

## 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

---

On Thursday, July 8, 2010, representatives from the Center for Responsible Lending (“CRL”) met with FTC Commissioner Ramirez, her attorney advisors, attorney advisors for Commissioners Rosch and Brill, and FTC staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule (“TSR”).<sup>1</sup>

The CRL representatives first stated that TASC’s own data makes it difficult to support an advance fee model because even it indicates that consumers are not receiving the promised results from debt settlement. One representative claimed the data is flawed because it does not account for the amount of debt that remains unsettled even if some debts are settled. The representative stated that TASC’s data shows a large proportion of people are paying for services not received.

Second, a CRL representative asserted that industry problems are not due to outliers and pointed to the complaints filed by state Attorneys General which generally name companies that are members of TASC and USOBA. Further, she asserted that she has seen no indication that industry groups have kicked companies out of the organizations due to violations.

Third, a CRL representative stated that comparisons the industry has made to cell phone companies and educational services, in terms of drop-out rates, are not appropriate comparisons because people do receive cell phone services, while many do not receive services with debt settlement programs, and because people do not pay such high amounts for educational services.

Fourth, a CRL representative argued that the debt settlement business model does not give firms a strong incentive to obtain effective settlements for their clients. While consumers wait for their debts to be settled, their accounts become delinquent and their credit ratings are “demolished.”

---

<sup>1</sup> In attendance from CRL were Ellen Harnicks and Diane Standaert. In attendance from the FTC were: Commissioner Edith Ramirez, Janis Kestenbaum, Carolyn Hann, Lisa Harrison, Richard McKewen, Pablo Zylbergait, and Katherine Redding.

Fifth, a CRL representative said that one should look at the complaints filed by state Attorneys General along with the results from the GAO survey using mystery shoppers. She finds it significant that the mystery shoppers have experiences with the debt settlement companies similar to those reported by consumers and detailed in complaints filed by multiple state Attorneys General. She asserted that the common narratives provides corroboration for the accounts previously given by the states and consumers. Further, the representative believes that the mystery shoppers counter the bad apple/outlier argument presented by the industry.

Sixth, the CRL believes that it would be detrimental for the FTC to decline to issue a rule with an advance fee ban because it would place even more of a burden on the state legislatures to pass laws regulating the industry.

When asked what consumers could do without debt settlement, a CRL representative stated that consumers have three options: (1) credit counselors, (2) lawyers, or (3) bankruptcy. She emphasized that if debt settlement companies are not achieving results, then there is no value in paying such a company. She suggested that the debt settlement business model is inherently unfair and referred to the ACCORD comment filed in response to the NPRM. Further, the CRL representative also referred to the data submitted by the Colorado Attorney General which analyzed all aspects of the debt settlement industry, not just consumer complaints. The representative emphasized that there is no reason to think that the Colorado data is not reflective of the entire country. Further, if the data regarding unsettled debt is analyzed in relation to settled debts and fees, one can determine that consumers face a net loss after going through debt settlement, especially when litigation and creditor fees are factored in.

A CRL representative addressed the frequent comparison of the debt settlement industry's advance fee to the fee structure used by attorneys and doctors stating that attorneys and doctors have many checks and balances and are highly regulated. She suggested that if 60% of people (as in debt settlement) did not receive promised results from attorneys and doctors, there would be a discussion about changing the fee structures in those industries as well.

In addressing the results of advance fee bans in states that have implemented them, the CRL representatives asserted that states, such as North Carolina, do still have debt settlement companies doing business in their state, however many times these companies are based out-of-state which makes enforcing state rules even more difficult. It was suggested that this situation is another reason why the CRL believes the FTC's proposed rule is so important because it would be a uniform standard.

As to whether consumers receive a benefit if some debts are settled while others are not, a CRL representative stated that it depends on the amount of outstanding debt versus the amount of debt settled. She asserted that another consideration is the amount of the outstanding debt versus the consumer's ability to pay the debt. If the consumer cannot maintain payments, then they should file bankruptcy and, if the consumer is going to file bankruptcy anyway, it is difficult to justify the advance fee charged by debt settlement companies.

Regarding the use of escrow accounts, a CRL representative indicated that her major

concern is the security of consumers' money since some escrow companies might be affiliated with debt settlement companies. Even if this is not the case, consumers might have limited access to their funds which could cause cash flow problems. The representative also expressed concern that consumers might have difficulties challenging an escrow company should it refuse to return their funds. Essentially, escrow accounts are unacceptable if the consumer does not retain full control of their money.