CDRI | Consumer Debt Relief Initiative

September 12, 2024

Administrator
Debt-Management Services Act
Office of the Attorney General
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203
dm@coag.gov

Re: Comments Regarding Rulemaking Under the Colorado Debt-Management Services Act

Dear Administrator,

Thank you for the opportunity to provide feedback on the rulemaking regarding debt settlement service fees. As one of the two major debt settlement industry trade associations, the Consumer Debt Relief Initiative (CDRI) can provide information critical to the rulemaking process, including information to support the position that fee caps would cause significant negative consequences to Colorado consumers by limiting access to debt settlement services, which is in direct contention to the law, which states, "The rules must not unduly limit consumer access to debt management services programs based on available state and national data."

In order to understand the debt settlement industry, it is important to understand the positive changes that have occurred following amendment of the federal Telemarketing Sales Rule (2010), which Colorado supported.[1] Significantly, since the TSR amendments, the industry has matured and developed a robust set of trade association accreditation standards. Prior to the TSR amendment, attorneys general across the country were receiving myriad complaints regarding the now-reformed industry.[2] These complaints were driven by an inability at the time to weed out bad actors through the existing framework of state laws, which largely tried to regulate the industry through fee caps. Indeed, Colorado was one of these states. As a result, the amendments to the

[1] In support of the TSR amendments, Colorado joined two letters with multiple states through the National Association of Attorneys General (NAAG) dated October 23, 2009, and July 6, 2010. In addition, Colorado submitted its own comment letter in connection with and support of the TSR amendments dated October 23, 2009.

[2] *Id.* In the letters from NAAG, the attorneys general stated complaints against debt settlement companies received by the states had consistently risen. For example, they noted Illinois complaints against debt settlement companies increased by 55% between 2008 and 2009. In addition to complaints rising, the attorneys general noted at the time that enforcement actions had continued to be filed, listing a non-comprehensive list of well over 100 enforcement actions and investigations during the years leading up to the TSR amendments. Significantly, this data was developed before the TSR's debt settlement amendments, when many states thought fee caps could successfully regulate the industry.

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TSR banned debt settlement companies from collecting up-front fees and permitted them to collect fees only once debts were settled as approved by the customer. By raising the costs of entry into the market and requiring companies to obtain successful settlements to be paid, it helped to ensure most companies that continued to operate did so in a way that benefitted consumers and caused many bad actors to leave the debt settlement industry. Following the success of the TSR amendments, the Colorado legislature repealed fee caps in 2011 as they were no longer necessary to regulate the industry. Today, the limited number of companies that engage in misconduct are doing so in violation of existing law, which Colorado can enforce, as it has in its case against Strategic Financial Services, LLC et al.[3]

As further demonstration of this, in the past year, the Consumer Financial Protection Bureau has received only a handful of complaints from Coloradans regarding debt settlement, and it is our understanding that your office has also received only limited consumer complaints regarding debt settlement providers. In addition, the Colorado Department of Regulatory Agencies, in its 2023 Sunset Review of the Uniform Debt-Management Services Act (UDMSA 2023 Sunset Review), recommended continuing with the regulatory status quo, which does not include fee caps, for an additional 11 years. The report also included information about consumer complaints regarding debt settlement, which from 2017 through 2022, identified only 42 complaints. Of those complaints, 24 were in regard to unregistered activity. Moreover, during the Sept. 12, 2024, stakeholder meeting regarding the proposed rules (Stakeholder Meeting), a consumer advocacy group representative confirmed a lack of consumer complaints.[4]

Nevertheless, the concept of fee caps has now been reintroduced in this rulemaking without any explanation of the need or basis for such regulation. In fact, during the Stakeholder Meeting, when directly asked for the basis for the proposed fee caps, none was given. Returning to a structure that includes fee caps will not serve Colorado consumers and, in fact, will only work to drive good industry actors out of the state and decrease options for your citizens. Other states, such as California, have recently considered fee caps in their debt settlement laws and ultimately determined not to include them. In states that have imposed restrictive fee caps, consumers struggle to access debt settlement programs through the various channels in which they are offered. For example, in Oregon, where statute caps debt settlement fees at 7.5% of consumer savings, we are unaware of any settlements whatsoever (2022). Washington, which caps debt settlement fees at 15% of enrolled debt and no more than 15% of any individual consumer deposit into a program, saw a very small number of total settled accounts – only about 6,000 (2022). Consumer access to debt settlement programs in both of these states is highly restricted.

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[3] On Jan. 10, 2024, Colorado, six other states, and the Consumer Financial Protection Bureau filed suit against Strategic Financial Services, affiliated companies, and owners Ryan Sasson and Jason Blust for an alleged illegal debt-relief scheme. See *Consumer Financial Protection Bureau v. Stratfs, LLC* (f/k/a Strategic Financial Solutions, LLC), 1:24-cv-00040, (W.D.N.Y.). Of significance, based on the information in the complaint, fee caps would have not deterred the alleged violations by the Defendants.

[4] Information provided by a National Consumer Law Center representative.

