percent, yet the New York Attorney General's office found that only one-third of one percent of consumers reduced their debt using NAS' services.

An April 2010 GAO study found that the debt settlement companies investigated made unsubstantiated claims about their ability to reduce consumers' debt.

• **Misrepresentation of Completion Rates**
Firms claim to have helped thousands of consumers attain debt relief, but have not been able to prove those statements. In Florida, the Attorney General found that of 227 Floridians enrolled in a debt settlement program with NAS, only 30 consumers completed the program-a completion rate of 13.5 percent. In Colorado, a study found that of Coloradans that used debt settlement services in 2008, less than 1 percent (0.84) had all debt eliminated.The GAO study reported similar misleading claims.

• **Directing Consumers to Stop Paying Creditors**
Many debt settlement firms direct or strongly encourage consumers to stop paying their creditors. Instead, consumers are told to save their funds to accumulate enough in their accounts that the debt settlement company can make a "lump-sum' offer to creditors. This practice harms consumers because it negatively affects their credit scores. In the GAO report, investigators found that

"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."

Of the 17 companies which encouraged consumers to stop paying their creditors, five (5) were members of TASC and four (4) were members of USOBA.

• **Failure to Communicate the Consequences of the Debt Settlement Process**

Debt settlement companies rarely if every effectively communicate to consumers that contracting with their firm will not prevent creditors from pursuing debt collection actions, that their credit score will worsen, that late fees and penalties will continue to mount, that any savings realized may be considered taxable income, and that their debt balance increases when payments are not being made.

The FTC Final Rule

Taking effect October 27, 2010, the FTC's final rule creates a new protections for Marylanders contracting with debt settlement firms. The FTC rule bans advance fees for services; requires a new set of disclosures to consumers, and proscribes the circumstances under which debt settlement firms can require consumers to create dedicated accounts in which they save their funds towards a lump-sum settlement.

The FTC rule is a great advance for consumers; however, loopholes remain and more regulation is needed to protect low-and-moderate income families from using debt settlement services that may lead to greater debt, lower credit scores, and continued collection activities.

RECOMMENDATIONS TO REGULATE DEBT SETTLEMENT

LICENSURE AND REGISTRATION

MCRC, CJ, and Maryland CASH Campaign supports licensure and registration of debt settlement companies operating in Maryland. Our groups support an interim registration period for one year to be followed by a report from the Commissioner of Financial Regulation (CFR) on the number and performance of debt settlement companies registered during that year as well as a recommendation for establishing a permanent procedure for licensing, registration, reporting, and bonding of debt settlement firms. The CFR could convene a task-force to study the issue and present recommendations for a permanent licensing, registration, reporting, and bonding scheme. The licensing program should, at a minimum, include the following provisions:

Application

An application for a license shall be made in writing, under oath, to the CFR in a form determined by the CFR. A debt settlement firm will pay a licensing fee as determined by the CFR at the time of application. Our organizations suggest a licensing fee of $1000 per application to defray administrative and investigative costs. The application should identify all affiliated business arrangements of the proposed licensee and all representatives who have contact, directly or indirectly, who have a relationship with customers or proposed customers. The application should also identify any lawsuits or regulatory actions to which the applicant or proposed representatives have been a party within ten years of the date of application.

Licensing

After receipt of the application and required fees, the CFR may issue a license if the following conditions are met:
□ the individual or business engenders belief that the debt settlement firm will operate fairly, honestly, and efficiently and abide by applicable Maryland law;
□ the individual or business has not been convicted of a felony or a misdemeanor or disciplined concerning a license from Maryland or any other state or are not currently the subject of a license disciplinary proceeding of any kind in Maryland or any other state;
□ the person or persons have no record of defaulting in the payment of money collected for others including discharge of debts through bankruptcy proceedings; and,
□ the applicants have not made any false statements in their application.

The CFR will issue the license to the applicant at the location provided on the form. The license will remain in effect until it is surrendered by the debt settlement firm or revoked by the CFR. The license will remain in full force for one year, at which time it will have to be renewed.

Renewal

A debt settlement firm may renew its license by completing the form prescribed by the CFR and paying a renewal fee of $1000. The application must be received by one month before the current license is due to expire.

Annual Reporting
A debt settlement provider must file an annual report with the CFR that must include all the following data:

(1) for each Maryland resident:
(i) the number of accounts enrolled;
(ii) the principal amount of debt at the time each account was enrolled;
(iii) the status of each account (for example, active or terminated);
(iv) whether the account has been settled, and if so, the settlement amount and the corresponding principal amount of debt enrolled for that account;
(v) the total amount of fees paid to the debt settlement service provider;
(vi) whether the creditor has filed suit on the account debt;
(vii) the date the resident is expected to complete the debt settlement program; and
(viii) the date the resident canceled, terminated, or became inactive in the program, if applicable.

2) For persons completing the program, the mean and median percentage of savings and the mean and median percentage of fees paid to the debt settlement service provider;
3) For persons who became inactive, cancelled, or terminated the program during the reporting period, the mean and median percentage of the savings and the mean and median percentage of the fees paid to the debt settlement service provider;
4) the percentage of Maryland residents who cancelled, terminated, became inactive, or completed the program without the settlement of all the enrolled debt;
5) the total amount of fees collected from Maryland residents.

An authorized agent of the debt settlement company must declare under penalty of perjury that the report complies with the information requested above.

The CFR may release a summary of the information received in the annual reports available to the public and publish all the data received on its website.

Suspension/Revocation of a License

A license may be suspended or revoked if the debt settlement firm fails to pay the annual renewal fee, fails to complete a renewal license, or is found to have made a false statement when applying for a license.

SCOPE

MCRC, CJ, and Maryland CASH Campaign support expanding the scope of coverage of the FTC rule as well as any additional regulations or legislation related to debt settlement to include any agreements conducted entirely through the internet; intrastate within Maryland, or in face-to-face meetings between the consumer and debt settlement provider.

Our organizations support expanding the scope of coverage of the FTC rule as well as any additional regulations or legislation related to nonprofit debt settlement providers as well as lead generation services.

We believe that any new legislation should include these types of transactions with the definition of debt settlement. Any new legislation should clarify that any businesses that receive compensation from a consumer directly or indirectly related to debt settlement would be covered by any proposed regulations or licensing scheme.

- **Other Businesses**

MCRC, CJ, and Maryland CASH Campaign believe that banks, mortgage brokers and lenders, and other professional licensees that engage in the business of debt settlement (outside of discharging debts that they own) should be covered by any proposed regulations or licensing scheme.

- **Related Products**

MCRC, CJ, and Maryland CASH Campaign believe that any products related to debt settlement (do-it-yourself debt settlement kits, debt settlement videos, etc.) should also be subject to any proposed regulations and licensing schemes.

FEE CAPS

Our organizations support capping fees at 15 percent of savings based on the debt enrolled. This formula rewards debt settlement firms for settling a consumer's debt while still enabling a consumer to retain a reasonable amount of funds saved.

Consumers who retain debt settlement services typically owe at least $10,000 in unsecured debt and have few other options available to reduce their debt besides bankruptcy. Consequently, it is particularly important to strike a balance between providing the debt settlement firm with adequate compensation for their effort while still ensuring that a moderate amount of savings returns to the consumer. A 15 percent fee cap provides an incentive for the industry and enables them to remain profitable. Moreover, since consumers stand to recoup more of their savings under this model, it provides a greater incentive for consumers to seek out debt settlement services, leading to a greater volume of clients and generating a higher profit for debt settlement firms.

