



Federal Trade Commission

CONSUMER PROTECTION AND THE DEBT SETTLEMENT INDUSTRY: A VIEW FROM THE COMMISSION

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before

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I. INTRODUCTION

My remarks today will be about consumer protection challenges in the debt settlement industry. To begin with, though, I'd like to engage in some "straight talk" from Washington about the credit situation in the U.S. today, and how we got here.

You all know about the "subprime lending" that has occurred, and the foreclosure crisis it has partially spawned. With the downturn in the economy and record job losses, credit card debt is said to be emerging as the next financial crisis.² According to the Federal Reserve Board's

¹The views expressed herein are my own, and do not necessarily represent the views of the Federal Trade Commission or any other individual Commissioner. I would like to express my appreciation to Carolyn Hann, my attorney advisor, for her contributions to this speech.

²See "Consumers Feel the Next Crisis: It's Credit Cards," Oct. 29, 2008, *The New York Times*, available at:
<http://www.nytimes.com/2008/10/29/business/29credit.html?scp=10&sq=credit%20card&st=cse>

most recent estimate, American consumers carry approximately \$973.6 billion in revolving debt.³ As troubled borrowers fall behind on their payments, many creditors anticipate substantial defaults on credit card debt this year.⁴

Whose fault is it that we Americans have borrowed too much money – whether for houses, tuition, cars, or for other goods or services? It’s not the for-profit debt settlement firms. Not surprisingly, the industry offering debt settlement services to consumers has grown exponentially, from about a dozen firms 10 years ago to at least 500 to date.⁵ To be sure, a number of debt settlement scams are now occurring, and I’ll get to those in a moment. But they didn’t cause the credit bubble in the first place.

Neither, arguably, is the American consumer to blame. To the contrary, for years, we were told American consumers were the engine driving our economic prosperity. Consumers just did what they were told – spend, spend, spend. Consumer confidence and same store sales, especially at Christmas, were touted. And if consumers needed to borrow money to do it, that money was there: mortgage loans, home equity loans, and credit card credit were abundant.

³See Federal Reserve Board, G.19 Statistical Release (released Mar. 6, 2009) (preliminary estimate), *available at* <http://www.federalreserve.gov/releases/G19/Current/>(last accessed Mar. 23, 2009).

⁴“Credit Card Companies Willing to Deal Over Debt,” Jan. 2, 2009, *The New York Times*, *available at* <http://www.nytimes.com/2009/01/03/business/03collect.html>.

⁵“Desperate Debtors are Ripe Targets; Promises to Wipe Credit Slate Clean Often Prove Empty,” Aug. 3, 2008, *Chicago Tribune*. *See also* “Look Out for That Lifeline: Debt-Settlement Firms are Doing a Booming Business – and Drawing the Attention of Prosecutors and Regulators,” Mar. 17, 2008, *Business Week*.

Nor, arguably, were creditors to blame. Again, there is no question that some lenders made deceptive claims to borrowers about creditworthiness and the terms on which credit would be made available to them. Indeed, the Commission has challenged some of those deceptive claims.⁶ And some lenders were just plain greedy. But many, if not most, lenders were just doing what they were told, which was to lend money to anyone who had a semblance of creditworthiness and not ask too many questions about it.

Who told them to do this? The federal government, of course. And for nearly two decades, the Fed facilitated the borrowing spree by keeping interest rates at very low levels. After 9/11 there was a legitimate reason to do so, but for the most part, there was no excuse.

Why do I emphasize where we are now and how we got there? Because the federal government, in its zeal to unfreeze the credit markets and stem the foreclosure crisis, must walk a very delicate line. On the one hand, there is no question that some of these measures are necessary to unlock segments of the lending markets that have seized up. On the other hand, however, the government must be careful not to go too far – by incentivizing borrowers who are not truly creditworthy to buy too much on credit and by incentivizing lenders to lend to them. Otherwise, we will be back in the same fix as we are now, a couple of years down the line. Let us hope – no, pray – that the government gets it right this time.

But let me now turn to the burden of my remarks, which is debt settlement services. Let

⁶*E.g., FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000).

me start by sharing with you the views of some others about the state of the industry.

