# Regulatory Trends Offer 4 Lessons For Debt Relief Providers

By **Moorari Shah, A.J. Dhaliwal and Mehul Madia** (March 1, 2024)

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On Jan. 10, the Consumer Financial Protection Bureau and the attorneys general of seven states filed suit against New York-based debt relief company StratFS LLC, and its founders and certain affiliated entities, in the U.S. District Court for the Western District of New York. The suit alleges violations of the Telemarketing Sales Rule, or TSR, and New York and Wisconsin state law.[1]

This lawsuit is the latest in a string of enforcement actions by the CFPB and other regulators against debt relief and credit repair organizations, which underscores the intense regulatory scrutiny these companies are under.

**The Case Against StratFS**

CFPB v. StratFS LLC f/k/a Strategic Financial Solutions LLC was brought by the bureau and the state attorneys general of Colorado, Delaware, Illinois, Minnesota, New York, North Carolina and Wisconsin.

The plaintiffs allege that the company ran an unlawful debt relief operation involving shell companies and third parties to deceive consumers into believing they would qualify for loans to help pay down their debts.[2] When customers called to obtain the loans, employees advised them they did not qualify, and instead funneled them to StratFS' debt relief program with the promise that the company's network of law firms would help improve their credit.

The complaint alleges that upon enrolling customers, the company began immediately collecting fees, a violation of the TSR's advance fee prohibition. Moreover, the complaint alleges that the company provided little, if any, debt relief services. In the end, many of the customers exited the program having paid substantial fees but with none of their debts reduced, or in some cases, with more debt.

**The Increasing Assault on Credit Repair and Debt Relief Companies**

The StratFS lawsuit is not an isolated enforcement action. In fact, credit repair and debt relief companies have seen an uptick in enforcement actions and lawsuits in recent years, with settlements often tailored to put the companies out of business.

For example, in August 2023, the bureau struck a deal in the U.S. District Court for the District of Utah case of CFPB v. Progrexion Marketing Inc. for over $2.5 billion.[3] The bureau alleged that Progrexion affiliates Lexington Law and CreditRepair.com violated the TSR and committed deceptive conduct under the Consumer Financial Protection Act. The action helped drive the company into bankruptcy.

In April 2022, the bureau settled an action in the U.S. District Court for the Central District of California case of CFPB v. Performance SLC, a student loan debt relief company, and its

CEO Daniel Crenshaw, alleging that the company wrongfully collected upfront payments, failed to provide required disclosures, and engaged in deceptive telemarketing. In addition to a large penalty, the settlement imposed industry bans on the company and its chief executive.[4]

The Federal Trade Commission also has been very active in actions against debt relief companies. In its 2022 actions against The Credit Game[5] and ACRO Services,[6] the FTC not only enforced the TSR but also pursued violations of Section 5(a) of the FTC Act and the Credit Repair Organizations Act.

With state and federal regulators showing no signs of slowing down, what lessons can credit repair and debt relief companies learn from the flurry of recent actions?

**Important Compliance Lessons**

***1. Any type of advance fee arrangement will be challenged.***

Regulators have been quick to challenge any type of advance fee that debtors pay in order to receive debt relief services.

The TSR, among the range of protections it provides for consumers, requires that credit repair companies wait six months before they request payment for their services, and then only after they provide consumers with documentation reflecting that the promised results were achieved.[7]

Likewise, the Credit Repair Organizations Act prohibits credit repair organizations from receiving fees until the agreed-upon service has been fully performed.[8] While the CROA does not have a six-month waiting period for companies to receive renumeration, courts have found that it does not conflict with or supersede the TSR's requirements.[9] And federal regulators have been quick to bring advance fee claims under the more demanding TSR rather than under the CROA.

Accordingly, companies that use telemarketing as part of their debt relief services should look to develop compliance protocols that comply with the more stringent TSR requirements.

***2. Subscription fee arrangements also violate the TSR.***

Some companies have attempted to comply with the TSR by designing a subscription-based service that requires the consumer to pay an initial fee followed by a monthly charge.

For example, a company will charge a consumer an upfront fee to analyze and audit their credit report, and then charge a monthly fee as the company works to restructure the debt. These companies will often not promise a particular outcome but instead simply claim to guide the customer through the process.

Do these structures violate the TSR? Yes, according to federal regulators.

