

MCRRC

The Voice For Maryland Consumers

MARYLAND CONSUMER RIGHTS COALITION

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Debt Settlement Policy Brief

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Acknowledgements

The Maryland Consumer Rights Coalition (MCRC) is a non-profit organization that works to advance and protect the interests of Marylanders through research, education, and advocacy. MCRC strives to make the marketplace fair and safe for consumers.

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About the Report's Author

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OVERVIEW

In January 2010, MCRC released the report *Debt Settlement in Maryland: Compounding Problems, Deepening Debt* that provided an analysis of debt settlement issues for Maryland consumers. MCRC pushed for passage of legislation (HB 392/SB 701) that would have strongly regulated the debt settlement industry in Maryland. The General Assembly voted instead to convene a working group to study the issue in more detail and issue a report with recommended regulations by December 1, 2010. MCRC served on the working group to represent the consumer's perspective.

This report provides an overview of the debt settlement industry, reviews new state and federal regulations pertaining to debt settlement, and proposes additional recommendations to protect consumers who use debt settlement services.

EXECUTIVE SUMMARY

Debt Settlement companies have tripled in the United States over the past few years. The debt settlement industry arose as consumers accrued more debt and wages remained stagnant.

Debt settlement companies promise to help consumers escape from pressing debt, but instead generally leave them in worse shape than before. These companies are unregulated in Maryland, and the ranks of those who have been taken in by this system are growing at an alarming rate.

Instead of helping consumers negotiate lower interest rates and pay off their debt in a timely manner – as credible debt management firms would do – debt settlement companies instead collect huge upfront fees, encourage consumers to stop paying creditors, and typically perform no real service, while debt settlement companies walk away with thousands of dollars in profit, consumers are left with less money, a worse credit score, angrier creditors, and dwindling options.

Complaints about the industry have led the Federal Trade Commission (FTC), National Association of Attorneys General (NAAG), and the General Accounting Office (GAO) to study, regulate and litigate

to stop the deceptive practices used by the industry. These organizations have all found similar problems within the industry including:

- **Advance Fee Structure:** Debt settlement firms are paid whether or not they settle a consumer's debt. The fees often range between 14-20 percent of the consumers' debt and are taken out of the first 4-6 months of payments that consumers make toward settling their debt. Once the consumers' fees are collected, firms have little incentive to do more work. Failure to settle the consumer's debt (the job they were paid for) is one of the leading consumer complaints against debt settlement companies.
- **Unsubstantiated Claims:** While debt settlement firms prominently claim that they can substantially reduce consumers' debts, they have not been able to provide solid substantiation of that claim.
- **Misrepresentation of Completion Rates:** Similarly, debt settlement firms claim to have helped thousands of consumers but these claims cannot be verified.
- **Advice That Results in Damage to Credit Ratings and Increased Debt:** Many debt settlement firms tell or strongly encourage consumers to stop paying their creditors. This hurts consumers' credit score and increases their debt as late fees and penalties mount.
- **Failure to Communicate the Consequences of the Debt Settlement Process:** Debt settlement companies rarely, if ever, clearly explain the consequences of the debt settlement process to consumers, namely, credit scores decline, collection activities continue, and debt deepens.

New Rules

Federal and state authorities have responded to complaints about the debt settlement industry by offering new rules and regulations.

- **FTC Rule**-On July 29, 2010, the FTC amended its Telemarketing Sales Rule (TSR) to include debt settlement firms. The new rule bans debt settlement firms from collecting fees in advance of settlement. It also requires a new set of disclosures.

While this is a great advance, loopholes remain. The rule only applies to transactions that take place over the phone; other types of transactions such as in-person meetings and Internet transactions are not covered. The rule also does not set a cap on the amount of fees that firms can collect when a consumer's debt is settled.

- **Illinois legislation**-New legislation passed this summer that bans advance fees and sets a 15% rate cap on the amount that firms can collect once a debt is settled. The 15% rate cap is calculated based on the amount of savings the debt settlement firm obtains for a consumer.

