

# Debt Settlement Industry Federal Regulatory Update

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# CFPB: “No news is good news”

- ▶ Most recent enforcement action: October 2013
  - Meracord Payment processing settlement
  - \$1.376 million civil penalty
  - Assisted companies in charging upfront fees after Telemarketing Sales Rule (TSR) was amended
  - Barred company from debt settlement processing
- ▶ Spring 2014 “Supervisory Highlights” report
  - No mention of debt settlement.
  - Focuses instead on payday lenders, debt collectors and consumer reporting agencies.



# CFPB: “No news is good news”

- ▶ No rulemaking announcements
  - Tom Pahl: “Perhaps maybe rulemaking someday”
  - No “Larger Participants” rule – like Debt Collection, Credit Reporting, now Auto Finance.
  - No further TSR modifications, disclosure requirements
- ▶ No separate Debt Relief Industry complaint tracking

# CFPB: Older news – not so good

- ▶ Mission Settlement Agency (May 2013)
  - First criminal referral by CFPB
  - Ended in guilty pleas by company and operator
  - Related civil action still pending
- ▶ American Debt Settlement Solutions (June 2013)
  - \$499,000 judgment stayed – inability to pay deal
- ▶ Payday Solution (Dec. 2012)
  - Five-state joint enforcement action
  - \$105,000 fine
- ▶ Tom Pahl: “Still paying close attention”



# FTC: “Business as Usual”

- ▶ 2013–14 Enforcement Actions:
  - Seven actions filed in the last three months of 2012
  - Continuing trend of state/federal cooperation
  - Extensive use of TRO/Asset Freezes
- ▶ Nelson Gamble settlement (Aug. 2013)
  - Permanent bar from DS, telemarketing, robocalling
  - Enjoined from misrepresentations about:
    - Refund policies, Government and other affiliations
    - Expertise, title position of those who provide services
    - Testimonials
  - \$4.6 million restitution (suspended – inability to pay)



# FTC's Internal Enforcement Structure



**Bureau of Consumer Protection**

**Marketing  
Practices**

**Advertising  
Practices**

# The TRO/Asset Freeze: The Nuclear Option in the FTC's Civil Enforcement Arsenal

- ▶ FTC Weapon: “unfair and deceptive acts and practices”



# Imagine...



PHOTO: DAVID PAUL MORRIS/BLOOMBERG VIA GETTY IMAGES



# It gets worse...



# Temporary Restraining Order (TRO)

Withdrawing Funds

Transferring Assets

Paying Bills

Borrowing Money



# Temporary Restraining Order (TRO)

Withdrawing Funds

Transferring Assets

Paying Bills

Borrowing Money

# In 2013

Companies

48

Business Owners

29

Employees

???



# Who was Targeted?

Debt  
Collection

Debt  
Settlement

Payday  
Lending

Timeshare  
Resale

Loan  
Modification

Marketing  
Industries



# Options?

- ▶ Attempt to persuade Judge to lift the freeze
- ▶ Negotiate an “inability to pay” settlement



# Summary

- ▶ NO Presumption of Innocence
- ▶ NO Right to a Hearing before Asset Freeze
- ▶ NO Assets Available With Which to Defend





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