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This is the result of the significant costs that debt settlement companies incur in onboarding and maintaining their clients' accounts while complying with the federal TSR's advance fee ban. At the same time, clients remain in complete control of their accounts and are free to leave the program at any time. As a result, companies must price their services both competitively to meet customer demand but also realistically to keep the business financially viable. Where states impose restrictive fee caps that make it impossible to strike this balance, compliant companies are forced to cease doing business or only engage in limited business in those states.

Many Coloradans, like other Americans, have found themselves in unfortunate financial situations and use our members' services. As the state of Colorado reported through its UDMSA 2023 Sunset Review, consumer debt continues to grow in the United States and in the second quarter of 2023, total household debt increased by $16 billion to reach $17.06 trillion. The review acknowledges debt as a pervasive issue for Americans, with 26 percent of consumers having significant debts in collection. In regard to Colorado specifically, the review points out that approximately 21 percent of residents have large amounts of debt in collections, with 36 percent of Colorado residents from communities of color having significant debts.[5] Furthermore, the Office of Financial Empowerment (OFE) in the Colorado Attorney General's Office reports that many Coloradans still struggle financially, lack access to safe and affordable financial services, and lack the support needed to maintain financial stability. The OFE states that communities of color, those with limited incomes, and those in rural areas disproportionately experience financial insecurity as compared to the general population. The OFE focuses on developing strategies to support local communities to help grow the financial resilience and well-being of Colorado's most economically vulnerable communities.[6]

Debt settlement consumers generally represent segments of the population who have traditionally not had access to sophisticated financial options (such as home equity loans) that can enable them to handle a financial hardship. While debt settlement is not without costs, at current market-driven rates, it still presents a viable option to millions of Americans who, with sub-550 credit scores and no lendable assets, are otherwise left to face harassment by debt collectors, litigation, wage garnishment, and (if they can afford the legal fees) bankruptcy. Rules with fee caps, such as those proposed today, will necessarily restrict access to debt settlement services by the underserved communities that need it the most, and may also create a black market where non-compliant companies fill the gap to meet consumer demand. Instead of supporting Coloradans by providing access to safe and affordable financial services, like the OFE strives for, fee caps would do just the opposite. During the Stakeholder Meeting, even a consumer advocacy group representative acknowledged fee caps will cause a reduced amount of settlements.[7]

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[5] The UDMSA 2023 Sunset Review cites to the Federal Reserve Bank of New York and the Urban Institute for these statistics.

[6] *See* https://coag.gov/resources/ofe/, accessed Sept. 12, 2024.

[7] Information provided by a National Consumer Law Center representative.

This is clear when you compare states with similar populations and the effects of fee caps:[8]

	Connecticut	Oklahoma
Population, 2022	3.608 million	4.019 million
Fee cap	10% of savings	None
Total debt settled, 2022	$3,712,163	$84,455,435
Total consumer savings, 2022	$877,000	$27,295,669
	Rhode Island	**South Dakota**
Population, 2022	1.093 million	0.909 million
Fee cap	30% of savings	None
Total debt settled, 2022	$1,396,248	$19,424,984
Total consumer savings, 2022	$545,261	$6,152,989
	Iowa	**Nevada**
Population, 2022	3.200 million	3.178 million
Fee cap	18% of enrolled debt or	None
Total debt settled, 2022	$29,894,430	$65,363,181
Total consumer savings, 2022	$9,511,193	$19,573,893

We are committed to sharing additional information about the value of debt settlement and providing the data to support those value claims. Debt settlement is not right for every type of consumer financial distress, but, in the right circumstances, it is the option that produces the best results. For qualifying consumers, debt settlement is affordable, especially in comparison with other debt relief alternatives such as debt consolidation loans (with interest rates nearing 30%) or bankruptcy. It also puts consumers in a much better financial position than either of those options. Of all the options for consumers in this position to consider, only bankruptcy and debt settlement provide an avenue to actually reduce the principal the consumer owes. Credit counseling, debt consolidation loans, and other similar alternatives may provide the consumer with more time and/or a lower interest rate, but the consumer will still pay 100% of their principal. Further, the re-filing rate for Chapter 13 is substantially higher than the re-enrollment rate in debt settlement programs, suggesting that additional fees may be accrued through multiple bankruptcy filings but

[8] Data is derived from *Options for Consumers in Crisis: An Updated Economic Analysis of the Debt Resolution Industry*, Greg J. Regan, Dec. 31, 2023, and the *2023 National Economic Impact Study of the Debt Resolution Industry*, John Dunham and Associates, November 2023.

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not through multiple enrollments in the same debt settlement program.[9] Importantly, on average, for every $1.00 paid in fees in a debt settlement program, there is a $2.58 reduction in debt.[10]

Another important factor is that the debt settlement industry, through Colorado's debt settlement law, federal standards specifically regulating debt settlement, and trade association accreditation standards for membership, is governed by a robust set of compliance requirements that ensure consumer protections. Currently, debt settlement providers licensed in Colorado must prove that consumers have enough income to be successful in a program through a suitability and financial analysis and must provide consumers with an estimate of total fees, length of program, and projected results. Federal debt settlement standards prohibit any debt settlement company that engages with consumers by phone as part of the marketing or enrollment process from charging any fee until a debt is actually settled for a consumer and require these companies to offer consumers the right to cancel their program at any time at no cost. Trade association accreditation standards mandate employee training, record retention, and additional pre-enrollment disclosures to educate consumers, in addition to regulating the content of program agreements and other consumer protections.