Debt Settlement in Maryland

In Maryland, consumer complaints about debt settlement have doubled between 2009 and 2010. Since the General Assembly session ended in April 2010, more than 95 Maryland consumers have reported problems with debt settlement firms. Maryland consumers need stronger regulation and disclosures about the industry.

MCRC Recommendations

- **Expand the Scope of Coverage**-Maryland legislation regulating debt settlement companies should include any business that directly or indirectly receives compensation for settling a consumer's debt including nonprofits, banks, and lawyers. The types of transactions covered should include face-to-face meetings, Internet, intranet, and do-it-yourself kits or other debt settlement products.
- **Licensing**-The Commissioner of Financial Regulation should establish a registration program for one year, during which it can gather information necessary to determine the proper parameters for a permanent licensing scheme.
- **Annual Reporting**-Debt settlement firms should report on their performance in Maryland. Reports should include the number of Maryland residents who enter into debt settlement contracts, the amount of debt enrolled, the amount of the consumer payments, the completion rate, the dropout rate, as well as other performance-related information.
- **Fee Cap**-The fees that debt settlement firms can collect after settlement should be capped at 15% of the savings consumers realize based on their debt at the time they enroll with a debt settlement firm. This formula rewards debt settlement firms for settling a consumer's debt while still enabling a consumer to retain a reasonable amount of funds saved.

MCRC's Report on the Need for Debt Settlement Regulation

Introduction

For cash-strapped consumers trying to get out of debt, the offers seem too good to be true.

One states:

“When you're in over your head in high credit card debts, debt relief is available. When you can't afford to pay off your credit card debts in full, credit card companies may agree to forgive or "settle" your credit card debt - forgiving or reducing your credit card debt by up to 50% or, in some cases, much more.”¹

Another says:

“When you're in debt, it can be overwhelming with out of control credit cards, bills piling up, and creditors calling. You may feel like you're alone, but you're not. Millions of Americans are in debt and in need of relief.... A more aggressive form of debt relief is debt settlement, debt negotiation, or debt forgiveness where you may only be required to pay a relatively small portion of what you owe - potentially saving you a substantial amount of money.”²

Many consumers, desperately in need of debt relief, sign up with the debt settlement firms who suggest that halving one's debt is rather easy. The reality is far different. Many consumers pay debt settlement firms thousands of dollars, only to see their debts mount, their credit scores plummet, and collection activities continue.

Debt Settlement Overview

More than 2,000 debt settlement companies exist in the United States today—more than triple the number that were in operation a few years ago. As credit has tightened and wages have remained

¹ www.debtreliefcenter.org, Nov. 22, 2010 email solicitation received by author via My Home Remodel Guide (HRG) productions

² <http://www.credit-card-debt-rescue.org> November 16, 2010 email solicitation received by author via ELM solutions

stagnant or decreased, many debt-ridden consumers have tried to improve their financial situation by paying off their credit-card bills.

Debt settlement firms advertise that they can provide a way for cash-strapped consumers to reduce their debts. Debt settlement firms promise to reduce consumer debt by negotiating a lump-sum payment to creditors. Such claims, however, rarely prove true.

Rather, due to the factors outlined below, consumers who enter into debt settlement contracts find that their debt only increases, while their credit score decreases. Many consumers who have contracted with debt settlement firms eventually declare bankruptcy, have their wages garnished, or must find a way pay off their debt (which has grown due to the fees and penalties) when they are taken to court.

Consumer complaints have led state and federal regulators to investigate and sue the industry. The Federal Trade Commission (FTC), National Association of Attorneys General (NAAG); and the General Accounting Office (GAO) have studied the industry and each has found the following endemic problems in the industry:

- **Advance Fee Structure**

Debt settlement companies are paid whether or not they settle a consumer's debt. Debt settlement firms charge anywhere between 14-20 percent of the full amount of the debt and the fee must be paid even if the consumer drops out of the program or the company is unsuccessful in negotiating the promised debt reduction. For example, if a consumer had \$20,000 in debt, the debt settlement firm's fee would be between \$2,800 and \$4,000.

