

**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 9, 2010

MEMORANDUM

To: Donald Clark
Secretary

From: Richard McKewen
Attorney Advisor to Commissioner Brill

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

Date: July 9, 2010

On July 9, 2010, Gail Hillebrand, the Financial Services Campaign Manager at Consumers Union, spoke with Commissioner Julie Brill via teleconference to discuss the proposed debt relief amendments to the Telemarketing Sales Rule (“TSR”). Also participating in the call were Joel Winston from the FTC’s Division of Financial Practices, Lisa Harrison from the FTC’s Office of General Counsel, and myself.

Ms. Hillebrand emphasized her support for an advance fee ban as proposed in the NPRM. She expressed a concern that a debt settlement provider may try to get around an advance fee ban by collecting a fee after a consumer has made only a single, small partial payment to a creditor as part of a structured settlement. In situations in which the provider has negotiated an extended payment plan as part of a structured settlement, the provider could try to claim its entire fee once the consumer has agreed to and started making payments towards the settlement, even though the consumer’s debt is not fully “settled” and the consumer doesn’t realize any savings until the payment plan has actually been completed and the debt extinguished. If the consumer fails to make payments pursuant to the payment plan for any reason, there would be no settlement, and the consumer will still owe the entire indebtedness. Moreover, according to Ms. Hillebrand, the provider is incentivized to get the consumer to agree to any kind of payment plan from a creditor, even one that the consumer could not be reasonably expected to maintain, simply so that the provider could collect a fee as soon possible.

In response to a question regarding the use of legitimate escrow services by consumers to save money in anticipation of settlement, as discussed in the NPRM, Ms. Hillebrand indicated that she would not object to a rule that permitted providers to require consumers to place funds to be used for settlements or fees into a federally insured bank account, so long as there is an advance fee ban in place, and so long as the consumer has complete control over the account, the account is in the consumer’s name, the consumer can withdraw her funds from the account at any time, and the providers fees cannot be deducted from the account until the consumer has actually, permanently, achieved some sort of savings from settlement.