This is an industry committed to the highest standards of consumer protection. It provides a valuable option to Coloradans who are struggling to service their unsecured debt obligations. Fee caps are being proposed as a solution to a non-existent problem and, instead of helping consumers, would hinder their access to much-needed debt settlement services, which runs afoul of the law's requirement that the rule not unduly limit consumer access.

We thank you for your consideration and ask that you please contact us with any questions.

Sincerely,

C Andrews

Cliff Andrews
CEO, CDRI

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[9] *A Descriptive Comparison of Chapter 13 Bankruptcy and Debt Settlement*, Freedom Debt Relief, September 2021.

[10] *Options for Consumers in Crisis: An Updated Economic Analysis of the Debt Resolution Industry*, Greg J. Regan, Dec. 31, 2023.

Brownstein Hyatt Farber Schreck, LLP
303.223.1100 main
675 Fifteenth Street, Suite 2900
Denver, Colorado 80202

September 12, 2024

Sarah M. Mercer
Attorney at Law
303.223.1139 direct
smercer@bhfs.com

VIA E-MAIL: DM@COAG.GOV

Martha Fulford
Administrator, Debt-Management Services Act
Office of the Attorney General, Consumer Protection Section, DM
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, Colorado 80203

RE: Debt-Management Services Act Potential Rulemaking Stakeholder Meeting

Dear Administrator Fulford:

We represent the American Association for Debt Resolution, which is the leading national association of debt resolution companies. Debt resolution services are important and beneficial to consumers. In 2022, the last full year for which independent data is available, debt resolution providers enrolled **$5.61 billion** in total debt[1] on behalf of more than **1.5 million consumers** nationwide.[2] At the time of settlement, the total amount of unsecured debt in enrolled accounts had increased to **$6.294** billion due to accretion.[3] Debt resolution providers collectively settled **$2.848 billion** on behalf of consumers in 2022, providing a total consumer savings of **$1.789 billion**, inclusive of fees.[4] Consumers on average each enrolled **6.7 accounts** into debt resolution programs during this period, with a mean total debt enrolled of **$26,392** per consumer.[5] Debt resolution clients saw their first settlement within just **four to six months** of enrolling in their debt resolution program.[6]

Moreover, consumers do not complain about debt resolution services. Of the 1.79 million consumer complaints received by the Consumer Financial Protection Bureau last year, **only 850, or 0.04%,** pertained to debt resolution.[7] A similar trend is true in the data kept by the Better Business Bureau. In

[1] *See* "Options for Consumers in Crisis: An Updated Economic Analysis of the Debt Resolution Industry" by Greg J. Regan.
[2] *See* "2023 Economic Impact of the Debt Resolution Industry" by John Dunham and Associates.
[3] *Ibid.*
[4] *Ibid.*
[5] *See* "Options for Consumers in Crisis: An Updated Economic Analysis of the Debt Resolution Industry" by Greg J. Regan.
[6] *Ibid.*
[7] Data derived from Consumer Financial Protection Bureau public consumer complaints database between July 11, 2023 and July 11, 2024: https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=1y&date_received_max=2024-07-11&date_received_min=2023-07-11&lens=Product&searchField=all&subLens=sub_product&tab=Trends.

2021, the organization received just under 1.25 million complaints. Only approximately **750** of those complaints were related to debt resolution, which accounts for **0.06%** of complaints. The same is true in Colorado, where debt resolution accounted for just **17** consumer complaints out of 11,467 filed, or just **0.15%**. We have not been made aware of a significant number of consumer complaints in Colorado, nor has the industry been presented with evidence articulating what consumer protection issue the rulemaking being considered would seek to address.

Debt resolution providers provide a highly valuable service to consumers under a strong federal regulatory framework and in compliance with state and federal law. As we have shared in our previous conversations, the amendments to the Telemarketing Sales Rule ("TSR") enacted by the Federal Trade Commission ("FTC") in 2010 implemented sweeping consumer protections within the debt resolution industry by, among other protections, prohibiting debt resolution companies from charging advanced fees to consumers. As a result, debt resolution companies may only receive their fee from consumers after they have provided the benefit of their service. Almost immediately after implementation of the TSR amendments, Colorado passed House Bill 11-1206 to repeal the state's existing fee cap for debt resolution services. Other states followed suit, acknowledging that fee caps were no longer necessary given the TSR amendments and recognizing that fee caps would only serve to restrict consumer access to debt resolution services following the implementation of the FTC's rule. In fact, only one state, Virginia, has adopted a fee cap for debt resolution services since the FTC adopted the TSR amendments in 2010.

