

AFSA Vehicle Finance Conference February 2020 Debt Settlement Working Group Report

1. CFPB

a. Debt Settlement Event

The CFPB informed AFSA that the CFPB will host a special event on the topic of debt settlement on March 10, 2020. The details have not been released and there has been no public announcement to date. The CFPB routinely hosts public events on special topics.

b. Enforcement

On January 9, 2020, the CFPB filed a complaint in federal court in the Central District of California against Chou Team Realty, LLC f/k/a Chou Team Realty, Inc., d/b/a Monster Loans and several student loan debt-relief companies, including Docu Prep Center, Inc. This suit against several companies and individuals who provided student loan debt-relief services alleges the defendants illegally obtained consumer reports, charged unlawful advance fees, and engaged in deceptive conduct.

The complaint alleges that between 2015 and 2017, Monster Loans violated the Fair Credit Reporting Act (FCRA) by obtaining consumer-report information for millions of consumers with student loan debt from a major credit bureau on the pretense that the company planned to use the information to offer mortgage loans to consumers when, in fact, Monster Loans provided the reports to the student loan debt-relief companies to use in marketing their services. Similarly, the CFPB alleged that Lend Tech Loans violated the FCRA by obtaining consumer report information for millions of consumers for use in marketing student loan debt-relief services.

The complaint alleged that, in addition to the FCRA violations, some of the defendants, while offering and providing student loan debt-relief services, violated the Consumer Financial Protection Act of 2010 (CFPA) and the Telemarketing Sales Rule (TSR) by making deceptive representations about the companies' services. Specifically, the Bureau alleged that certain defendants misrepresented to consumers that they would have their interest rates reduced, have their credit scores improved, and that the U.S. Department of Education would become their servicer. The Bureau also alleged that certain defendants unlawfully charged and collected at least \$15 million in fees before consumers received any adjustment to their student loans and made any payments toward their adjusted loans.

The complaint is available at: https://files.consumerfinance.gov/f/documents/cfpb_chou-team-realty-monster-loans_complaint_2020-01.pdf

c. Consumer Advisory Board Meeting

The CFPB's Consumer Advisory Board (CAB) met on October 23, 2019 and the summary report of the meeting was released in December. AFSA had been advised that trends in debt settlement and credit repair would be discussed at the October 2019 CAB meeting.

CFPB staff, John McNamara, Assistant Director and Vanessa Megaw, Financial Analyst, from the CFPB's Office of Credit, Payments and Deposits Markets presented to the CAB on the topic of debt settlement and credit repair as part of an information exchange and market monitoring. The CFPB explained the difference between debt settlement and credit repair and discussed CFPB enforcement activity in this space, particularly concerns for false advertising. The CFPB presented evidence that there is a large market for consumers trying to settle debts and repair their credit and, as a result of this large market, the industry is growing. The CFPB sought feedback from CAB members on current trends impacting consumers and feedback on potential policy considerations. The CAB noted that the industry is growing with support of venture capital.

CAB members stated that consumers seek out debt settlement companies because consumers have too many creditors and it is more convenient to work with one contact. They further noted that consumers receive help only when they are delinquent and that consumers lack sufficient income to settle debt. Members shared other concerns including that consumers need more products designed to help them pay their bills. Members also spoke about false advertising and fees that lead to increases in consumer debt. Some member noted that the CFPB should actively pursue enforcement in the space and also noted that some creditors refuse to work with debt settlement companies. Finally, members suggested that it would be possible to utilize data, maybe nontraditional sources, to prevent significant financial trouble before it happens.

The CAB is an advisory group of external experts, industry representatives, consumers, community leaders and advocates. Members act as a source of market intelligence and expertise for the CFPB, and also advise and consult on the CFPB's work by informing the CFPB about emerging practices or trends in the consumer finance industry and share analysis and recommendations. They are charged with identifying and assessing the impact of emerging products, practices, or services on consumers and other market participants.

Bios of board members can be found here: https://files.consumerfinance.gov/f/documents/cfpb_cab-biographies.pdf

2. FTC

a. FTC Action Against Debt Settlement Company Arete Financial Group

In November 2019, the FTC obtained a temporary restraining order and subsequently a preliminary injunction against California-based debt settlement company Arete Financial Group for allegedly defrauding consumers by pretending to be affiliated with the U.S Department of Education and falsely promising student loan debt relief. As part of the restraining order and injunction, the FTC froze Arete's assets, appointed a receiver, received limited expedited discovery, and access to Arete's premises.