While opponents may try to justify a higher percentage arguing that debt settlement firms cost more to operate than debt management firms or other nonprofit providers, TASC's own study noted that one important reason for these higher costs was the money spent on lead generation including email, telemarketing, television and radio ads, and contracts with lead-generation firms. Testimony from DebtShield in 2010 reiterates this point. While it is true that it may cost more to run a debt settlement service, if companies reduce the amount that they spend on generating leads, they should still be able to remain highly profitable.

Additionally, the track record for many debt settlement firms suggests that very little is done to service clients once the company's fees are collected. In fact, failure to perform the services promised is one of the leading complaints against the industry.

A fee that is based on 15 percent of the amount a consumer saved provides a positive incentive for a debt settlement provider to settle. It rewards success and seems commensurate with the level of effort expended. Conversely, a higher fee seems disproportionate to the amount of work that most firms do to reduce a client's debt.

Several states including Arkansas, Kentucky, Louisiana, New Jersey, and Wyoming, have chosen to simply ban for-profit debt settlement companies from operating in their states at all. Individuals who violate those states' bans are guilty of a misdemeanor and could face up to 1 year imprisonment in Arkansas and up to 6 months imprisonment in Wyoming.

Maine and Illinois law caps fees at 15 percent of savings. National legislation sponsored by Senator Schumer proposes a 5 percent cap on fees.

We believe the fee should be calculated based on the amount the consumer saved on the debt enrolled. In other words, the calculation of the percentage saved could be calculated as the amount that is 15 percent of the difference between the principal amount of that debt; the amount (i) paid by the debt settlement provider to the creditor on behalf of the consumer if the settlement fully and completely satisfies the creditor's claim with regard to that debt; or (ii) negotiated by the debt settlement provider and paid by the consumer to the creditor if the payment fully and completely satisfies the creditor's claim with regard to that debt.

The settlement fee will only be paid to the debt settlement firm once the consumer receives a legally enforceable agreement from the creditor that they will accept the lump-sum settlement which will fully and completely satisfy their claim concerning the debt.

DISCLOSURES

MCRC, CJ, and Maryland CASH Campaign support fuller disclosures so that consumers are well-informed and able to decide if debt settlement services are right for them. MCRC proposes that debt settlement firms use a standard form to provide parity among providers and clearly inform potential clients.

Our organizations suggest that debt settlement firms issue the following warning verbatim, both orally and in writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in at least 28-point font and the remaining portion in at least 14-point font, to a consumer before the consumer signs a contract for the debt settlement provider's services:

"CONSUMER NOTICE AND RIGHTS FORM

CAUTION

We CANNOT GUARANTEE that you successfully will reduce or eliminate your debt. If you stop paying your creditors, there is a strong likelihood some or all the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

DEBT SETTLEMENT PROVIDERS CANNOT:

- REPRESENT THAT IT CAN SETTLE A CONSUMER'S DEBT FOR A SPECIFIED AMOUNT OR REDUCE A CONSUMER'S DEBT BY A SPECIFIED PERCENTAGE
- REQUIRE OR ADVISE A CONSUMER TO STOP MAKING PAYMENTS TO ANY CREDITOR OF THE CONSUMER
- REQUIRE ANY VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED BY THE DEBT SETTLEMENT SERVICES PROVIDER TO THE CONSUMER.

I, the debtor, have received from the debt settlement provider a copy of the form entitled Consumer Notice and Rights Form.

LAWYER'S EXEMPTION

MCRC, CJ, and Maryland CASH Campaign support requiring lawyers who are admitted to practice in Maryland and who are "principally engaged" in providing debt settlement services to consumers to follow the same licensing procedures and any new regulations that other debt settlement firms follow.

First, including lawyers who run debt-settlement businesses is an issue of parity. Lawyers who run, or principally run, debt settlement firms should be required to follow the same rules and regulations as any other individual or entity. There was consensus about expanding the scope in Maryland to include nonprofit business providers, intrastate, and Internet transactions. This should be no different.

Furthermore, it creates a level playing field for debt-settlement firms. If all debt settlement firms doing business in Maryland have to follow the same rules, there is no unfair advantage for one type of business-all companies will have to compete based on their ability to settle a consumer's debt. This provides an incentive for firms to quickly settle consumers' debts, which, in turn, benefits consumers who use debt settlement services.

Finally, and most importantly, Maryland has already had demonstrable proof of the problems that arise when lawyers who primarily run debt settlement businesses use their attorney-client privilege as a veil to obscure deceptive practices.

Richard Brennan and the Brennan Law Firm was the only debt settlement firm prosecuted in Maryland to date (check because of case search on the others). The Attorney General's office charged that Brennan had misrepresented the amount consumers would save through debt settlement and promised services he did not render. The Attorney General's office reached a settlement with Brennan in October 2007-yet despite this agreement, Brennan never paid the penalties, costs and restitution to consumers and continued to illegally provide debt settlement services. The Attorney General's office sued Brennan in Circuit Court in January 2009. In January 2009, he was also disbarred from practicing law in the state of Maryland. The Circuit Court entered a judgement against Brennan but Brennan ignored that order and continued to provide debt settlement services. He was jailed for contempt of court in July 2009.

While Brennan's case is extreme, it exemplifies the difficulties in protecting consumers from unscrupulous lawyers if they are not regulated in the same way as other debt settlement businesses.

Brennan's case is not unique. There have been several court cases filed against other law firms that are primarily debt settlement businesses and scores of consumer complaints against the same firm. Any contemplated (partial or full) exemption should only apply in any circumstance only to attorneys acting within the scope of their license. In other words, it the attorney is acting outside the scope of his/her license, no exemption would apply.

Thank you for your consideration of our comments. I would be happy to discuss any of the proposals in the letter at greater length. Please don't hesitate to contact me at 410-624-8980 or marcelineawhite@gmail.com

Best,

Marceline White
Executive Director
Maryland Consumer Rights Coalition

on behalf of

Maryland Consumer Rights Coalition
Civil Justice
Maryland CASH Campaign

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October 26, 2010

VIA E-MAIL and HAND DELIVERY

Michael J. Jackson
Maryland Department of Licensing/Regulation
Division of Financial Regulation
500 N. Calvert Street
Baltimore, Maryland 21202

Dear Mr. Jackson:

This letter responds to the Department's request for comments on proposed debt settlement rules as discussed at the industry meeting on September 23, 2010. Thank you for the opportunity. Persels & Associates is a national law firm and not a debt settlement company. As a preface to these remarks we would like to emphasize our view that there is no need for additional regulation of attorneys services, neither is the Legislature empowered to enact any. The right and power to regulate the profession is reserved to the Court of Appeals. There is even considerable question as to whether the new FTC regulations extend to attorneys as there is significant authority that such regulations are beyond the scope of the authorizing legislation enacted by Congress. See, *ABA v. FTC, 430 F. 3rd 457 (2005).*

With these principles in mind we offer the following comments and observations.

"Consensus Issues":

Registration- The Firm believes that Registration, as it applies to attorneys, is both unnecessary and unworkable. The problems are obvious. Every attorney who works with consumers at one time or another works to restructure debt. When would members of the Bar who work on compromises of their client's debt be required to register? What level of activity in the field would trigger registration? How would lawyers know when they had to register? Obviously, all attorneys are "registered" and regulated by the Court of Appeals. Imposing a further requirement would open the door to the possibility of myriad other invasions of the practice of law which are constitutionally reserved to the State's highest court.

Internet-face to face meetings- The firm supports the concept of contingency fees in the field and has long since adjusted its billing practices to reflect this policy. The imposition of the national rules on intrastate transactions, or ones in which there is no interstate use of telephonic equipment, seems reasonable.

