October 26, 2009

Via Electronic Mail

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Telemarketing Sales Rules –Debt Relief Amendment – R411001

Ladies and Gentlemen:

The Association of Settlement Companies ("TASC") appreciates the opportunity to comment in this letter on the proposal by the Federal Trade Commission ("FTC") to amend the Telemarketing Sales Rule, 16 C.F.R. Part 310 ("TSR"), to address the marketing of debt relief services. 74 Fed. Reg. 41,988 (Aug. 19, 2009) (the "Proposal"). A very brief summary of some of the primary comments in this letter are set forth below in the following Introduction. A full explanation of our comments follows in the Discussion.

INTRODUCTION

TASC members provide an immensely valuable service for many consumers in severe financial distress. To provide objective evidence of this to the FTC, TASC undertook a survey of its members. The results of the TASC survey are compelling, even though the shortness of the FTC's comment period imposed limitations on TASC's efforts, including the number of members that were able to participate.[1] Nonetheless, the TASC survey is extensive, and includes data representing about 75% of debt under management by TASC members.

The TASC survey shows in excess of $531 million of consumer debts settled in 2008 and in excess of $415 million of consumer debts settled in the first six months of 2009. Based on these actual reported results, TASC estimates that its members settled about $708 million of consumer debts in 2008 and over $553 million in the first six months of 2009. Moreover, the TASC survey indicates that 34.4% of consumer clients have either

[1] The survey undertaken by TASC and referenced throughout this letter is described more fully below in Section IIC.

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substantially completed those plans or are still actively saving for additional settlements, and that over 70% of the debts enrolled in the programs that are still active have been settled. The TASC survey also shows an average debt reduction in completed settlements of 55% in 2008 and 58% in the first 6 months of 2009. Thus, it is undeniable that TASC members, in fact, are successfully settling many, many debts for their consumer clients.

Moreover, the benefits of debt settlement far outweigh the risks for consumers who are properly underwritten for the programs provided by professional debt settlement companies and who maintain sufficient discipline to save according to the plan. Debt settlement is the best alternative for consumers who are not in a position to make the more sizable monthly payments and more substantial time commitment required under a debt management plan ("DMP") offered by credit counselors and who want to avoid bankruptcy. Further, the TASC survey shows that the aggregate debt reduction in settlements is almost two times the fees paid by consumers for the debt settlement services, and that the aggregate debt settled is approximately 3.5 times such fees, in each case considering all consumers, whether they dropped out of the program or continued to completion. It is thus plainly against the interests of consumers for the FTC to impose regulations that limit (or eliminate) this important alternative and disrupt competition in the debt relief services industry.

Critics of the debt settlement industry are clearly mistaken in any assertion that most debt settlement companies actually settle extremely few debts or that the use of debt settlement services harms the vast majority of consumers who sign up for debt settlement programs. Additionally, for regulations as invasive and far-reaching as those contained in the Proposal, the FTC cannot meet its substantial burden of proof merely by repeating unfounded accusations by industry critics, many of whom make such accusations for competitive reasons. The Proposal contains an inadequate basis to support the claims of consumer harm made against TASC members and we provide substantial data below showing that debt settlement provides significant consumer benefits. Indeed, it would be extraordinary (and clearly untenable) for the FTC to claim that consumers seldom receive debt settlement services when the TASC survey covers settlement of almost 95,000 accounts in 2008 and over 70,000 accounts in the first six months of 2009 and, based on that data, TASC estimates that its members settled over 126,000 accounts in 2008 and over 94,000 in the first six months of 2009.

TASC supports the vast majority of the types of consumer protections in the FTC's proposal. We recognize that debt relief services involve risks for consumers and believe that consumers should decide to enter debt settlement programs only when they have a full appreciation of those risks. TASC also is in favor of strong consumer protections that prohibit debt relief service providers from making success claims that are not substantiated by historical data or that mislead consumers shopping for services, including through service and outcome guarantees that may not be (or are not intended to be) performed. TASC also is a strong proponent of State licensing and examination of debt settlement companies as an effective means to prevent potential abuses.

However, TASC vehemently opposes the FTC's proposed "advance fee" limit. As noted above, the premise underlying the purported need for the limit (that debt settlement companies seldom, if ever, provide valuable consumer services) is simply not true. There is

thus no rational basis for the FTC to prohibit debt settlement companies from receiving compensation until the settlement of the debt is consummated when the data clearly shows that, under current fixed fee compensation arrangements, consumers are successfully resolving excess debt obligations in very large numbers and amounts, and realizing debt reductions that far exceed fees paid.

Moreover, prohibiting debt settlement companies from collecting fees on an ongoing basis will have many adverse consequences, none of which have been adequately addressed by the FTC. Contingent fees undoubtedly will be higher than flat fees, and will reduce the likelihood of successful settlement programs. The proposed prohibition will put many debt settlement companies out of business because many companies will be unwilling or financially unable to engage in a risky, contingent fee business. Those debt settlement companies un-willing or unable to charge excessively high contingency fees will be forced to reduce the quantity and quality of the services provided to consumers because of revenue reductions inherent in the contingent fee model. The "advance fee" limit also unfairly favors credit counselors over debt settlement companies because debt settlement is significantly more labor intensive and thus the need for upfront compensation is greater than for credit counselors. The Proposal thus will substantially harm competition provided by the independent debt settlement industry in favor of the credit counselors that are supported by creditors. In sum, the FTC's proposed "advance fee" limit should be rejected because it is based upon a false premise and is plainly not in the best interests of consumers or competition in the debt relief services industry.

The consumer protection concerns raised by the FTC with respect to "advance fees" can be addressed more directly and without adversely affecting debt settlement companies that operate in a fair and reasonable manner. TASC believes that, instead of regulating compensation models for the industry, the FTC should evaluate other alternatives, such as the possibility of (i) imposing requirements to determine the suitability of particular debt relief services for consumers before enrollment, and (ii) imposing specific guidelines for adequate substantiation for any claimed success rates. Importantly, any new potential requirement for the debt relief service industry in these areas will need to be evaluated thoroughly and carefully to ensure that it is workable, achieves the desired consumer protection goals and avoids providing any competitive advantage for one segment of the industry over another.

The "advance fee" limits proposed by the FTC amount to price regulation of debt settlement companies, which the FTC should leave to the States. The FTC acknowledges that its proposal would not extend to significant portions of the debt relief services industry (i.e. non-profits and providers that do not use telemarketing), whereas States can (and increasingly have) regulated debt relief services in a comprehensive manner that avoids unintended consequences on competition in a developing industry.

The FTC's attempt in the Proposal to regulate debt relief services under the TSR is fundamentally flawed for several important reasons. To start with, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 ("TSA"), authorizes the FTC to regulate abusive **telemarketing,** while the FTC's Proposal is an attempt to regulate the debt relief services industry generally merely because the industry uses telephones in its business. The appropriate means for the FTC to regulate the debt services

industry, if it chooses to do so, is under Section 5 of the FTC Act, which is the sole authority under which the FTC has brought every enforcement action to date with respect to the potentially abusive matters addressed in the Proposal. Although the FTC may want to avoid the procedural requirements of the Magnuson-Moss Act and implement regulation of the debt relief industry quickly to address perceived consumer needs, those procedural protections were imposed by Congress for good reason and are especially important here where the basis on which the FTC proposes to impose a ruinous "advance fee" limit is an unsubstantiated (and incorrect) factual assertion that most consumers do not in fact receive debt settlement services.

Finally, the Proposal does not comply with even the abbreviated procedural requirements under the Administrative Procedures Act and general due process protections under the Constitution. The debt settlement industry deserves a reasonable opportunity to demonstrate to the FTC that it provides valuable consumer services and to rebut the unfounded assertions that consumers seldom receive such services. However, as TASC pointed out more fully in its previous request for an extension, the unreasonably short notice and comment period in the FTC's Proposal have prevented TASC and its members from having a reasonable opportunity to assist the FTC in the proper resolution of these critically important consumer protection issues and to protect their legitimate business interests. This rush to judgment exceeds the FTC's authority, is improper, and is contrary to the best interests of consumer and debt settlement services providers alike.

DISCUSSION

I. Background on TASC

Formed in 2005, TASC is a trade association with approximately 200 members actively engaged in providing services to both consumers and to other debt settlement industry members. The primary service provided by debt settlement companies is the negotiation with a creditor or a debt collector of a compromise amount that fully resolves the debtor's unsecured credit obligation, together with the support and service of the consumer through the savings and negotiation periods. Many companies also provide financial education and other services to consumers. The TASC survey shows in the aggregate, as of June 30, 2009, over 116,000 active consumer clients and total debt under management in excess of $3.7 billion; based on this data, TASC estimates its entire membership has over 154,000 active consumer clients and total debt under management of more than $4.9 billion as of June 30, 2009. These numbers are up significantly from the TASC survey numbers for the end of 2008 of approximately 92,000 active consumer clients and total debt under management of approximately $3.0 billion, from which TASC estimates its entire membership has 123,000 active consumer clients and total debt under management about $4.0 billion. As a consequence, TASC members have very substantial experience over an extended period of time with the manner in which the debt settlement business actually works.

A fundamental purpose of TASC is to promote responsible business practices in the provision of debt settlement services. To that end, TASC has adopted a comprehensive set of standards to which members must adhere ("TASC Standards"); the TASC Standards were

originally adopted in 2005 and are reviewed regularly for potential improvements. (A copy of the current version of the TASC Standards is attached as Exhibit A). Many of the consumer protections in the FTC's proposal mirror those that have been included in the TASC Standards for some time and, in some instances, the TASC Standards require an even higher level of compliance from its members. For example, the TASC Standards expressly require that a member obtain appropriate financial information from a prospective consumer client and provide debt settlement services to the potential client only if the consumer is qualified to participate in a debt settlement program. In addition, the TASC Standards expressly prohibit members from making claims about performance or savings unless the claims are substantiated by objective and unbiased data for the industry or the member.

Importantly, TASC actively enforces its members' compliance with the TASC Standards. The association uses a "secret shopper" program provided by an unaffiliated company. Under that program, the company calls members posing as a consumer seeking debt settlement services and conducts an extensive compliance check with respect to required disclosures, whether misleading or false information is conveyed to the consumer and whether high-pressure or inappropriate sales tactics are used. A third party company also examines the websites of TASC members for compliance with the TASC Standards. Companies that are found not to comply with the TASC Standards are informed of the compliance issues and given a set period of time, usually 30 days, to bring their activities into compliance; continued failure to comply results in revocation of the company's membership in TASC. These real and substantial audit procedures have resulted in the actual termination of companies' memberships in TASC.

In addition to the minimum TASC Standards, many TASC members have chosen to go a step further and become an Accredited Member of TASC. In order to qualify as an Accredited Member, the applicant must undergo a thorough on-site audit annually, conducted by the BSI Group, an internationally recognized third-party business standards auditor. The standards for accreditation are even stricter and set an even higher bar than the already comprehensive TASC Standards. This voluntary level of audit and review provides an important level of consumer protection by validating the actual business operations of the TASC Member. To date, 30 members of our organization have gone through and successfully completed the accreditation process.

TASC also strongly supports responsible regulation of debt settlement companies at the State level. Debt settlement is the best option for many consumers with excessive levels of delinquent consumer debt. The best way to ensure that these valuable services continue to be available to needy consumers is to ensure that they are provided in a manner that is fair and reasonable to consumers and to require that **all** debt relief service providers, including credit counselors, compete openly on the basis of the quality of their services and their actual performance in achieving results for their consumer clients, not on the basis of misleading or deceptive advertising. To that end, TASC has worked extensively with representatives from the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in connection with the Uniform Debt Management Services Act ("UDMSA") adopted by the NCCUSL, and has supported numerous efforts by various States to adopt licensing and other reasonable regulation of the debt services industry.

II. Debt Settlement is a Valuable Consumer Service

A. Third Party Negotiators Provide Valuable Services

Professional third party negotiators can and do provide consumers with very valuable services. Critics of debt settlement frequently argue that debt settlement companies do not provide any services that consumers could not provide for themselves. However, such critics fail to recognize both the obvious benefits of a professional third party negotiator as well as other benefits specific to the debt settlement industry.

An obvious benefit of a professional third party negotiator is objectivity: third party negotiators are not personally involved in the issues being negotiated and thus are much more likely to be able to resolve them in a dispassionate fashion. Moreover, to claim that a consumer could achieve a satisfactory resolution of his or her debt directly and without the intercession of a third party negotiator ignores both the relative discrepancy in bargaining strength as well as the fact that many consumers are very uncomfortable when attempting to negotiate with their creditors, especially those creditors who are large and sophisticated, and who have employees that are expert in, and very experienced with, such negotiations.