First, a *Chicago Tribune* reporter recently observed, “[D]ebt settlement has brought salvation and heartbreak for troubled borrowers.”⁷ *Salvation*, it was clear, if, as promised, the debt settlement firm successfully negotiates down the amount of debt a consumer owes his or her creditors. *Heartbreak*, as it was equally plain, if debt settlement actually leaves the consumer worse off than if he or she had sought credit counseling, filed for bankruptcy, or worked directly with the creditors instead. As this dichotomy illustrates, the debt settlement industry is controversial.

Second, last Fall I was listening on my car radio in San Francisco to an interview conducted by a radio consumer reporter. She was interviewing another consumer activist about debt settlement. The interview was remarkably even-handed. The consumer activist said there were plenty of scam artists in the for-profit debt settlement industry. But she added that debt settlement specialists could do a debtor a lot of good if the debtor was not hopelessly in debt and followed the specialist’s plan to the letter.

Third, last September the FTC held its first-ever workshop exploring consumer protection issues in the debt settlement industry.⁸ There, creditors, credit counseling

⁷“Desperate Debtors are Ripe Targets; Promises to Wipe Credit Slate Clean Often Prove Empty,” Aug. 3, 2008, *Chicago Tribune*.

⁸See FTC, “Consumer Protection and the Debt Settlement Industry: An FTC Workshop” (Sept. 25, 2008) (“FTC Workshop”), *available at* <http://www.ftc.gov/bcp/workshops/debtsettlement/index.shtm>.

organizations, and consumer advocates expressed concerns that debt settlement may do more harm than good.⁹ Specifically, representatives of creditors testified that money paid to debt settlement specialists could better be used by debtors to reduce their indebtedness.¹⁰ In fact, a consortium of creditors, including Bank of America and Citi, through their web site, HelpWithMyCredit.Org, is encouraging beleaguered consumers to deal with them directly.¹¹ But we also heard from members of the debt settlement industry, who believe they provide a beneficial and necessary service for consumers in dire straits.¹²

Now I'll share my own views about debt settlement. I'll then discuss my thoughts on options available to the FTC and to the debt settlement industry to improve debt settlement practices.

II. THE DEBT SETTLEMENT INDUSTRY

In my view, debt settlement can provide some real benefits for consumers. For example, a debt settlement firm can advocate on the consumer's behalf, especially in cases where consumers are reluctant, embarrassed, or even afraid, to contact their creditors directly. A debt settlement firm also may be able to provide individualized attention to consumers, taking a

⁹See, e.g., O'Neill, FTC Workshop Transcript ("Tr."), available at <http://www.ftc.gov/bcp/workshops/debtsettlement/OfficialTranscript.pdf>, at 94, 98, 119; Flores, Tr. at 164-170; Plunkett, Tr. at 99-106.

¹⁰*Id.*

¹¹See "Help With My Credit: Who We Are," available at <http://www.helpwithmycredit.org/index.php?page=whoweare>.

¹²See, e.g., Craven, Tr. at 89, 113-14; Young, Tr. at 127-8.

holistic approach to all of the consumer's unsecured debt owed to several creditors, rather than just the amount owed to a particular creditor.

However, while I'm hopeful that debt settlement can help consumers, I also am concerned about certain practices we've witnessed among some industry players. To illustrate my concerns, I'd like to describe some law enforcement actions brought by the FTC in recent years. In these cases, the FTC alleged that companies and individuals offering debt settlement services engaged in unfair or deceptive practices, in violation of the FTC Act.¹³

In March 2007, the FTC filed a complaint against Debt-Set, an affiliated company, and their principals who marketed debt reduction services online and in television and radio ads with claims such as "Reduce Debt Now" and "Stop Harassing Calls."¹⁴ The FTC alleged that first, these defendants falsely promised to obtain lump-sum settlements, such as "fifty cents on the dollar" or "50 to 60 percent" of consumers' total unsecured debt. Second, the defendants allegedly claimed that they would not charge consumers any up-front fees prior to obtaining the promised debt relief, when in fact the defendants charged a percentage-based fee – usually eight percent – of the consumer's total unsecured debt before contacting any creditors. Finally, the defendants allegedly misrepresented that participation in the program would stop creditors from

¹³All of these cases ended in settlement orders against the defendants. *See FTC v. Debt-Set, Inc.* ("Debt-Set"), No. 07-00558 (D. Colo. 2007); *FTC v. Dennis Connelly, et al.* ("Dennis Connelly"), No. 06-701 (C.D. Cal. 2006); *FTC v. Innovative Systems Technology, Inc., d/b/a Briggs & Baker, et al.* ("Innovative Sys. Tech."), No. 04-0728 (C.D. Cal. 2004); *FTC v. Jubilee Fin. Servs., Inc., et al.* ("Jubilee Fin. Servs."), No. 02-6468 (C.D. Cal 2002).