Colorado law authorizes the Administrator to adopt rules regarding the fee or charge for debt management services, but provides that the rules cannot "unduly limit access" to such services: "The Administrator may adopt rules regarding the fee or charge authorized pursuant to subsection (d)(2)(A)(iii) of this section by March 1, 2025. The rules must not unduly limit consumer access to debt management services programs based on available state and national data."[8] Based on the available data from other states, which the industry has previously shared, the fee cap of 15% of enrolled debt or 30% of savings proposed in "DMSA Draft 2" is unworkable because it would unduly limit consumer access. Three examples are illustrative:

First, Nevada and Iowa both have populations of approximately 3.2 million people. Nevada has no debt resolution fee cap, while Iowa imposes a cap of 18% of enrolled debt or 30% of savings. Independent data shows that in 2022, Nevada consumers saw approximately **75% more accounts settled** by debt resolution companies than Iowa consumers and about **72% more total debt settled**.

Second, Oklahoma, a state with a population of roughly 4 million, has no fee cap and saw debt resolution programs settle more than **$41 million** in unsecured debt in 2022 for its consumers. By

[8] Colorado Revised Statutes § 5-19-223(d)(2)(C).

contrast, Connecticut, which has a similar size population but imposes a fee cap, saw debt resolution programs settle only about **$877,000** in 2022 for its consumers.

Last, Rhode Island, a state with a population of just over 1 million, imposes a 30% of savings fee cap on debt resolution programs. South Dakota, a state with approximately 100,000 fewer residents but no fee cap, saw **twelve times** as many accounts settled for its consumers in 2022.

This state data demonstrates that fee caps arbitrarily limit access to debt resolution services rather than providing additional protections for consumers. If the fee cap proposed in “DMSA Draft 2” is adopted in Colorado, it would do the same.

For these reasons, continuing under the existing framework as proposed in “DMSA Draft 1”, which aligns Colorado’s regulations with those promulgated at the federal level by the FTC in 2010, is the best path forward. “DMSA Draft 1” ensures that consumers will continue to be protected by both the TSR’s prohibition on advanced fees and additional state-imposed safeguards against consumer harm, including licensing and disclosures, without unduly limiting access to debt resolution services as the unworkable fee cap proposed in “DMSA Draft 2” would do.

We appreciate your consideration of these comments, and look forward to the opportunity to further discuss the draft language during the stakeholder meeting.

Sincerely,

Sarah Mercer

Sarah Mercer

cc: Steve Boms, American Association for Debt Resolution
Jason Dunn, Brownstein Hyatt Farber Schreck

CDRI | Consumer Debt Relief Initiative

August 27, 2024

Phil Weiser
Colorado Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203
pjweiser@coag.gov

Re: Ensuring Continued Access to Debt Relief for Colorado Consumers

Dear General Weiser,

Thank you and your staff for engaging in continued dialogue with the debt settlement industry regarding HB 1380, which provides that the state UCCC administrator *may* adopt rules regarding debt settlement services fees. As one of the two major debt settlement industry trade associations, the Consumer Debt Relief Initiative (CDRI) appreciates your attention to this matter and the time and attentiveness your staff has provided through multiple communications and meetings to date.

As no rulemaking has commenced yet, this is a critical inflection point for your office. During our meetings with staff, we have been told that your office has not heard from stakeholders supportive of a rulemaking, and that the purpose of the rulemaking process would be to determine if fee caps are necessary due to staff perception that debt settlement services are simply "too expensive." We believe that a rulemaking is premature, and that fee caps would cause significant negative consequences to consumers, including by limiting access to debt settlement services. Moreover, we believe that many of your office's questions can be better answered through ongoing dialogue with you and staff. We are committed to sharing information about the value of debt settlement and providing the data to support those claims. We would also like to further discuss not only the affordable cost of debt settlement versus other debt relief alternatives, but how debt settlement actually puts consumers in a much better financial position than debt consolidation loans or bankruptcy. Finally, we can demonstrate how fee caps will limit consumer access to debt settlement programs using data from other states that have tried that approach, such as Illinois, Iowa, and Minnesota. And we can do all of this without the state expending the time and resources that a rulemaking would require.

Many Coloradans who have found themselves in unfortunate financial situations use our members' services. This industry underwent substantial change following amendment of the federal Telemarketing Sales Rule (2010). Significantly, many bad actors were driven out of debt settlement. Prior to that, attorneys general across the country were receiving myriad complaints regarding the now-reformed industry. By comparison, in the past year, the CFPB has received

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only a handful of complaints from Coloradans regarding debt settlement, and it is our understanding that your office has also received only limited consumer complaints regarding debt settlement providers. This reflects the TSR amendments' effectiveness, and in that context, the Colorado legislature *repealed* fee caps in 2011. Of note, Virginia is the only state that has passed a fee cap since the adoption of the TSR amendments. California, for example, considered fee caps in its debt settlement law and determined not to include them. In addition, the Colorado Department of Regulatory Agencies, in its 2023 Sunset Review of the Uniform Debt Management Services Act (UDMSA), recommended continuing with the regulatory status quo, which does not include fee caps, for an additional 11 years. The report also included information about consumer complaints regarding debt settlement, which from 2017 through 2022, identified only 42 complaints. The overwhelming majority of these related to unregistered activity. Returning to a structure that includes fee caps will not serve Colorado consumers and, in fact, will only work to drive good industry actors out of the state and decrease options for your citizens.