Each month, the consumer pays the debt settlement firm an agreed upon amount which goes toward a building a lump sum payment that will be offered to each creditor to settle the consumer's debt. However, during the first 4-6 months of the program, the payments are going toward the firm's fees, rather than toward building the consumer's account for accumulating money to pay creditors. Debt settlement companies require that their fee be paid before any negotiations begin on the consumer's behalf. Not surprisingly, because debt settlement firms collect fees before performing any work, they do not contact creditors or perform other services for the consumers during this time.

Failure to perform is one of the leading complaints consumers have about debt settlement firms. Consumers complain that while they make monthly payments to the firm, their debt has not, in fact, been reduced or settled. Creditors are not contacted, debt increases due to late fees and penalties, and collection activities continue. Even if creditors are contacted, the size of the debts can continue to grow

due to interest or penalties. Often, collection activities continue, and consumers may even be sued on their debts while waiting for the settlement firm to act. Under this business model, the debt settlement firm gets paid even if it fails to do the job it was hired to do. If the company makes money regardless of whether or not it succeeds, there is little incentive for it to take steps to actually reduce the consumer's debt.

- **Unsubstantiated Claims of Debt Reduction**

Debt settlement companies claim they can substantially reduce a consumer's debt. Many of these claims, however, cannot be substantiated, while others have been found to be grossly overstated. In New York, two debt settlement firms were sued for deceptive practices and false advertising. Credit Solutions of America (CSA) promised a 60 percent reduction in consumers' debt but on average, only 1 percent of CSA's New York clients realized any savings. Meanwhile, CSA collected \$17 million in fees from New Yorkers. Similarly, Nationwide Asset Services (NAS) promised to reduce clients' outstanding debt by 25-40 percent, yet the New York Attorney General's office found that only one-third of one percent of consumers reduced their debt using NAS' services. An April 2010 GAO study found that the debt settlement companies investigated made unsubstantiated claims about their ability to reduce consumers' debt.

- **Misrepresentation of Program Completion Rates**

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

- **Directing Consumers to Stop Paying Creditors**

Many debt settlement firms direct or strongly encourage consumers to stop paying their creditors. Consumers are told to, instead, pay those funds into their debt settlement accounts so that the debt settlement company can then make a "lump-sum" offer to creditors. However, when consumers stop making regular payments to their creditors, those lapses often result in the accumulation of late fees and penalties, collection activity and adverse reports to credit reporting agencies. In the GAO report, investigators found that:

"Representatives of nearly all the companies we called—17 out of 20—advised us to stop paying our creditors, by either telling us that we would have to stop making payments upon entering their programs or by informing us that stopping payments was necessary for their programs to work, even for accounts on which we said we were still current."

The use of this practice has not been limited to a few “renegade” firms. Of the 17 companies that encouraged consumers to stop paying their creditors, nine (9) were members of industry associations. Five (5) were members of The Association of Settlement Companies (TASC) and four (4) were members of the United States Organization for Bankruptcy Alternatives (USOBA).

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

Debt settlement companies rarely, if ever, effectively communicate to consumers the real results of contracting with their firms and discontinuing payments to their creditors. Consumers are not told that the consequence of this action will be that creditors will pursue or heighten their current debt collection actions, that their credit score will worsen, that late fees and penalties will continue to mount, that their debt balance will increase when payments are not being made and that any savings realized may be considered taxable income.

Without clear information about the consequences of debt settlement, consumers are making choices against their self interest. Consumers need to be fully informed so that they can choose the right option to reduce their debt.

New and Proposed Regulations

The problems with debt settlement firms have prompted federal and state regulators and legislators to look for new ways to protect consumers. Recently, there have been several new regulations and laws to promote fairness and transparency within the industry.

- **FTC Rule**

The FTC has actively brought administrative actions against debt settlement companies for misrepresentations and for unfair and deceptive practices. In August 2009, it began the process of revising its Telemarketing Sales Rule (TSR) to apply to debt settlement companies.

On July 29, 2010, the FTC amended the TSR so that the rule applies to debt settlement firms. The FTC's final rule creates new protections for consumers contracting with debt settlement firms. The FTC rule bans advance fees for services; requires a new set of disclosures to consumers; and clarifies the process by which consumers create dedicated accounts to save toward a lump-sum settlement.