¹⁴*Debt-Set*, No. 07-00558 (D. Colo. 2007).

calling or suing them to collect debt.¹⁵

In another case, *FTC v. Dennis Connelly, et al.*,¹⁶ the FTC filed a complaint against five debt settlement companies and five principals engaged in a nationwide debt negotiation scheme. According to the FTC's complaint, the defendants allegedly charged an upfront, non-refundable fee of up to 15 percent of the consumer's unsecured debt. The FTC also alleged that the defendants failed to adequately disclose the likelihood that consumers would be sued, or that their account balances would grow, if they took the defendants' advice and stopped paying creditors. Finally, the FTC charged the defendants with falsely advising consumers that if the program resulted in the addition of negative information onto their credit reports, that information would be removed upon completion of the program.¹⁷

A third example is *FTC v. Innovative Systems Technology*,¹⁸ where the defendants allegedly promised to refund to consumers the fees they paid for debt settlement services if debt settlement negotiations were unsuccessful, yet failed to honor these promises.

¹⁵FTC news release, "Debt Reduction Companies Settle with FTC" (Feb. 14, 2008); FTC news release, "Debt Reduction Defendant Settles FTC Charges" (Apr. 22, 2008).

¹⁶No. 06-701 (C.D. Cal. 2006).

¹⁷FTC news release, "FTC Stops Nationwide Debt Negotiation Scheme" (Sept. 21, 2006); FTC news release, "Debt-Negotiation Defendants Agree to Settle FTC Charges in Nationwide Operation That Led Many Into Financial Ruin" (Sept. 25, 2008).

¹⁸No. 04-0728 (C.D. Cal. 2004).

Finally, in *FTC v. Jubilee Financial Services*,¹⁹ the FTC alleged, among other things, that the debt settlement firm falsely claimed to hold the consumers' money in a trust account. According to the FTC's complaint, the corporate defendant and its employees withdrew approximately 2 million dollars from the trust for unlawful purposes, without the consumers' knowledge or consent.

I understand that the defendants in these law enforcement actions may not be representative of the debt settlement industry. But, I believe we can glean some lessons from these cases. I offer my suggestions on several industry practices that can be improved – as well as some that I believe should be prohibited.

First, debt settlement firms should limit their performance claims to those they can adequately substantiate. For example, a debt settlement firm should not advertise that it can successfully negotiate a consumer's settlement down to only 50 percent of his or her unsecured debt, if the firm's average settlements are closer to 80 or 90 percent of its consumers' unsecured debt.

Second, debt settlement firms' ads should not misrepresent the benefits of debt settlement. For example, they should not claim that the program will protect consumers from debt collection calls or creditor law suits if that is not true.

¹⁹No. 02-6468 (C.D. Cal 2002).

Third, debt settlement ads should disclose, clearly and conspicuously, the negative impact that participation in a program may have on a consumer's credit score, and how long that impact may linger. This disclosure should not be made only in the written contract, but in the ad itself.

Fourth, if a debt settlement firm promises to refund debt settlement service fees to consumers if their debt settlement negotiations are unsuccessful, the firm must honor that promise. Moreover, if the refund is subject to certain terms and conditions, they should be clearly and conspicuously disclosed before the consumer signs up for the program.²⁰

Finally, I believe certain practices should be prohibited in the debt settlement industry. In particular, debt settlement firms shouldn't be allowed to charge any payment in advance of performing services for the consumer. This type of advance payment is already prohibited for credit repair services,²¹ and I think they should similarly be prohibited here.