Nonprofit Providers- The Firm agrees that non-profits should be subject to the same rules as other providers. It has been demonstrated over and over again that the establishment of "quasi" eleemosynary institutions whose real purpose is to generate as much revenue as possible is a common means of circumventing effective regulation in this field. Any truly charitable non-profit should be able to deliver its services under the restrictions of an effective regulatory scheme. It is simply too easy to use the charitable business format as a front for an otherwise indistinguishable for-profit business.

Lead Generation- We agree that so called "lead generators" should be subject to the same rules as providers of the services.

"Non-Consensus" Issues

Fee Caps- Fee caps are ill advised. The difficulty here is that the government has no basis on which to make the judgment that any particular percentage of recovery or fixed fee is fair and reasonable. Having just changed to an entirely new system of compensation, market participants have little or no experience on which to base an empirical analysis of the costs of delivering the services. This presents the danger that an inappropriate restriction on fees will result in consumers having no access to services for debt relief other than bankruptcy. The reluctance of even the Federal Trade Commission to intervene in market forces in the setting of fees should provide ample justification for declining to regulate in this area. Moreover, the setting of fee restrictions should the proposed regulation be applicable to attorneys would present significant constitutional issues. Fees charged by lawyers are regulated by the Court of Appeals and are subject to an elaborate system of mediating and arbitrating fee disputes. Rule 1.5 of the Maryland Rules of Professional Conduct sets out detailed guidelines by which the fairness of a fee can be judged. There is also ample case law on the subject.

The difficulties in this area are further compounded by the fact that the regulation is directed to companies which only provide debt settlement services, not legal services. There would be no means to effectively differentiate between the two, thereby depriving consumers of the opportunity to have sound legal advice in the course of attempting to compromise their debts. Fee caps would be particularly troublesome when applied to attorneys who provide services other than the negotiation of compromises of debts. Such services as litigation support, the preparation of documents to be used in litigation, the bringing of actions to protect clients from illegal aggressive collection tactics, bankruptcy advice, and many others can not be separated from the fees charged to the client for negotiating compromises. There is ample evidence that when such services are billed separately on a fee for service basis the costs of the services rapidly outstrip the ability of debt laden clients to pay them. A system that charges fees across a broad population of clients, only a few of whom require additional legal services at any given time, is the only way to make such services affordable to the entire client base.

Disclosures- The Firm has always made substantially the disclosures required by the FTC Rule and, therefore, the disclosures proposed by the 2010 legislative draft. With one exception, they are sound guidelines. In the context of a lawyer-client relationship the question of whether a lawyer may suggest to a consumer that any particular debt should or should not be paid is strictly with the discretion of the attorney and should not be the subject of government regulation. While the Firm's policies do not recommend or suggest that any client be told not to pay their debts, there are times when such advice may be in the client's interests in the context of a settlement of a legal dispute. Here again we confront the dichotomy between providing non-legal debt settlement services and providing legal services delivered in the context of a lawyer-client relationship which highlight the policy reasons for excluding lawyers from the proposed law. Clearly, a layman in a non-lawyer debt settlement company has no business advising a client to pay or not pay any particular debt. That is the giving of legal advice. There may be a dozen reasons why a lawyer might do so, however, and he or she would be perfectly within their rights and the

scope of the representation. Indeed, in many instances the standard of care owed to the client by an attorney may compel the giving of such advice. For example, an attorney advising a client with limited resources that he should satisfy a creditor with a judgment and an enforceable garnishment pending before making a payment to an unsecured creditor who has not begun a judicial process would be in violation of the restrictions of the proposed law. Yet, such advice would be clearly within the scope of the attorney's right and need to properly advise his client. This is just one more example of the inappropriateness of attempting to bring lawyers within the purview of this statute.

Attorney Exemption- Many of the reasons why attorneys should be excluded from this legislation have already been discussed herein. We do not argue that a lawyer who runs a debt settlement business which does not include, or perhaps specifically disclaims, the establishment of an attorney/client relationship should be exempt. States have had no difficulty in preventing such subterfuge. *See e.g. Lexington Law Firm v. South Carolina Department of Consumer Affairs*, 382 S.C. 580, 677 S.E.2d 591 (2009).

The legal profession is already among the most highly regulated occupations. While it is true that recent experience with at least one attorney in this State has given legislators reason to consider regulation, the fact is that no regulatory scheme is capable of preventing dishonesty of the kind exhibited by that particular attorney. Moreover, the organized Bar is the only institution in the State that has a fully funded system to compensate clients who are the victims of unscrupulous attorneys (See, the Client Security Trust Fund). No such fund will be available under the current versions of this legislation nor is there a source of funding available should the Legislature choose to include such a provision. One has to wonder whether if the Legislature effectively declares the offering of debt negotiation services to be a non-legal function and subject to regulation, the Bar might conclude that the Trust Fund was not available to compensate victims of fraud.

Those who demand that lawyers be included in the regulatory scheme do so primarily as a means of maintaining a competitive advantage or at least preventing one in favor of attorneys. They claim they want a "level playing field". They don't. They want an advantage. Their view completely ignores the fact that the lawyers are providing services that the non-lawyer competitors are not and cannot provide. They should not be ruled by the same regulatory scheme. This is the reason why virtually every state that has considered this issue has elected to provide an exemption for attorneys when engaged in the practice of law. By our count this includes 43 jurisdictions. The National Conference of Commissioners on Uniform State Laws studied this very issue for over five years. Its members included the most informed scholars in the law, government and the industry. The final draft of the legislation, now in effect in four states and the US Virgin Islands, exempts attorneys when engaged in the practice of their profession. In the face of this overwhelming authority across the nation one has to ask "what special or other considerations exist in Maryland that justify a different approach"?

Respectfully submitted,

Persels & Associates LLC
Neil J Ruther, Managing Member

Cc: Mark Kaufman, Commissioner
Nick Manis

October 13, 2010

TASC Response to Request for Comment following Maryland Debt Settlement Workshop

General Position

TASC has always advocated for strong regulation of the industry and has supported comprehensive legislation in a number of states where such bills have become law. By far the most contentious issue in any discussion of regulation of the debt settlement industry has been about the fee. That has now been addressed by the FTC in a manner that provides complete protection for the consumer: no fees may be charged until a debt is settled, the consumer has approved the settlement, and he has made at least one payment towards such settlement. So, debt settlement is now effectively and strongly regulated in the State of Maryland.

While there are some arguments that gaps may exist in the FTC rule (addressed further below), from a practical standpoint, the FTC rule covers the vast majority of circumstances. Since there was not a significant problem to begin with and since the FTC rule provides so much more protection than existed in Maryland before, the need for additional regulation for debt settlement companies is minimal.

The industry's opponents have always cited significant complaint volume as support for their positions yet relied only on individual cases or anecdotal evidence. Recent statistical evidence shows the contrary.

1. Maryland Attorney General statistics received pursuant to an FOIA request by USOBA reveal that once the complaints against Richard Brennan and his law firms are removed (who was shut down, disbarred and jailed after enforcement action was taken against him), only approximately 71 complaints over a three (3) year period were made against for profit debt settlement companies. (See attached summary of results of FOIA request by USOBA).
2. Likewise, an FOIA request made to the FTC regarding the volume of complaints against debt settlement companies reveals very few complaints. In response to the request, the FTC provided a breakdown of complaints by company for 2009 of the Top 100 complaint targets in the category of "debt negotiation/credit counseling" complaints. There are no debt settlement companies in the Top 20, and the highest number of complaints received by any debt settlement company is 47 compared to the 3209 complaints received by the highest listed company, HSBC. In fact, the top four listed companies were all large banks. Debt settlement companies appear to comprise less than 20% of the number of companies on the list and constitute

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approximately 5% of the total number of complaints. (See attached FTC response to FOIA request).