While the rule is a great advance for consumers, loopholes remain and more regulation is needed to protect low-and-moderate income families from becoming mired in debt. The FTC rule only covers sales that take place via the telephone; consequently, debt settlement transactions that are conducted totally in-person or over the Internet are not covered by the rule. In addition, the FTC rule applies only to debt settlement companies that conduct business interstate. Therefore, debt settlement businesses that are located in Maryland and only do business with Maryland consumers are not covered even if the transactions involve telephone communications.

While advance fees are banned, the rule does not limit the amount of fees that debt settlement firms can collect if they settle the debt, nor does it state whether the amount of debt at the time of contract, or the amount of debt at the time of the creditor's payoff should be used to calculate the debt settlement fee. This is important since a fee, based on the amount of the consumer's debt at the time of contract will be smaller than one based on the amount due at the time the debt is settled with the creditor due to accumulating interest, fees and penalties.

- **Proposed Federal Regulation**

Senators Charles Schumer (D-NY) and Claire McCaskill (D-MO) have introduced S.3264 “The Debt Settlement Consumer Protection Act of 2010,” which would cap fees at 5% of the savings achieved, would require clear disclosures for consumers; and would require clear contractual language.

- **State legislation**

States have responded to the challenges posed by debt settlement firms in a variety of ways. Some states have limited debt settlement services to non-profit organizations while others have capped fees and required disclosures.

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

This year, Illinois passed legislation that caps fees at 15% of the savings achieved by the settlement—not the total amount owed by the consumer. The law applies to all debt-settlement contracts regardless of whether consumers sign up by phone, in person or online.

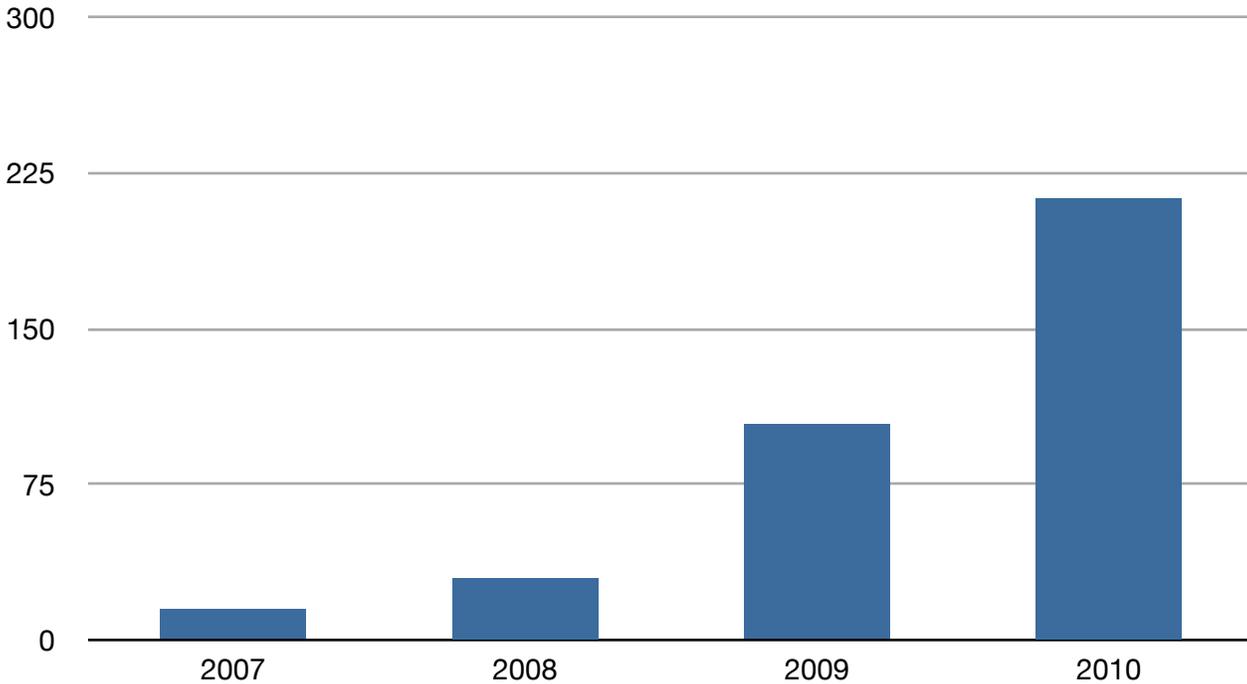
Other states also cap rates at 15%. Washington limits the fee to 15% of the debt enrolled while Maine sets a fee of no more than 15% of the savings a consumer realizes.

