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Comments to the FTC's NPRM are noted in red as follows:

VIII. Questions for Comment

The Commission seeks comment on various aspects of the proposed Rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

A. General Questions for Comment

Please provide comment on each aspect of the proposed Rule, including answers to the following questions.

(1) How would the proposed Rule impact different entities or the provision of different types of debt relief services? Please provide as much detail as possible. Useful information would include information about the services provided by particular entities or types of entities, and how different entities perform their services.

a. In particular, do entities differ in how they currently collect their fees, e.g., what payments are required before the services are begun, what payments are required while services are being provided, and what payments are not collected until after the work is completed? Which providers of debt relief services currently require consumers to make some payment before services are completely provided? Which entities do and do not require such payments? How much of the total fee do the various providers charge prior to completion of the services being offered?

There are three basic business models in use in the settlement industry

1. Upfront fee model where a significant amount of fees are collected before the client is able to save any funds for settlement
2. Flat fee model where fees are divided evenly and collected across the first ½ (typically) of the program (except that for our program, no fee is taken from the first scheduled payment to allow funds to accumulate more quickly)
3. Backend model where a small monthly fee is collected in addition to a settlement fee based upon a percentage of the settlement savings

Our program is very oriented towards providing education and customer service to our clients. Our experience is that this client requires frequent contact and training in order to be successful in resolving their debt without entering into bankruptcy. Most of our clients have dealt with financial stress for many years and are often demoralized and intimidated by the circumstances in which they find themselves. Often this stress creates a mental state of denial in which financial discipline is difficult if not impossible. Without frequent contact and guidance, especially within the first six months, most of our clients would fail in their efforts to resolve their debt.

This education and support is a critically important product that is delivered throughout the duration of the program with considerable time and effort spent prior to the first settlement.

b. How do the various types of entities measure their success in providing the represented services and what level of success are they able to achieve? (Please provide data to support these representations.)

Our primary measure of success is the number of clients whose accounts are resolved without filing bankruptcy. However, it is very pertinent that clients who enter our program rarely have any other alternative for resolving their debt other than bankruptcy. These clients have typically tried every other alternative (including contacting their creditors and/or credit counseling) prior to applying for our debt settlement program. They have expended all available resources and are literally one step from bankruptcy.

For this reason, almost any additional financial reversal (reduction of hours at work, reduction in hourly wage, medical expenses, etc.) may well force our client to cancel their settlement program to file bankruptcy. Almost all of our clients qualify for bankruptcy prior to entering our program but choose to seek an alternative because they feel an obligation to at least pay their creditors what they can afford, even if it is not as much as the creditor is demanding. Although more difficult, they feel this is a more honorable solution than to take the easier route of bankruptcy.

Although difficult to measure, many of the clients that ultimately cancel to file bankruptcy feel morally justified in filing because they have truly tried everything possible to repay their debt honorably. During the cancellation process, our clients frequently make statements to this effect.

(2) What would be the effect of the proposed Rule changes (including any benefits and costs), if any, on consumers? Would the benefits to consumers differ depending on the service offered or the type of provider offering it, and if so, how? What evidence is there that consumers are or are not misled in the promotion and sale of different types of goods or services or by different providers? Please provide as much detail as possible.

The proposed Rule changes assume that the service delivered is simply settlement of a client's debt. In fact, an even more significant service delivered is the education and support provided well prior to any settlement made. The most frequent comment made by clients that complete our program is not "Thank you for settling my debt", but rather "I have learned my lesson, I will never let myself get into this situation again." If fees cannot be collected prior to settlement, support and training prior to settlement will be severely curtailed causing an even higher percentage of clients who cannot complete the program and are forced into bankruptcy.

(3) What would be the impact of the proposed Rule changes (including any benefits and costs), if any, on industry?

Unfortunately the impact of the proposed Rule changes would eliminate many legitimate settlement companies who simply cannot afford to support a client for 6 – 8 months prior to obtaining the first settlement. It would also severely limit the acceptance of clients with a relatively small amount of debt or have only a few accounts as for both of these circumstances, the length of time to accumulate sufficient funds for settlement will be well beyond the 6 to 8 month time frame for the first settlement. The rule changes will incent settlement firms to only take clients that can afford a large payment (and can therefore accumulate funds more quickly) and discriminates against legitimate clients who may even have a more compelling need for a settlement program since bankruptcy makes less sense for smaller amounts of debt.