Also, in circumstances where the debt settlement program involves trust accounts for consumers, the firms should not be allowed to withdraw any funds from those accounts without

²⁰*See, e.g., FTC v. Debt Solutions, Inc.* (“*Debt Solutions*”), No. 06-0298 (W.D. Wash. 2006)(defendants allegedly guaranteed a “full refund” if consumers did not see a savings of at least \$2500, but did not adequately disclose that refund eligibility was conditioned on the consumer's following a specific computer-generated debt reduction payment schedule, not on the defendants' successful negotiation).

²¹*See* Credit Repair Organizations Act, 15 U.S.C. § 1679b(b) (“No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before any such service is fully performed.”).

the consumer's express, prior written consent.

Ultimately, the goal should be that consumers have complete and accurate information about debt settlement, as well as other options such as credit counseling and bankruptcy, before they choose a course of action.

III. OPTIONS FOR IMPROVING DEBT SETTLEMENT

I see four possible ways to improve practices in the debt settlement industry. The first is Magnuson-Moss Act rulemaking, which the FTC can start on its own initiative. The second is rulemaking under the Administrative Procedure Act. Third, are law enforcement actions, which are an ongoing FTC priority. Last, but certainly not least, are self-regulatory efforts by the debt settlement industry.

A. Magnuson-Moss Act Rulemaking

The FTC's rulemaking authority was codified in 1975 by the Magnuson-Moss Act,²² which added Section 18 to the FTC Act. Section 18 authorizes the FTC to issue trade regulation rules – that is, “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce” within the meaning of Section 5 of the FTC Act.²³ For example, in the past the FTC has issued trade regulation rules on credit practices, negative

²²Pub. L. No. 93-637, § 202(a), 88 Stat. 2183 (1975).

²³15 U.S.C. § 57a(a)(1)(B).

option plans, and home insulation.²⁴

I see two major benefits to Mag-Moss rulemaking. One benefit is that the FTC can start this type of rulemaking on its own initiative. Another benefit is that Mag-Moss rulemaking enables the FTC to enforce rule violations through civil penalties²⁵ and consumer redress.²⁶

However, Mag-Moss rulemaking can be unwieldy and time-consuming. First, the FTC must state “with specificity” the acts or practices that it deems unfair or deceptive.²⁷ Second, the FTC is required to make a determination that the unfair or deceptive acts or practices at issue are prevalent.²⁸ “Prevalence” is based on either the agency’s cease and desist orders or “other information . . . that indicates a widespread pattern” of such conduct.²⁹ Finally, Mag-Moss rulemaking imposes onerous procedural requirements. In particular, the FTC must publish a notice of proposed rulemaking, allow interested parties to submit comments, and provide an opportunity for an informal hearing. Moreover, if issues of material fact are in dispute, the FTC

²⁴16 C.F.R. §§ 444 (credit practices), 425 (negative option plans), 460 (home insulation).

²⁵15 U.S.C. § 45(m)(1)(C).

²⁶15 U.S.C. § 57b(b).

²⁷*See, e.g., Katharine Gibbs School v. FTC*, 612 F.2d 658 (2d Cir. 1979)(holding that trade regulation rule penalizing vocational schools for every student dropout, regardless of cause, did not adequately identify unfair or deceptive acts or practices in the industry “with specificity”).

²⁸15 U.S.C. § 57a(b)(1)(A).

²⁹15 U.S.C. § 57a(b)(3).

must allow parties to present rebuttal evidence and cross-examination.³⁰ In past Mag-Moss rulemaking, the procedures have taken three to 10 years to complete.³¹ The risk and cost to consumers in the interim may be too great.

B. Administrative Procedure Act Rulemaking

The FTC also can issue rules under a number of statutes other than the FTC Act that address particular conduct. For example, the Telemarketing and Consumer Fraud and Abuse Prevention Act³² directs the FTC to issue rules prohibiting deceptive or abusive telemarketing practices. These rules can be promulgated using Administrative Procedure Act rulemaking procedures. Like Mag-Moss, APA rulemaking requires the FTC to publish a notice of proposed rulemaking and allow interested parties to submit comments.³³ However, in contrast to Mag-Moss, APA procedures do not require a hearing, an opportunity for rebuttal and cross-examination, or a determination of prevalence.

On the positive side, APA rulemaking enables the FTC to streamline its rule promulgation. In fact, in some instances, the FTC has completed APA rulemaking in less than a

³⁰15 U.S.C. § 57a(c)(2).