Debt Settlement in Maryland

In January 2010, legislation (H. 392/S.701) was introduced in the General Assembly that would have capped fees at 15% of the amount a consumer saved, required certain disclosures about the consequences of debt settlement, and required certain contractual provisions. As noted previously, the General Assembly did not pass this legislation but instead convened a working group to study the issue in more detail.

Debt settlement complaints have been steadily rising in Maryland for the past three years. Since 2007, the number of complaints to the Maryland Attorney General’s office about debt settlement firms has more than quadrupled (see Chart 1). Between 2009 and 2010, the number of complaints more than doubled.

Chart 1: Debt Settlement Complaints in Maryland 2007-2010



Source: Maryland Attorney General

Since April 2010, when the General Assembly session ended, more than 95 consumers have complained to the Attorney General’s office about their experiences with debt settlement firms. This number reflects only the consumers who took the time to contact the Attorney General’s office to file a complaint. It is likely that there are many other Maryland consumers with similar experiences who haven’t contacted state officials. Other states that have conducted comprehensive studies have found that thousands of consumers have been affected by these firms.

Consumers from across the state have filed complaints against debt settlement firms, including those from Baltimore City, Baltimore County, Cecil County, Howard County, Montgomery County, and Prince George’s County.

A review of 28 of these consumer complaints showed that those cash-strapped Marylanders lost more than \$54,000 to debt settlement firms who took their money but failed to reduce their debt. A more thorough review of the other complaints is needed to calculate the economic loss of Maryland consumers between April and November of 2010.

A separate review of complaints from 81 Maryland consumers revealed several categories of problems, including:

- **Failure to Perform (36);**
- **Failure to Honor Cancellation or Refund Request (20)**
- **Deceptive Practices/Misrepresentation of Fact (10)**
- **Other (15).**

In these complaints, consumers report that the firms took their money but didn't reduce their debt. Those who tried to cancel their contracts or get a refund were unsuccessful.. In addition, consumers believe they were misled or deceived by the debt settlement companies.

Of the debt settlement firms that Maryland consumers have complained about, more than half are members of one of the industry's trade associations (TASC or USOBA).

While the details may vary, the experience and problems of working with debt settlement firms are quite similar for many Maryland consumers. The story below is illustrative of many others.

Virginia Slater’s story is all too common in Maryland these days.

Mrs. Slater, 50, of Cecil County, was injured while working as a sales associate at Wal-mart. Her workers’ compensation, coupled with her husband’s income as a sheriff’s deputy, was not enough to cover the family’s bills and they began accruing debt. In hopes of lowering her interest rates, she responded to a TV advertisement from Credit Solutions. A company representative said all the right things: that Credit Solutions would cut her interest rates, that they would contact her creditors to let them know a payment plan was in the works, that everything was going to be alright.

But after months of payments to the firm, about \$3,100 in all, Mrs. Slater realized things were not right. Her creditors kept calling. She was racking up late fees and her interest rates were skyrocketing. She started with \$20,000 in debt and estimates it more than doubled in the time she was working with Credit Solutions because of the fees and higher rates.

“I went from having a great credit score to almost losing my home,” she said. “And these companies don’t care because they’re making money. They don’t care who they hurt as long as they’re making a profit. You believe that in this country they are not going to let any big business be a scam artist, but that’s what the public is being attacked with. They’re scam artists with licenses.”

The Slaters are trying to avoid filing for bankruptcy protection because they want to pay the debt they owe. But as Mrs. Slater pointed out, digging themselves out of their financial hole only became harder after working with a debt settlement firm.

