

**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
June 21, 2010

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 21, 2010

On Friday, June 4, 2010, representatives of the industry groups The Association of Settlement Companies (“TASC”) and the United States Organization for Bankruptcy Alternatives (“USOBA”) met with FTC Chairman Leibowitz, his attorney advisor, and FTC staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule.¹

The representatives stated that debt settlement provides value to consumers. They also stated that they support a very substantial part of the FTC’s proposed rule on debt relief services and believe the Commission should play a role in regulating the industry. They said, however, that they are seriously concerned about the proposed ban on advance fees.

The representatives stated that not all consumers are suitable for debt settlement, and their companies conduct a budget analysis of each consumer as part of the intake process. They said that generally:

- consumers who can afford to pay 3-4% of their debt amount each month should make the minimum payments on their credit cards;
- consumers who can afford to pay 2-2.5% of their debt amount each month should enter credit counseling/debt management plans;
- consumers who can afford to pay 1.5-2% of their debt amount each month should enter debt settlement; and
- consumers who can afford to pay 1-1.5% or less of their debt amount each month should file for bankruptcy, although filing for bankruptcy became more difficult and expensive as a result of the 2005 amendments to the bankruptcy code.

Chairman Leibowitz expressed concern about debt settlement companies’ representations, particularly guarantees of success and use of the term “government-approved.” The representatives said that an entity that represents that it is government-approved or sponsored does more harm than good to the industry. A USOBA representative stated that the trade group had recently instituted a “zero tolerance” policy for use of government imagery in debt settlement advertising.

¹In attendance from TASC were: Andrew Strenio, Sidley Austin LLP; Andrew Houser, CEO of Freedom Debt Relief and TASC Board Member; Robert Linderman, General Counsel of Freedom Debt Relief and TASC Vice President; and Wesley Young, Legislative Director of TASC. In attendance from USOBA were: Jonathan Massey, Massey & Gail LLP; John Ansbach, Legislative Director of USOBA; and Samuel Brunelli, Team Builders International.

In attendance from the FTC were: Chairman Leibowitz, Deborah Matties, Lawrence Wagman, Michael Ostheimer, Joel Winston, and Allison Brown.

The representatives stated that while most of the elements of the proposed rule should be implemented, the advance fee ban will eliminate full-service debt settlement programs. The debt settlement programs that remain will have the incentive to enroll as many people as possible in the hope that some will complete the program and pay fees.

The representatives said that 80% of enrolled consumers obtain at least one debt settlement, and 43% get a majority of their debts settled. They also said that 52% of those who drop out get more money in debt reduction than they pay in fees. The representatives stated that Freedom Debt Relief has 600 employees – 130 are in sales/enrollment; 160 are in customer service; 150 conduct negotiations; and the remaining 160-170 are in various other support roles, including information technology and human resources. The representatives said that 30,000 jobs could be lost throughout the industry if the advance fee ban is implemented.

The representatives said that about 20% of industry members belong to either TASC or USOBA. The trade groups impose self-regulatory rules on their members, and they can suspend members if they do not abide by them. In addition, USOBA recently reported 28 companies to the Texas Office of the Attorney General for misrepresentations in marketing materials.

Chairman Leibowitz asked whether a provision that allowed companies to require that consumers put fee money into escrows would alleviate their concerns. The representatives said that it would not; it would not provide any cash flow to companies, and they would not necessarily be certain to get paid eventually, because if the account is in the consumer's name, a creditor can attach or garnish it.

The representatives stated that they had determined, through financial modeling using Freedom Debt Relief's data, that if they had to operate under an advance fee ban, it would take them five years before they were cash-flow positive. The actual numbers could be worse, they stated; if an advance fee ban shifts negotiating power to the creditors and results in less favorable settlements for consumers, their cash flow would be even worse.

The representatives stated that they support state legislation that eliminates large advance fees but allows specific fees; for example, Tennessee allows a fee of 17% of the consumer's debt amount, paid over half of the program. The representatives noted that in states where the fee caps are too strict, some debt settlement companies will not serve consumers living in the state.

The representatives recommended that the Commission adopt a safe harbor from any advance fee ban for companies that are providing value to consumers. The representatives described the proposal, set forth in full in a letter submitted on April 28, 2010 and posted to the public record, as including a safe harbor for companies that meet the following standards:

- mandatory refunds: company provides 100% refund of fees within the first 30 days; and, up until the first settlement occurs, refunds of all fees, less a monthly fee in approximately the amount allowed to be charged by credit counselors in the state;
- company provides more in debt reduction than it collects in fees, as verified by an independent auditor; and/or
- company allows consumers a choice between a flat fee structure and a contingency fee

structure.

The representatives made the following statements in closing:

- there is a great deal of good in the proposed rule; the problem is the advance fee ban;
- these issues are compounded because the Commission does not have authority over nonprofits, which comprise a significant share of the marketplace; and
- if the Commission overshoots and imposes an advance fee ban, legitimate and illegitimate industry members will go out of business, and there will be no way to reconstitute the businesses to try a less restrictive approach.