



FTC Hosts Workshop on Consumer Protection and the Debt Settlement Industry:

Participants Urge More Industry Regulation and Transparency; Calls for Elimination of High Upfront Fees; Industry Responds

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On September 25, 2008 in Washington, D.C., the Federal Trade Commission (“FTC”) held an all-day workshop, entitled “Consumer Protection and the Debt Settlement Industry,” to explore growth in the for-profit debt settlement industry and to examine its impact on consumers and businesses. Consumer advocates, industry representatives, and state and federal regulators discussed a range of issues, including the history and expansion of the industry; the advertising and marketing of debt relief services; the role of third-party lead generators and other service providers; legal developments in the regulation of the industry; and ways to address consumer protection issues and education needs.

Throughout the day, the calls for state and federal regulation were urgent and were presented as a necessary step for ensuring the industry’s survival, despite the industry’s documented self-regulation and evolving business practices. The workshop’s four panels highlighted the serious problem that the debt settlement industry is currently facing with regard to legitimacy. Several panelists, representing consumer, banking and credit interests, questioned the need for debt settlement companies at all, preferring for consumers to either deal directly with banks and creditors or seek credit counseling through a nonprofit counselor.

Consumer advocates and other non-industry panelists focused heavily on high fees, upfront fee structures, uncertain program completion rates, lack of clear disclosures to consumers, and the inherent inability of settlement companies to guarantee a reduced payment obligation – despite frequent advertisements to the contrary – as cause for concern. Industry representatives emphasized that not all settlement companies are the same and that trade association members and others provide thorough disclosures before consumers make any payments for their services.

Four Panels Highlight Maturing Industry

The Workshop included four panels with participants representing the debt settlement industry and various consumer advocates, in addition to representatives from the banking and credit industry and the legal community. Below is a summary of the four panels:

- **Panel 1: Overview of the For-Profit Debt Settlement Industry: Understanding the Origins of the Industry** – Panel 1, which lacked any settlement industry representation, explored the evolution of the for-profit debt settlement model, drawing distinctions between that model, nonprofit credit counseling agencies, and for-profit providers of debt management plans (“DMPs”). Representatives of the National Foundation for Credit Counseling and the American Association of Debt Management Organizations testified about the important differences between credit counseling and
- **Panel 2: The For-Profit Debt Settlement Industry Today: Perspectives on Current Industry Trends and Practices** – Panel 2 offered the views of the banking industry, the Consumer Federation of America, and three debt settlement company representatives. This mix of participants allowed for a lively dialogue on the various business practices and models of settlement companies, industry efforts at self-regulation, and the banking community’s opinion of settlement. The three settlement company representatives all emphasized the beneficial service that they offer to consumers, highlighting their standards for full disclosure and other

“compliance” measures, while also noting the variances in fee models and performance among settlement companies. Of particular note was the assertion of Virginia O’Neill of the American Bankers Association that the banking community views the debt settlement industry as unnecessary, performing services for high fees that consumers could instead negotiate directly with banks to obtain for free. Ms. O’Neill stated that the debt settlement companies add no value, only impeding the operations of banks, and it is the position of the banks not to deal with the debt settlement companies (although these comments were later challenged by several settlement industry panelists). Ms. O’Neill advocated for consumers to seek guidance only from nonprofit credit counseling agencies and called for minimum standards of disclosure and licensing for the debt settlement companies, if they are to exist at all.

Finally, Travis Plunkett of the Consumer Federation of America proposed the idea of an alternative for consumers, somewhere between bankruptcy and debt settlement through a for-profit company. Mr. Plunkett believes there are five main concerns with debt settlement companies:

- (1) Consumers are misled with regard to the likelihood of settlement with inflated graduation rates and other deceptive figures
- (2) No guarantee of reduction of debt
- (3) Lack of transparency surrounding the effect of the settlement process on a consumer’s credit score
- (4) Large fees and questionable payment models
- (5) Lack of transparency regarding services to be offered to the consumer

Mr. Plunkett proposed market-based solutions that would include cooperation from creditors as well as regulation-based solutions guided by objective data and information that is not currently available (a sentiment echoed later in the day). Mr. Plunkett also expressed the opinion that the industry is often inherently fraudulent and that FTC and state attorneys general investigations and continued enforcement are appropriate.