3. The BBB statistics also show relatively low numbers of complaints. According to the BBB's 2009 data, debt settlement ranked 117th in number of complaints. Industries rated worse include at #3 banks, #6 collection agencies, #15 credit card companies and #86 credit counseling. (See attached 2009 BBB complaint statistics report).

So, even before the FTC rule was promulgated and before there was any regulation of the debt settlement industry in Maryland, there was not a significant complaint volume. Now with the FTC rule, there is significant protection in place. Thus, it is not necessary to impose additional regulation in Maryland.

Specific Issues addressed

1. Registration requirement
   Although TASC views additional regulation as unnecessary, it does not oppose a registration requirement.

2. Internet, Face-to-face Meetings and Intrastate Application
   Given the complexity of the initial consultation process and the amount of information needed to complete an application and enrollment into a debt settlement program, it is unlikely that a transaction without any personal interaction would succeed. Personal interaction without using the phone in today's society does not seem possible. The broad application of the Interstate Commerce clause also makes it highly unlikely that such an exemption based on intrastate commerce truly exists. Real, legitimate face-to-face meetings may occur occasionally, but the use of runners or notaries is not likely compliant with the Rule's exceptions. Further, market competition will temper attempts to "circumvent" the rule. Subject to TASC's general position, the perceived gaps may be closed by mirroring the FTC Rule and applying it to all debt settlement providers including nonprofits.

3. Nonprofit providers
   Nonprofit providers are not regulated by the FTC rule and thus represent a true loophole in the rule. TASC supports mirroring the FTC rule and applying it to nonprofit providers.

4. Lead Generation
   The concerns regarding lead generation are not debt settlement specific. Either existing regulation or new regulation specific to marketing practices used by lead generation companies for all industries, products or services is more appropriate. Further, the FTC rule covers lead generation providers as entities that assist debt relief providers.

5. Fee Caps

All previous fee cap discussions need to be reevaluated in light of the FTC rule. TASC opposes a fee cap at this time for the following reasons:

a. The FTC rule already provides complete protection for the consumer.
    i. The fees must be clearly and conspicuously disclosed prior to the consumer entering into an agreement with the provider.
    ii. No fees are chargeable until a settlement is reached.
    iii. The consumer has another opportunity to reject the fees by rejecting the settlement.
    iv. The consumer not only must approve of the settlement, but must affirm that approval by making a payment towards the settlement.
b. The FTC rule imposes a fee structure that is completely untested. While some providers claim that they have used the "no fees until settlement" model, TASC has learned that those providers did not use such model for all consumers, that insufficient time had passed to fully evaluate the model, and that such providers admit that some presumptions they had made about the model were wrong. It is simply too early to know what an appropriate fee cap would be for the FTC fee model. One thing is clear – the fees must be higher as work is performed for consumers who end up not paying.
c. Under prior state regulation, consumers in unregulated states actually paid less than those in regulated states. Market forces do work especially when it comes to pricing. While critics may claim otherwise, when limited to the specific price of a product or service, it is hard to refute the evidence that competition sets the market price. As such, concerns that fees will be unfairly high is unfounded.

6. Disclosures

TASC has always supported disclosures. However, the FTC made an interesting conclusion – the FTC actually scaled back the disclosures from their original proposal on the basis that it was more important to make good disclosures that would be noticed by consumers than to give more complete disclosures. So, the FTC supported fewer more focused disclosures. One disclosure that was not considered, however, is that of any fair share payment or other compensation by a creditor to a provider. Without such disclosure the consumer would not know the true cost of the service and as such is an important one for the consumer.

7. Attorneys

Many states have struggled with the issue of how to exempt attorneys. To date, all have taken a conservative approach in deferring to the attorney's own licensing requirements, bar standards and ethics rules. Otherwise, the overlapping jurisdiction with the lawyer licensing body may cause conflicts. Further, enforcement against attorneys who are causing problems is working. Richard Brennan was a Maryland attorney who was prosecuted, disbarred and imprisoned for violations under existing Maryland law and bar rules. There is also the risk of how regulation of attorneys might impact other types of practices including bankruptcy, consumer law and collections law.

As such, TASC recommends against including attorneys in an attorney-client relationship with a consumer in any potential regulation of the debt settlement industry and to defer any enforcement to either the attorney licensing body or to the State Attorney General's office under existing state laws.

In closing, TASC believes the FTC Rule provides sufficient and significant protection for Maryland consumers, and addresses the key concern, the charging and collection of advance fees. The statistical evidence shows that even prior to the implementation of the new FTC rule, debt settlement was a relatively minor issue from a consumer protection standpoint and concerns were overblown likely due to negative media attention and PR campaigns against the industry. Nevertheless, consumers in Maryland will benefit from the FTC regulation and the more prudent, conservative course would be to wait and see how well the new regulation works instead of speculating about what additional regulation is needed.

Respectfully submitted

The Association of Settlement Companies (TASC)

Summary of Complaint Information for debt settlement received from AG's office per FOIA request for period 2007-2009

320	Total Complaints
85	Misclassified/non debt settlement
164	Total Complaints for Richard Brennan/Frederick Law Group
71	**Remaining complaints against debt settlement co.'s**

FOIA-2010-00701

Database: Consumer Sentinel Network
Purpose of search: To find the top 100 companies who have received the highest number of complaints under the product service code "Debt negotiation/ Credit Counseling"

The search included all records available through April 28, 2010.

Rank	Subject Name	Responsive Complaints
1	HSBC Finance Corp	3,209
2	Unknown	1,651
3	Capital One	460
4	CARD Services	421
5	Green Tree Servicing LLC	207
6	Debt Solutions	184
7	UNKNOWN	175
8	Mortgage Help Services	151
9	America's Servicing Company	150
10	Citifinancial Service Inc.	149
11	Mutual Consolidated Savings	129
12	ACCOUNT services	122
13	Peak5	97
14	Sears Roebuck & Company	83
15	Alternative Funding	72
16	Chrysler Financial	68
17	Clear Breeze Solutions	67
18	INC Credit Services	67
19	Direct Capital Corporation	63
20	Real Talk Radio Network	59
21	Prestige Financial Services Inc.	57
22	Express Debt Elimination	51
23	Credit Solutions	47
24	Debt Relief USA	47
25	Credit Consultants	43
26	Ideal Wealth Builder Club	43
27	Careone Services, Inc.	39
28	AMS Financial	38
29	Chase Health Advance	36
30	Card Holder Services	35
31	Innovative Wealth Builders, Inc.	34
32	Allegro Law, LLC	32
33	Money Works	32
34	Consumer Services	29
35	National Deed Service, Inc.	29

36	Amscot	28
37	Card Member Services	28
38	Financial Freedom Resources, Inc.	28
39	TD Ameritrade, Inc.	28
40	Blue Harbor Financial	27
41	CardHolder Services	27
42	United First Financial, LLC	27
43	DEBT Relief	26
44	Federal Loan Modification Law Center	26
45	Freedom Financial Management	25
46	Lifeguard Financial	25
47	Wells Fargo	24
48	Vericrest Financial	22
49	Consumer Financial Advisory Board	21
50	Morgan Drexen	20
51	Premier Credit Services, Inc.	20
52	Wells Fargo Financial	20
53	Consumer Education Services, Inc.	19
54	Phoenix Debt Management	19
56	World Financial Group	19
57	Aqua Finance, Inc.	18
58	Credit Card Reduction	18
59	Debtscape	18
60	Nationwide Bi-weekly Administration, Inc.	18
61	Suburban Debt Solutions	18
62	Clear Financial Solutions	17
63	Credit Answers	17
64	FINANCIAL Services	17
65	Freedom Debt Relief	17
66	GE Financial Assurance	17
67	Money Express Pos Solutions Inc.	17
68	Sales Department	17
69	21st Century Legal Services	16
70	Commercial Debt Counseling Corporation	16
71	Credit Attorney Pc	16
72	Debtyz	16
73	Financial Solutions	16
74	Ranger Financial Services Inc.	16
75	Bank of America	15
76	Citi Financial Services	15
77	Consumer Relief	15
78	Express Consolidation	15
79	Federal Debt Relief System	15