Under these circumstances, often the best chance a consumer has in reaching an appropriate settlement, one that recognizes the economic realities of the case rather than a cram-down effected for the benefit of the creditor, is through the mechanism of a third party expert that can advocate for them. Professional debt settlement companies are expert in negotiating consumer debts because they do so regularly.[2] They have a wealth of experience negotiating with a wide universe of creditors, are skilled in conducting debt settlement negotiations and have an excellent grasp of the current range of reasonable settlement amounts that can be expected in the marketplace. Because of constant contact and communication with the creditor community, debt negotiators have established relationships with both in-house collection departments and third party debt collectors, and can facilitate settlements quickly and on more favorable terms than could be obtained by a consumer working alone.

Additional benefits for consumers arise because of the manner in which the debt settlement business is commonly conducted. For example, a debt settlement company takes a comprehensive approach to all of a given consumer's unsecured debt, prioritizing the debts that should be addressed first over those that should be settled later, basing that determination on experience with various creditors and debt collectors. As an additional consumer benefit, debt settlement companies are able to aggregate settlement opportunities for a group of similarly situated consumers with the goal of achieving a bulk settlement with a creditor. For instance, a creditor might not be willing to settle a single account of $20,000 for 45%, but might well be willing to settle ten accounts held by ten different consumers at once at that rate. In short, debt settlement service providers bring expertise and economies of scale to the debt settlement process that no single consumer can achieve.

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[2] As described below, TASC estimates that its members settled over 126,000 accounts in 2008 and in excess of 94,000 accounts in the first six months of 2009.

Finally, negotiating debt is an emotional process that takes months of dedication. There are many examples of employees of debt settlement companies who have chosen to enroll in a debt settlement program, and pay for the services, in order to avoid the difficult and emotional process of dealing with creditors and collectors over a two to three year period, despite the fact that this is what these employees do for a living.

B. Debt Settlement is the Best Debt Relief Service for Many Consumers

The level of unsecured (mostly credit card) debt at this time is extraordinarily high.[3] Likewise, relaxed credit standards by many creditors and the current severe economic recession have led to all-time high credit card default rates that currently are estimated to be as high as 5% of all credit card accounts.[4] As a result, large numbers of consumers are seeking help in addressing their excessive debt obligations, many times in response to aggressive debt collection tactics or an inability to meet expenses for housing, food and other necessities. For consumers who do not have access to additional credit (e.g., a home equity loan) and have a substantial and continuing inability to meet their current debt obligations, there essentially are three main debt relief options available: debt counseling, debt settlement and personal bankruptcy.[5]

At the risk of restating the obvious, a consumer who has a substantial and continuing inability to meet his or her current debt obligations is in need of some form of significant debt relief. The suitability of each one of the three primary options available to consumers depends largely on the severity of the consumer's financial difficulty. Consumers who are able to meet their obligations with more modest adjustments are often best suited for a DMP sponsored by a credit counselor. A DMP offers consumers pre-negotiated reductions from creditors of minimum payments and interest rates, and sometimes the waiver of previously imposed or ongoing fees and charges. However, DMPs are relatively expensive for consumers (on a cash flow basis) because there is almost never any reduction in the principal amount owed on the indebtedness and because creditor-granted, non-negotiable concessions on interest rates that are pre-determined by creditors for all consumers are typically modest or even negligible. Thus, consumers with more severe debt problems need a more aggressive approach.

Unlike a DMP, where consumer funds are distributed, pro rata, on a monthly basis to creditors, a debt settlement program requires the consumer to make regular deposits into a fund that can be used to settle the consumer's debt for less than the consumer agreed to pay on the loan. Since the settlement amount(s) for which the consumer is saving is/are projected to be at a substantial discount from the debt at the time of program enrollment, the amount the consumer sets aside each month is considerably less than amortization of principal plus payment of interest required in a typical DMP. Thus, debt settlement programs

[3] For example, at the end of 2008, the average credit card balance in approximately 78% of U.S. households was greater than $10,000. Ben Woolsey and Matt Schulz (2009), "Credit card statistics, industry facts, debt statistics" Vol. 2009: CreditCards.com.

[4] See "Loan Delinquency Rate Hits New Record; One in 20 Credit Card Accounts Delinquent", 93 BNA Banking Report 625 (Oct. 6, 2009).

[5] The FTC has also identified debt negotiation as another type of debt relief service. This letter does not consider debt negotiation separately, as it shares many similarities with debt settlement.

provide an alternative to consumers who cannot afford to repay their obligations under a DMP, but can successfully set aside savings necessary to establish a settlement fund of sufficient size, which can then be used to settle the consumer's debts. Importantly, a debt settlement program typically spans approximately three years, compared to five years for a DMP. This shorter timer period allows consumers with severe debt problems to get back on their feet sooner and is one of the reasons for the higher success rate consumer experience in settlement programs relative to DMPs.

There are consumers who can afford neither to make the higher payments required by a DMP nor make the lower deposits required by a debt settlement program. For these consumers, a bankruptcy filing may be the only reasonable alternative. However, there are many downsides to this most extreme alternative and, thus, many consumers correctly want to avoid it. A bankruptcy will have an immediate, severe and lasting adverse impact on the consumer's credit report, and the consumer's ability to obtain credit in the future. Moreover, as a result of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, consumers generally must participate in credit counseling prior to filing for Chapter 7 and Chapter 13 bankruptcy, which can be costly and time-consuming. 11 U.S.C. § 109(h). Chapter 7 generally requires the liquidation of non-exempt assets, which is not a requirement of a debt settlement program, and Chapter 13 involves a reorganization and repayment of debts over a period of time that is typically close to five years. Additionally, many consumers believe there is a social stigma attached to filing bankruptcy. Debt settlement is an important (and pro-consumer) alternative to filing for bankruptcy for those consumers that can afford to save for a debt settlement program and want to avoid the severe consequences of filing bankruptcy. In fact, consumer clients of TASC members regularly report, after completing a debt settlement program, how happy and proud they are to have avoided bankruptcy.

A cornerstone of a fair and reasonable debt settlement program is an assessment of the suitability of this alternative for the particular consumer. Indeed, as noted above, the TASC Standards require that a debt settlement company obtain financial information from the consumer about their debts and income and not enroll the consumer in a debt settlement program unless it is determined to be appropriate for the consumer. This means that the TASC Standards prohibit a member from enrolling a consumer in a debt settlement program if its underwriting of the consumer indicates that the consumer cannot save the necessary settlement amounts (and thus bankruptcy would likely be a better alternative). Similarly, proper underwriting of a consumer for debt settlement would include identifying consumers who have the ability to pay off their debt burden through other means, outside of a settlement program.

In fact, based on the TASC survey, between 6% and 7% of consumers who request information about enrolling in a debt settlement program ultimately enroll in the program. This is a clear indication that TASC members are both providing the appropriate information to help consumers make an informed decision, and providing an important analysis of a consumer's suitability for a debt settlement program before enrolling them in a settlement program.

C. Debt Settlement Provides Substantial Benefits for Many Consumers

A fundamental misperception about debt settlement programs is that consumers seldom actually receive settlement services or that debts are seldom actually settled, and that consumers therefore are often worse off after having participated in such plans. To the contrary, the TASC survey shows that substantial percentages of consumers complete all or substantially all of the debt settlement programs administered by TASC members. Further, even for consumers who do not fully complete a debt settlement program, the TASC survey demonstrates that the vast majority of consumers settle at least one debt. Finally, the TASC survey shows that the aggregate dollar amount of debts settled greatly exceeds, and the aggregate savings from debt settlements easily exceeds, the aggregate fees paid by consumers for the debt settlement service.[6]

TASC conducted a survey of its largest members in September-October of 2009 order to provide the FTC with data on completion of debt settlement plans achieved by consumer clients of TASC members. The survey covered services representing approximately 75% of debt under management by TASC members.[7] Because debt settlement programs are designed to be completed in approximately three years, the TASC survey considered the experience of consumers who had enrolled in a debt settlement program at least three years earlier and classified whether the programs were "completed," "active", or "terminated."[8] Members reported data in the TASC survey on over 43,000 consumer clients.

The TASC survey deemed a consumer's program to be active if the debt settlement company was still actively trying to settle debts for the consumer, while a program was considered to be completed if the program was no longer active and the consumer had settled at least 75% of the debts enrolled in the program.[9] A consumer who settled at least this percentage of debts in a debt settlement program plainly received very substantial

[6] The presentation of consumer benefits is offered in absolute dollar terms. However, this significantly understates even the total dollar benefit realized by the consumer. The total program savings are considerably more significant when compared to comparable cost of other alternatives such as struggling to make minimum payments on credit cards or making payments into a DMP, even assuming such alternatives are within the consumer's financial reach. For example, we estimate that a consumer owing $30,000 of credit card debt at 25.5% interest and making only the minimum payments would pay a total of about $100,000 over more than 20 years. Similarly, in a typical credit counseling program, where interest rates are reduced to 12.5% in a five-year plan, the cost to the consumer would be in excess of $42,000. More generally, debt settlement provides additional non-monetary benefits as well.

[7] Two reporting members were unable to provide break out information regarding debt reduction and fees paid by consumers. Thus, it was not possible to include such data for these members at this time. We are continuing to try to obtain this data and will supplement this letter as appropriate.

[8] By analogy, a survey that measures the number of students who completed a four year university on time would examine the experience of students who had been enrolled in the university at least four years earlier. Students who were enrolled in the university less than four years are, by definition, not expected to have graduated and thus are properly excluded from the success rate calculation.

[9] Because of time limitations to coordinate data collection among companies that track and report differently, most TASC members reported as completed only programs with 100% completion rates, and did not report programs with 75% completion rates. The TASC survey thus underestimates the completion rates to the extent that such members only reported programs with 100% completion rates and the survey reports them as having at least 75% completion rates.

services from the TASC member.[10] The TASC survey considered a program to be terminated if the program was no longer active and the consumer had not settled at least 75% of the debts enrolled in the program. Finally, consumers who rescinded their debt settlement program during the three-day "cooling off" period were excluded from the analysis in the TASC survey since they did not participate in a program.

The TASC survey data is compelling. It shows that about 34.4% of consumers either completed their debt settlement programs entirely or were active and continuing to save for additional settlements.[11] The TASC survey also shows that, of the approximately 9.8% of settlement programs that were still active, over 70% of the accounts enrolled in the program had been settled. Finally, the TASC survey demonstrates that, even with respect to debt settlement programs that were terminated, in about 34.8% of such programs at least one debt was settled before termination. By any reasonable review of this data, it would be arbitrary and capricious to conclude that these settlement programs conducted by TASC members did not provide real and substantial settlement services to consumer clients.

Importantly, consumer are resolving much more in debt than they are paying debt settlement companies in fees, even when considering the consumers who terminated programs before completion. For example, the TASC survey showed that the total debt settled for consumers was approximately $444 million, while the total fees collected for debt settlement services was approximately $126 million. Thus, the TASC survey shows that the total debt resolved by consumers was 3.5 times more than the aggregate amount they paid in fees. This includes consumers who terminated from the program before completion. In fact, even looking at **only those** consumers who terminated their debt settlement programs before completion, this subset had approximately $105.1 million in debt settled for them and paid approximately $55.6 million in fees. Thus, even the consumer that terminate from debt settlement programs before completion are receiving, on average, a significant benefit relative to the fees they are paying debt settlement companies.

In addition, the TASC Survey showed that the aggregate dollar amount of debt reduction for consumers in completed, active and terminated programs was $245 million, meaning that the debt reduction was nearly two times higher than the aggregate fees that were paid for the debt settlement services. This means that, as a group, even including the consumers who terminated the programs before completion, consumers succeeded in reducing the debt owed by **almost twice** the fees paid for the debt settlement services. This fact is extraordinary since it shows clearly that even when the category of debt settlement programs that ended the earliest are included, consumers as a whole were still better off financially by participating in the program. In sum, the foregoing data debunks the myth that most consumers who enter debt settlement programs with TASC members are worse off, and

[10] The TASC survey also used a 75% completion rate, rather than a 100% completion rate, because industry experience shows that the many of consumers who settle at least that percentage of their debts voluntarily withdraw from debt settlement programs because they feel they have achieved control over their financial situation, and decide not to settle further debts.

[11] Based on data provide by the two largest responding TASC members, TASC estimates that over 80% of the programs identified as Complete involved settlement of 100% of the consumer's enrolled debts, with the remainder having settled at least 75% of the enrolled debts.

convincingly shows that consumers derive very substantial benefits from debt settlement program provided by TASC members.

It is important to note that while TASC members are providing significant value to their consumers, the value relative to their alternatives is significantly higher. A typical DMP lasts approximately five years and results in a total cost to the consumer of 150% to 200% of their enrolled debt, assuming program completion. Paying minimum payments can result in a total cost to the consumer of 300% to 400% of the total debt originally charged. Thus, when compared to the alternatives, the value TASC members are providing to consumers is significantly higher than the numbers stated in the paragraph above.