- **Panel 3: Protecting the Consumer: A Discussion of Consumer Protection Challenges** – During Panel 3, the panelists had the opportunity to examine some of the contentious issues surrounding the advertising and marketing of debt settlement services to consumers. The consumer advocates on the panel took great issue with what, in their opinion, were deceptive claims (e.g., x% of debt reduction in x months) and the complete lack of fee information provided in initial advertisements. The industry representatives defended the lack of fee

information, citing the customized nature of each consumer’s program, and thus the customized nature of the fee structure. Industry representatives emphasized that members of the two major trade associations ensure that clients are made fully aware of fees and all other contract terms during their consultation. Consumer advocates also raised concerns about the use of third-party marketing and lead generation in the settlement process. They believe that these relationships make consumer protection more difficult. Finally, FTC staff used a mock Internet advertisement which included claims of “debt elimination”, money back guarantees, and low monthly payments for settlement services. This mock advertisement was used



Panelists commented on a mock Internet advertisement created by the FTC staff. Source: FTC Debt Settlement Workshop.

to highlight the need for clear and conspicuous disclosures and claim substantiation in order to comply with Section 5 of the Federal Trade Commission Act.

- **Panel 4: The Future of the For-Profit Debt Settlement Industry: Where Will the Industry Go From Here** – Panel 4 took a hard look at the future and attempted to identify the type of immediate action for which panelists representing the industry, state government, and consumer protection are calling. The panel, which included Jenna Keehnen, executive director of the United States Organizations for Bankruptcy Alternatives (“USOBA”), collectively agreed that greater transparency and credibility would serve all interests well. Some non-industry panelists called for federal regulation with room for stronger state action. Some believed strongly that the Uniform Debt-Management Services Act (a model law that has been adopted in four states to date) has the potential to harmonize state laws, but is currently being enacted in forms too varied to ensure this harmonization. Consumer advocates agreed that legal requirements should include mandatory disclosures regarding fees, impact on credit

score, tax consequences, wage garnishment, and potential alternatives to debt settlement. Keehnen stated that USOBA members and other settlement companies are already making the disclosures that were advocated throughout the day and are acting in a

responsible manner. In addition, Keehnen said that USOBA was developing independent research to demonstrate the value of the industry and challenged the FTC and others to hold the credit counseling industry to the same standards.

FTC's Next Steps

Next, it is expected that the FTC will use the information gathered from the workshop and other sources to write a report that could further serve as the basis for additional regulation of the settlement industry. The question now is whether the FTC or others will work to completely and permanently eliminate the debt settlement industry or will implement additional regulation and enforcement and/or publish guidance for the industry. (The FTC has published considerable guidance for consumers in this area but has not provided any guidance for the settlement industry on what it considers to be acceptable industry practices.) While all panelists agreed that consumers in financial distress need options and that some form of negotiated settlement amount can be appropriate for some consumers, few, if any, non-industry participants expressed support for the current advertising marketing practices of the settlement industry.

In the meantime, using its authority under Section 5 of the FTC Act (which prohibits unfair and deceptive trade practices), the Credit Repair Organizations Act, the Gramm-Leach-Bliley Act, and other federal statutes, the FTC will continue to have the ability to take enforcement action against debt settlement companies, along with their marketers and other service providers.

More Information and Filing Comments with the FTC

A recorded webcast and transcripts of the workshop are available online at <http://www.ftc.gov/bcp/workshops/debtsettlement/index.shtml>. The FTC will accept post-workshop comments and papers until December 1, 2008. Any person may submit written comments as well as any original research, surveys, and academic papers at <https://secure.commentworks.com/ftc-debtsettlementworkshop/>.

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