³¹For example, promulgation of the FTC's Credit Practices Rule, 16 C.F.R. § 444, took almost ten years.

³²15 U.S.C. §§ 6101 *et seq.*

³³5 U.S.C. § 553(b)-(c).

year.³⁴ However, a potential down side is the range of enforcement tools available for APA rule violations. Specifically, the FTC cannot always seek civil penalties or consumer redress for violations of these rules, as it can for violations of Mag-Moss rules. Rather, whether violations of a particular APA rule are subject to civil penalties and consumer redress will depend on the express language of that rule's enabling statute.³⁵

C. Law Enforcement Actions

Case-by-case law enforcement in this area is an ongoing FTC priority. Since 2001, the FTC has brought 14 cases against defendants offering debt relief services.³⁶ Half of these cases

³⁴Examples include APA rulemaking by the FTC pursuant to the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, 117 Stat. 1952 (2003). *See, e.g.*, Prescreen Opt-Out Disclosure Rule, 69 Fed. Reg. 58861 (Oct. 10, 2004) (proposed rule), 70 Fed. Reg. 5022 (Jan. 31, 2005) (final rule), effective Aug. 1, 2005; Free Annual File Disclosures Rule, 69 Fed. Reg. 13192 (March 16, 2004) (proposed rule), 69 Fed. Reg. 35468 (June 24, 2004) (final rule), effective Dec. 1, 2004.

³⁵*E.g.*, Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6102 (providing that a violation of rules promulgated pursuant to the Telemarketing Act “shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act . . . regarding unfair or deceptive acts or practices,” thus enforceable through civil penalties and consumer redress); Truth in Lending Act, 15 U.S.C. § 1607 (“TILA”) (designating the FTC as one of the agencies responsible for enforcing TILA, does *not* provide civil penalty or consumer redress authority).

³⁶*FTC v. Edge Solutions, Inc.* (“*Edge Solutions*”), No. 07-4087 (E.D.N.Y. 2008); *Debt-Set*, No. 07-00558 (D. Colo. 2007); *FTC v. Select Personnel Mgmt, Inc.*, No. 07-0529 (N.D. Ill. 2007); *Dennis Connelly*, No. 06-701 (C.D. Cal. 2006); *FTC v. Randall Leshin, d/b/a Express Consolidation, et al.*, No. 06-61851 (S.D. Fla. 2006); *U.S. v. Credit Found. of Am.*, No. 06-3654 (C.D. Cal. 2006); *Debt Solutions*, No. 06-0298 (W.D. Wash. 2006); *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 04-1674 (M.D. Fla. 2004); *FTC v. Integrated Credit Solutions, Inc.*, No. 06-00806 (M.D. Fla. 2006); *FTC v. National Consumer Council, Inc.*, No. 04-0474 (C.D. Cal. 2004); *FTC v. Better Budget Fin. Servs., Inc.* (“*Better Budget Fin. Servs.*”), No. 04-12326 (D. Mass. 2004); *Innovative Sys. Tech.*, No. 04-0728 (C.D. Cal. 2004); *FTC v. AmeriDebt, Inc., et al.*, No. 03-3317 (D. Md. 2003); *Jubilee Fin. Servs*, No. 02-6468 (C.D. Cal 2002).

have involved debt settlement companies.³⁷ I've discussed a few in depth earlier in this speech, but I would like to share my observations about trends in all seven debt settlement cases brought by the FTC.

First, in all of these cases, the defendants allegedly made false or unsubstantiated claims about the program benefits – specifically, that their programs would enable consumers to pay off all of their unsecured debt for a reduced amount³⁸; that consumers would be debt-free in 18-30 months³⁹; and that debt collection calls would cease.⁴⁰ These claims are particularly astonishing in cases where the defendants apparently contacted few, if any, of the consumers' creditors.⁴¹ Some of these firms advertised money-back guarantees, yet allegedly refused to honor them.⁴² In at least one case, the defendants allegedly failed to clearly and conspicuously disclose that they would charge up-front fees,⁴³ or that damage to the consumer's credit rating would linger for several years.⁴⁴

³⁷*Edge Solutions*, No. 07-4087 (E.D.N.Y. 2008); *Debt-Set*, No. 07-00558 (D. Colo. 2007); *Dennis Connelly*, No. 06-701 (C.D. Cal. 2006); *Debt Solutions*, No. 06-0298 (W.D. Wash. 2006); *Better Budget Fin. Servs.*, No. 04-12326 (D. Mass. 2004); *Innovative Sys. Tech.*, No. 04-0728 (C.D. Cal. 2004); *Jubilee Fin. Servs.*, No. 02-6468 (C.D. Cal 2002).