Additionally, the debt settlement industry has a robust set of accreditation and compliance requirements that ensure consumers receive the protections in the UDMSA and more. Currently, licensed debt settlement providers in Colorado must offer consumers the right to cancel their program at any time at no cost, must prove that consumers have enough income to be successful in a program through a suitability and financial analysis, and must provide consumers with an estimate of total fees, length of program, and projected results. All of this is in addition to the federal (and state) requirement that no debt settlement company may charge any fee until a debt is actually settled for a consumer.

We ask that in lieu of rulemaking, we continue to work with your office to provide information about debt settlement and the negative impact of fee caps. This is an industry committed to the highest standards of consumer protection, and we feel that through our collaboration, you will ultimately find fee caps and a rulemaking unnecessary. We thank you for your consideration and ask that you please contact us with any questions.

Sincerely,

C Andrews

Cliff Andrews
CEO, CDRI

1717 Pennsylvania Ave. NW, Suite 1025, Washington, D.C. 20006 | 410.630.1755 | www.debtreliefadvocate.com

Dealing with Debt

September 12, 2024

Phil Weiser
Colorado Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

RE: Request for Input Concerning Rulemaking under the Colorado Debt-Management Services Act

Dear Attorney General Weiser,

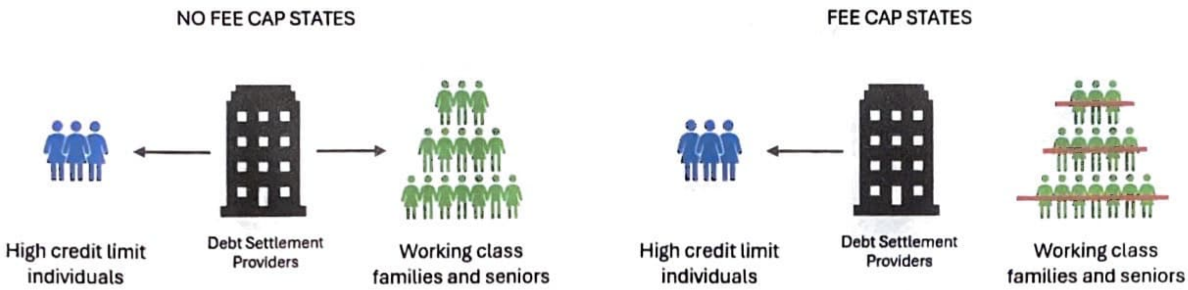
I hope this letter finds you well. I am writing to you in my capacity as Chief Executive Officer of Dealing with Debt (DWD), a 501(c)(3) non-profit organization committed to supporting U.S. consumers as they navigate the complex challenges of personal debt. ***Our mission is to improve public health, one budget at a time, by providing financial education, access to essential resources, and a supportive community for individuals at all stages of their financial journey***.

Through our online community, DWD offers access to peer connections and coaching, as well as a comprehensive set of financial educational courses and tools necessary to achieve and maintain financial stability, and our services are free to consumers.

I wanted to reach out to express our concerns regarding Colorado's potential adoption of any fee cap structure for debt settlement providers. This issue was recently brought to our attention by a member of our board who is actively involved in the debt settlement industry. As an organization committed to supporting consumers, we believe it is crucial to engage with and understand the perspectives of all industries and stakeholders that play a role in addressing the financial challenges faced by the individuals we serve.

While we understand the intent behind such regulations, we believe that ***fee caps, as seen in other states, ultimately harm the very consumers they are meant to protect by reducing access to legitimate debt relief services***.

In our work at DWD, we recognize that fixed-income communities, made up of working-class families and seniors, are disproportionately affected by limited access to credit. These individuals often experience problem debt at lower levels than those with higher credit limits, yet their ability to access services like debt settlement is critical to resolving their financial difficulties. ***When fee caps are introduced, debt settlement providers are forced to focus their services on consumers with higher debt levels, leaving these working-class families and seniors without access to critical support***.



We firmly believe that ***the best way to support struggling consumers is to ensure they have access to a broad range of debt resolution options***, including credit counseling, debt settlement services, and even bankruptcy proceedings, all provided by trusted and reputable companies. Limiting these options through the imposition of fee caps risks leaving consumers with fewer viable avenues for addressing their debt.

We appreciate your consideration of these concerns and would welcome the opportunity to engage further in dialogue. I know we share a common goal—to support Colorado consumers in overcoming financial distress—so we are eager to collaborate in ensuring the best possible outcomes for those struggling with debt.

Thank you for your time and attention. We look forward to the opportunity to work together toward a solution that benefits all Colorado residents.

