

**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: Don Clark

From: Katherine Redding, Paralegal Specialist, Division of Financial Practices

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

Date: July 9, 2010

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On Wednesday, July 7, 2010, representatives from the New York City Department of Consumer Affairs (“DCA”) conducted a conference call with FTC attorney advisors and other staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule (“TSR”).<sup>1</sup>

The DCA representatives provided background information on the organization highlighting that it is charged with protecting New York City consumers, licenses 56 categories of businesses, and enforces a consumer protection law that is consistent with Section 5 of the FTC Act. The representatives emphasized its aggressive enforcement against debt collectors and payment processors, its enforcement of a law which requires debt collectors to be licensed, and its deep engagement in and first-hand experience with the issues the FTC faces. The representatives highlighted its Office of Financial Empowerment which was created to address poverty in New York City and its mission to provide financial literacy to lower income people through a variety of outreach efforts.

The representatives stated that the DCA recently become involved with the issues surrounding the debt settlement industry after the city court system noticed that a large number of consumers appearing in the court for consumer credit issues had also worked with debt settlement companies. Since hearing from the court system, the DCA has begun aggressive education campaigns and enforcement actions directed at the debt settlement industry. The organization stated that, in 2008, there were over 618,000 consumer credit cases in New York City alone and that consumer debt cases totaled 40-60% of cases filed in the city. The representatives believes that those figures are indicative of the current situation and, in their conversations with consumers, have found that people do not understand debt collection and are looking for someone to turn to. The experience in the New York court system also demonstrates that many consumers do not understand what debt settlement is or that the debt settlement

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<sup>1</sup> In attendance from DCA were: Marla Tepper, Mitchell Kent, Caitlyn Brazill, Dawn Yuster, and David Friedman. In attendance from the FTC were: Elizabeth Schneirov, Janice Kestenbaum, Paige Jennings, Carolyn Hann, Deborah Matties, Lisa Harrison, and Katherine Redding.

companies will not help them when they have to go to court.

The representatives indicated that DCA operates the Financial Empowerment Centers which have seen over 6,000 consumers since opening a year ago. Most come to the centers about debt and have a median debt of \$10,000 with a median income of \$12,000. The centers offer help with debt assessments, bankruptcy legal referrals, and judgement-proof debts. Over 80% of visitors have since viewed their credit report and some consumers have spoken with their creditors and worked out a number of their debt problems. Recently, the number of consumers enrolled in plans to manage their debt and the number of consumers requesting mailers from the center have increased. The centers give the DCA a personal understanding of the situations that many consumers face and has shown the organization that debt settlement companies are not using suitability requirements and are diverting people free services and financial literacy programs. Further, the representatives believe that their observations are consistent with those of other advocates.

As to enforcement, the representatives reported that the organization is co-piloting a program with the city courts to collect complaints about debt settlement companies from consumers in the courthouse and at the Financial Empowerment Centers. The complaints provide the DCA with information and opportunities to mediate and investigate. The DCA representatives claim the coordination between the courts and DCA is unusual; however, it is a reflection of the pervasiveness of problems in the debt settlement industry. The city does not have a statute prohibiting advance fees in the debt relief services context, but the representatives believe advance fees are dangerous, harmful, and unreflective of the services performed.

The representatives stated that one major concern is the pervasiveness of debt settlement advertisements and alleged misrepresentations made in the ads. The representatives have found that debt settlement advertisements appear on a wide spectrum of radio stations and that the types of advertisements are equally widespread. The organization has reviewed at least 50 hours of advertisements since December 2009 and has found that ads are trying to lure consumers by claiming to reduce debt by 50% or to eliminate debt and assess consumers' financial situations within five minutes. The representatives have heard advertisements claiming government affiliation or affiliation with the stimulus package and bailout. The representatives have identified at least 10 distinct companies with radio ads offering toll free telephone numbers, rather than addresses or websites.

The representatives support the advance fee ban in the FTC's proposed rule. They cited to two consumers they believed show why the advance fee ban is necessary. The first consumer made three months of payments totaling \$850 that went entirely to the company's fee and, after eight months, the consumer had paid \$1,700 towards the company's fee and had \$600 in their reserve account. The second consumer told the company up-front that she was unemployed and on disability and forwarded the company a settlement offer from American Express. The company disregarded the letter and offered a settlement worse than the one the consumer was previously offered by the creditor. The DCA representatives asserted that, if the debt settlement industry was really helping consumers, it would use upfront fees to settle debts. Further, they asserted that the drop-out rate is so high partly because people pay a lot of money without

accumulating anything in their reserve account. The representatives also stated they had seen fee descriptions that did not include all fees and left asterisks for fees without providing further explanation.

The representatives indicated that New York state enacted a law in 2008 which bans up-front fees for distressed property (foreclosure) consultants. The representatives asserted that the debt settlement industry is similar to the foreclosure rescue industry and further, that other industries, such as attorneys, are able to operate off of contingency fees instead of advance fees.

Lastly, the organization representatives claimed that advance fees provide no incentive for suitability requirements or settlement success, but instead provide incentive for companies to enlist as many people as possible. The representatives claimed that an advance fee ban would provide the incentives for companies to assess client suitability which would in turn lower drop-out rates. The representatives asserted that the up-front fee is in part made necessary by the industry's blanket marketing strategy. In addition, one representative stated that industry members would be able to collect their fees despite the advance fee ban if they used escrow accounts.