

**16 C.F.R. Part 310: Telemarketing Sales Rule
Notice of Proposed Rulemaking To Amend the Rule
To Address the Sale of Debt Relief Services,
and Announcement of Public Forum
Summary of Communications Pursuant to Commission Rule 1.26(b)(5)**

Donald S. Clark
Secretary
September 10, 2009

MEMORANDUM

To: Donald Clark, Secretary

From: Carolyn L. Hann, ^{CWH}Attorney Advisor, Office of Commissioner J. Thomas Rosch

Re: Telemarketing Sales Rule (TSR): Notice of Proposed Rulemaking (NPRM) - Please place on public record

Date: Thursday, August 6, 2009

On Saturday, August 1, 2009, I spoke on a panel entitled, "Debt Settlement - Navigating the Legal and Ethical Minefield," at the American Bar Association's Annual Meeting, Section of Business Law (Chicago, IL). My presentation included an overview of the NPRM voted out by the Commission on Thursday, July 30, 2009. The NPRM proposes amending the TSR to cover debt relief services including debt settlement.

During the panel's Q&A and immediately following the panel, I received three comments, which I have summarized below:

1. Ms. Nessa Feddis (Vice President & Senior Counsel, American Bankers Association) suggested that the NPRM's definition of "debt relief service" is so broad that it could cover credit card issuers, many of whom are trying to "renegotiate, settle, or . . . alter the terms of payment or other terms of debt" with their customers. She asked whether this definition was intended to have this effect. I responded that I did not think that was the intent, but that she raised a good point.
2. The Hon. Philip H. Brandt (U.S. Bankruptcy Judge, U.S. Bankruptcy Court (W.D. Wash.)) noted that while the definition of "debt relief service" expressly covers only "unsecured creditors," some mortgage creditors may be swept in due to economic circumstances. For example, in some bankruptcy contexts, a mortgaged property may be so over-leveraged that the mortgage creditor is no longer a secured creditor and is, in effect, an unsecured creditor.
3. Mr. Philip S. Corwin (Partner, Butera & Andrews) stated that the FTC Act expressly exempts non-profits from the FTC's jurisdiction. He expressed concern if the FTC's jurisdiction over financial products and services were transferred to the Consumer Financial Protection Agency (CFPA), then non-profits (including credit counseling agencies) could be swept into the new agency's jurisdiction. This is because the proposed CFPA legislation does not have an analogous carve-out for non-profits. I responded that a number of events would have to occur in order for this scenario to be reality. However, I suggested that the best way to address his concern would be through legislative drafting. He agreed and said that his group already is lobbying Congress.