The TASC survey provides further proof that debt settlement is a valuable consumer service. For example, the TASC survey shows that in 2008 the reporting members had over $3 billion of debt enrolled in settlement plans, and settled over $531 million of outstanding debt on almost 95,000 accounts. Extrapolating the TASC survey results to the entire TASC membership, TASC estimates that in 2008, its members had over $4 billion of debt enrolled in settlement plans, and settled over $700 million on over 126,000 accounts.

Similarly, the TASC survey indicates that for the first six months of 2009, members had over $3.7 billion of debt enrolled in settlement plans, and settled over $415 million of outstanding debt on over 70,000 accounts. Again extrapolating the survey results to the entire membership, TASC estimates that for the first six months of 2009, members had over $4.9 billion of debt enrolled in settlement plans, and settled over $553 million of outstanding debt on over 94,000 accounts.

The TASC survey further shows that the debt reduction achieved for consumers was 55% of outstanding balances in 2008 and improved to 58% of outstanding balances in the first six months of 2009. Stated differently, the TASC survey indicates an average settlement rate of 45% in 2008 and 42% in the first six months of 2009. This data indisputably demonstrates that debt settlement companies achieve significant results for their clients and that it simply is untenable to claim that debt settlement companies seldom provide services to consumers. Rather, the data compels the conclusion that settlement services are being provided at extraordinary levels.

TASC recognizes that the FTC stated in the Proposal its belief that "success rates should reflect the number or percentage of consumers who pay for the offered goods or services that then fully achieve the represented results" and seemed to suggest that the only measure of "success" (and basis for compensation) was whether 100% of the debts enrolled in a program were settled. 74 Fed. Reg. 41,995 at fn. 104. However, responsible debt settlement companies do not represent 100% success rates, but rather disclose the risk that some or all of the attempted settlements may fail. TASC agrees that debt settlement companies that exaggerate performance claims should be subject to false advertising enforcement actions. But the FTC should not claim that responsible debt settlement companies guarantee success of their settlement efforts merely because they disclose historical performance data (with adequate factual support), nor should the FTC measure their "success" against such a non-existent 100% completion guarantee. Instead, it

undoubtedly is possible for debt settlement companies that regularly settle debts on behalf of their clients (as evidenced by the many facts described in this letter) to provide services that are valuable and successful when measured in light of the risks that are inherent (and are disclosed) in debt settlement, and thus to measure success by means other than in relation to settling 100% of the debts enrolled in a program.[12]

In analyzing the settlements actually achieved in debt settlement programs, it must be remembered that these consumers are in extreme financial hardship when they enter the programs. Even assuming that a debt settlement company properly underwrites a consumer's likelihood of successfully completing a debt settlement program, a consumer may choose not to save or may simply lack the discipline to save the amounts necessary for settlements. The risk of such non-compliance is invariably higher with consumers who have not been able to pay other obligations than for consumers generally. Moreover, events can occur subsequent to enrollment in a debt settlement program over which neither the consumer nor the debt settlement company have any control. For example, a consumer may lose their job or become ill. These risks of failure are inherent with respect to any program involving payments over time and do not suggest that there is anything abusive with respect to debt settlement programs.

The only other empirical study of settlements achieved by debt settlement companies of which we are aware further supports the conclusion that debt settlement programs provide substantial consumer benefits. A recent study by Professor Briesch of the Cox School of Business at Southern Methodist University (Economic Factors and the Debt Management Industry (August 6, 2009)) examined data from a large debt settlement company on 4,500 randomly selected consumer debt settlement programs with a wide range of characteristics. This study concludes (among other things) that "[t]he debt settlement company generates tremendous value to its clients, as more than 57% of the clients have offers to settle at least 70% of their original debt, and the most common situation (almost 30% of the clients) having settlement offers for at least 90% of their original debt." Id. at 3.

In the Proposal, the FTC relied heavily on evidence gathered from a severely limited number of FTC and State attorney general enforcement actions as the basis for suggesting that at least some debt settlement programs obtain relatively few settlements for their clients. See 74 Fed. Reg. 42,006 (August 19, 2009). The Proposal does not indicate how the FTC calculated the 1% to 2% completion rates or precisely what they measure, which is critical. It appears, however, that in calculating these rates, the FTC may have used as the denominator the total number of clients enrolled in company's debt settlement programs, including those enrolled for periods as short as one month, and used in the

[12] Moreover, the rational of the Proposal for the "advance fee" prohibition is that consumers are so extraordinarily unlikely to actually settle debts that it amounts to telemarketing fraud or abuse to allow debt settlement companies to receive payment until settlements are actually consummated. The FTC should not be engaging in a more general "valuation" of the services, as might be appropriate in a fee regulation adopted under State law. The success of debt settlement programs administered by TASC members, as shown in the TASC survey and described in this letter, is wholly inconsistent with such any characterization of such fraud or abuse, and concerns regarding whether consumers appreciate the inherent risks of debt settlement programs are more properly addressed by rules regarding advertising and performance guarantees than by an "advance fee" prohibition that will substantially limit the availability of the service.

numerator the number of "successful clients" for a company that had only been in business approximately three years. As discussed above, such a calculation would improperly and dramatically reduce the percentage because debt settlement program are designed to be completed in three or more years.

Moreover, the settlement experience of a very limited number of companies that were found (in enforcement actions) to have misrepresented the services that they provide and to have made unsubstantiated claims of success is not going to be illustrative of an entire industry. By analogy, a study of lawyer competence based on examining the performance of lawyers against whom the State bar association had initiated successful disciplinary actions would yield a far worse picture than if study measured the performance of lawyers generally. In contrast, the TASC data based on a broad industry survey must be seen as more reliable and instructive on the issue of whether debt settlement programs can be successful.[13]

III. TASC Supports Reasonable Regulation of Debt Relief Service Providers

A. Regulation Should Apply to Attorneys that Regularly Provide Debt Relief Services

The Proposal generally defines "debt relief service" as any "service represented, directly or by implication, to renegotiate, settle or in any way alter the terms of payment or other terms of a debt between a consumer and one or more unsecured creditors or debt collectors." 16 C.F.R. 310.1(m). The FTC then identifies the primary participants in the debt relief industry as credit counselors, debt settlement companies, and debt negotiators. 74 Fed. Reg. at 41,990-97. TASC respectfully requests that the FTC confirm that attorneys who regularly provide debt relief services will be required to comply with any requirements imposed on debt settlement service providers under the FTC's regulations.

There presently are attorneys who regularly provide many of the same debt settlement services that debt settlement companies provide, including arrangements in which an attorney is only nominally involved and non-lawyers provide substantial back-office and other support services. In addition, attorneys may compete with other debt relief service providers by representing consumers in bankruptcy matters or by providing financial counseling. Consumers should be entitled to the same protections whether or not their provider is an attorney. For example, a consumer needs the same disclosures about the risks of debt settlement programs, regardless of whether or not the service provider is licensed to practice law. This is especially relevant considering that a number of the FTC's enforcement actions within the industry have been against law firms. See, e.g., *FTC v. Nat'l Consumer Council*, No. SACV04-0474CJC(JWJX)(C.D. Cal. 2004). In addition, it would be unfair and harmful to competition to impose new requirements on debt settlement companies generally, but not impose the same provisions on attorneys who regularly engage in the same

[13] Similarly, the claims from certain groups regarding the lack of success in debt settlement programs are not supported by any data or empirical study. For example, one group criticized the industry for not providing it competitively sensitive data on success rates and then concluded that those rates must necessarily be unreasonably low. See National Consumer Law Center Inc., *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers* (2005).

business. To fail to do so would provide attorneys with an unfair advantage to be able to charge customers on a flat fee basis, but require other debt settlement service providers to charge fees on a success contingency basis. Finally, the fact that attorneys are licensed by a State should not give rise to special treatment as many debt settlement companies also are subject to licensing and extensive regulation under State law.

In this respect, the manner in which attorneys are regulated under the Fair Debt Collection Practices Act ("FDCPA") provides a helpful example. Like the debt relief services industry, attorneys frequently are involved in third party collection actions. In 1986 Congress revised the FDCPA to repeal a provision that expressly exempted attorneys from being subject to the FDCPA. Later, the Supreme Court interpreted this repeal to mean that the FDCPA applies to attorneys if their practice regularly consists of collecting consumer debts. See *Heintz v. Jenkins*, 514 U.S. 291 (1995). In these instances, State bar membership was not sufficient to justify an exemption from important consumer protection requirements and competition in the industry was enhanced by subjecting all participants to similar requirements. The same rule should apply with respect to debt relief services, including debt settlement services.

Finally, an attorney exemption from the FTC's rule also would provide additional incentives for unscrupulous debt settlement companies to attempt to circumvent consumer protections through arrangements with attorneys. Currently, some debt settlement companies (that are not members of TASC) have gone to great efforts to set up nationwide networks of attorneys in an attempt to avoid licensing and other forms of State regulation. In these situations, the debt settlement companies perform substantially all of the sales, consultation and debt settlement services while hiding behind a service contract between an attorney and the consumer as the basis to avoid licensure and regulation. The purpose of these attorney networks, in many instances, is simply to avoid having to comply with State fee limitations and other State regulatory constraints. If the FTC adopts an "advance fee" limit or other significant consumer protections, but does not apply them to attorneys, there will be additional significant incentives for these undesirable arrangements in order to avoid a mandatory success contingency fee model. Such arrangements are harmful to competition and consumer interests.

B. TASC Supports Full Disclosure of the Risks of Debt Settlement

Debt settlement is an aggressive approach for consumers with severe debt problems. Consumers who are able to save the funds needed to effect settlements enjoy the benefits of repaying their unsecured debts at a substantial reduction in a relatively short period of time without having to suffer the adverse consequences of filing bankruptcy. However, there is a risk that consumers may not be able to save the funds necessary to fund settlements, either because of intervening events like loss of employment or because the consumer chooses to re-allocate the necessary funds away from the settlement fund. In addition, there are risks for the consumer during the time it takes to effectuate a debt settlement program. Creditors on accounts in debt settlement programs have not agreed, in advance, to any modifications of the consumers' account terms, payment obligations or interest rates. As a result, during a debt settlement program, the consumers' creditworthiness

may go down (at least temporarily) and consumers are likely to be subject to continuing collection efforts by creditors until the debts are settled.

TASC members are required to alert and prepare the consumer for these risks and, in any event, for many consumers the potential benefits of a successful debt resolution outcome far outweigh the risks. To start with, appropriate underwriting of consumers before enrollment helps to ensure that the debt settlement program is suitable for the consumer and that those consumers with too low of a likelihood of completing the plan successfully are not enrolled. Debt settlement programs undoubtedly are less damaging to a consumer's credit rating than bankruptcy. Moreover, after a debt settlement program is even partially completed, consumers reduce or eliminate their pre-existing debt load, and they have done so without the severe consequences of filing bankruptcy.

Although for many consumers the risks of a debt settlement program are far outweighed by the benefits of addressing their debt problems without bankruptcy, consumers need to be fully advised of these risks in order to make an informed choice. TASC supports full and complete disclosure to consumers of the risks of a debt settlement program prior to anyone entering into a plan. For this reason, TASC developed a disclosure form addressing the risks of debt settlement and requires its members to provide such a disclosure, at a minimum. A copy of TASC's model disclosures are attached as Exhibit B. The disclosures that would be required under the FTC's Proposal are similar in many respects to those contained in TASC's model disclosure.

Full disclosure of the risks and benefits of debt settlement is also important because it fosters competition among debt relief service providers (e.g., with respect to alternatives such as credit counseling and bankruptcy) by allowing consumers to be informed about the advantages and disadvantages of different debt relief services that may be available to them, and to make an informed choice about which alternative is best for them. However, this goal of comparison shopping among different debt relief providers and options can be achieved only if providers offering these alternatives are subject to the same or similar disclosure requirements. Imposing harsh disclosure requirements on only certain debt service providers does not facilitate comparison shopping and unfairly places those debt service providers at a severe competitive disadvantage to others.

The disclosures required under Section 310.3(a)(1)(viii) of the Proposal seem to be targeted primarily to risks of debt settlement and do not contain disclosures that may be necessary for consumers to evaluate the advantages and disadvantages of other alternatives. For example, consumers evaluating a credit counseling alternative should be informed about the relationship between the credit counselor and the consumer's creditors, including any "fair share" payments or other compensation that the credit counselor receives. Without disclosure of such obvious conflicts of interest, consumers are likely to assume that the credit counselor is an independent business or a completely charitable non-profit organization and will not be able to assess the potential bias of a credit counselor towards creditors that provide them with financial assistance. Similarly, as noted above, the proposed disclosures regarding adverse effects on creditworthiness in 310.3(1)(a)(viii)(E) are equally if not more important in the case of bankruptcy.