“They tell you to ignore your bills, they say don’t talk to creditors because they’re taking care of it,” she said. “And really no, that’s not what’s happening. You’re sitting back thinking they’re helping you, and they’re burying you.”

Source: MCRC interview, November 2010.

Maryland families need protection from the type of debt settlement firm that Virginia Slater relied upon. In these tough economic times, policymakers must do more to keep money in the pockets of hard-working Marylanders and away from debt settlement firms that promise to help but don’t deliver.

Recommendations for Maryland

While the FTC rule prohibits advance fees for debt settlement agencies that make their sales over the phone, which is a tremendous advance for consumers, there is still cause for concern. The types of transactions that are covered, the percentage that debt settlement firms can charge consumers when they do achieve results, as well as the way the savings are calculated need to be addressed.

Furthermore, debt settlement firms need to transparently document and share their track record and

communicate the consequences of debt settlement to consumers so they can make informed decisions about whether to pursue this option.

- **Broader Regulatory Scope**

Any new legislation should clarify that any business that receives compensation from a consumer directly or indirectly related to debt settlement would be included in the definition of a debt settlement company and thus, covered by its provisions. This would include businesses that offer debt settlement services entirely over the Internet; conduct business only within Maryland (intrastate), or solely in face-to-face meetings with consumers.

Additionally, nonprofit debt settlement providers, lead generation services³, banks, mortgage brokers and lenders, and other professional licensees that engage in the business of debt settlement (outside of discharging debts that they own) should be covered by any proposed regulations or licensing scheme.

Finally, any products related to debt settlement (do-it-yourself debt settlement kits, debt settlement videos, etc.) should also be subject to any proposed regulations and licensing schemes.

- **No Exemption for Lawyers Principally Engaged in Debt Settlement**

Lawyers who are admitted to practice in Maryland and who are “principally engaged” in providing debt settlement services to consumers should follow the same licensing procedures and any new regulations that other debt settlement firms follow.

First, including lawyers who run debt-settlement businesses is an issue of parity. Lawyers who run, or principally run, debt settlement firms should be required to follow the same rules and regulations as any other individual or entity. The working group on debt settlement agreed to expand the scope in Maryland to include nonprofit business providers, intrastate, and Internet transactions. Lawyers who primarily engage in debt settlement should also be included.

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

³ Lead generation services are Internet, email, or other businesses that market debt settlement services and are paid for driving consumers to these companies (see Appendix B for examples).

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

Richard Brennan

Richard Brennan and the Brennan Law Firm was the only debt settlement firm prosecuted in Maryland to date. The Attorney General's office charged that Brennan had misrepresented the amount consumers would save through debt settlement and promised services he did not render. The Attorney General's office reached a settlement with Brennan in October 2007, yet despite this agreement, Brennan never paid the penalties, costs and restitution to consumers and continued to illegally provide debt settlement services. The Attorney General's office sued Brennan in Circuit Court in January 2009. In January 2009, he was also disbarred from practicing law in the state of Maryland. The Circuit Court entered a judgment against Brennan but Brennan ignored that order and continued to provide debt settlement services. He was jailed for contempt of court in July 2009. Brennan collected 2.6 million from consumers for debt settlement services he failed to provide. Only a portion of the money he took has been recovered.

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

Unfortunately, Brennan's case is not unique. There has been private litigation filed in Maryland against a number of other law firms that are primarily debt settlement businesses and scores of consumer complaints have been filed against the same firms. Any contemplated (partial or full) exemption should only apply to attorneys acting within the scope of their license. In other words, if the attorney is acting outside the scope of his/her license, no exemption would apply.

• Licensing and Registration

The Commissioner of Financial Regulation (CFR) should initiate an interim registration period for one year to be followed by a report on the number and performance of debt settlement companies registered during that year, as well as a recommendation for establishing a permanent procedure for licensing, registration, reporting, and bonding of debt settlement firms.