80	Geneva-Roth Ventures	15
81	JK Harris	15
82	Northside Services	15
83	Allegro Law	14
84	Authorize.net	14
85	Consumer Finance Services LLC	14
86	Platinum Advantage	14
87	Real Talk Network	14
88	Unkown	14
89	Wachovia Bank, Na	14
90	Ameridebt	13
91	Client Services	13
92	DELL Financial Services	13
93	GHS Solutions	13
94	National Foreclosure Relief	13
95	Web Transaction Services	13
96	Clear Debt Solution	12
97	Financial Consulting Services	12
98	Financial Freedom	12
99	Global Client Solutions LLC	12
100	Pioneer Services, A Division of Midcountry Bank	12

US BBB
2009 Statistics
Sorted by Complaint

Industry Description	Inquiries	Rank by Inquiries	Complaints	Complaint Rank	Complaints Settled	%	Complaints Not Settled	%	Complaints Unable to Pursue	%
TOTAL	**62,165,457**		**948,305**		**700,194**	**73.8%**	**215,973**	**22.8%**	**32,138**	**3.4%**
Cellular Telephone Service, Equipment & Supplies	198,662	61	36,086	1	34,358	95.2%	1,585	4.4%	143	0.4%
Television - Cable, CATV & Satellite	183,908	68	32,158	2	31,382	97.6%	729	2.3%	47	0.1%
Banks	400,201	29	29,824	3	29,131	97.7%	637	2.1%	56	0.2%
Auto Dealers - New Cars	1,087,755	5	26,019	4	21,646	83.2%	4,105	15.8%	268	1.0%
Internet Shopping	528,481	20	21,154	5	14,541	68.7%	5,727	27.1%	886	4.2%
Collection Agencies	374,994	33	15,628	6	13,315	85.2%	2,051	13.1%	262	1.7%
Auto Dealers - Used Cars	817,480	10	13,235	7	9,121	68.9%	3,752	28.3%	362	2.7%
Telephone Companies	73,491	160	13,166	8	12,595	95.7%	516	3.9%	55	0.4%
Auto Repair & Service	949,500	7	12,410	9	8,032	64.7%	4,139	33.4%	239	1.9%
Furniture - Retail	421,312	28	12,313	10	9,341	75.9%	2,556	20.8%	416	3.4%
Not Elsewhere Classified	382,931	32	12,106	11	5,269	43.5%	5,666	46.8%	1,171	9.7%
Internet Services	393,841	30	11,454	12	8,005	69.9%	3,271	28.6%	178	1.6%
Computers - Dealers	185,625	66	10,775	13	8,090	75.1%	2,603	24.2%	82	0.8%
Herbs	31,760	332	10,275	14	5,191	50.5%	5,009	48.7%	75	0.7%
Credit Cards & Plans	122,397	107	9,741	15	9,310	95.6%	345	3.5%	86	0.9%
Financial Services	502,672	21	9,079	16	8,207	90.4%	619	6.8%	253	2.8%
Mortgage Brokers	1,271,259	3	8,102	17	6,119	75.5%	1,638	20.2%	345	4.3%
Movers	1,055,881	6	7,850	18	5,743	73.2%	1,890	24.1%	217	2.8%
Department Stores	51,103	218	7,204	19	7,056	97.9%	134	1.9%	14	0.2%
Health Clubs	117,419	109	7,139	20	5,873	82.3%	1,125	15.8%	141	2.0%
Roofing Contractors	2,168,635	1	7,050	21	4,298	61.0%	2,291	32.5%	461	6.5%
Electronic Equipment & Supplies - Dealers	117,075	110	6,997	22	5,234	74.8%	907	13.0%	856	12.2%
Insurance Companies	635,243	15	6,620	23	5,882	88.9%	668	10.1%	70	1.1%
Credit Reporting Agencies	52,942	213	6,495	24	6,390	98.4%	99	1.5%	6	0.1%
Health & Diet Products - Retail	122,500	106	6,310	25	5,109	81.0%	1,164	18.4%	37	0.6%
Contractors - General	1,416,329	2	6,175	26	2,990	48.4%	2,819	45.7%	366	5.9%
Consumer Finance & Loan Companies	193,832	63	5,971	27	5,274	88.3%	633	10.6%	64	1.1%
Computers Software & Services	235,007	52	5,888	28	5,124	87.0%	681	11.6%	83	1.4%
Apartments	142,868	94	5,751	29	3,757	65.3%	1,878	32.7%	116	2.0%
Travel Agencies & Bureaus	384,967	31	5,598	30	4,424	79.0%	961	17.2%	213	3.8%
Airlines	21,277	439	5,581	31	5,143	92.2%	419	7.5%	19	0.3%
Work-At-Home Companies	462,351	24	5,446	32	2,068	38.0%	2,194	40.3%	1,184	21.7%
Fulfillment Services	30,965	339	5,369	33	1,916	35.7%	1,539	28.7%	1,914	35.6%
Property Management	303,969	40	5,297	34	4,001	75.5%	1,220	23.0%	76	1.4%
Telephone Communications	89,122	136	5,182	35	4,732	91.3%	384	7.4%	66	1.3%
Real Estate Loans	248,905	47	4,920	36	1,249	25.4%	3,589	72.9%	82	1.7%
Construction & Remodeling Services	1,114,625	4	4,876	37	2,329	47.8%	2,178	44.7%	369	7.6%
General Merchandise - Retail	98,652	126	4,784	38	2,905	60.7%	1,766	36.9%	113	2.4%
Mail Order & Catalog Shopping	93,292	130	4,710	39	3,940	83.7%	716	15.2%	54	1.1%
Hotels	87,129	138	4,519	40	3,114	68.9%	1,357	30.0%	48	1.1%
Appliances - Major - Dealers	142,863	95	4,512	41	3,878	85.9%	544	12.1%	90	2.0%
Plumbing Contractors	905,924	8	4,505	42	3,335	74.0%	1,078	23.9%	92	2.0%
Auto Parts & Supplies - New	169,364	73	4,458	43	2,825	63.4%	1,575	35.3%	58	1.3%
Business Services - General	198,965	60	4,363	44	2,429	55.7%	1,660	38.0%	274	6.3%