C. TASC Supports Prohibition on Misrepresentations in Connection with Sale of Debt Relief Services

TASC supports a prohibition on misrepresentations by providers of debt relief services like the one proposed by the FTC in Section 310.3(a)(2)(x). Debt settlement is a valuable service for many consumers who should choose it if they are provided with sufficient information necessary to make an informed choice. Moreover, full and accurate disclosure of the risks and benefits of a debt relief service will enhance competition among different types of debt relief service providers and among different debt settlement companies. For these reasons, the TASC Standards prohibit members and their representatives from engaging in any sales or marketing that uses any unfair or deceptive representations, including performance or savings statements that are not supported by objective and unbiased data.

IV. TASC Strongly Opposes Regulation of Compensation for Debt Settlement Services

A. Debt Settlement Services Are Not "Fundamentally Bogus"

The FTC previously determined that it is an abusive practice to take advance fees in connection with credit repair services or recovery services, or in connection with obtaining a loan for a consumer if the provider guarantees or represents a high likelihood of success. 16 C.F.R. § 310.4(a)(2), (3) and (4). The FTC based these determinations on its findings that sellers of these services commonly take consumers' money for services that the seller has no intention of providing and in fact does not provide. See 74 Fed. Reg. 41,988, 42,006 (Aug. 19, 2009). The FTC also has indicated an advance fee ban is appropriate for these three services because they are "fundamentally bogus." See 68 Fed. Reg. 4,580, 4,614 (Jan. 20, 2003). Noting a lack of empirical data on the success rate of the debt settlement industry, and based on certain enforcement actions in a sharply limited number of abusive situations, the FTC's Proposal would extend such regulation of permissible compensation methods to debt relief service providers. Importantly, under the FTC's reasoning in the Proposal, the rule making does not involve a general inquiry into an appropriate level of fees or debt settlement success, as States might determine in regulating the industry. Rather, the FTC is asserting that it is so extraordinarily unlikely that consumers will receive debt settlement services that allowing them to pay for such services in advance amounts to telemarketing fraud or abuse.

TASC strenuously disagrees with any assertion that debt settlement is a "fundamentally bogus" service or that debt settlement companies commonly take consumers' money for services that the seller has no intention of providing and in fact does not provide. To the contrary, the empirical data presented above shows that consumers, even those who may not be able to complete the program, receive substantial benefits from debt settlement services provided by TASC members. This is seen in both the substantial numbers of settlements, and the aggregate amount of debt settled and debt reduced in those settlements, negotiated by TASC members. Considering all categories of consumer programs in the TASC survey (completed, active and terminated), the aggregate amount of debt settled for consumers was almost 3.5 times the aggregate fees paid by consumers for the services, and the aggregate debt reduction in those settlements was almost two times the fees paid by

consumers. Moreover, the rates at which debt settlement companies achieve settlements must be considered in light of the fact that "success" in the context of enabling settlements requires both fiscal commitment and ongoing financial performance by consumers in severe financial distress who have already slipped into default on their obligations. By analogy, it would be unreasonable to expect the success rate of an oncologist treating a cancer patient to be as high as the success rate of a doctor undertaking a routine procedure of removing a child's tonsils.

There is scant data identified by the FTC in the Proposal to support its suggestion that consumers seldom receive benefits from using debt settlement services. In contrast, the data submitted by TASC with this letter and the study by Professor Briesch noted above examined the specific experiences of literally tens of thousands of consumers with many different debt settlement companies. At a minimum, the industry data described by TASC is sufficient to require the FTC or critics of the industry to come forward and prove the wild assertions that debt settlement seldom if ever provides consumer benefits. Even if critics would prefer higher rates of settlement, it simply is wrong to claim that most consumer clients do not receive settlement services from TASC members. In this respect, TASC would welcome a full administrative hearing in which interested parties can present evidence, and a substantial factual record for the FTC's actions can be developed. The issues raised in the Proposal are simply too important to the debt settlement industry to be resolved on the basis of speculation and accusation. Moreover, TASC is confident that, if the FTC allows a full and fair opportunity for a factual presentation, the debt settlement industry will be able to gather further proof that there are many debt settlement companies that provide consumers substantial benefits in a significant percentage of the companies' debt settlement programs.

After the FTC's NPR on debt relief services was published in the Federal Register on August, 19, 2009, TASC promptly commenced to gather data from its members to submit to the FTC on the issue of consumer benefits. We believe that the data we were able to collect in this very short comment period is compelling and more extensive than the other data on which the FTC proposes to rely. However, the relatively short comment period did not provide a reasonable opportunity for TASC and other industry members to submit more robust data and analysis on these issues. Indeed, given typical summer holidays in August and September, the FTC provided a notice period of barely more than thirty days. Such a comment period is plainly too short to prepare a full response to a proposal to regulate compensation received by debt settlement companies that literally could put a substantial portion of TASC members out of business. As a result, TASC joins the members of Congress who have called on the FTC to extend the comment period for this rulemaking by at least 120 days. It simply is more important to make informed decisions regarding an "advance fee" limit than it is to make a quick one.

B. Banning Fees Prior to Settlement of Debts Will Adversely Affect Consumers

1. Debt Settlement Companies Should Be Able to Receive Compensation for Services Rendered Before Settlement

The Proposal would prohibit debt settlement companies from requesting or receiving "advance fees" and would treat any compensation paid before the company provides documentation in the form of a contractual settlement agreement that a settlement is completed and funded as paid in "advance." See 74 Fed. Reg. at 42,009. TASC respectfully submits that substantial services are (and indeed must be) provided before a settlement is finally consummated (including where settlement negotiations fail or where an agreement falls through because of no fault of the debt settlement company) and that there is absolutely nothing improper about such companies' receiving compensation for such services.

Debt settlement companies incur substantial expenses in providing services before a debt is actually settled, and in fact even before a consumer actually enrolls in a debt settlement program. For example, debt settlement companies incur large costs in employing highly-trained personnel to consult with consumers to discuss their financial situations, explore the options available to them, explain in detail how debt settlement works and determine their suitability for debt settlement, all of which occurs before any debts are settled and, in many cases, before the consumer is enrolled. In addition, debt settlement companies must have highly-trained personnel to monitor consumers' accounts and continually negotiate with creditors and debt collectors, all of which occurs before any debts are settled.

TASC members also devote substantial resources to hiring and training customer service representatives who answer questions and otherwise assist consumers during the settlement process, an investment in human resources that is necessary regardless of whether any debts are settled. Due to the emotional nature of the problem we are attempting to solve for consumers, the number and length of consumer interactions is substantial – and can number many interactions each week for a single consumer. Finally, tracking and managing the data and interactions of consumers, who on average enroll seven different creditor accounts, requires significant investment in technology infrastructure and systems to ensure consumers are handled appropriately. These are real expenses that a debt settlement company must cover even where a settlement negotiation is unsuccessful or when an agreement is not performed by a consumer.

Critics of debt settlement argue that debt settlement companies do not provide any meaningful services until a debt is actually settled. This is absolutely wrong. Debt settlement companies, even prior to the inception of the client relationship, provide underwriting, educational and qualification services and, following enrollment, provide customer support and ongoing creditor contact when preparing for, initiating and engaging in settlement negotiations. The average debt settlement customer will contact or be contacted by a debt settlement services provider as many as eleven times per month; given the apprehension felt by this vulnerable constituency, it is not uncommon for customer contact in the first few months to exceed that number by a considerable margin.

Creditor negotiations are labor- and detail-intensive and will often last over a period of several months for each creditor account enrolled. The average consumer enrolls numerous creditor accounts, and each account negotiation can require many sessions between the debt settlement services provider and the creditor. Further, efforts to settle a debt may then fail for a variety of reasons unrelated to whether the debt settlement companies performed all services it was able to provide. For example, the consumer may make

unreasonable settlement demands or may fail to save the amounts necessary to fund settlements. In these instances, by any reasonable measure of fairness, debt settlement companies deserve to be compensated because they have provided the creditor negotiation, customer service and other services they agreed to provide.

Because of the labor-intensive nature of debt settlement services, debt settlement companies generally hire large numbers of staff. These staff include the following positions that must be paid prior to settlements being completed:

- Training
- Intake
- Data Entry
- Legal and Compliance
- Accounting
- Customer Service and Education
- Information Technology
- Human Resources
- Management
- Negotiations
- Marketing

Larger staff means larger expenses for rent, insurance, technology and equipment such as phone and computers, furniture and supplies, legal costs, and employee benefits such as health insurance and retirement plans. These are all very real costs that must be paid prior to enrollment, let alone completion of settlements.

Various States, after years of study, have recognized that debt relief service providers should be able to receive compensation before a debt is settled or other services are completely provided. For example, Colorado modeled its debt settlement statute on the UDMSA, but it enacted the statute without including a $400 cap on up front fees, instead limiting fees to 18% of the principal amount of the debt with a requirement that fees be collected over at least half the life of the program. Colo. Rev. Stat. § 12-14.5-223. Delaware law likewise imposes an 18% cap on fees for debt settlement services, but does limit the time period over which fees may be collected. Del. Code Ann. tit. 6. § 2423A. Thus, any requirement by the FTC to limit compensation until a debt settlement company settles a debt would be flatly inconsistent with the considered judgment of States that have studied the issue and reached the conclusion that companies should be permitted to be paid during the process of debt settlement. Most companies in the debt settlement industry have adopted a "fixed fee" model in which fees are stated upfront as a percentage of the debt enrolled, and spread over a fixed period of time. Consumers appreciate the clear visibility with respect to their fees and debt settlement companies are able to cover the substantial costs of servicing a consumer, especially in the early months of a debt settlement program.

2. <u>Requiring Success Contingency Fees Will Harm Consumers</u>

The argument that debt settlement companies should not receive compensation unless a settlement is completed is based on the faulty premise that the service being provided by the debt settlement company is **guaranteed** settlement of the consumer's debt. But this is not the case. TASC members expressly disclose to consumers entering into the debt settlement program that there is a risk that their debts might not be settled. The primary service that debt settlement companies offer to provide is to set up a plan that puts the consumer in a position of leverage to negotiate that consumer's debts, and to support the consumer throughout the process. However, the results of such negotiation are not guaranteed. By analogy, a consumer might hire a lawyer to negotiate a contract or defend a lawsuit. That lawyer is entitled to payment for his or her services in negotiating a contract or defending the lawsuit even if the contract is not signed by the parties or the consumer loses the lawsuit. Indeed, in those instances, like in debt settlement, the lawyer does not and cannot guarantee the results of matters that are outside of the lawyer's control.

The FTC's Proposal would condition the ability of a debt settlement company to receive compensation on the success of the settlement negotiations and consummation of the settlement (e.g., a contingency fee based on success). This is likely to have several adverse consequences for consumers. First, the cost of debt settlement services will most certainly be substantially higher if all compensation paid to debt settlement companies is paid on a contingency basis. Again, a good analogy is the manner in which attorneys price their services in contingent fee engagements. Attorneys charge higher fees in contingency matters to compensate for the risk that the matter, through no fault of the attorney, is not resolved successfully and thus the attorney would not receive any compensation.

Higher costs for services is especially undesirable in the case of debt settlement services. An attorney's contingent fee arrangement applies to a recovery by the consumer and results in the consumer receiving less of the recovery. However, in debt settlement, the contingency fee is paid by the consumer in addition to the amounts the consumer needs to pay for settlement. Higher fees for debt settlement services, in turn, are likely to result in fewer settlements because fewer consumers in financial distress will be willing or able to pay a higher settlement cost that includes the contingent fee. In cases where the consumers are willing to pay the higher settlement cost, settlements will almost certainly come later than they would under the fixed fee model because the consumer will have to save that much more before the settlement can be effected. These results are clearly not in the best interests of consumers, and can be avoided by simply not imposing an unnecessary "advance fee" limit.

Under the FTC's Proposal, as under other contingency fee arrangements, debt settlement companies will be required to support all of their operations, including the expenses of unsuccessful debt settlement negotiations, from the contingent revenues received in successful debt settlements. The Proposal thus would have the effect of forcing consumers who are able to complete debt settlement programs to subsidize those who do not. TASC submits that debt settlement companies should have the ability to charge all clients for the services they receive, even if a successful settlement is not reached, and that the subsidization inherent in requiring contingency plans creates undesirable incentives for consumers.

Also, creditors may be more willing to hold out against settlement if they believe the contingent nature of the settlement companies' compensation provides them leverage. Consumers may be more likely to enter into a debt settlement program that involves excessive risk if they don't have to pay anything unless the plan is successful. Similarly, consumers may be less likely to continue to complete a debt settlement program or may turn down a reasonable settlement offer from a creditor if they are not required to pay for the services that the debt settlement company has provided unless and until there is a settlement that might be acceptable to the consumer, no matter how unrealistic or outlandish. Indeed, given the FTC's proposal to condition the ability to receive compensation on consummation of the settlement (rather than a successful negotiation), some consumers undoubtedly will attempt to "game the system," turning down reasonable settlement offers from creditors knowing that they can then try to deal with the creditors directly, thus circumventing the debt settlement company and avoiding the need to pay any fees for the company's work.