And this negative impact goes even beyond the settlement companies themselves and their employees. For every client accepted into our settlement program, we, on the average, speak with 30 potential clients that cannot be accepted (cannot afford the program, have accounts that are cross-collateralized, etc.). We spend a minimum of 45 minutes with these clients offering free advice, often even including how to deal with their creditors directly to resolve their debt. So with the elimination of legitimate settlement firms, a service to even consumers who would not enter a settlement program will also be eliminated.

(4) What changes, if any, should be made to the proposed Rule to increase benefits to consumers and competition?

We support the FTC's effort to prevent unethical settlement companies from taking excessive fees prior to delivering meaningful services to a client. However, we believe a fee to cover minimal marketing costs and a reasonable fee structure that spreads the cost over more than half of the program (starting in the 2nd month) will do much to eliminate the companies that are not acting in the best interests of the consumer. We believe the extension of the rescission period to minimum of 30 days would provide a consumer with ample opportunity to gauge a company's competence and commitment in supporting a client through what is a very difficult and life changing process.

(5) What changes, if any, should be made to the proposed Rule to decrease any unnecessary cost to industry or consumers?

See answer to (4) above.

(6) How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

Many small business entities would not be able to enter the market due to excessive investment costs and extended break-even time.

B. Questions on Proposed Specific Provisions

Section 310.2 – Definitions

(1) Does the definition of "debt relief service" in proposed Section 310.2(m) adequately describe the scope of the proposed Rule's coverage? If not, how should it be modified? Is the proposed definition accurate? Are there alternative definitions that the Commission should consider? Should additional terms be defined, and, if so, how? What would be the costs and benefits of each suggested definition?

(2) Are there reasons to broaden the definition of "debt relief service" to include the word "product"? Would the addition of "products" allow the Rule to reach additional deceptive and abusive practices engaged in by sellers and telemarketers of debt relief products and services? Are there reasons to include "products" to ensure that the scope of the definition is appropriately broad to anticipate likely changes in the marketplace? Why or why not?

(3) The definition of "debt relief service" in proposed Section 310.2(m)would apply to "any service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more *unsecured* creditors or debt collectors." (emphasis added). The Commission has so limited the provision in anticipation of covering mortgage loan modification and foreclosure rescue services under its new rulemaking authority with respect to mortgage loans. As a result of this determination, with a few exceptions, only outbound telemarketing calls to sell mortgage loan modification or foreclosure rescue debt relief services would be covered by the TSR. Is this determination appropriate? Why or why not?

(4) Should any entities encompassed by the definition in proposed Section 310.2(m) be excluded or exempted from this definition? If so, which entities? Why or why not?

Section 310.3 – Deceptive telemarketing acts or practices

(1) The proposed amended Rule contemplates extending coverage of the existing TSR disclosure and misrepresentation provisions contained in Section 310.3(a) to inbound debt relief sales calls (as defined in the proposal). Would this adequately address the harms to consumers that occur in the sale of debt relief services? Why or why not?

(2) Proposed Section 310.3(a)(1)(viii) has six required disclosures. For each disclosure, please provide comment on the following questions:
Disclosure A: disclose "the amount of time necessary to achieve the represented results, and to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors or debt collectors, the

specific time by which the debt relief service provider will make such a bona fide settlement offer to each of the customer's creditors or debt collectors.
Disclosure B: disclose, "to the extent that the offered service may include the making of a settlement offer to one or more of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before a debt relief service provider will make a bona fide settlement offer to each of the customer's creditors or debt collectors."
Disclosure C: disclose that "not all creditors or debt collectors will accept a reduction in the balance, interest rate, or fees a customer owes such creditor or debt collector."
Disclosure D: disclose that "that pending completion of the represented debt relief services, the customer's creditors or debt collectors may pursue collection efforts, including initiation of lawsuits."
Disclosure E: disclose that "to the extent that any aspect of the debt relief service relies upon or results in the customer failing to make timely payments to creditors or debt collectors, that use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being sued by one or more creditors or debt collectors, and may increase the amount of money the customer owes to one or more creditors or debt collectors due to the accrual of fees and interest."
Disclosure F: disclose "that savings a customer realizes from use of a debt relief service may be taxable income."

a. Is this disclosure appropriate to address harms to consumers that occur in the sale of debt relief services? If not, why or why not? How could the proposed amended Rule be modified to better address such harms?

   A: Appropriate

   B: Same as A.

b. Should this provision be applicable to all providers of debt relief services, or should this provision be tailored to apply only to certain debt relief providers? Why or why not? If so, which entities should be covered?

