

**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
July 6, 2010

MEMORANDUM

To: Don Clark

From: Alice S. Hrdy, Division of Financial Practices

Re: Telemarketing Sales Rule – Debt Relief Amendments, Comments to be Placed on the Public Record

Date: July 6, 2010

On June 23, 2010, representatives from two debt settlement trade associations – The Association of Settlement Companies (TASC) and the United States Organization for Bankruptcy Alternatives (USOBA) (collectively, “the trade associations”) – met with FTC Commissioner Brill, her attorney advisors, and FTC staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule (“TSR”).¹

The trade associations stated that they had three overarching points to convey: (1) contrary to media reports, debt settlement is a legitimate industry, with good actors, that provides a valuable service to consumers; (2) that TASC and USOBA support the vast preponderance of the proposed amendments; and (3) that they are convinced any advance fee in the final amended TSR would have a detrimental effect on the debt settlement industry and on consumers.

The trade associations stated that they believe debt settlement companies provide benefits to consumers, particularly in light of the demand created by the historic high levels of debt. They also stated that consumers need options besides filing for bankruptcy or entering a full repayment plan (known as debt management plans) and that debt settlement fills the gap between those two options. A discussion ensued about how to measure appropriately the net benefits obtained by a given consumer who enrolls in a debt settlement program, and industry members cited their data submissions to support their contention that consumers receive benefits from debt settlement, including consumers who dropped out before settling all of their debts.

¹ In 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: Commissioner Brill, Richard McKewen, Alice Hrdy, and Lisa Harrison. Debbie Matties, attorney advisor to Chairman Leibowitz, also attended.

With regard to the proposed Rule, the trade associations stated that they support the majority of it, particularly the disclosure and misrepresentation provisions. They believe that most of the consumer protection problems associated with debt settlement stem from deceptive advertisements disseminated by a few bad actors. For example, they stated that they are very concerned about advertisements in which the advertiser falsely claims an affiliation with the government or government “bailouts.”² In addition, they stated that they do support fee limits, such as those adopted in a statute recently enacted in Tennessee.³

However, they believe that an advance fee ban is too aggressive a solution and that it will have several negative consequences. First, they argued, it will cause many legitimate debt settlement companies to shut down. As an example, they noted that in North Carolina, which has banned the collection of advance fees, debt settlement providers have stopped doing business.⁴ Second, the trade associations argued that an advance fee ban would create incentives for providers to cease screening consumers for suitability and to scale down their customer service. Third, they argued that an outright ban of advance fees would compel debt settlement providers to increase the overall amount of fees they charge to each consumer. Fourth, the trade associations argued that an advance fee ban would give creditors too much leverage in the negotiation process; specifically, because creditors will know that debt settlement companies cannot receive their fees until settlement, the creditors will make less generous settlements. They stated that this is evidenced by the fact that some creditors have voiced support for an advance fee ban at both the state and federal levels.

The trade associations emphasized that debt settlement is a labor-intensive process that requires them to hire skilled workers who can engage in negotiations with creditors and provide good customer service to consumers. They stated that they must provide significant services to their consumers long before any settlements are reached. Without fees to support this service, they assert that the debt settlement industry will be comprised of companies that simply sign up every consumer who calls without doing any screening for suitability or providing any meaningful customer service. The industry associations stated that, based on their projections, it would take a debt settlement company four to five years to reach profitability under an advance

² TASC and USOBA stated that they represent, collectively, only a segment of the industry and further, that the only action they can take in response to abuses in the industry is to expel members from their respective trade associations. USOBA further stated that it has adopted a “zero tolerance” policy on deceptive advertising and will expel any member who violates that policy.

³ The Tennessee statute allows providers to collect a \$400 enrollment fee and then additional fees – not to exceed 17% of the consumer’s debt amount – over the first half of the program.

⁴ In response to a follow-up question from Commissioner Brill who stated her understanding that there are at least two debt settlement companies operating in North Carolina, they stated that there are no “pure” debt settlement companies doing business in North Carolina.

fee ban. A possible alternative to the advance fee ban suggested by the trade associations is to offer customers a full refund up until the first settlement is offered.