The FTC's rule would **require** all debt settlement companies to charge substantially more than (presumably almost double) the amounts charged on a flat fee basis by forcing them to utilize the contingency model. If a State imposed a rate cap that did not allow a relatively high fee (either generally or for back end fees), the FTC's rule would effectively put debt settlement companies out of business. On the other hand, if a State does not regulate debt settlement fees or sets a high cap, debt settlement companies may charge extraordinarily high back end fees of 50% or more in order to cover their expenses. Such a result would be extremely harmful to consumers who are trying extricate themselves from severe financial problems because it would mean a longer period to save for settlement and thus more intervening collection actions and fewer settlements. Moreover, it would punish the consumers who are successfully fulfilling their obligations by forcing them to cover the expenses of those who do not.

If debt settlement companies do not increase prices to cover the contingency of unsuccessful debt settlement programs, they will be forced to decrease operating costs through lower service levels. Debt settlement is a labor intensive and a complex business. It requires educated, experienced employees to achieve results for consumers. Consumers in debt settlement programs have relatively large amounts of unsecured credit involved and want to work with experienced and knowledgeable representatives that can solve their problems; these consumers understand that they must pay for the valuable services provided by qualified service representatives. In order to deal with the FTC's proposed fee rules, debt settlement companies would be required to hire less experienced and less skilled employees for such important functions as underwriting, customer service, compliance, technology support and negotiations. This would result in fewer customer service representatives to answer questions from consumers, fewer and less experienced negotiators and greatly expanded risk that the consumer gets unsatisfactory results from their settlement program or subsequently again becomes excessively indebted. All of these steps required to save expenses would substantially reduce the value of the services that professional debt settlement companies provide to consumers and increase the likelihood that companies with unscrupulous business practices, the very practices our industry association has been trying to root out, will come to dominate the industry.

3. Requiring Success Contingency Fees Will Harm Competition

The proposed ban on so-called "advance fees" is likely to have a serious adverse effect on competition in the debt relief services industry. Many of the existing debt settlement companies will not be willing or able to operate on a contingency basis as the FTC proposes to require. By analogy, many lawyers would not be willing or able to provide services in negotiating a contract or defending a lawsuit if the only way that they could be compensated is through a success contingency arrangement. Such lawyers may reasonably decide that they do not want to have their compensation contingent on risks over which they do not and cannot control, like whether parties negotiating a contract would agree on the terms of the contract. Similarly, many debt settlement companies will not be willing to do business on a contingency basis where their compensation is entirely dependent upon circumstances that are not under their control (e.g., whether the consumer will save the settlement fund amounts). Further, debt settlement companies that receive compensation only upon success will need greater capitalization and resources to withstand temporary periods during which the volume of settlements completed may be reduced. Businesses that are compensated on a success contingency basis are also at risk that intervening events (such as government regulation or macro-economic conditions) will substantially alter the likelihood that they will be successful in negotiating settlements and thus get paid. All of these factors will greatly reduce the number of professional debt settlement companies that will compete in the marketplace.[14]

In addition, the FTC's proposal to require success contingency fees will adversely impact debt settlement companies to a far greater extent than it will impact credit counseling companies. Debt settlement companies have far greater costs and expenses across the board than do credit counseling companies, and measure success in a very different manner. Debt settlement companies are required to individually negotiate the amount of the debt settlement with creditors in an adversarial setting, which invariably involves multiple calls and significant paperwork over an extended period of time. In contrast, credit counseling companies establish pre-arranged DMPs that that are partially funded by the creditors. Additionally, debt settlement companies provide far more personal, individualized attention to each client than do credit counselors. This personalization means that a debt settlement company incurs significantly greater "up front" as well as ongoing costs than does a credit counselor. Thus, restrictions on compensation that prohibit payment to cover these expenses before "success" will impact debt settlement companies significantly more than credit counselors.

Once set up (a process that is very swift), DMPs are largely automated electronic payment services that require very limited human interaction. Because of this, the labor cost for a DMP is literally about one tenth of that of a similar sized debt settlement company. A debt settlement company with 30,000 clients would require approximately 400 – 500 employees to operate; a similar sized credit counseling agency administering DMPs would require less than 50 employees to operate. Furthermore, credit counselors typically

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[14] In fact, according to a survey of its members, TASC received responses that pointed to a drastic impact of an advance fee ban. Eighty-seven percent of respondents said that they would certainly or likely shut down, while 93% said they would certainly or likely have to lay off employees.

collect a portion of their total fees directly from creditors (the so-called "fair share" payment). Unlike credit counselors, debt settlement companies never receive compensation from creditors. This avoids a conflict of interest with the creditor, allowing debt settlement companies to negotiate more substantial total program savings for consumers compared to those achieved in DMPs, particularly since DMPs do not extend any reduction in principal owed. Since the proposed compensation limitations apply only to payments from the consumer, credit counselors would be free to accept greater "fair share" payments to defray operating costs before a successful result is obtained for the consumer. Debt settlement companies, in contrast, would be restricted from covering such operating costs because they accept compensation only from their consumer clients. For these reasons, the FTC's Proposal unfairly tilts in favor of credit counselors and will disrupt competition between debt settlement companies and credit counselors.

Any reduction in competition among segments of the debt relief services industry ultimately harms consumers. As a general matter, reducing competition means the consumer can choose from fewer types of debt relief services and is likely to pay more for what choices remain available. That is especially significant because certain kinds of debt relief services may be inappropriate for certain consumers. For example, for a consumer who is unable to make payments on a DMP, the option of being able to use the services of a debt settlement company in lieu of filing for bankruptcy can be very important. The debt settlement option is an important one for consumers who want to employ the services of an independent professional and are concerned about the conflicts of interest inherent when credit counselors are partially compensated through "fair share" payments or other consideration received from creditors or debt collectors. TASC submits that the FTC should take all steps reasonably possible to ensure that consumers are able to chose from a variety of debt relief services in order to select the one that may be the best based on the facts and circumstances of their particular situation.

The FTC should recognize that a ban on "advance fees" is a poor tool to address perceived problems in the debt relief services industry. It is not a cure all and does not in itself stop "bad actors" from continuing their operations. The FTC brought an action against a company in the case *FTC v. Better Budget Fin. Servs., Inc.*, No. 04-12326 (WG4) (D. Mass. 2004) wherein the company used a success contingency fee model and yet was found to be violating FTC Act prohibitions on unfair and deceptive trade practices. The FTC's proposal on fees will simply wipe out most of the legitimate companies who provide legitimate services and make it easier for illegitimate companies to operate without competition. TASC has clearly shown the value of settlement services provided by its members and (below) identifies alternative ways that regulators might address the perceived problems more directly and without harming desirable businesses. Indeed, the FTC's "advance fee" limit is likely to cause substantial reductions in employment opportunities for businesses that provide consumer benefits in the midst of one of the country's worst economic times since the Great Depression.

C. <u>There Are Better Alternatives to Address Regulatory Concerns Without Requiring Compensation Be Paid On A Success Contingency Basis</u>

According to the Proposal, the "advance fee" prohibition proposed by the FTC is necessary to protect consumers from the possibility that they will not obtain any benefit from, or may even be harmed by, the use of debt settlement services. However, this objective can be achieved much more directly, and without the inevitable adverse impacts on consumers, businesses and competition inherent in the FTC's proposal to establish a success contingency fee requirement.

To start with, the proposed limitations on misrepresentations in connection with the sale of debt relief services will address a substantial portion of the perceived problems. To the extent that a company advertises, but does not intend to actually provide, debt relief services, the prohibition at Section 310.3(a)(2)(x) of the Proposal already offers ample protection to consumers, as discussed above. In addition, a major portion of the problems identified by the FTC is that some debt relief service providers overstate the likelihood of success. This problem can be addressed directly and specifically by detailed requirements that any success claims must be substantiated by data in a specified manner and limiting claims of "up to" success rates unless the service provider generally has a requisite success rate.

Moreover, the concern that consumers purchasing debt relief services are unlikely to receive valuable services can be addressed most directly and effectively with two additional consumer protections, which TASC urges regulators to consider.

<u>First</u>, TASC recommends that regulators consider imposing requirements that debt relief service providers employ reasonable underwriting standards to determine the suitability of the offered debt relief services for a consumer, based on the consumer's individual facts and circumstances. As noted above, a company that uses reasonable underwriting standards will not attempt to sell debt relief services to all consumers irrespective of whether the services are suitable for the consumer. For example, requiring that a debt settlement services provider obtain current income and expense information, in addition to information about all debts owed by the consumer, not just those committed to the program, would enable a provider to assess accurately whether the consumer is, in fact, able to meet the demands of a debt settlement program. A suitability analysis performed for each prospective client would enhance retention rates by winnowing out those with a lesser likelihood of program completion. Indeed, suitability requirements have been used successfully in securities, insurance and other financial services industries to ensure that consumers are properly matched to the financial services being sold.

<u>Second</u>, TASC recommends that regulators consider imposing additional requirements on companies that merely market debt relief services, but do not provide them, such as Internet companies that merely act as lead generators. In particular, TASC suggests that such companies should not be able to advertise claims of experiences in settling debts unless the company discloses the provider whose experience it is advertising and that provider has appropriate data to substantiate the claims. TASC also suggests that such companies that do not actually provide debt relief services should be required to disclose that fact, clearly and conspicuously, in any marketing or sales activities. In other words, if a company merely brokers debt relief services, that fact should be disclosed in marketing materials.

These proposed consumer protections would differentiate debt relief service providers that operate fairly and reasonably from the companies the FTC believes are "fundamentally bogus" or do not provide services that are beneficial to consumers. At the same time, these protections would not involve regulating compensation methods or levels in the debt relief services industry, which must be avoided if possible because of the draconian consequences of such regulations on legitimate service providers.[15]

D. Any Success Contingency Fee Requirement Should Be Limited to Providers Who Guarantee Success

The Proposal by the FTC expressly solicited comment on whether the success contingency fee requirement should be limited to service providers who guarantee success or a high likelihood of success. While TASC generally opposes any success contingency fee requirement, it also believes strongly that if such a requirement is imposed, it must apply only to debt relief service providers that voluntarily choose to guarantee the success of a debt relief program.

As described above, a fundamental problem with a success contingency requirement is that it treats all debt settlement providers as if they guarantee success, when in fact the service offered by such providers is providing assistance to the consumer in settling the consumer's debt, but not guaranteeing it. In debt settlement, the consumer's own actions significantly impact their success in the program. Failure to save money or lack of discipline in saving may occur despite the best efforts of the company. Also, consumers routinely reject good and reasonable settlement offers despite the advice of the company.

An appropriate analogy is the lawyer that agrees to negotiate a contract for a client. Imposing a success contingency requirement essentially requires the lawyer to guarantee the success of the contractual negotiations notwithstanding that success is very heavily dependent on circumstances beyond the lawyer's control. As a general matter, providers should be free to offer their services and receive compensation for such services, and not be required to guarantee the success of the matter for which the services are provided in order to receive compensation.

As discussed above, the FTC should not mandate a success contingency fee limit structure because consumer already receive valuable debt settlement services from companies like TASC members under the current fixed fee pricing models widely in use.

[15] While it admittedly would be an ambitious effort, regulators also might consider requiring debt relief service providers to disclose their rates under clear and standardized rules, and with terminology common to all such providers. In the mutual fund industry, SEC rules require a mutual fund to disclose its investment return over certain specified time periods. Providers of debt relief services similarly might be required to disclose specified statistics regarding actual consumer experiences with the service providers, whether they involve debt settlement, credit counseling or bankruptcy programs. Debt relief service providers that do not in fact have success in their plans would be forced to disclose that fact to prospective consumers. Other debt relief service providers would have an incentive to increase the success of their resolution alternatives. Thus, such disclosures would improve competition, consumer choice and consumer awareness of plan risks. While there may be merit to an initial exploration of the feasibility of disclosing historical consumer experience with debt relief service providers, TASC believes very strongly that any such disclosures must apply even-handedly to all debt relief service providers and not merely to one segment of the industry.

However, if a debt settlement company **voluntarily chooses** to guarantee the success of a debt settlement program, a better argument can be made that the debt settlement company should not receive compensation until the company provides the promised services (i.e. the successful settlement of the consumer's debt). The key here is that the success contingency fee requirement should not apply to debt settlement companies that choose to provide services in a more traditional fashion where the companies agree to negotiate the settlement of the consumer's debt but not to guarantee the results of negotiations that are beyond their control. TASC respectfully submits that the most responsible debt settlement service providers do not and would not attempt to guarantee an outcome that is heavily dependent on the actions of others.