Industry Description	Inquiries	Rank by Inquiries	Complaints	Complaint Rank	Complaints Settled	%	Complaints Not Settled	%	Complaints Unable to Pursue	%
Auto Warranty Processing Service	171,202	72	4,214	45	2,854	67.7%	875	20.8%	485	11.5%
Magazine Sales	43,960	255	4,189	46	3,086	73.7%	883	21.1%	220	5.3%
Electric Companies	92,300	133	4,103	47	3,870	94.3%	228	5.6%	5	0.1%
Health & Medical Products - Scientifically Unproven	22,897	413	4,053	48	2,649	65.4%	1,329	32.8%	75	1.9%
Restaurants	242,229	50	4,036	49	2,375	58.8%	1,477	36.6%	184	4.6%
Dentists	320,140	36	3,783	50	2,939	77.7%	801	21.2%	43	1.1%
Home Builders	768,911	11	3,723	51	2,374	63.8%	1,198	32.2%	151	4.1%
Air Conditioning Contractors & Systems	714,126	13	3,659	52	2,858	78.1%	726	19.8%	75	2.0%
Attorneys	602,083	16	3,643	53	2,175	59.7%	1,411	38.7%	57	1.6%
Heating & Air Conditioning	870,854	9	3,550	54	2,625	73.9%	807	22.7%	118	3.3%
Vitamins & Food Supplements	71,049	165	3,546	55	2,509	70.8%	887	25.0%	150	4.2%
Security Control Equipment & System Monitors	283,154	43	3,485	56	3,132	89.9%	307	8.8%	46	1.3%
Internet Marketing Services	219,066	57	3,450	57	2,693	78.1%	676	19.6%	81	2.3%
Loans	244,740	48	3,432	58	1,896	55.2%	1,223	35.6%	313	9.1%
Real Estate	467,806	23	3,426	59	2,281	66.6%	1,011	29.5%	134	3.9%
Auto Renting & Leasing	66,570	171	3,417	60	2,898	84.8%	493	14.4%	26	0.8%
Dry Cleaners	81,907	145	3,368	61	1,672	49.6%	1,604	47.6%	92	2.7%
Buying Clubs & Group Purchasing Service	54,914	210	3,349	62	3,093	92.4%	138	4.1%	118	3.5%
Computers - Supplies & Parts	80,912	148	3,230	63	2,583	80.0%	633	19.6%	14	0.4%
Manufacturers & Producers	165,612	77	3,224	64	2,879	89.3%	326	10.1%	19	0.6%
Marketing Programs & Services	181,367	70	3,134	65	1,280	40.8%	1,685	53.8%	169	5.4%
Home Improvements	647,917	14	3,097	66	2,019	65.2%	951	30.7%	127	4.1%
Tax Return Preparation	158,878	83	3,095	67	2,196	71.0%	824	26.6%	75	2.4%
Vacation Time Share	134,288	99	3,069	68	1,953	63.6%	1,003	32.7%	113	3.7%
Timeshare Companies	202,586	58	3,048	69	1,982	65.0%	911	29.9%	155	5.1%
Vacation Certificates & Vouchers	83,405	143	2,959	70	1,562	52.8%	886	29.9%	511	17.3%
Extended Warranty Contract Service Companies	168,522	74	2,951	71	2,458	83.3%	350	11.9%	143	4.8%
Burglar Alarm Systems - Dealers, Monitoring & Service	135,081	98	2,916	72	2,657	91.1%	240	8.2%	19	0.7%
Collection Systems	40,052	281	2,833	73	2,035	71.8%	767	27.1%	31	1.1%
Computers - Networks	56,099	202	2,785	74	2,702	97.0%	78	2.8%	5	0.2%
Jewelers - Retail	328,264	35	2,771	75	1,851	66.8%	826	29.8%	94	3.4%
Tire Dealers	167,720	76	2,752	76	2,023	73.5%	707	25.7%	22	0.8%
Magazines - Subscription Agents	25,673	384	2,747	77	1,957	71.2%	665	24.2%	125	4.6%
Information Bureaus	155,988	85	2,724	78	2,365	86.8%	342	12.6%	17	0.6%
Towing - Automotive	80,068	150	2,723	79	1,575	57.8%	1,097	40.3%	51	1.9%
Transmissions - Automobile	181,861	69	2,663	80	1,840	69.1%	754	28.3%	69	2.6%
Landscape Contractors	544,493	19	2,662	81	1,338	50.3%	1,217	45.7%	107	4.0%
Pharmacies	64,867	172	2,627	82	735	28.0%	1,867	71.1%	25	1.0%
Auto Body Repair & Painting	486,775	22	2,526	83	1,570	62.2%	902	35.7%	54	2.1%
Pest Control Services	425,709	27	2,523	84	2,055	81.5%	429	17.0%	39	1.5%
Business Opportunity Companies	197,681	62	2,484	85	1,569	63.2%	663	26.7%	252	10.1%
Credit & Debt Counseling	714,683	12	2,483	86	1,790	72.1%	518	20.9%	175	7.0%
Services - General	97,363	127	2,483	86	1,297	52.2%	928	37.4%	258	10.4%
Swimming Pool Contractors, Dealers, Design	442,034	26	2,442	88	1,741	71.3%	636	26.0%	65	2.7%
Dating Service	72,242	161	2,430	89	2,052	84.4%	314	12.9%	64	2.6%
Amusement Parks & Places	55,113	207	2,377	90	2,044	86.0%	324	13.6%	9	0.4%

Industry Description	Inquiries	Rank by Inquiries	Complaints	Complaint Rank	Complaints Settled	%	Complaints Not Settled	%	Complaints Unable to Pursue	%
Real Estate Maintenance Protection Plan	24,094	403	2,325	91	1,285	55.3%	376	16.2%	664	28.6%
Lawn Maintenance	231,801	53	2,312	92	1,778	76.9%	480	20.8%	54	2.3%
Mailing Services	57,785	190	2,283	93	2,019	88.4%	254	11.1%	10	0.4%
Advance Fee Brokers	62,330	184	2,247	94	223	9.9%	910	40.5%	1,114	49.6%
Data Communications Equipment & Systems	15,022	541	2,245	95	2,217	98.8%	27	1.2%	1	0.0%
Health & Medical - General	158,009	84	2,200	96	1,770	80.5%	394	17.9%	36	1.6%
Office Supplies - Sale by Deceptive Telemarketing	22,097	427	2,149	97	1,504	70.0%	642	29.9%	3	0.1%
Business Consultants	230,814	54	2,111	98	1,456	69.0%	639	30.3%	16	0.8%
Exercise & Physical Fitness Programs	46,868	240	2,048	99	1,393	68.0%	595	29.1%	60	2.9%
Florists - Retail	56,817	197	2,033	100	1,602	78.8%	389	19.1%	42	2.1%
Video Production Services	43,191	264	2,012	101	1,627	80.9%	364	18.1%	21	1.0%
Electronic Equipment & Supplies - Wholesale & Manufacturers	14,325	557	2,001	102	1,925	96.2%	60	3.0%	16	0.8%
Advertising Agencies & Counselors	143,969	93	1,997	103	1,176	58.9%	765	38.3%	56	2.8%
Insurance Services	220,643	56	1,928	104	1,720	89.2%	190	9.9%	18	0.9%
Auto Manufacturers & Distributors	9,905	690	1,924	105	1,756	91.3%	159	8.3%	9	0.5%
Natural Gas Companies	40,303	276	1,924	105	1,803	93.7%	110	5.7%	11	0.6%
Web Design	164,599	79	1,923	107	1,220	63.4%	645	33.5%	58	3.0%
Advertising - Direct Mail	49,657	227	1,909	108	1,700	89.1%	195	10.2%	14	0.7%
Publishers - Book	64,693	174	1,906	109	1,596	83.7%	286	15.0%	24	1.3%
Carpet & Rug Dealers - New	306,826	39	1,904	110	1,461	76.7%	382	20.1%	61	3.2%
Advertising - Directory & Guide	27,873	366	1,900	111	1,465	77.1%	413	21.7%	22	1.2%
Motorcycles - Dealers	75,758	159	1,885	112	1,207	64.0%	633	33.6%	45	2.4%
Newspapers	40,274	277	1,873	113	1,698	90.7%	168	9.0%	7	0.4%
Computers - Service & Repair	130,510	100	1,838	114	1,297	70.6%	488	26.6%	53	2.9%
Carpet & Rug Cleaners	317,258	37	1,810	115	1,152	63.6%	592	32.7%	66	3.6%
Credit Card Processing Service	84,833	141	1,802	116	1,628	90.3%	156	8.7%	18	1.0%
Debt Settlement Companies	283,623	42	1,794	117	1,378	76.8%	349	19.5%	67	3.7%
Business Forms & Systems	52,679	215	1,758	118	784	44.6%	904	51.4%	70	4.0%
Audio-Visual Equipment - Dealers	50,608	220	1,749	119	1,398	79.9%	339	19.4%	12	0.7%
Photographers - Portrait	71,250	163	1,742	120	687	39.4%	900	51.7%	155	8.9%
Publishers - Directory & Guide	60,975	187	1,735	121	1,350	77.8%	348	20.1%	37	2.1%
Ticket Sales - Events	77,080	157	1,727	122	1,459	84.5%	240	13.9%	28	1.6%
Windows - Installation & Service	445,442	25	1,716	123	1,293	75.3%	336	19.6%	87	5.1%
Radio Stations & Broadcast Companies	14,333	555	1,712	124	1,586	92.6%	107	6.3%	19	1.1%
Loans - Small Business	104,893	119	1,697	125	1,249	73.6%	434	25.6%	14	0.8%
Motels	24,285	399	1,664	126	1,061	63.8%	583	35.0%	20	1.2%
Telecommunications Equipment - Disability	21,696	433	1,663	127	1,093	65.7%	564	33.9%	6	0.4%
Posters	6,732	853	1,655	128	1,629	98.4%	26	1.6%	0	0.0%
Billing Service	42,980	265	1,648	129	1,329	80.6%	307	18.6%	12	0.7%
Building Materials	114,648	111	1,634	130	1,467	89.8%	161	9.9%	6	0.4%
Painting Contractors	586,231	17	1,619	131	815	50.3%	695	42.9%	109	6.7%
Telephone Pre-Paid Card Sales & Distribution	17,210	492	1,602	132	1,492	93.1%	97	6.1%	13	0.8%
Office Supplies	54,972	209	1,577	133	1,373	87.1%	185	11.7%	19	1.2%
Discount Stores	61,889	186	1,569	134	1,179	75.1%	359	22.9%	31	2.0%
Concrete Contractors	307,668	38	1,567	135	682	43.5%	804	51.3%	81	5.2%
Taxes - Consultants & Representatives	123,850	105	1,551	136	874	56.4%	654	42.2%	23	1.5%
Beauty Salons	102,053	122	1,538	137	943	61.3%	482	31.3%	113	7.3%