Sincerely,

The Honorable Shawn Tarrant
Chief Executive Officer
Dealing with Debt

October 18, 2024

Phil Weiser
Colorado Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

RE: Second Request for Input Concerning Rulemaking under the Colorado Debt-Management Services Act

Dear Attorney General Weiser,

On behalf of Dealing with Debt (DWD), a 501(c)(3) non-profit organization dedicated to supporting consumers in their journey to financial recovery and stability, I am writing to provide further comments on the ongoing rulemaking process under the Colorado Debt-Management Services Act. This is the second time we have had the opportunity to offer input, and ***we appreciate the opportunity to contribute once again to this important discussion.***

We want to acknowledge and ***commend your office's decision not to pursue fee caps for debt settlement services***. This decision is a step in the right direction toward ensuring that Coloradans can access the full range of financial recovery options they may need.

At DWD, ***we believe strongly in preserving consumers' access to all forms of debt relief—credit counseling, debt settlement, and bankruptcy***. Each option plays a vital role in helping individuals recover from financial hardship, and limiting access to any of these options would unnecessarily constrain consumers' ability to make the best choices for their financial futures.

As a stakeholder and participant in this conversation, we are concerned with the most recent draft that may restrict debt settlement companies to a "percentage of savings" fee model, as proposed, will ultimately hurt consumers by reducing their ability to understand costs upfront and limiting access for lower-debt individuals. Based on our own knowledge and experience, ***we believe that allowing for fee calculation based on a percentage of debt enrolled provides consumers with the clarity and choice they need***.

Moreover, ***such restrictions could disproportionately impact economically vulnerable communities, including seniors on a fixed income and working-class communities***, as we noted in our last letter and comments. The need for a diverse array of financial solutions is particularly acute for these populations, as they already face challenges to financial stability.

Dealing with Debt remains committed to helping Coloradans access the debt relief options that best serve their needs. We ***urge your office to adopt rules that maintain flexibility for consumers and providers alike, thereby ensuring the broadest possible access to effective debt relief solutions***.

Thank you again for the opportunity to provide our input. We look forward to continued collaboration as this process moves forward.

Sincerely,

The Honorable Shawn Tarrant
Chief Executive Officer
Dealing with Debt

October 18, 2024

Administrator
Debt-Management Services Act
Office of the Attorney General
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203
dm@coag.gov

Re: Second Submission of Comments Regarding Rulemaking Under the Colorado Debt-Management Services Act

Dear Administrator,

Thank you for the opportunity to again provide feedback on the above-referenced rulemaking. As a reminder, the Consumer Debt Relief Initiative (CDRI) is one of the two major debt settlement industry trade associations and, as such, provides information critical to the rulemaking process. We appreciate your consideration of our testimony and written comments dated Sept. 12, 2024, related to the first stakeholder meeting held on that same date during which we expressed our opposition to the proposed rule containing fee caps. The state then proposed a new rule that limits the method of fee calculation to percent of savings, excluding the option for a fee calculation method based on a percent of debt enrolled. A second stakeholder meeting occurred today, Oct. 18, 2024, wherein we expressed our opposition to this new rule, and we offer these comments in supplement of that testimony and position. Notably, we are unaware of any issues in the industry that would necessitate such a restriction, nor was any discussed at the prior stakeholder meeting and, therefore, we support adopting the rule that maintains the status quo. We appreciate the opportunity to address our concerns in this letter and through our testimony at the second stakeholder meeting.

There Is No Basis to Restrict the Method of Calculating Fees

As was stated in our earlier submission, debt settlement companies have drawn limited consumer complaints since the industry was overhauled by the amendments to the TSR in 2010, including in Colorado. During the first stakeholder meeting, no information was provided to the contrary, and, in fact, a consumer advocacy group representative confirmed a lack of consumer complaints.[1] In addition, the Colorado Department of Regulatory Agencies, in its 2023 Sunset Review of the Uniform Debt-Management Services Act (UDMSA 2023 Sunset Review), noted

[1] Information provided by a National Consumer Law Center representative.

that from 2017 through 2022 there were only 42 complaints, mostly related to unregistered activity. Significantly, the Department recommended continuing with the regulatory status quo, which allows for fee calculations based on both a percentage of debt enrolled or a percentage of savings, for an additional 11 years. Federal law allows both methods of fee calculation. Nevertheless, the new proposed rule disallows a fee calculation based on a percentage of debt enrolled without any explanation of the need or basis for such regulation. The problem the proposed rule is trying to solve is unknown, but what is certain is that it limits options in debt settlement fee method calculation, hindering debt settlement companies' ability to provide consumers with the cost of the service upfront which can negatively impact consumers. Also of significance, bad actors can be targeted by regulatory enforcement actions whether the fee calculation method is based on savings or enrolled debt. Bad actors ignore the TSR's advance fee ban, and they will likely not comply with a fee calculation method based on percent of savings.

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This proposal is at odds with consumers' preferences and with guidance from the Federal Trade Commission and state attorneys general on how to effectively communicate price information to consumers. Requiring a fee based on savings means that consumers will have less clarity about what they are agreeing to pay for their debt settlement program when they enroll. Consumers have communicated to debt settlement companies that they prefer the certainty of a fee based on enrolled debt over committing upfront to a fee amount that will not be determined until months later. This is a key reason for most debt settlement providers calculating fees based on a percent of debt enrolled. Regulators, including the FTC and state attorneys general, have expressed concerns when consumers are unable to determine prices upfront. In an enrolled debt model, the debt settlement company provides an estimate of total costs for the program at the time of enrollment that includes the debt settlement company fee for service, and that fee cannot change even if the amount of the consumer's debt increases while enrolled in the program. This means the consumer would know their program costs on day one and can more easily plan a monthly budget to pay down their debts. And as discussed in our earlier submission, of importance, the consumer has the ultimate authority to reject or approve each settlement. The consumer does not pay any fee for the company's efforts to secure a settlement proposal; the company only gets compensated when the consumer accepts a settlement. Requiring a fee method based on a percent of savings means taking away a consumer's ability to know their costs upfront.