The Complaint alleges that Arete engaged in the following actions: (1) deceptive marketing practices; (2) deceptive payment reduction representations; (3) misrepresentations as to payments received from consumers and their servicing; (4) misrepresentations as to their affiliation with the government; (5) collected up-front fees when consumers agree to their services.

On January 27, 2020, the court entered an order allowing Arete to re-open on a limited basis and subject to extensive restrictions. The FTC, however, is simultaneously continuing to pursue enforcement against

Arete and its principals and liquidation of Arete's assets. Arete did file an appeal of the temporary restraining order and injunction on January 24, 2020 to the Ninth Circuit Court of Appeals, but the FTC's case continues to move forward at this point in time.

3. News

a. Google Bans Advertisements by "Uncertified" Debt Settlement Companies and all Credit Repair Organizations

In November 2019, Google updated its "Financial Products and Services" policy to restrict the advertisement of debt settlement, debt management services, and to ban credit repair services. Ads for credit repair services are no longer allowed while ads for debt settlement or debt management services are allowed only if the advertiser is "certified" by Google. Certification is available only in certain countries. To be certified by Google, debt settlement and debt management services advertisers must be registered, licensed, or approved by the relevant regulatory authorities or recognized professional bodies in the country or countries they are targeting. It is not clear how rigorous is Google's certification process. Google claims that it will only allow ads promoting debt services if the advertiser and provider of these services is "an approved non-profit budget and credit counseling agency, as defined by 11 U.S. Code § 111." Google's "Financial Products and Services" policy now states as follows:

Credit repair services


We want consumers to make informed decisions about the services offered to help them address bad credit. To protect users from harmful practices the following is not allowed:


 Ads for credit repair services

This policy applies to advertisers who offer credit repair services directly, lead generators, and those who connect consumers with third-party credit repair services.

Debt services

We want consumers to make informed decisions about the services offered to help them address overwhelming debt. To protect users from deceptive and harmful practices, we only allow advertisements for the following debt services in select countries and only if (1) the services and ads comply with local laws and industry standards, and (2) the account is certified by Google:

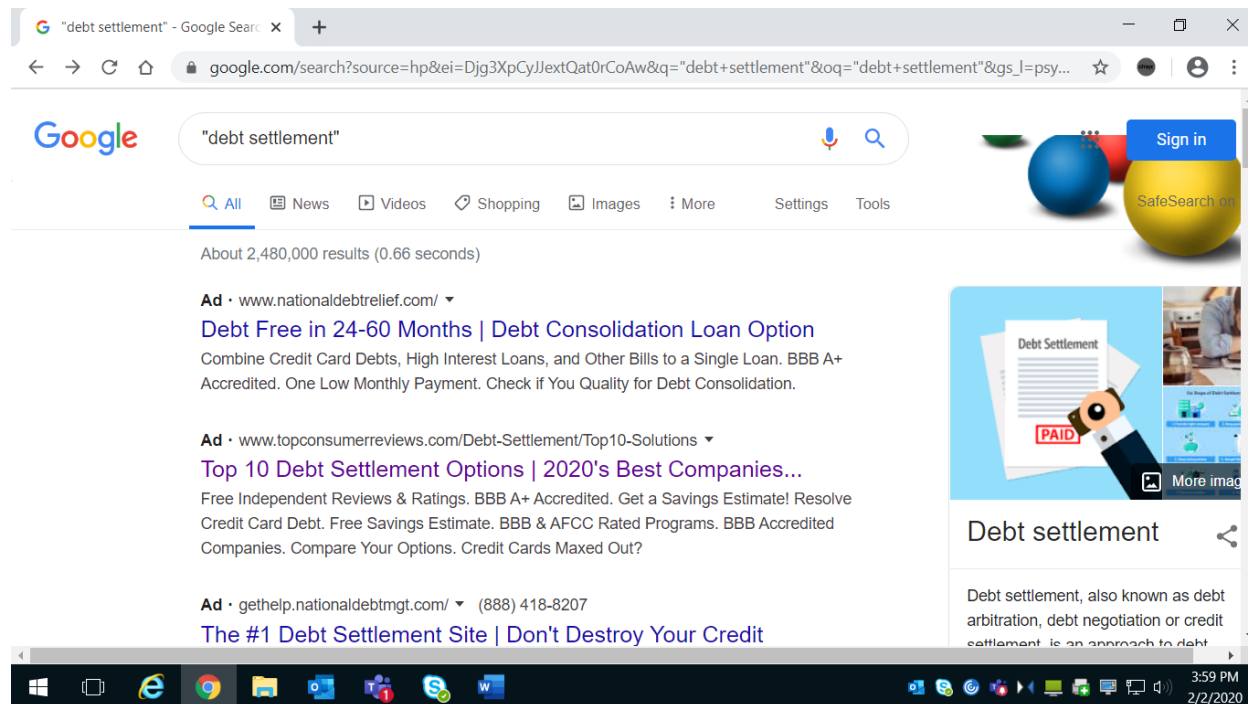
 Ads for debt settlement services that offer to negotiate with creditors a reduced, lump-sum payment that will be regarded as payment in full

 Ads for debt management services that offer to negotiate with creditors reduced periodic payments, interest rates, and/or fees

This policy applies to advertisers who offer these debt services directly, lead generators, and those who connect consumers with third-party debt services.