If the FTC pursues this alternative, it is important to make absolutely clear that debt settlement companies be allowed to advertise success rates (that are substantiated by appropriate data) without being subject to the success contingency fee requirement. Mutual funds regularly disclose historical investment return information along with an appropriate disclosure that historical data is not a guarantee of future performance. Debt settlement companies likewise should be able to disclose historical information on success rates, which will aid consumers in making informed decisions, without being deemed to have guaranteed particular results and becoming subject to a success contingency fee requirement.

V. The States Are In a Substantially Better Position than the FTC to Regulate Debt Relief Service Providers

A. Any Regulation of Fees Charged By Debt Settlement Companies Should Be Imposed Under State Laws and Not the TSR

The data set forth above demonstrates the benefits of debt settlement for consumers. Given this fact, the TSR is ill suited to regulate either the appropriate total price for these services or the portion of that price that may be collected before a debt is settled. Indeed, as discussed further below in Section VI, the FTC's role under the TSR is to prohibit "abusive" telephone practices and not to regulate rates charged for legitimate business. State legislative and regulatory bodies are much better suited than the FTC to make the policy decisions inherent in rate regulation.

The FTC correctly points out in the Proposal that many States already regulate debt settlement companies through the adoption of the UDMSA and other similarly purposed legislation. TASC is working with other States that are considering the adoption of such legislation. As noted above, many of these States and the UDMSA allow debt settlement companies to receive compensation before the settlement of a debt. After extensive deliberative efforts, the State legislatures in each of these States, as well as NCCUSL, recognized the need to allow debt settlement companies to receive compensation before a settlement actually occurs. The FTC should not attempt to override these determinations of State legislatures and regulators by imposing a Federal rule that all compensation must be contingent on the successful settlement of the consumers' debts.[16]

[16] The fact that the FTC's proposal to impose an "advance fee" limit on debt settlement services differs substantially from the position reached by State legislatures is in stark contrast to the similarity of positions that have been taken by various State legislatures and the Federal government on the imposition of such a limit on

State laws (and the UDMSA) provide significant other regulations that reduce the need to so stringently regulate the fees. The lengthy and comprehensive UDMSA includes regulation of the following areas:

- Licensing
- Insurance and bond requirements
- Criminal background checks
- Review of financial statements
- Accreditation
- Mandatory disclosures
- Mandatory written form for service agreements
- Fee restrictions
- Prohibitions
- Enforcement

With so many other protections in place that more relevantly and effectively regulate debt relief companies including debt settlement companies, the need to restrict fees so tightly is alleviated – legitimate and open competition can serve that end. TASC supports the UDMSA and other State laws that are in effect.

The FTC should not impose a Federal rate regulation structure on fees that duplicates (and is likely to conflict with) rate regulation at the State level.[17] Indeed, State regulation of fees charged by debt settlement companies is adopted under the premise that the State will establish the entire rate regulation of debt settlement companies, including all types of fees and other compensation, as well as the other specific rules that establish the risks and rewards of providing debt settlement services. An unintended and harmful result could occur if, for example, debt settlement companies are subject to the success contingency fee limits proposed by the FTC and also a State limit on other fees that a State adopted on the assumption that debt settlement companies could charge fees in advance of settlement.

B. State Regulation Offers Substantial Benefits Over Regulation by the FTC under the TSR

Regulation of debt relief service providers by the States offers substantial benefits over FTC regulation under the TSR for several important reasons. First, the FTC does not have jurisdiction over a substantial segment of the debt relief services industry and thus any regulation by the FTC would necessarily be incomplete and harm competition. Indeed, the FTC does not have jurisdiction over non-profit companies, under either the Telemarketing

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credit repair organizations. Congress and State legislatures have consistently determined that there should be an "advance fee" limit on credit repair organizations and thus the FTC's imposition of such a limit under the TSR is in line with these other policy determinations. See 15 U.S.C. § 1679b(b); see also, e.g., Cal. Civ. Code § 1789.13(a). In contrast, as noted above, States have consistently chosen not to impose an advance fee limit on debt settlement companies, and Congress likewise has not chosen to do so.

[17] The FTC's proposed intrusion into state regulation of compensation charged by debt settlement companies also is at odds with the principles of federalism recently reaffirmed by the Obama administration. See Memorandum for the Heads of Executive Departments and Agencies (May 20, 2009), *available at* http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Regarding-Preemption/.

Sales Act or its general authority to prohibit unfair or deceptive acts pursuant to the FTC Act, and non-profit companies historically have played a major role in the debt relief services industry. In contrast to the FTC, the States have the ability to craft regulations that apply to non-profit companies and thus the entire industry, and have demonstrated a willingness to use such authority. Thus, States have the ability to regulate the entire debt relief industry in a comprehensive manner and will not place one segment of the industry at a competitive disadvantage to another segment because of lack of regulatory authority.

Similarly, because the FTC has chosen to use the TSR to regulate the debt relief services industry, there are many transactions that cannot be regulated. Under the express terms of the TSR, the proposed regulations would not apply to consumers who obtain debt relief services entirely over the internet. Likewise, a consumer who visits a brick and mortar office would not be covered because the debt relief services are not provided over the telephone. On the other hand, State regulation of debt relief services is not limited to those that are provided by telephone and thus the consumer protections can be provided to consumers who obtain debt relief services in any manner.

Finally, State regulation of debt settlement companies is a far superior method to FTC regulation under the TSR as a method to root out any abusive practices by debt settlement companies. State regulation of debt settlement companies is far more hands-on and almost always includes licensing of the companies. The licensing process includes disclosure and review of all relevant aspects of the subject company, including marketing materials, criminal background checks, review of financial statements and bonding requirements. In addition, once licensed, debt settlement companies may be subject to regular audits to identify any compliance problems, and are responsible for maintaining robust consumer complaint procedures. State regulators also have broad enforcement powers to address misconduct by licensed entities. These general processes, which are implemented on the level of the individual licensees, are more effective at identifying particular problems that may arise and ameliorate the need for a broad compensation rule that assumes that all consumers are unlikely to receive services from debt settlement companies.

VI. The Proposal Exceeds The FTC's Rulemaking Authority Under The TSA.

The FTC has issued the Proposal as an amendment to the TSR, relying on its rulemaking authority under the TSA. However, the Proposal plainly exceeds the FTC's authority under that statute. Indeed, as discussed more fully below, the FTC itself has recognized the limitations on its rulemaking authority, testifying before Congress in support of new legislation that would permit the FTC to, among other things, comprehensively regulate debt settlement services.

To the extent that the FTC seeks to regulate business practices of the debt settlement industry that are not regulation of telemarketing, such regulations can only be grounded in Section 5 of the FTC Act, 15 U.S.C. § 45. As the FTC has acknowledged in recent testimony before Congress, rulemaking to regulate the debt settlement industry generally must follow the procedures set forth in the Magnuson-Moss Act (Section 18 of the FTC Act, 15 U.S.C. § 57a), or be based on separate Congressional authority, as in the case of the virtually identical rules proposed by the FTC with respect to mortgage relief services. As discussed

below, proceeding under Section 5 has the important procedural benefit of providing an appropriate means to develop the factual record to be able to assess the value of services provided, and thus the need to regulate compensation received, by debt settlement companies. In the alternative, seeking (and then acting pursuant to) specific authority from Congress to issue regulations in this area is highly desirable because it would allow the FTC to regulate **all** debt relief providers (including non-profits and non-telephone providers) and minimize the creation of competitive advantages for certain segments of the industry because of a lack of jurisdiction over them.

A. Scope of the TSA.

Under the TSA, the FTC is directed to "prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing act or practices." 15 U.S.C. § 6102(a)(1). The statute then continues by directing the FTC to include a number of specific items in its regulations, such as: deceptive charitable solicitations, § 6102(a)(2); coercive or abusive patterns of telephone calls, § 6102(a)(3)(A); restrictions on hours when calls can be made, § 6102(a)(3)(B); prompt and clear disclosures relating to goods and services sold by telemarketing, § 6102(a)(3)(C); and disclosure of the purpose of charitable telemarketing solicitations, § 6102(a)(3)(D). Telemarketing is defined broadly by the statute, but plainly is grounded in the use of telephone calls to sell goods or services:

> The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of good or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call.

15 U.S.C. § 6106(4).

The fundamental limitation on the FTC's rulemaking authority under the TSA is – as reflected in the very name of the statute – that the regulations must relating to deceptive or abusive **telemarketing** acts or practices. The purpose of the statute, and of the regulations issued pursuant to the statute, is to regulate telemarketing. Telemarketing was recognized by Congress to raise particular concerns not found with other types of marketing activities. For example, telemarketing intrudes on privacy interests of consumers, because the telemarketer reaches into the home of the person being solicited. Telemarketing can also create a heightened opportunity for certain types of fraud, given the absence of face-to-face interaction. For these reasons, Congress gave the FTC specific authority to regulate telemarketing under the TSA. Congress did not grant the FTC broader authority, under the TSA, to regulate commercial practices generally – that power presently is found only in the FTC Act. Nor did Congress invite the FTC to expand the reach of the TSA to cover any and all business practices merely because a telephone is used to conduct the business.

B. The Proposal Exceeds the Scope of the TSA.

The Proposal clearly is not grounded in the regulation of telemarketing. Neither the allegedly deceptive or abusive acts identified by the FTC, nor the purported rules to be implemented by the Proposal, relate specifically to telemarketing.[18]

First, the acts and practices identified by the FTC as problematic are not part of, nor in any reasonable way related to, telemarketing. The FTC complains that debt settlement providers provide inaccurate claims about the success of settlement programs, such as the percentage of debts that will be reduced, the time period for the reduction, the cessation of collection calls and lawsuits, and claims about the qualifications and abilities of the settlement company and its employees. See, e.g., 74 Fed. Reg. at 41,995. But as the Supplementary Information to the Proposal properly points out, any such allegedly deceptive claims are made almost exclusively in "radio, television, and Internet advertising." 74 Fed. Reg. at 41,993; see also id. at 41,994 (specifying improper claims and deceptive omissions in "Debt settlement **broadcast advertising**...." (emphasis added)).

Similarly, the FTC also raises the issue of whether it is "abusive" for debt settlement companies to receive payment for services before the settlement of a debt is consummated. 74 Fed. Reg. at 41,994-95. The fee structure, however, has nothing to do with **telemarketing**. Precisely the same issues (if any) are presented whether a debt settlement company provides services to consumers in person at a brick and mortar location or over the telephone, and these purported issues flow directly from the FTC's misperceptions and misstatements regarding the success rates of that debt settlement programs.

Second, the Proposal's amendments to the TSR are not designed to change telemarketing practices, but rather to undertake general regulation of the underlying debt settlement business by outlawing a critical part of the existing industry business model – the manner in which most debt settlement companies charge for their services. Through the proposed amendments, the FTC has proposed *not* to regulate the telemarketing activities that debt settlement providers can undertake, but rather to regulate the underlying business model whenever any communication takes place by telephone. It is the substance of the debt settlement business, not the related telemarketing activity, that the FTC seeks to regulate.

Rather than seeking to address or regulate telemarketing practices, the Proposal uses the incidental involvement of a telephone conversation as a hook to regulate the substance of the underlying business. Indeed, the Proposal takes the extraordinary step of purporting to regulate not only out-bound telemarketing activities of debt settlement companies, but to regulate business conducted by such companies if a consumer calls in response to a newspaper, radio or television advertisement. The FTC has not even suggested that there is an adequate basis on which to distinguish in-bound calls to debt settlement companies in contrast to in-bound calls to other businesses that are not subject to similar regulation under the TSR. Moreover, under this unwarranted view of TSA regulatory authority, the FTC presumably could regulate compensation received by any business merely because the business uses a telephone to communicate with its customers. Such an interpretation of FTC

[18] Perhaps most importantly, it is difficult, if not impossible, to understand how the methodology for charging consumers for services can constitute a "telemarketing" practice to be regulated under the TSR.

authority under the TSA is far outside both the language of the statute and the purposes for which it was enacted.

The FTC's regulatory approach under the TSA is fundamentally flawed for yet another reason. The FTC apparently takes the position that it can regulate compensation received by debt settlement companies because consumers, they assert, are not sufficiently likely to receive debt settlement services and, therefore, any telemarketing of the service is necessarily a fraudulent practice. As amply addressed elsewhere in this letter, any such contention is both false and totally unsupported by the record. The FTC has the burden to come forward with clear and convincing evidence to support this allegation, which it has plainly failed to do. (Supra at Sections IIC, IVA). TASC's survey data show that debt settlement provides benefits to a significant proportion of consumers who utilize the service. (Supra at Section IIC). Selectively relying on limited anecdotal information obtained in a very small number of dated enforcement actions in disregard of extensive data supplied by TASC and others regarding industry operations and practices is both arbitrary and capricious. Indeed, the industry welcomes a reasoned debate regarding the manner in which the debt settlement industry should be regulated to protect legitimate consumer interests; it is simply untenable and categorically wrong for the FTC to assert that consumers do not regularly receive services from debt settlement companies that provide substantial benefits.