Consumer Choice

In addition, a savings-based fee calculation method is often not the best way, and should not be the only way, to ensure that debt settlement companies align their interests with their customers' interests. Just as debt settlement is not the best option for every consumer experiencing financial stress, not every debt settlement customer prioritizes the percentage of savings ahead of all their other interests such as a timelier resolution. Many consumers value this over potential additional savings as ongoing debt issues are major contributors to mental health concerns, can disrupt personal relationships, and affect a consumer's ability to find or maintain employment. A fee structure based exclusively on savings encourages creditors to prolong the negotiation process beyond what would have been possible with a fee based on enrolled debt. Creditors reason that they can wait out debt settlement companies whose fees are tied exclusively to savings, ultimately jeopardizing debt settlement companies' ability to operate. However, extending the negotiation period can come with costs to the consumer, including costs that the consumer might prefer not to bear.

For example, a consumer whose debt is jeopardizing an employment opportunity or a security clearance might choose a quicker settlement, even at a lower savings rate. A consumer might choose a quicker settlement because that means less likelihood of being sued by a creditor and less time being harassed by collection calls. A consumer might choose a quicker settlement because that shortens the period during which the consumer is making monthly payments under their plan and experiencing a negative impact on their creditworthiness while delaying the start of their post-program rehabilitation of their credit record. To be sure, some consumers may well choose to stay enrolled in their debt settlement program for as long as it takes to achieve the maximum percentage of savings. The consumer's legally mandated opportunity to accept or reject each proposed settlement commits the debt settlement company to act in accordance with that choice. Requiring everyone to only use a percentage of savings fee method would penalize a debt settlement company for delivering the desired outcome for any customer who prioritizes anything ahead of percentage of savings.

Consumer Access

Consumer access will be impacted by only allowing a fee cap based on savings because it effectively rules out the debt settlement option for lower-debt consumers who are experiencing substantial financial stress. It is not financially feasible for debt settlement companies to work with these consumers if they are required to use a savings-based fee structure because the potential return in exchange for the labor invested in the consumer is too small. The relative economic impact of the percentage of savings model causes this minimum debt-load enrollment amount to increase, leaving consumers below this threshold without a debt settlement option. This is not a result of poor company performance; rather, it is simply a necessity to ensure sufficient aggregate fee potential necessary to continue company existence.

As was referred to in our earlier submission, the state of Colorado reported through its UDMSA 2023 Sunset Review that consumer debt continues to grow in the United States and in the second quarter of 2023, total household debt increased by $16 billion to reach $17.06 trillion. The review acknowledges debt as a pervasive issue for Americans, with 26 percent of consumers having significant debts in collection. For Colorado, the review points out that approximately 21 percent of residents have large amounts of debt in collections, with 36 percent of Colorado residents from communities of color having significant debts.[2] Furthermore, the Office of Financial Empowerment

[2] The UDMSA 2023 Sunset Review cites to the Federal Reserve Bank of New York and the Urban Institute for these statistics.

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(OFE) in the Colorado Attorney General's Office reports that many Coloradans still struggle financially, lack access to safe and affordable financial services, and lack the support needed to maintain financial stability. The OFE states that communities of color, those with limited incomes, and those in rural areas disproportionately experience financial insecurity, as compared to the general population.[3] These consumer groups often include lower-debt consumers and a fee cap based on savings would negatively impact their access to debt settlement.

In addition to the negative impact on lower-debt consumers caused by only allowing a percent of savings fee method, it would also require debt settlement companies to use a fee method calculation that degrades customer experience as costs would be unknown upfront leaving consumers to make less-informed enrollment decisions. For these reasons, the impact of a savings-based fee requirement may deter companies from operating in the state, depleting consumer access, including those from Colorado's most economically vulnerable communities.

Conclusion

Debt settlement provides an essential debt relief option to Coloradans who are struggling to service their unsecured debt obligations. Colorado consumers deserve choice and to know what they are paying for a good or service. They also deserve access to options to help them through difficult financial situations, including the option of debt settlement, which is being used by many Coloradans under the current regulatory regime. A requirement that the fee calculation method be based on a percentage of savings, and the disallowance of a fee calculation based on a percentage of debt enrolled, is being proposed as a solution to a non-existent problem and will take away valuable options for consumers.

We support adopting the rule that maintains the status quo, which allows for a fee calculation based on a percent of debt enrolled. We oppose the adoption of the rule that requires a fee method calculation based on a percentage of savings and continue to oppose the adoption of the rule requiring fee caps. We thank you for your consideration and ask that you please contact us with any questions.