³⁸*Id.*

³⁹*E.g.*, *Edge Solutions*, No. 07-4087 (E.D.N.Y. 2008).

⁴⁰*E.g.*, *Better Budget Fin. Servs.*, No. 04-12326 (D. Mass. 2004).

⁴¹*E.g.*, *Jubilee Fin. Servs.*, No. 02-6468 (C.D. Cal 2002).

⁴²*E.g.*, *Debt Solutions*, No. 06-0298 (W.D. Wash. 2006); *Innovative Sys. Tech.*, No. 04-0728 (C.D. Cal. 2004).

⁴³*E.g.*, *Debt-Set*, No. 07-00558 (D. Colo. 2007).

⁴⁴*E.g.*, *Dennis Connelly*, No. 06-701 (C.D. Cal. 2006).

Second, the Commission sought restitution of money lost by consumers pursuant to 15 U.S.C. § 13(b), which authorizes a federal district court to grant equitable relief whenever consumers are injured by violation of any law enforced by the agency. For example, in *Jubilee Financial Services*, the FTC obtained a Court Order requiring a principal to turn over his personal residence, valued at over \$500,000, and to forfeit his interest in frozen bank accounts to a fund administered by the agency for equitable relief.⁴⁵

The FTC will continue its steady drumbeat of law enforcement actions against the worst actors in debt settlement. However, case-by-case law enforcement alone is not enough. Each investigation takes substantial time and resources, restricting the agency's ability to cast its net wide enough.

D. Self-Regulatory Efforts by the Debt Settlement Industry

As many of you know, I have been a strong proponent of self-regulation in many areas of consumer protection law,⁴⁶ and I believe it can play an important role in debt settlement. Self-regulation can provide a critical complement to the FTC's law enforcement actions. It allows

⁴⁵“Jubilee Financial Services Defendants Banned from Providing Debt Negotiation Services” (Aug. 29, 2003), *available at* <http://www.ftc.gov/opa/2003/08/jubilee.shtm>.

⁴⁶*See, e.g.*, Remarks by J. Thomas Rosch, “Looking Backward and Forward: Some Thoughts on Consumer Protection” (Mar. 11, 2009), *available at* <http://www.ftc.gov/speeches/rosch/090311backwardforward.pdf>; Remarks by J. Thomas Rosch, “Self-Regulation and Consumer Protection: A Complement to Federal Law Enforcement” (Sept. 23, 2008), *available at* <http://www.ftc.gov/speeches/rosch/080923Rosch-NADSpeech.pdf>; Remarks by J. Thomas Rosch, “The Importance of Self-Regulation: A View from the Federal Trade Commission” (Apr. 24, 2007), *available at* <http://www.ftc.gov/speeches/rosch/070424AmericanTeleservicesAssoc.pdf>.

the FTC to focus more efficiently on the activities of those who don't comply with the self-regulatory regime. Moreover, the judgment and experience of an industry in crafting rules themselves also can be of great benefit, especially where the business practices are complex and industry members have inside knowledge and experience to craft "best practices."

The best self-regulatory programs carry several hallmarks. First, they clearly address the problems they seek to remedy. Second, they are flexible and able to adapt to new developments within the industry. Third, they are widely followed by affected industry members. Fourth, they are visible and accessible to the public. Fifth, they are administered in a fashion that avoids conflicts of interest between the regulated firms, on the one hand, and the body doing the regulating, on the other hand. Finally, they objectively measure member performance and impose sanctions for noncompliance.

I would like to acknowledge the efforts of three trade associations, the American Association of Debt Management Organizations ("AADMO"), the United States Organizations for Bankruptcy Alternatives ("USOBA"), and The Association of Settlement Companies ("TASC"). Each of these organizations already meets some of the hallmarks I described. First, all three organizations address problems within the debt settlement industry and offer guidelines for best practices.⁴⁷ In fact, TASC requires its members to demonstrate compliance with the

⁴⁷For example, AADMO offers a State Law Guide for its members. A summary of this guide is available at www.aadmo.org/ci/php.