Consumer Education

NFCC Initiates Debt Settlement Awareness Campaign

Debt settlement companies often take advantage of well-meaning consumers who want to pay their bills, but are struggling to do so in today's economic environment. They have spent millions of dollars in advertising making promises that have great appeal to desperate consumers. NFCC Members frequently hear from these consumers after they've lost thousands of dollars and don't know where to turn.

As the national organization whose mission includes promoting the national agenda for financially responsible behavior, the NFCC believes it is our role to educate consumers about the risks of working with a debt settlement company, and to inform them that there is legitimate help available through an NFCC Member Agency.

In January, the NFCC began developing the messaging and tools for a national outreach campaign to educate consumers about the risks of debt settlement.

Having commenced in February, this outreach campaign includes a number of communication components whose messaging has reached millions of consumers in the first few months. To date, these communications have included: radio public service announcements; multimedia, radio, and print news releases; a satellite media tour; video consumer tips; social media outreach (blogging, etc.); victim testimonials; and op-eds. Additionally, the NFCC produced a member toolkit for use in local outreach and messaging.

The radio PSAs launched in mid-February and instantly received significant airplay, and through the end of April had more than 7,300 times with audience impressions of nearly 17 million. In the media – on the radio and in print – the debt settlement issue has attracted a significant amount of coverage and the NFCC has led the charge in bringing these issues to the forefront.

Debt Settlement Working Group

As the NFCC conducted its recent regional meetings, addressing Debt Settlement companies emerged as our Members' number one priority. Consequently, the NFCC has established a new Debt Settlement Working Group which is chaired by Colleen Benjamin from Bank of America. The Working Group will operate primarily through three sub-groups:

- Regulatory
- Consumer Awareness/Communications
- Product

These sub-groups have been meeting regularly since mid-March, and have been tasked with developing strategies and a plan for their execution. They will be reporting on these plans to the full Working Group and NFCC Membership in the coming weeks.

For more information about this Working Group, contact Sally Parker at sparker@nfcc.org.

Save The Date

NFCC Annual Leaders Conference

Monday September 14, 2009 — Thursday September 17, 2009

Omni Shoreham Hotel
2500 Calvert Street NW
Washington, DC 20008
202.234.0700 P
202.265.7972 F
www.omnishorehamhotel.com

The NFCC will hold its 44th Annual Leaders Conference at the Omni Shoreham Hotel in Washington, DC from September 14-17, 2009. Hotel Reservations are now being accepted and can be made via the Internet or by phone - please note details below. Inquiries regarding any NFCC Meetings may be directed to Mary Ann Reott at (301) 576-2513 or mreott@nfcc.org.

Maryland Debt Settlement Workshop
Request for Comments

October 18, 2010

The United States Organizations for Bankruptcy Alternatives (USOBA) appreciates the opportunity to provide further information and comments to the Maryland Debt Settlement Workshop participants. USOBA has very actively proposed, supported and sought fair regulation for the debt settlement industry, in Maryland and across the country. The issue of debt is of monumental concern to hundreds of thousands of American citizens, the lenders and creditors that are owed, the consumer agencies charged with protecting its residents and the providers of debt relief services. USOBA could not agree more that consumers should be protected from unscrupulous businesses and individuals, and Maryland has set a great example by pursuing enforcement action against Richard Brennan and his associates. Agencies such as Brennan's harm consumers and harm the industries they claim to participate in.

During USOBA's quest to ensure consumer protection and the fair regulation of the debt settlement industry, it has become quite clear that debt settlement has often been used as a political platform and sensationalized media coverage has painted a picture that is neither representative of the industry nor accurate and in some instances blatantly false. While we agree that even one harmed consumer is too many, we also don't believe that the right way to regulate an industry is to concentrate on the very small numbers of complaints or the few bad actors as the sole basis for new laws. Actual Maryland complaints were discussed in the face-to-face meeting of the Maryland Debt Settlement Workshop (September 23, 2010) and it was made clear that the number of complaints in Maryland is actually very low, approximately 70 over a three (3) year period.

The Association of Settlement Companies (TASC) has submitted detailed examples of other instances where the charges against debt settlement have been inflated and misstated; please see their comments submission for further documentation.

Overall, USOBA believes that the current Federal Trade Commission rules under the Telemarketing Sales Rule will, over time, prove to be excellent protection for consumers in Maryland and across the country. It is our belief that any company not adhering to the new rules will find it extremely difficult, if not impossible, to compete in the debt settlement industry. It is our recommendation that Maryland representatives give the federal regulation an opportunity to work before exploring seemingly unnecessary further layers of regulation.

A. 'Consensus" Issues
   1. Registration/Licensing.

Maryland Debt Settlement Workshop
Request for Comments

October 18, 2010

USOBA does not oppose a registration requirement. Per the request, a sample registration amended from the state of Montana has been included for your reference. Modifications were made in acknowledgement of and to avoid inconsistencies with the recent FTC TSR Amendments. Please see attached *Montana Registration Modified for Maryland*.

2. Internet, Face-to-Face Meetings, and Intrastate Application.

USOBA believes that internet, face-to-face meetings and intrastate exemptions are becoming increasingly difficult to qualify for and comply with. USOBA agrees with its sister association, TASC, that debt settlement transactions are unlikely without personal interaction. This industry has relied heavily on telephone communications in all areas of the debt settlement process, and internet transactions will likely be unsuccessful.