C. Jurisdiction for FTC Action Presently Can Be Found Only in the FTC Act.

The conclusion that Congress did not intend the FTC to have broad authority under the TSA to regulate general unfair business practices merely because the business uses a telephone is compelled by the fact that Congress gave that precise agency such general authority under a different statute – Section 5 of the FTC Act, 15 U.S.C. § 45. That statute gives the FTC power concerning "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce...." 15 U.S.C. § 45(a)(1). This broad authority is not limited to a particular form of communication or marketing, or a specific industry. It stands in sharp contrast to the language of the TSA, because that latter statute focuses on **telemarketing**. It is both counter-intuitive and illogical to read the language of the TSA in an exceedingly unnatural manner simply to provide the FTC with redundant authority over debt settlement services, when it already has such authority under Section 5 of the FTC Act. Indeed, the FTC has previously relied upon its Section 5 power – not the TSR – to bring enforcement actions against wrongdoing in the debt settlement area.[19]

The Proposal reflects an attempt by the FTC to utilize its rulemaking authority under the TSA in a manner inconsistent with Congressional intent. The FTC's authority to enact "unfairness" regulations is grounded in Section 5, and the FTC Act requires the FTC to follow specific substantive and procedural due process protections when exercising that authority. In this matter, in addition to the use of the authority in this attempt to regulate an

[19] None of the FTC's prior enforcement actions against debt settlement providers have asserted that a debt settlement company engaged in "abusive" practices under the TSR. Only one – *FTC v. National Consumer Council* – even raised any claims under the TSR, and those claims were specifically related to **telemarketing**. In particular, the FTC alleged that the defendants improperly called consumers on the do-not-call list, and made false representations in telemarketing solicitations. See Complaint in *FTC v. Nat'l Consumer Council*, No. SA CV 04-0474 CJC (JWJx) (C.D. Cal.), filed Apr. 23, 2004, ¶¶ 74-80.

industry – debt settlement – rather than specific telemarketing activity, the FTC uses **precisely the same** analysis to determine whether practices are "abusive" under the TSR as it uses to determine whether practices are "unfair" under Section 5 of the FTC Act. Thus, in analyzing the scope of "abusive telemarketing acts or practices," the FTC uses its "traditional unfairness analysis" – the familiar three-part test originally announced by the FTC in the 1980s, as developed under Section 5. 74 Fed. Reg. at 42,005. The FTC has not offered any reasonable basis for its implicit assertion that Congress meant those very different words in Section 5 of the FTC Act to mean the same thing as the language in the TSA, or that the scope of "abusive" practices that Congress intended to proscribe in the TSA were precisely the same as the "unfair" practices prohibited by Section 5. This is not surprising because the FTC's interpretation of the TSA largely seems to derive from its overreaching attempt to use the TSA as a substitute for its authority under the FTC Act because of the substantive and procedural limitations on the agency's authority under Section 5.

D. Rulemaking Under the FTC Act is Subject to the Magnuson-Moss Act.

The FTC should not be permitted to circumvent clear Congressional intent to circumscribe the FTC's authority to declare business practices "unfair" by the necessary and appropriate oversight mechanisms reflected in the Magnuson-Moss Act. It must be remembered that the Magnuson-Moss Act arose out of widespread Congressional dissatisfaction with the previously unchecked use by the FTC of its authority to define "unfair" practices under Section 5. Among other things, Congress recognized the extraordinarily broad potential application of the concept of "unfairness" and the potential that the FTC might inappropriately "legislate" ordinary business practices through the vaguely defined doctrine and effectively substitute its judgment for policy matters appropriately left to Congress or the marketplace. As a result, the protections of the Magnuson-Moss Act were enacted, including protections requiring significant fact-finding in support of any proposed FTC action, as well as an administrative process that would allow interested parties that would be covered by the FTC's rules a fair opportunity to present facts to support their positions and prevent the FTC from summarily adjudicating matters of vital importance against an industry.

Importantly, the Magnuson-Moss protections apply only to "unfairness" actions under the FTC Act and not to the proper exercise of regulatory authority under the TSA. Thus, the FTC has clear incentives to wrongfully invoke the TSA regulatory authority, which allows ordinary notice-and-comment rulemaking under Section 553 of the Administrative Procedures Act ("APA"). 5 U.S.C. § 553. However, the FTC should not be allowed to avoid the important limitations on FTC rulemaking authority in the Magnuson-Moss Act in circumstances in which the FTC is seeking to regulate general commercial practices such as those described in the Proposal that would govern the manner in which debt settlement companies can be paid. Those procedures were chosen by Congress to govern the FTC's exercise of the broad authority conferred by it under Section 5. They cannot be cast aside by the FTC as an inconvenience because they impose a procedural burden – nor can they be evaded by an ill-considered attempt to expand the scope of another statute.

We also note that the FTC's own testimony before Congress has recognized that its authority to enact regulations comprehensively covering the debt settlement industry is

governed by the Magnuson-Moss procedures and thus the Congressional intent described above. In a prepared statement for a hearing before a Congressional subcommittee in March 2009, the Commission explained:

> The FTC also believes that it could do more to assist consumers if it could use APA [§ 553] notice and comment procedures to promulgate rules for those entities under the Commission's jurisdiction for unfair and deceptive acts and practices related to financial services other than mortgage loans.

Prepared Statement of FTC, "Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public," before the House Committee on Energy & Commerce, Subcommittee on Commerce, Trade and Consumer Protection (Mar. 24, 2009), at 22-23. In the same statement, the FTC specifically outlined debt settlement as one of the financial services areas in which it believed there may be abuses, id. at 17-19, apparently seeking greater and more flexible regulatory power to respond to such abuses. Similarly, in testimony before a Senate committee, Commissioner Pamela Jones Harbour both (1) specifically identified debt settlement as an area of concern to the FTC, and (2) explained the FTC's desire for streamlined rulemaking authority to enable the agency to address its concerns. Statement of Commissioner Pamela Jones Harbour, Hearing, Committee on Commerce, Science, and Transportation, S. Hrg. 111-33 (Feb. 26, 2009), at 10-12, 12013.

Congressional authority is needed for the type of rule making the FTC is attempting in the Proposal, if the FTC is not going to comply with the protections of the Magnuson-Moss Act. This fact is illustrated by the recent action by Congress to authorize substantially similar rules with respect to mortgage loans (as opposed to unsecured loans), particularly with respect to foreclosure rescue scams. Congress granted that authority, as part of the 2009 Omnibus Appropriations Act (H.R. 1105), and expressly permitted the FTC to proceed under the general provisions of the APA rather than the Magnuson-Moss Act. Likewise, the need for special Congressional authority for the FTC to proceed without Magnuson-Moss Act protections is shown by the Obama administration's proposal, as part of its financial regulatory reform proposal, to amend the FTC Act to repeal the Magnuson-Moss provisions entirely so that the FTC would have notice-and-comment authority under Section 5.[20] However, Congress has not yet granted the FTC notice-and-comment rulemaking authority under Section 5, nor has Congress granted the FTC power to issue notice-and-comment regulations specifically concerning debt settlement. Unless and until that happens, Section 5 rulemaking on debt settlement issues is subject to the Section 18 procedures and the FTC cannot circumvent those important Congressionally mandated protections by attempting to adopt the amendments to the TSR that are at issue in the Proposal.

This summary notice and comment process by the FTC (which does not follow Magnuson-Moss Act procedures) is especially inappropriate here. As discussed above, the

[20] The administration's proposal would also create the Consumer Financial Protection Agency ("CFPA") which, under the recent version of the legislation circulated by Rep. Barney Frank, would assume the authority to regulate debt settlement services.

process the FTC has chosen for the Proposal has resulted in a wholly inadequate time period for public comment. The public record on this issue simply cannot be properly developed with the comment period that has been provided. Such a record is particularly important here, where the basis of the FTC's proposal to ban "advance fees" is grounded entirely on factual issues relating to the benefits of debt settlement services. The debt settlement industry should not be placed in the position of disproving the unfounded assertion that its services are not sufficiently valuable in order to avoid ruinous price regulation. As importantly, it is unfair to place the industry in the completely untenable position of having to do so in an unreasonably short period of time in the very short comment period for the Proposal and force it to submit data that has been developed without adequate time to ensure accuracy and completeness. The Magnuson-Moss procedures, as Congress intended, would provide the necessary opportunity to develop the record, and for the FTC to consider and enact appropriate regulations.

In sum, the Proposal should be withdrawn because it exceeds the FTC's authority under any possible reading of the TSA. If the FTC determines that regulation of the debt relief services industry is appropriate, it should initiate Section 5 rulemaking pursuant to the Magnuson-Moss provisions of Section 18 by filing an Advance Notice of Proposed Rule Making.[21] If the FTC insists on proceeding with regard to the Proposal, the comment period should be extended by a minimum of 120 days to increase the likelihood that interested parties can meaningfully participate in the notice and comment process and protect their respective interests from the very significant impacts of the Proposal.

* * *

Please contact us if you have any questions about our comments or we can be of any further assistance.

Sincerely,

Andrew Housser
for
The Association of Settlement Companies

[21] The Proposal should also be withdrawn because it infringes on the protections afforded by the First Amendment of the Constitution. It would limit the ability of debt settlement providers to communicate with their customers in a truthful and non-deceptive manner. While commercial speech may be subject to greater government regulation that other forms of speech, there are, nevertheless, limits on the intrusion that laws and regulations can make. In particular, the Proposal is far from the least intrusive means by which the FTC can address the concerns identified. For example, TASC has identified a number a number of more direct ways that the FTC could address any concerns about the likelihood that consumers will receive valuable services, without the dramatic adverse on the ability of debt settlement companies to communicate with customers and potential customers. Moreover, the Proposal is defective because it singles out debt settlement providers who happen to communicate by telephone for expansive regulation of their commercial speech, while not touching other providers (who may, for example, communicate by internet or in person). There is no basis for such disparate treatment.

EXHIBIT A

The Association of Settlement Companies

TASC™ Standards for Preferred & Accredited Members

I. SCOPE

The goal of this document is to establish Industry Standards for members of The Association of Settlement Companies (TASC™). With this goal in mind, TASC™ recognizes the differences in the practices of potential TASC™ member companies and specifically includes Principal Members as the following:

a) a member company who markets and sells a debt settlement program;
b) a member company who provides customer service and negotiation; and
c) a member company who provides markets and sells a debt settlement program and provide customer service and negotiation.

In addition, TASC™ also recognizes Members as vendors who sell, provide or offer to provide goods or services to Principal Members and Industry Alliance Members who work in conjunction with the debt settlement industry in some manner.

The following Standards apply to all Principal Members. These Standards include the TASC™ Member Licensing Agreement, the TASC™ Disclosure Document and the TASC™ Web Disclosure Document, all of which are attached. Member adherence to these Standards will be noted by one of two designations; Preferred or Accredited. The designations are defined below in Section II, Definitions.

All Preferred and Accredited Members and their Representatives shall adhere to the standards required of their designation at all times while engaging in the business of providing Debt Settlement Services to consumers. Failure to do so can result in the cancellation of the TASC™ membership.

II. DEFINITIONS

Accreditation:
A process conducted by an independent third party accreditation and/or certification company approved by TASC™ to demonstrate a member's adherence to these Standards. Members must comply with a minimum yearly accreditation review process by the above mentioned independent third party accreditation and/or certification company.

Accredited Members:
Member companies will be known as Accredited Members and (subject to the terms and conditions of logo usage) will be able to display the TASC™ Accredited logo on informational and marketing materials once their materials and operations have been Accredited by an approved independent third party accreditation company. This Accredited status must be renewed annually.

Members:
Any TASC™ member, whether an individual or an entity, currently operating as a Debt Settlement Services Provider.

Affiliate Members:
Affiliate Members are companies providing front end services to a backend TASC member company. To become an affiliate member, you must already be associated with a backend TASC company and you must list the name of the backend company on your application.

Vendor Members:
Vendor Members are companies providing services to debt settlement companies such as lead generation, software, legal services, etc.

Industry Alliance Members:
An Industry Alliance Member works in concert with the debt settlement industry in some manner. This membership includes creditor, collector and debt buyer companies, settlement software companies, credit card marketing and card industry companies and others associated in some manner with the debt settlement industry. An Industry Alliance member is actively looking to effect positive interaction among all parties while supporting TASC standards and guidelines.

Cancellation/Termination:
Used interchangeably, both "cancellation" and/or "termination" shall be collectively herein referred to as "cancel", "cancelled", or "cancellation". This refers to any point in time, following the right of rescission period, in which either the Member or its Client gives notice to the other of their intent to end the agreement or program.