If you meet the requirements, [apply for certification](#). If you want to advertise in more than one country, submit a separate application for each country.

It appears, however, that at least some of the debt settlement companies have been able to successfully advertise despite Google's restrictions. For example, a Google search conducted on February 2, 2020, for the term "debt settlement" returned an ad for one of the largest debt settlement companies in the United States:



Links to the Google policy and certification process:

https://support.google.com/adspolicy/answer/2464998?hl=en&ref_topic=1626336

https://support.google.com/adspolicy/contact/debt_services_cuf?

4. Data

AFSA members are still requested to complete a survey to gather information related to debt settlement company activity. AFSA emailed this survey to AFSA members on November 11, 2019 in an email entitled: "Debt Settlement & Credit Repair." The CFPB is interested in understanding both company and consumer impact from debt settlement. Data as to company losses due to activity, increases in first-payment defaults, time and cost of handling and responding to disputes is helpful to this effort. The information is aimed at quantifying the harm created by debt settlement companies. AFSA hopes to be able to provide this industry information to regulators and legislators who are interested in understanding and supporting enforcement and regulation.

5. Legislative and Regulatory Strategy

a. Federal

Work is being done on a letter that would be directed to the CFPB Director and FTC Chairman requesting examination of regulatory framework for debt settlement companies. Currently, congressional signatures and support for the letter are being sought. Part of the federal strategy is to also draft legislation and seek to gain congressional hearing.

b. State

Meetings: AFSA members are conducting meetings with state regulators and Attorneys Generals to raise the issue of increased debt settlement activity and resulting consumer harm. The goal of these meeting is to better understand the reasons for the apparent lack of enforcement in states with outright bans or significant restrictions and where DSC activity remains strong and is growing. On Tuesday November 12, 2019, an AFSA member organization met with **New Mexico** Commissioner of the Financial Institutions Division Christopher Moya to discuss New Mexico's position on DSCs which are illegal to operate in New Mexico per state statute, but activity is pervasive.

Legislation: AFSA members continue to be involved in monitoring, reviewing and commenting on state legislation filed by the debt settlement industry and continue to identify opportunities to limit debt settlement activity.

- **Tennessee** (HB 1182/SB 103) – Engaged in discussions to amend bill in current form to strengthen regulatory scheme and apply limitations on business practices (e.g. disclosures, non-delinquent debt exemption, fee caps).
- **Virginia** (HB 1553) - Provided edits to Attorney General's office for substantive additions related to tax disclosures and creditor non-participation notices. The proposed bill contains 10% of savings fee cap.
- **Ohio** (HB 131/SB 112) – Engaged in discussion to amend bill for limitations on business practices (e.g. disclosures, non-delinquent debt exemption, registry of non-participating creditors).
- **California** – Engaged advocates and legislative staff to draft bill for new regulatory structure including fee caps, licensing, examination, disclosures, etc. Proposed bill could be part of new DBO/DFPI restructuring or stand-alone.

6. Other Initiatives

a. Metro 2 Special Comment Code for Credit Reporting

AFSA held a follow-up call with **Consumer Data Industry Association (CDIA)** in January 2020 to renew AFSA's request for a new special comment code for credit bureau reporting to differentiate debt settlement activity from participation in non-profit consumer credit counseling programs which present different risk profiles. AFSA is emphasizing that this request is urgent in light of the dramatic growth of the debt settlement industry over the past few years.

- b. Engage support, resources, and technical knowledge of nonprofits.

The National Foundation of Credit Counseling (NFCC) is engaged in talks with federal regulators and legislative staff for education and policy discussion. Financial Counselors Association of America (FCAA) is also engaged in state level advocacy and grassroots efforts.

7. Developing Best Practices

AFSA members should consider:

- Drafting and implementing uniform policies and procedures for handling debt settlement activity on an industry-wide basis.
- Creating borrower education materials regarding debt settlement harm.
- Sending customer communications to intervene.