When confronted with a similar structure in the U.S. District Court for the District of Massachusetts case of CFPB v. Commonwealth Equity Group LLC in 2023, the CFPB argued that a credit repair organization cannot string along consumers for months and months — all the while charging them — without providing the requisite benefit to the consumer.[10] If the company collects a fee, it can only do so six months after it demonstrates proof that the service has been completed.

***3. Extravagant promises will grab the wrong type of attention.***

Federal regulators have been quick to pounce when companies promise dramatic results or make extravagant claims. For example, companies that promise an increase in a consumer's credit score from 500 to 700 in 45 days, or the removal of unlimited negative items from a credit report, will likely find themselves faced with a deceptive acts or practices claim.

Companies would be well advised to stay away from clickbait advertising and instead focus on the services they actually can provide. Hyperbole will only serve to get you flagged by regulators.

***4. Service providers are not off the hook.***

Federal regulators are not only limiting their actions to credit repair or debt relief companies, but are also using their broad powers to go after the companies' service providers.

The CFPA gives the CFPB the authority to pursue companies that provide substantial assistance to a covered person.

For example, in a 2021 action, the bureau used that authority in the Central District of California case of CFPB v. Daniel A. Rosen Inc. d/b/a Credit Repair Cloud to sue a software company that marketed and sold credit repair business software to credit repair businesses. The CFPB alleged the company instructed these businesses — through trainings, materials and software — to charge unlawful advance fees.[11]

Service providers that support the debt relief industry should pay close attention and confirm their own conduct is in accordance with federal and state laws.

**Conclusion**

Enforcement actions in recent years leave little doubt that debt relief and credit repair enterprises are top targets for federal and state regulators.

Companies should continue to monitor their compliance with federal telemarketing statutes and other unfair and deceptive practices laws.

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[1] The TSR, 16 C.F.R. § 310, is the implementing regulation of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108.

[2] Consumer Financial Protection Bureau et al. v. StratFS LLC (f/k/a Strategic Financial Solutions LLC) et al., No. 1:24-cv-00040-JLS-MJR (W.D.N.Y. Jan. 10, 2024), at https://www.consumerfinance.gov/enforcement/actions/stratfs-llc-fka-strategic-financial-solutions-llc-et-al/.

[3] Press Release, CFPB, "CFPB Reaches Multibillion Dollar Settlement with Credit Repair Conglomerate" (Aug. 28, 2023), at https://www.consumerfinance.gov/about-us/newsroom/cfpb-reaches-multibillion-dollar-settlement-with-credit-repair-conglomerate/.

[4] Press Release, CFPB, "CFPB Obtains Ban Against Debt Relief CEO Daniel Crenshaw" (Apr. 29, 2022), at https://www.consumerfinance.gov/about-us/newsroom/cfpb-obtains-ban-against-debt-relief-ceo-daniel-crenshaw/.

[5] Press Release, FTC, "FTC Action Leads to Permanent Ban for Scammers Behind 'The Credit Game' Credit Repair Scheme" (Dec. 15, 2022), at https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-action-leads-permanent-ban-scammers-behind-credit-game-credit-repair-scheme.

[6] Press Release, FTC, "FTC Lawsuit Leads to Permanent Ban from Debt Relief, Telemarketing for Operators of Debt Relief Scam" (May 1, 2023), at https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-lawsuit-leads-permanent-ban-debt-relief-telemarketing-operators-debt-relief-scam.

[7] See TSR, 16 C.F.R. § 310.4(a)(2).

[8] Credit Repair Organizations Act ("CROA") 15 U.S.C. § 1679b(b).

[9] CFPB v. Prime Mktg. Holdings LLC, 2016 WL 10516097 (C.D. Cal. Nov. 15, 2016).

[10] CFPB v. Commonwealth Equity Group LLC d/b/a Key Credit Repair and Nikitas Tsoukales a/k/a Nikitas Tsoukalis, No. 1:20-cv-10991-RWZ, (D. Mass.), Pl.'s Mot. Summ. J., at 18 (July 28, 2023)

[11] Press Release, CFPB, "CFPB Sues Software Company That Helps Credit-Repair Businesses Charge Illegal Fees" September 20, 2021, at https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-software-company-that-helps-credit-repair-businesses-charge-illegal-fees/.