To the extent that personal interaction is facilitated via face-to-face meetings, current interpretations of the FTC rule require that the entire sales presentation occur face-to-face prior to contract. The financial burden of establishing office locations within reasonable proximity of targeted consumers is unreasonable, and most other alternatives are anticipated to be deemed non-compliant with the Rule's exemptions (runners, door to door and notaries for example).

Intrastate exemptions appear to be only applicable if ***ALL*** sales functions occur within the state, including lead generation, call centers, operation centers, compliance recordings, etc... making qualification for exemption a high risk for debt settlement companies.

USOBA believes that market competition will likely reduce attempts to circumvent the FTC rule. In addition, USOBA agrees that applicability of the FTC rule to all debt settlement providers, including nonprofits, would serve to close gaps in the rule.

3. Non-Profit Providers.

Including non-profit providers is the only way to truly ensure that the consumer is protected. It is estimated that approximately three quarters of the debt relief industry is non-profit; this leaves a huge number of companies completely unaffected by the Federal Trade Commission rules.

4. Lead Generation.

The federal government and most states already have laws on the books that address marketing practices. It would likely be redundant and inappropriate to focus portions of a debt relief statute on a completely separate industry.

B. "Non-Consensus" Issues

Maryland Debt Settlement Workshop
Request for Comments

October 18, 2010

1. Fee Caps.

USOBA agrees with industry association, TASC, in opposition of a fee cap at this time. The FTC rule provides clear and comprehensive protection for the consumer with disclosure of fees prior to agreement, fees collectable only after the time of settlement, opportunity to have fees refunded at any time (for settlements not achieved) and strict approvals for settlement offers. Without historical data on the impact of an after settlement fee model, it is impossible to determine appropriate compensation or reasonable restrictions for debt settlement program fees. USOBA has always supported fair competition within the marketplace and contends that the marketplace will set a fair fee.

2. Disclosures.

USOBA currently requires disclosure of items 1, 2, 5 and 6, and we do not oppose item 3. Item 4, while not harmful, may be unnecessary as voluntary contributions cannot be required.

USOBA understands the FTC's position that fewer, more complete disclosures would be better noticed by the consumer and agrees with this position in certain areas. The FTC's conclusion is particularly applicable in marketing where too much information is often confusing and overwhelming. A requirement that the disclosures be included in any advertisement is over burdensome and does not benefit the consumer.

3. Attorneys.

USOBA represents an entire industry with both attorney and non-attorney business models. As such, we promote fair competition and a level playing field. It is USOBA's position that the exemption for an attorney who is "admitted to practice in the state and is not principally engaged in debt settlement services" from legislation proposed in 2010 is acceptable. However, we are not experts in the attorney field and feel it is most appropriate to defer to the American Bar Association (ABA) for further guidance.

Thank you for your time and consideration. Please feel free to contact Jenna Keehnen at jkeehnen@usoba.org or at 877-768-7622 with any questions or requests for clarification.

Sincerely,

Jenna Keehnen
Executive Director, USOBA

Department of Justice

Office of Consumer Protection
2225 11th Ave ~ Box 200151
Helena, MT 59620-0151
(406) 444-4500 or (800) 481-6896

Debt Settlement Provider Filing Checklist

Filing Fee: $250

Use this form as a checklist. Label each of your responses with the corresponding number below. You will be notified in writing of the results of the review of your submissions. You must promptly notify the Office of Consumer Protection of any circumstance that would cause your answers to change. Please note that "You" refers to any person included as part of this application, including any owners, officers, directors or business entities.

Subpart A) Company Information

A1. Company Name (including LLC, Inc., etc.) _____

A2. List all DBAs in current use and any formerly used with respect to consumers in the State of Montana _____

A3. Physical address of each location to be operated as a Debt Settlement Provider
_____

A4. Provider is organized under the laws of the State of _____

A5. Date of the Organization _____ / _____ /_____

A6. Provide the name and residential address of your owners or partners or, if you are a corporation, LLC, or association, the name and residential address of all officers, directors, trustees and managers. Attach a separate sheet if necessary.
_____

A7. Website address: _____

A8. **Compliance Contact**

Name _____ Phone (___) ___-_____ Email _____

A9. If you are a corporation, provide proof that you have obtained a certificate of authority to transact business in Montana pursuant to Mont. Code Annot. § 35-1-1026, and provide the full name and address of your registered agent.

Subpart B) Insurance Verification

B1. Do you maintain insurance coverage for dishonesty, fraud, theft and other misconduct on the part of directors, officers, employees or agents?
Yes ___ No___

B2. State the name of the insurer providing coverage for dishonesty, fraud, theft and other misconduct.

Subpart C) General Information

C1. Do you conduct, or intend to conduct, telemarketing in the State of Montana?
Yes ____ No ____
If yes, provide proof of telemarketing registration (required under MCA § 30-14-1404).

C2. Do you use the services of another person or entity to generate leads and/or solicit potential clients? Yes ____ No ____
If yes, please include the business name, address, and website of each lead generator with whom you have a business relationship, and describe what contractual or other restrictions you impose with respect to claims, promises, assertions, or other conduct of that entity with respect to consumers referred to you.

C3. Have you or any of your officers, directors, or principal owners ever had a license disciplined, denied, suspended, or revoked by any unit of this State or any other State within the past five years? Yes ____ No ____
If yes, provide a detailed explanation with the appropriate documentation.

C4. Have you or any of your officers, directors, or principal owners ever been enjoined, punished, fined, sued, or investigated for wrongdoing by this State or any other State or the Federal Government within the past five years?
Yes ____ No ____
If yes, provide a detailed explanation with the appropriate documentation.

C5. Are you or any of your officers, directors, or principal owners currently under investigation by this State, any other State, or the Federal Government?
Yes ____ No ____
If yes, provide a detailed explanation with the appropriate documentation.

C6. In the last 10 years, have you been, or has any organization or business with which you (or any of your officers, directors, or principal owners) were associated as an officer, director, partner, owner, or otherwise, involved in any voluntary or involuntary bankruptcy, receivership, or insolvency proceedings?

Yes ____ No ____

If yes, provide a detailed explanation with the appropriate documentation.

C7. What services, if any, does your company provide to the consumer beyond standard debt settlement services? Please describe.

Subpart D) Disclosure

Provide copies of the following documentation:

D1. Copy of consumer contract with FTC required disclosures highlighted and displayed according to the FTC Telemarketing Sales Rule as it pertains to debt settlement entities.

Subpart E) Additional Information

Please provide an annual consolidated report which includes the following information for the previous calendar year:

E1. The total amount of debt for all individuals for whom you are providing debt settlement services, as of December 31;

E2. The total principal amount of debt of all individuals who entered into agreements during the previous calendar year;

E3. The total number of individuals who entered into agreements with you during the previous calendar year;

E4. The total number of Montana residents with debt settlement service agreements in effect with you as of December 31;

E5. The total number of individuals who terminated, withdrew, abandoned, or were terminated from an agreement during the previous calendar year;

E6. The total number of individuals who completed the debt settlement program by successfully discharging all of their enrolled debt during the previous calendar year;

E7. The total number of debts settled by the provider during the previous calendar year;

E8. The total dollar amount of debts settled by the provider, as follows:

(A) For persons completing the program during the reporting period, the median percentage of the original principal amount of the debt which was settled and the median in fees paid.
(B) For persons who cancelled, became inactive, or terminated the program during the reporting period, the median percentage of the original principal amount of the debt which was settled and the median in fees paid.
(C) The percentage of individuals who canceled, terminated, became inactive, or completed the program without the settlement of all of the enrolled debt.

E9. The total amount of fees collected from individuals in this state during the previous calendar year.