Sincerely,

C Andrews

Cliff Andrews
CEO, CDRI

[3] *See* https://coag.gov/resources/ofe/, accessed Sept. 12, 2024.

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Brownstein Hyatt Farber Schreck, LLP
303.223.1100 main
675 Fifteenth Street, Suite 2900
Denver, Colorado 80202

October 18, 2024

Sarah M. Mercer
Attorney at Law
303.223.1139 direct
smercer@bhfs.com

VIA E-MAIL: DM@COAG.GOV

Martha Fulford
Administrator, Debt-Management Services Act
Office of the Attorney General, Consumer Protection Section, DM
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, Colorado 80203

RE: Debt-Management Services Act Potential Rulemaking Stakeholder Meeting #2

Dear Administrator Fulford:

As you know, we represent the American Association for Debt Resolution. We appreciate this opportunity to submit written comments in advance of the second potential rulemaking stakeholder meeting concerning the Debt-Management Services Act ("DSMA"). In order to avoid repetition, we incorporate here the written comments we submitted in advance of the first DMSA potential rulemaking stakeholder meeting, which was held on September 12, 2024.

First, and most importantly, neither the oral nor written comments provided in response to or as part of the first stakeholder meeting demonstrated any evidence suggesting that the current manner in which debt resolution providers charge fees to consumers for debt resolution services in accordance with the Federal Trade Commission's ("FTC") 2010 amendments to its Telemarketing Sales Rules ("TSR") is problematic. Moreover, as was discussed during the first stakeholder meeting and in our written comments, consumers do not complain about debt resolution services.[1] For these reasons, we support "DM Draft Rule 4 Status Quo" and oppose "DM Draft Rule 4 Savings."

In addition, we oppose "DM Draft Rule 4 Savings" because it would arbitrarily prohibit one of the two FTC-mandated fee models for debt resolution services by limiting fees to be a percentage of the

[1] In 2021, the Better Business Bureau received just under 1.25 million complaints, but only about 750 (or 0.06%) were related to debt resolution. This is also true in Colorado, where there were only 17 debt resolution complaints out of 11,467 total complaint (or just 0.15%). Of the 1.79 million consumer complaints received by the Consumer Financial Protection Bureau last year, only 850 (or 0.04%) pertained to debt resolution. *See* Consumer Financial Protection Bureau Public Consumer Complaints Database (Jul. 11, 2023 through Jul. 11, 2024), available at: https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=1y&date_received_max=2024-07-11&date_received_min=2023-07-11&lens=Product&searchField=all&subLens=sub_product&tab=Trends..

amount saved as a result of the services. Unlike a percent of enrolled debt fee model, this approach would have the perverse outcome of making it impossible for consumers in financial hardship to know, with certainty, how much enrolling in a debt resolution program would cost them. By creating this uncertainty for consumers, a percent of savings-only fee model requirement would materially hinder consumers' ability to compare the costs of different options available to them to resolve their unmanageable unsecured debt burdens and would impose significant limitations on consumers' ability to access debt resolution programs in the state.

In its written comments to the first stakeholder meeting, the nonprofit Dealing with Debt stated that "the best way to support struggling consumers is to ensure they have access to a broad range of debt resolution options, including credit counseling, debt settlement services, and even bankruptcy proceedings, all provided by trusted and reputable companies."[2] We agree with Dealing with Debt, and believe that "DM Draft Rule 4 Status Quo" aligns with the Obama Administration's amendments to the TSR to provide a strong regulatory framework that would protect Colorado consumers without unduly limiting access to debt resolution services in the state.

We also want to take the opportunity to clear the record regarding the applicability of the TSR to debt resolution providers. During the first stakeholder meeting, the National Consumer Law Center erroneously claimed that the TSR does not apply to debt resolution providers. This is plainly false. There is little doubt that the TSR is appliable to debt resolution providers and, thus, this is an insufficient justification for changing the current fee structure allowed by the TSR and set forth in "DM Draft Rule 4 Status Quo."

By adopting "DM Draft Rule 4 Status Quo," the Colorado Attorney General's Office will ensure that consumers continue to be protected by both the TSR's prohibition on advanced fees and additional state-imposed safeguards against consumer harm, including licensing and disclosures, without unduly limiting access to debt resolution services. To the contrary, "DM Draft Rule 4 Savings" will arbitrarily limit the fee structure for debt resolution services creating uncertainty as to the availability of such services for Colorado consumers for without any demonstrable rationale or consumer benefit.

We welcome the presentation of any evidence articulating what consumer protection issue the proposed rulemaking seeks to address and, therefore, support "DM Draft Rule 4 Status Quo."

We appreciate your consideration of these comments, and look forward to the opportunity to further discussion during the stakeholder meeting.

[2] Dealing With Debt, Written Comment Letter re: Request for Input Concerning Rulemaking Under the Colorado Debt-Management Services Act (Sept. 12, 2024).

Sincerely,

Sarah Mercer

Sarah Mercer

cc: Steve Boms, American Association for Debt Resolution
Jason Dunn, Brownstein Hyatt Farber Schreck