• Annual Reporting

Debt settlement firms should file an annual report with the CFR documenting their results. The report should include all of the following data:

(1) For each Maryland resident:

- the number of accounts enrolled;
 - the principal amount of debt at the time each account was enrolled;
 - the status of each account (for example, active or terminated);
 - if the account has been settled, the settlement amount and the corresponding principal amount of debt enrolled for that account;
 - the total amount of fees paid to the debt settlement service provider
 - whether the creditor has filed suit on the account debt;
 - the date the resident is expected to complete the debt settlement program; and
 - the date the resident canceled, terminated, or became inactive in the program, if applicable.
- 2) For persons completing the program, the mean and median percentage of savings and the mean and median percentage of fees paid to the debt settlement service provider;
- 3) For persons who became inactive, cancelled, or terminated the program during the reporting period, the mean and median percentage of the savings and the mean and median percentage of the fees paid to the debt settlement service provider;
- 4) The percentage of Maryland residents who cancelled, terminated, became inactive, or completed the program without the settlement of all the enrolled debt;
- 5) The total amount of fees collected from Maryland residents.

The CFR should summarize the information received from each company and make that summary available to the public. In addition, the CFR should also publish all the raw reporting data received from debt settlement firms on its website.

• **Fee Caps**

The fees that debt settlement firms can collect after settlement should be capped at 15% of savings based on the debt enrolled. This formula rewards debt settlement firms for settling a consumer's debt while still enabling a consumer to retain a reasonable amount of funds saved.

Consumers who retain debt settlement services typically owe at least \$10,000 in unsecured debt and have few other options available to reduce their debt besides bankruptcy. Many consumers don't have enough money left over each month to pursue debt management or other options. Consequently, it is particularly important to strike a balance between providing the debt settlement firm with adequate compensation for their effort while still ensuring consumers obtain the debt reduction promised. A 15% fee cap provides an incentive for the industry and enables them to remain profitable. Moreover, since consumers stand to recoup more of their savings under this model, it provides a greater incentive for

consumers to seek out debt settlement services, leading to a greater volume of clients and generating a higher profit for debt settlement firms.

While opponents may argue that debt settlement firms cost more to operate than debt management firms or other nonprofit providers, TASC's own study noted that one important reason for these higher costs was the money spent on lead generation including email, telemarketing, television and radio ads, and contracts with lead-generation firms. Testimony from DebtShield in 2010 reiterates this point. While it may cost more to run a debt settlement service, most of those costs are related to marketing and advertising-getting more consumers to sign up.

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

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

Finally, the settlement fee should only be paid to the debt settlement firm once the consumer receives a legally enforceable agreement from the creditor stating that the creditor will accept a lump-sum settlement that will fully and completely satisfy its claim concerning the debt. Consumers should not have to pay fees toward settlement that will never be accepted by their creditors.

- **Disclosures**

MCRC supports fuller disclosures so that consumers are well informed and able to decide if debt settlement services are right for them. MCRC proposes that debt settlement firms use a standard form to provide parity among providers and clearly inform potential clients (see Appendix A for an example of a disclosure form).

Conclusion

In the past few months, the FTC has acted to ban advance fees and require more disclosures from debt settlement firms. Illinois and several other states have acted to strongly regulate the industry. In Maryland, the General Assembly decided to study the issue and propose new regulations by Dec. 1, 2010. The result of the study is, as expected, a finding that more regulation of the debt settlement industry is needed in Maryland.

Meanwhile, between April and November, more than 95 Maryland consumers have had negative experiences with debt settlement firms—losing more than \$50,000 in payments without reducing their debt.

The FTC rule provides new protections for consumers but loopholes remain that only the General Assembly can close for Maryland consumers. Maryland families who are trying to dig themselves out of debt need clear information about debt settlement companies' performances, disclosures about the consequences, and reasonable fees that reward firms for success and return a reasonable amount of savings back to the consumer. Maryland policymakers need to act to protect and assist consumers.

Firms that engage in debt settlement in any way should be covered by rules that ensure fairness in the marketplace, and allow firms to compete on the basis of their performance rather than on special exemptions.

