

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Leadership Conference on Civil and Human Rights (LCCHR)
National Association for the Advancement of Colored People (NAACP)
National Council of La Raza (NCLR)
National Fair Housing Alliance (NFHA)
Service Employees International Union (SEIU)

July 2, 2010

Federal Trade Commission Office of the Secretary Room H-135 (Annex T)
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: Telemarketing Sales Rule-Debt Relief Amendments-R411001

Dear Commissioners:

On behalf of the undersigned civil rights and labor organizations, we write in regard to the Notice of Proposed Rulemaking (NPR) issued by the FTC (the "Commission") on July 30, 2009 concerning proposed amendments to the Telemarketing Sales Rule (TSR) to address the sale of debt relief services, including debt settlement services. We strongly support the Commission's proposal to prohibit debt settlement service providers from charging any fees in advance of settling a consumer's debt, a practice which is unnecessarily harmful to consumers.

The debt settlement model is an inherently flawed one, in that it requires consumers who are deep in debt (typically \$20,000-\$30,000 worth, if not more) to save significant sums of money to settle each individual debt, but requires them to pay hefty up-front fees and monthly fees that leave the consumer with little savings left for settlements. Often, enrolling in a debt settlement service puts consumers in a worse position, *i.e.*, facing increased debt, higher risk of (or actual) bankruptcy, ruined creditworthiness, heightened collections efforts and even lawsuits.

Under current practice, most debt settlement companies collect significant up front fees and total fees in the range of 15-20% of the total debt, paid monthly regardless of whether the consumer's debt is being settled. This fee model provides absolutely no financial incentive for the companies to do anything for the consumer. Given this flawed model, it is no surprise, then, that all available data demonstrates that very few consumers benefit from debt settlement services while most suffer various harms. Even data submitted by the industry to the Commission actually reveal that success rates are low, while fees are high and often, at least some debt (and commonly substantial debt) remains.

Accepted at face value, the industry's best data show that nearly two-thirds of consumers terminated the program before receive any promised services.¹ Other data show similar or worse performance figures. For example, the Colorado Attorney General released data after passage of a law allowing for providers to charge 4% up front and 18% total. The data showed that more than 50% of consumers who had signed up in 2006 or 2007 had already terminated as of Dec. 31, 2008, while only 7.81% of those who had enrolled 2-3 years earlier (in 2006) had completed the

program.² Despite the very low success rate, the enrollees had already paid an average of \$1,666 in fees.³ Information from the Better Business Bureau mirrors Colorado's findings. According to the BBB's classification system, debt settlement companies are considered "inherently problematic." Although a company can escape this designation simply by showing that one-half of its customers have their debt settled as promised, none has been able to do so.⁴

Even those that the industry counts as successes are questionable. New York Attorney General Cuomo obtained a judgment against Nationwide Asset Services, wherein the Court found that 27 of the 63 consumers who the company represented as "successes" paid more than their original debt, when taking fees into account.⁵

It is telling that forty-one attorneys general who have been on the front lines responding to complaints, investigating companies, pursuing over 100 enforcement actions, and obtaining judgments against debt settlement companies, support the ban on advance fees. Their letter to this Commission in support of the ban is compelling:

The fundamental principle behind a ban on advance fees is clear - it will simply require debt relief companies to render promised services before collecting their fees. Currently, there is minimal incentive for debt relief companies charging up-front fees to perform services because they collect these substantial fees regardless of whether they negotiate anything for the consumer, succeed in settling any of the consumer's debts for a reduced amount, or take any action at all on behalf of the consumer.

During this time, our communities, not to mention the entire economy, are in near collapse from the fallout in our banking system. Today, eight percent of African-American and Latino homeowners are facing foreclosure, which will result in \$350 billion of lost home equity in our communities by the time foreclosures end.⁶ Moreover, recent research from Pew notes that the median wealth of African-American and Latinos has seen a disproportional decrease as a result of the Great Recession and both communities were more likely to use credit cards to finance basic living expenses.⁷ The impact of increased debt coupled with job loss increases the likelihood that members of our communities will be susceptible to pervasive marketing and empty promises of abusive debt settlement companies. The targeting through ethnic media mediums has already begun.⁸

Charging high fees for unsubstantiated promises to eliminate consumers' debt obligations exacerbates the debt problem; it does not relieve it. The proposed rule is a common sense step forward to help families and the nation's economic recovery that imposes no cost to state or federal governments.

For these reasons, we urge the Commission to include the advance fee ban in its final rule.

Sincerely,

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

² See "Press Release: Attorney General Unveils First Annual Report On Debt Settlement, Credit Counseling Business Practices," available at http://www.coloradoattorneygeneral.gov/press/news/2009/10/15/attorney_general_unveils_first_annual_report_debt_settlement_credit_counseling; *2008 Annual Report – Colorado Debt Management Service Providers*, available at <http://coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2008%20DM%20Annual%20Report.pdf>. Moreover, 28.38% of those who enrolled in 2008 cancelled before the year was over. See *2008 Annual Report*.

³ See *supra* note 3, *2008 Annual Report*.

⁴ U.S. GAO, "Debt Settlement: Fraudulent, Abusive, And Deceptive Practices Pose Risk To Consumers," (April 22, 2010) at 12, <http://www.gao.gov/new.items/d10593t.pdf>

⁵ See *People v. Nationwide Asset Servs., Inc.*, 888 N.Y.S.2d 850 (Oct. 9, 2009); "Press Release: Attorney General Cuomo Obtains Court Order Barring Debt Settlement Company That Ripped Off Thousands Of NY Consumers From Operating In NYS Unless It Meets Strict Requirements" (Oct. 15, 2009), available at http://www.oag.state.ny.us/media_center/2009/oct/oct15b_09.html

⁶ See Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, "Foreclosures by Race and Ethnicity: The Demographics of a Crisis", June 18, 2010, <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf>

⁷ See A Balance Sheet at 30 Months, How the Great Recession Has Changed Life in America, Pew Research Center's Social & Demographic Trends Project, June 30, 2010, <http://pewsocialtrends.org/assets/pdf/759-recession.pdf>

⁸ Nearly every morning for the past year, the Russ Parr in the Morning Show—a nationally syndicated radio show that reaches 3.2 million, predominantly African-American listeners in 45 cities advertises www.wefixmoney.com, a lead generator for debt settlement, payday lending and other abusive products.