Creditor:
A creditor or creditors is defined as a person or entity allegedly owed a debt by a consumer. This may include authorized representatives of the creditor, and any other person or entity that has lawful authority to collect such alleged debt or account.

Customer or Client:
Any consumer(s) that contracts with or otherwise agrees to obtain debt settlement services from a Debt Settlement Services Provider.

Debt Settlement Services:
Offering to negotiate or negotiate a compromise to reduce the unsecured debt obligations or the credit extended by others between a client and a creditor to less than the full principal amount owed. These services may also include financial educational materials, advice, and customer service throughout the term of the program.

Debt Settlement Services Provider:
Any individual or entity who advocates on behalf of consumers in financial distress by providing or offering to provide debt settlement services.

Fee or Fees:
The good and/or valuable consideration given to a Debt Settlement Service Provider by or on behalf of a Client.

Members:
All Principal or Associate Members who are current in their monthly TASC™ membership dues and are in compliance with all other membership requirements.

Principal Member:
Any TASC™ member, whether an individual or an entity, currently operating as a Debt Settlement Services Provider.

Standards, Policies, Procedures:
Written measures, conditions, actions and parameters of conduct adhered to by Preferred and Accredited Members and their Representatives to avoid any discrimination or disparity of provided services.

Principal Location:
The primary physical location which includes the Member's name, physical address, and telephone number associated with that physical address.

Program:
The system of Debt Settlement Services specific to a Client will be known as a Program. It shall not be called a Plan because neither the time nor the needed amount for settlement can ever be guaranteed.

Rescission Clause:
A clause that allows clients to cancel the program without financial penalty within three (3) days of signing the contract is called a Rescission Clause. This Clause should be located in the immediate proximity of the Client's signature block within the master contract. It should include the following statement; **"You may rescind this agreement without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the agreement."**

Representatives:
All member officers, directors, employees, agents, affiliates, contractors and sub-contractors related to providing Debt Settlement Services.

Third Party Accreditation Company:
An entity that offers an accreditation program approved by TASC™.

Vendor:
Any individual or entity that markets, sells, provides or offers to provide goods or services to Principal Member entities or other entities in the debt settlement services industry.

III. BASIC REQUIREMENTS

a) Members are companies (subject to the terms and conditions of logo usage) who will be able to display the TASC™ logo on approved informational and marketing materials upon joining TASC™ and who have agreed to submit written company materials to TASC™ representatives for verification of membership. This review will determine if the company's written materials adhere to these standards. A member company that fails to submit information for such approval, or whose materials indicate non-compliance with these standards, shall not be allowed to display the TASC™ approved logo.

b) All Members and their Representatives shall comply with all Federal and State laws, regulatory opinions, rulings and determinations including, but not limited to the privacy of Client's personal confidential information and company registration as required by applicable State law.

c) All Members shall maintain a fixed "brick and mortar" location.

d) All Members shall make available on their websites a street address for their headquarters, a main telephone number, an email contact address and the TASC™ Web Disclosures Document.

e) All Members shall have written agreements with all Clients which include the official and approved TASC™ Disclosure Document and the written requirements described under the CLIENT AGREEMENT section below
f) All Members shall be open for business a minimum of 40 daytime business hours Monday through Friday and will post their hours of operation clearly on their website.
g) All Members shall have formal and continual training for each of its applicable staff in Sales, Operation, Negotiation and Customer Service which will include access to a copy of the Fair Debt Collection Practices Act.
h) No Member shall direct a potential or current client to stop making monthly payments to their creditors.
i) All Members shall offer and apply Debt Settlement Services to all individuals in a nondiscriminatory manner.
j) All Members shall advocate the needs on behalf of their clients while conducting themselves in the highest ethical standards and practices.
k) A TASC member company may not offer credit repair, loan modification or pay day lending services in conjunction with debt settlement services. The TASC logo can not be displayed on any website except a TASC member company website or domain name.

IV. CLIENT AGREEMENT

All Members shall provide the client a copy of the Client Agreement and maintain a copy of the agreement for a period of three (3) years after the client either completes or terminates the program. All Client Agreements shall include:

1. The TASC™ Disclosure Document.
2. A comprehensive list of every debt at the time of enrollment including the Creditors' names and identifying information.
3. The approximate total of all such debts.
4. The total amount of all fees, or the method for calculating such fees, to be paid by the Client to the Member or to any other person, over the term of the agreement.
5. The estimated amount of money needed to fund settlements.
6. The estimated number of installments necessary to fund the Program.
7. The name, physical address and telephone number of the Member.
8. A description of the services to be provided by the Member.
9. Clearly defined cancellation policies and procedures.
10. A clear and conspicuous rescission statement in the contract with the heading 'Notice of Rescission' and an accompanying form for such rescission. This form will contain instructions on how to communicate with ease the client's decision to rescind the agreement.
11. The full legal name and legal address of the Services Provider.

12. The Client Agreement containing all of the above terms must be reviewed by a company representative for appropriateness and completeness and signed by the Client.

V. MARKETING STANDARDS

a) All Members shall publish on all websites owned by the Member the appropriate TASC™ logo with the link to the published TASC™ Web Disclosure Document and will ensure internally that the link is active.
b) No Members shall engage in any sales or marketing that uses any unfair or deceptive representations including unsubstantiated performance or savings statements. Unsubstantiated statements are those that cannot be supported by objective and unbiased data for the industry and/or the Member.
c) All Members and their Representatives shall only provide Debt Settlement Services to a Client who is qualified based upon the financial review of the information provided by the client.
d) All Members shall disclose verbally to a prospective client all the prescribed TASC™ disclosures prior to any signing of a Client Agreement.

e) All Members shall conduct an initial comprehensive review of a consumer's debts and his/her monthly budget.
f) All Members shall describe the methodology of the Debt Settlement program to each potential client so that he/she can make an informed decision as to whether or not a debt settlement program is a viable and affordable option.
g) All Member advertising content (and data supporting the claims made) shall be saved for a minimum of five years.
h) TASC™ strongly recommends and encourages all Members to provide discounted and/or free debt settlement services to consumers who otherwise will not be able to afford their services.

VI. FEES

All Fees shall be in compliance with state law when applicable and in other instances shall be fair and reasonable.

VII. FINAL ACCEPTANCE

Members must fully evaluate prior to final acceptance of each Client Agreement that a Debt Settlement Program is an affordable and viable option for each potential client.

VIII. SERVICING THE CLIENTS AND SERVICE DELIVERY PROCEDURES

Members shall have written policies and procedures that include, but are not limited to, the following elements:

a) Job descriptions for all hourly and supervisory personnel;
b) Days and Hours of operation;
c) Methods of communication with Clients;
d) Guidelines for timeliness and accuracy of service;
e) The maintenance of records in a retrievable format;
f) The documentation of communications with Clients and actions taken on their behalf;
g) An internal client dispute resolution policies and process that provides for prompt resolution of any Client dispute;
h) The process to be used to measure the performance of client service and service delivery
i) The acceptable benchmark for the above performance ;
j) The feedback communication of the above performance to staff and managers
k) The establishment of a performance improvement review process; and
l) Written procedures to prevent unauthorized access to or misuse of a Client's confidential information.

IX. NEGOTIATION OF CLIENT DEBTS

All Principal Members except those involved solely in marketing or selling a debt settlement program shall demonstrate their ability to achieve settlements of consumer debt that are mutually agreeable to both Clients and Creditors if the Member has been in business for more than 1 year.

Members shall have in place and written documentation of:

a) A process to obtain a Client's approval for each settlement unless the authority to settle a client's debt is provided for by contract or by statute.
b) An internal procedure for the periodic review of a Client's progress through its Program.
c) The procedure to obtain written settlement agreements that contains language of final debt forgiveness or satisfaction before payment is made to the Creditor.
d) A written procedure describing the necessary steps for handling an account in which the creditor is represented by an attorney.
e) The process to notify the Client or to ensure Creditors are paid on or before the due date(s) set forth in the settlement terms.
f) The internal procedure to provide Clients with copies or access to copies of each settlement agreements achieved and if applicable, proof of payment.

X. CREDITORS

Principal Members shall:

a) Establish Creditor Policies and Procedures and adhere to their own set of systems of communications with creditors. This system shall include standards for response time to communications from various creditor inquiries.
b) Be open to creditor inquiries and have readily available by phone and in writing an explanation on how debt settlement works.
c) Not receive compensation in any form or manner from a Client's creditors for handling that particular client's creditor account.

XI. CLIENT FUNDS

No Principal Member shall receive money directly from a client or exercise direct control over funds of a client for the purpose of distributing payments to or among one or more creditors of the client in full or partial payment of the client's obligations. If the client has entered into an agreement with a third party as part of his/her savings program, any funds held, escrowed or distributed by a third party will be for the purpose of settling the debts of the client with the intended creditor(s) or for the payment of certain fees (i.e. settlement savings fees) specified in the Client Agreement.

XII. INSURANCE COVERAGE

Members shall maintain reasonable insurance coverage or surety bond to protect the Member, its employees, and Clients as required by the applicable state law.

XIII. RESELLER AND SUBCONTRACTING REQUIREMENTS

Members shall adopt policies and procedures to ensure that subcontractors, with whom they contract, comply with all applicable standards and take appropriate action to remedy any non-compliance.

XIV. RECORD KEEPING REQUIREMENTS

All Members shall:

a) follow a record retention policy that ensures records of all Client contracts and transactions including those stored electronically are preserved for a minimum of three (3) years from the date the Client completes or otherwise terminates the Member's Program;
b) maintain a record keeping system to account for all client contacts and transactions;
c) prevent records from being altered or destroyed;
d) provide policies and procedures for correcting erroneous information in records;
e) safeguard records from damage or deterioration;
f) recover or reconstruct damaged or deteriorated records; and

g) protect records from unauthorized access.

XV. PERIODIC REVIEW

a) Members shall be reviewed for compliance with approved Standards at a time and place at the discretion of TASC™.

b) Membership status shall be reviewed annually by TASC™.

EXHIBIT B

This company is a Member of The Association of Settlement Companies and as such has agreed to publicly disclose the following on each of their websites and as part of their contract with consumers. Should you wish to comment on their use or avoidance of this disclosure please email ClientCare@TASCsite.org with your contact information and the nature of the complaint.

DISCLOSURE STATEMENT

< Company Name> provides consumers with a method of debt resolution known as debt settlement. The goal you have set is to negotiate mutually agreeable settlements between you and your creditor(s) for payment of certain unsecured debt.

BY SIGNING BELOW, YOU ARE STATING THAT YOU UNDERSTAND ALL THE ISSUES BELOW:

1. You are enrolling into a debt settlement program after voluntarily seeking the assistance of < Company Name>.
2. You will be responsible for saving sufficient program funds in your own account.
3. The savings program that you have made to reach your debt settlement goal is detailed in your Client Agreement. Actual settlement amounts, necessary savings and the period required to reach your goal may vary based on creditor polices and actions and other factors.
4. Most creditors and collectors negotiate with Debt Settlement Service Providers, < Company Name> cannot force the negotiations and cannot force creditors to accept a settlement. If negotiations are not successful, you could be called upon to pay the entire balance.
5. < Company Name> does not make regular monthly payments to your creditors. You have stated that you are unable to meet the minimum payments required by your creditors. If you do not make required minimum payments to your creditors you may be breaking the terms of your agreements with them and your actions will probably be reported to consumer reporting agencies as late, delinquent, charged-off or past due balances. This may have an adverse effect on your credit report and credit score.
6. Your creditors may continue collection efforts on delinquent accounts. Such collection efforts can include phone calls and letters to you, charging off the account, sending accounts to collection agencies or attorneys, lawsuits and even garnishments of your wages if a judgment has been obtained.
7. Your account balance may continue to grow as your creditor adds accrued interest, late fees, over-limit fees and penalties.
8. The fees paid to < Company Name> are intended to compensate them for their efforts and will only be refundable to the extent they have not been deemed to have been earned in the manner described in the Client Agreement.
9. Communications with creditors are handled on a case by case basis. In some instances creditors may not be contacted until several months after you enroll. When your creditor settles a debt, a savings of $600 or more off what you owed may be reported by your creditor to the IRS as Discharge of Indebtedness income and you may have to pay taxes on that amount.
10. You acknowledge that the company is not a law firm and cannot provide legal advice.
11. You understand that you have the responsibility and the right to communicate my comments directly to the company's management using the information provided below:

Company: ______________________________ Address: ______________________________
Phone Number: __________________________ Email: ______________________________

Furthermore, upon request you will receive from the Company the grievance policy and refund procedure. Finally, you have a right to report any concerns directly to TASC via email: Clientcare@tascsite.org

______________________________ ______________________
Client's Signature Date

______________________________ ______________________
Co-Client's Signature Date