Appendix A

Examples of Debt Settlement lead generators

Below are examples of the text used in the websites of debt settlement lead generators. This is how lead generation works: a consumer will go to a website offering debt relief, and after reading the information posted, will either call the number listed on the website or fill out a form on the website. Consumers who call the number are connected to a debt settlement provider who explains the process and asks them to sign up for debt settlement services. Similarly, if they fill out a form, a debt settlement provider will contact them.

Example 1-Debt settlement generator

Below is the text from a debt settlement lead generator.

www.debtreliefcenter.org

How does Debt Settlement work?

When you're in over your head in high credit card debts, debt relief is available. When you can't afford to pay off your credit card debts in full, credit card companies may agree to forgive or "settle" your credit card debt - forgiving or reducing your credit card debt by up to 50% or, in some cases, much more. Especially if you have already fallen behind on payments, and your credit standing is hurting, a debt settlement program may be the best debt relief option for you.

Why would credit card companies agree to settle with you? If they feel there is a possibility that they will collect little or nothing at all if you declare bankruptcy - they are quite willing to consider your financial circumstances and offer you debt relief by accepting only a fraction of what you currently owe.

Why would credit card companies agree to settle with you? If they feel there is a possibility that they will collect little or nothing at all if you declare bankruptcy - they are quite willing to consider your financial circumstances and offer you debt relief by accepting only a fraction of what you currently owe. The fact is, if credit card companies decide to "sell off" your debt to a third-party debt collection agency, they may receive as little as ten percent of the original amount owed. It's stands to reason, then, that credit card companies are willing to consider a reasonable offer to settle made by you or on your behalf by a credit card debt settlement company or debt mediation specialist. How does debt settlement compare with debt consolidation or debt management?

With debt consolidation you still pay back all the money you owe - you just get relief through lower interest rates and, often, a lower payment each month. With debt settlement you do not pay what you owe, because the credit card companies are being asked to "forgive" or "settle" your debt.

If you have more than \$10,000 in credit card debt and want to see how much debt settlement could save you, you can get a free debt relief analysis and savings estimate now.

Example 2-Debt settlement generator

Below is the text from a debt settlement lead generator.

<http://www.credit-card-debt-rescue.org/>

Help when debt becomes too much to handle...

When you're in debt, it can be overwhelming with out of control credit cards, bills piling up, and creditors calling. You may feel like you're alone, but you're not. Millions of Americans are in debt and in need of relief. Fortunately, there are several debt relief solutions available. [Get a Free Debt Relief Analysis](#)

These days credit card debt help comes in many forms. Debt management offered through credit counseling agencies may help reduce your interest rates, lower your monthly payments, and gets you out of debt faster than you could on your own. A more aggressive form of debt relief is debt settlement, debt negotiation, or debt forgiveness where you may only be required to pay a relatively small portion of what you owe - potentially saving you a substantial amount of money. Get Your [Free Debt Relief Analysis](#)

In today's economy, debt settlement is becoming more popular, however it can negatively impact your credit. Depending on your financial circumstances, bankruptcy may be another debt relief option to consider, but it can have a longer lasting impact on your personal finances, so you should consult with an attorney or financial professional before proceeding.

Appendix B:

Sample: Consumer Disclosure Form

"CONSUMER NOTICE AND RIGHTS FORM" in at least 28-point font and the remaining portion in at least 14-point font, to a consumer before the consumer signs a contract for the debt settlement provider's services:

CONSUMER NOTICE AND RIGHTS FORM

WE CANNOT GUARANTEE that you will successfully reduce or eliminate your debt. You should consider all your options for addressing your debt, such as credit counseling and bankruptcy filing. If you stop paying your creditors, there is a strong likelihood some or all the following may happen:

- **Creditors may continue to contact you to try to collect.**
- **Creditors may sue you for the money you owe.**
- **Your wages or bank account may be garnished.**
- **Your credit rating and credit score will likely be affected or harmed.**
- **Not all creditors will agree to accept a balance reduction.**
- **The amount of money you owe may increase due to creditor imposition of interest charges, late fees, and other penalty fees.**
- **Even if we do settle your debt, you may still be required to pay taxes on the amount forgiven.**

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

