

MEMORANDUM

To: Don Clark
From: Allison Brown, Attorney, Division of Financial Practices
Re: Telemarketing Sales Rule – Debt Relief Amendments, Comments to Be Placed on the Public Record
Date: June 16, 2010

On Tuesday, June 8, 2010, representatives of the consumer groups Consumer Federation of America, Consumer Action, Consumers Union of U.S., National Consumer Law Center, and Mid-Minnesota Legal Assistance, along with a representative of the Office of the Maryland Attorney General, met with Commissioner Ramirez, her attorney advisors, and an FTC staff member to discuss the proposed debt relief amendments to the Telemarketing Sales Rule.¹

The representatives stated that the ban on advance fees is the essential piece of the proposed rule. They stated that in debt settlement programs, the majority of consumers who enter the programs do not get their debts settled. If any companies go out of business in response to an advance fee ban, they will be the companies that do not provide actual services to consumers anyway.

The representative of the Maryland Attorney General's office said that in enforcement actions, the states repeatedly find that companies sign up consumers indiscriminately, even though debt settlement is only appropriate for a small fraction of consumers. In many investigations, it appears that the debt settlement counselors are simply salespeople whose only goal is to sign people up for the program.

The representatives said that trade associations already encourage their members to give consumers disclosures similar to those proposed by the FTC, but the disclosures have not ensured that consumers have made informed purchasing decisions. A study published by Dr. Richard Briesch found that 60% of consumers in one debt settlement program dropped out within six months.

The representatives said that the fundamental business model of debt settlement is problematic; people save hundreds of dollars in a bank account, but the majority of the money is used to pay the company's fees, making it impossible for consumers to save for settlements. Consumers are set up to fail but pay advance fees to fill the coffers of the businesses. Moreover, a number of debt settlement companies have said that they can operate without taking fees in

¹In attendance from the consumer groups were: Susan Grant, Consumer Federation of America; Linda Sherry, Consumer Action, along with Steve Sakamoto-Wengel, Office of the Maryland Attorney General. Participating by phone were: Gail Hillebrand, Consumers Union of U.S.; Andrew Pizor, National Consumer Law Center; and Ron Elwood, Mid-Minnesota Legal Assistance.

In attendance from the FTC were: Commissioner Ramirez, Janis Kestenbaum, Pablo Zylberglait, and Allison Brown.

advance of settlement.

The representatives said that the debt settlement industry associations are blaming others for problems that the FTC cannot fix through this rule, such as creditor incentives to provide more favorable payment plans and creditor harassment. The representatives also said the incentives are not properly aligned in the current system, as once consumers pay the full fees, the companies do not have the incentive to engage in additional work on behalf of the consumers.

The representatives said that even a robust refund right would not be adequate to protect consumers. The representatives emphasized that entering a debt settlement program has significant opportunity costs to consumers – they may lose time and money that would have been better spent in utilizing other alternatives, such as bankruptcy or credit counseling. They also said that getting money back after paying is difficult, and a refund right does not get people's time back. In addition, they said that a refund right is least effective for those who need it most, including those who are not aware of their rights. Finally, if a refund right only lasts until the consumer receives the first settlement, the company would have the incentive to settle a small debt very quickly in order to extinguish the refund right, which does not provide a substantial benefit to the consumer.

The representatives said that the companies are utilizing a large share of the upfront fees they collect on advertising and paying lead generators for consumer names/contact information. Some lead generators charge \$500 per lead. Moreover, the companies are not actually spending money on individualized financial counseling; they provide off-the-shelf budgeting information to consumers, information that is free from many consumer organizations and other sources.

The representatives emphasized that under an advance fee ban, if the debt settlement company produces results in a prompt and timely fashion, it will get paid in a prompt and timely fashion.

The representatives noted that in the Dr. Briesch study, the median amount of debt of consumers in the program was \$24,000. They said that many consumers who have \$24,000 in debt cannot save several hundred dollars a month, which is necessary to complete a debt settlement program. Thus, the program is designed to fail after collecting advance fees.

The representatives said that the data submitted by TASC are not reliable and were not subject to audit, but even if you assume the industry data are accurate, they show that most consumers pay for results that are not delivered.

The representatives provided the following additional recommendations:

- The Commission should also consider banning advertising of savings rates unless 80% of customers achieve the advertised savings rate, and the rate accounts for the provider's fees.
- The Commission should impose a carve-out to the face-to-face exemption for debt relief services so that debt relief companies cannot evade an advance fee ban by hiring a runner to go

out to consumers' homes to get them to sign contracts, thus qualifying for the face-to-face exemption.

- The Commission should not rely on a suitability analysis to protect consumers of debt relief services. A suitability requirement would be difficult to enforce. It is also likely that companies would do a perfunctory suitability analysis in order to get the fees.

In conclusion, the representatives said that an industry with hundreds of law enforcement cases filed against companies in the industry does not deserve a safe harbor.