“good conduct” standards set out in TASC’s Bylaws.⁴⁸ If TASC learns of a non-compliant member, it reserves the right to revoke that firm’s membership.⁴⁹ Second, each organization demonstrates flexibility and adaptability to new developments in the industry, particularly to evolving state regulations on debt settlement practices.⁵⁰ Third, all three organizations are visible and accessible to the public, but only to a certain extent. Each organization provides public access to portions of its web site (other parts are for members-only) and offers educational materials free of charge to consumers seeking information on debt settlement.⁵¹

While I commend AADMO, USOBA, and TASC for their self-regulatory efforts thus far, I’m bound to say that their efforts are far from perfect. Indeed, I wonder whether a trade association can sufficiently provide the self-regulatory regime that is required in today’s environment. First, such a self-regulatory organization should demonstrate that its self-regulatory program is widely followed by those regulated. Do these trade associations actually monitor their members’ conduct?

⁴⁸“About TASC,” *available at* www.tascsite.org/about.php. *See also* Young, Tr. at 155-56.

⁴⁹Young, Tr. at 191.

⁵⁰For example, all three organizations regularly hold conferences to educate members about the evolving legal landscape. *See, e.g.*, USOBA conference page, *available at* http://www.usoba.org/usoba_conferences.html/; USOBA Winter Conference (November 2008) agenda, *available at* http://www.usoba.org/pdfs/winter_usoba_conference_final.pdf.

⁵¹*See, e.g.*, TASC Consumer Information, “On The Road To Ruin: The Worst Money Mistakes You Can Make” (July 30, 2007), *available at* www.tascsite.org/article.php?id=7; AADMO Public Education, “Steps to Becoming Debt-Free,” *available at* www.aadmo.org/popups/coninfo/03.html; “Frequently Asked Questions . . . What is Debt Settlement?,” *available at* <http://www.usoba.org/consumers.html>.

Second, a viable self-regulatory body should demonstrate that it is more independent from the firms it is regulating. No trade association is wholly independent of its members. For example, the Legislative Director on the TASC Executive Board is an individual who works full-time as General Counsel for a member company. This Legislative Director position would be better filled by a third party, such as outside counsel, who does not have a vested interest in a particular member firm. On a related point, an effective self-regulatory body should identify its Executive Board members on its public web site, as TASC does.⁵² Providing this information would enable consumers to determine whether an organization's leadership has any conflicts of interest.

Third, self-regulatory bodies should demonstrate that they objectively measure the performance of those regulated and impose sanctions for non-compliance. I commend TASC for making "good conduct" compliance a condition of membership, but I don't know if TASC has ever revoked the membership of a firm that has faltered in compliance. I would also encourage self-regulatory organizations to refer any "bad apples" to our agency for possible law enforcement action.

Finally, a self-regulatory program should ensure its visibility and its accessibility to the public. For example, TASC should publish its "good conduct" standards on its public web site, where it is readily accessible to consumers.⁵³ Similarly, USOBA should make its "Accreditation

⁵²See <http://www.tascsite.org/bod.php>.

⁵³The public (e.g., non-member) portion of the TASC web site describes the development of the Bylaws, but does not provide access to them. See www.tascite.org/about.php. TASC did

Program” available on its public web site.⁵⁴ This type of transparency would make it easier for consumers to understand what they should expect from reputable debt settlement firms, and also to identify and report unacceptable member conduct to the appropriate self-regulatory body or to public law enforcement agencies.

In short, effective self-regulation is arguably the best and most effective form of regulation for both the FTC and the industry being regulated. However, the self-regulatory program must be more than just a “fig leaf,” or else it will not be credible.

IV. CONCLUSION

Thank you again for inviting me to speak. I’m happy to take any questions.

file its standards as an attachment to a public comment filed with the FTC, *see* <http://www.ftc.gov/os/comments/debtsettlementworkshop/536796-00036.pdf>, but this may not be an obvious resource for most consumers.

⁵⁴The public portion of USOBA’s web site provides a brief description of the Accreditation Program, but makes the actual Program standards available to members only. *See* <http://www.usoba.org/>.