

**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 12, 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 12, 2010

On Wednesday, June 7, 2010, representatives from six consumer groups – Consumer Federation of America, Maryland Consumer Rights Coalition, National Consumer Law Center, Consumer Action, Consumers Union, and Mid-Minnesota Legal Assistance (collectively, “the consumer groups”) – met with FTC Commissioner attorney advisors and FTC staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule (“TSR”).¹

The consumer groups emphasized their support of the advance fee ban, which they view as the most important issue in the proposed amendments. In fact, the groups stated that it was not worth requiring additional disclosures without the advance fee ban because the current debt settlement business model depends on the advance fee ban and is detrimental to consumers because they think they are paying for settlements of their debts, not for attempts to settle their debts. The consumer groups believe that the advance fee model creates a disincentive to screening consumers and settling debts.

The consumer groups claimed that the industry’s statistics illustrate that the majority of consumers drop out of debt settlement programs and do not get all of their debts settled. They argued that the problems go beyond a few bad actors and that the industry’s limited data shows that only a small percentage of consumer eliminate their debt. The groups believe that the fairness of paying a fee on the entire debt must be weighed against the amount of debt and the industry’s poor results.

The groups emphasized that, when accounting for fees and unsettled debts, consumers can come out of debt settlement with a net loss. They claim that the industry does not account for unsettled consumer debts and that, even if some of the consumer’s debts are settled, the fees are still accumulating for unsettled debts. Even if some accounts are settled, consumers are still

¹ In attendance from the consumer groups were: Susan Grant, Consumer Federation of America; Marceline White, Maryland Consumer Rights Coalition; Andrew Pizor, National Consumer Law Center; Linda Sherry, Consumer Action; Gail Hillebrand, Consumers Union; and Ron Elwood, Mid-Minnesota Legal Assistance. In attendance from the FTC were: Carolyn Hann, Elizabeth Delaney, Lisa Harrison, Katherine Redding, and Monica Kumar.

worse off because of accretion. The consumer groups believe that if consumers paid fees based only on debts settled, it would satisfy a number of issues and would keep consumers from wasting money.

When asked whether there is an argument that could be made that debt settlement is more time consuming for providers than credit counseling and thus advance fees are justified, the consumer groups stated that debt settlement companies use the advance fees to cover marketing, which is their largest expense.

The consumer groups stated that the important question is whether consumers are getting the results that they paid for. Consumers are not looking for credit counseling from debt settlement providers, but want to have their debts settled. The consumer groups stated that the main reasons consumers drop out of debt settlement programs are to file bankruptcy and because creditors continue to call. The increase in consumer distress and diversion of essential consumer funds are additional reasons why the advance fee ban is unfair.

When asked whether disclosures such as “creditors will still call and try to collect” would be sufficient, the consumer groups asserted that debt settlement companies are in the business of selling optimism to some of the most desperate consumers and thus regulation beyond disclosures is required. One consumer group representative gave the examples of (1) consumers who thought they were signing up for debt management, not settlement and (2) companies that require consumers to fill out all their information online and check a box for understanding disclosures, while only providing an opportunity to print the contract after signing it online.

In addressing the argument that has been made that advance fees are like fees charged by other industries, the consumer groups stated that these comparisons are not valid. A comparison to building contractors is incorrect because contractors require up-front fees to buy necessary materials to build with. A comparison to advance fees charged by attorneys is incorrect because consumers are not necessarily expecting to win their case, they are paying for the service of representation. In contrast, when consumers sign up for debt settlement, they expect their debts to be settled, not that the company will try to settle their debts. Further, attorneys are highly regulated, their fees are comparatively smaller, and it is easier to see whether the attorneys have done any work. One consumer group representative pointed to a recent Minnesota law which prohibits advance fees for mortgage loan modification companies - an industry to which comparisons are more appropriate.

The consumer groups stated that some states have tried to implement advance fee bans with varying levels of success. One consumer group representative stated that when a state restricts advance fees, the companies simply pick up and move to a different state. Further, there are some debt settlement companies that operate without advance fees which shows that the industry can still work with a ban.

The consumer groups further believe that, if the advance fee ban were to go forward, that it would end the practice of sweeping up every possible consumer and collecting fees, and instead create an incentive for a business model of picking people who are suitable for debt

settlement and actually settling debts so that fees can be collected. Further, it would lower the drop-out rate because most consumers drop out of the programs after paying most of the fees. In addition, if the advance fee ban were passed by the FTC, then the agency would be in a position to develop financial education programs and help people find their best options.

The consumer groups also discussed possible trends in the debt settlement industry that arose out of an increase in consumer complaints. Specifically, the industry tried to self-regulate by creating industry groups and spreading up-front fees over a longer period of time. The consumer groups stated that they do not believe either of these developments have mitigated the harmful practice of charging fees in advance. The consumer groups do not believe that membership in an industry group sways consumers either way because they do not know what the industry groups are and, at the point of signing up for debt settlement, are too desperate to care. Further, the consumer groups believe that the industry groups' independent standards and certifications do not accomplish much on their own – there also needs to be the possibility that those standards will be enforced by the government.