   All providers of debt relief services should be covered.

c. What would be the benefits to consumers of this proposed requirement?
   The benefit would be that a consumer would not enter into a debt relief program blindly.

d. What burdens would be imposed on providers of debt relief services if this requirement were adopted?

e. As a practical matter, how would providers comply with the requirement? Would it be necessary to provide disclosures that were specific to the situation of an

individual consumer or could the requirement be satisfied with a generic disclosure that would be given to all of the provider's potential customers? What would such a disclosure look like?

It will be difficult if the disclosure requirement is too specific since contact and settlement guidelines are very much tied to creditor guidelines and collection processes which change frequently. Any statements about the contact and settlement process during the sales consultations will be held by the client as a firm commitment (intended or not), therefore the disclosure must be generic enough to allow the settlement firm flexibility to adapt to changes in the creditor's process. For example certain creditors have internal groups specifically tasked with dealing with settlement firms. In the recent past one creditor eliminated their settlement group and no longer would settle directly with a settlement firm prior to charge off. Settlement firms adapted by simply waiting until the accounts charged off so that they could be settled with third party collection agencies. In this instance, the time frame for contacting and settling with this creditor went from 150 days of delinquency to 270+ days of delinquency. The disclosure must be flexible enough to allow a settlement firm to make these adjustments or be forced into a process that may actually be injurious to the client (increased risk of litigation).

We suggest a disclosure such as:

> There are two factors that affect when we contact your creditors for settlement of your accounts: 1) your account must be at least 150 days or more delinquent. Only after your account is sufficiently delinquent will it be handled by a group that is authorized to accept a reasonable settlement. 2) you must have sufficient funds (40%) available in your escrow account for immediate payment of a settlement if accepted by your creditor. Creditors typically expect payment of a settlement within 24 to 48 hours and at most by the end of the month in which a settlement agreement is reached. Accounts are negotiated one at a time unless sufficient funds are available to settle multiple accounts under the terms described above.

f. Are there changes that could be made to lessen the burdens without reducing the benefits to consumers?
During the initial consultation with the consumer the debt settlement company should be required to pre-qualify the consumer to reduce risk in regards to cross-collateral accounts.

(3) Are there other disclosures that should be included in the Rule to address harmful practices in the sale of debt relief services? If so, provide the suggested disclosure and discuss the relative costs and benefits to industry and consumers of such a requirement.

(4) Proposed Section 310.3(a)(2)(x) prohibits misrepresentations of any material aspect of a debt relief services, and provides specific examples of such prohibited misrepresentations. Is each specified misrepresentation sufficiently widespread to justify inclusion in the Rule?

(5) Are there other prohibited misrepresentations that should be specified in the Rule to address harmful practices in the sale of debt relief services? If so, why?

(6) Does the proposed Rule need to be modified in any way to better address any misrepresentations or omissions, and if so, what should those modifications be?

Section 310.4 – Abusive telemarketing acts or practices

(1) What has been the experience in states that have regulated the fees that debt relief providers can charge – for example, allowing a limited initial or set-up fee, and then limiting the fees that can be charged while the services are being provided? Have providers of debt relief services been able to comply with these restrictions and still operate successfully in those states? What kinds of providers have been able to do so? Would it be appropriate for the Commission to consider such an approach? Why or why not? If providers were permitted to collect such limited fees, what fees should be permitted and what limits should be established on them?

No, certain states limit fees to such an extent that settlement companies do not operate in those states. The settlement process is very labor-intensive for a properly structured and managed settlement firm. It requires frequent contact with clients in which education, counseling, coaching and encouragement are provided, ideally on a monthly basis and often even more frequently. Negotiations is not a one-contact process, but one in which each account is reviewed frequently to identify it's status, location (who owns it; who is collecting on it; and what stage of the collection process it is in), the amount of client funds available, and the type of settlement available. Often settlements require client contact for additional funds or to approve special settlement arrangements. The contacts will require additional client education and require timely response from the client. At times clients do not respond in a timely fashion, causing the settlement opportunity to be lost and subsequently repeated at later time. This entire process occurs for each enrolled creditor account.

Other types of debt management programs do not require this constant level of consumer and creditor interaction, hence the reason settlement firms choose not to operate in states that severely limit the setup and monthly fee ($50 setup and max $50/month).

(2) To what extent does proposed Section 310.4(a)(5) prevent harm to consumers that would not be eliminated by the disclosure requirements in proposed Section

310.3(a)(1) and misrepresentation prohibitions in proposed Section 310.3(a)(2)? Alternatively, if you believe that proposed Section 310.4(a)(5) would not prevent any additional harms, please explain why.

(3) Proposed Section 310.4(a)(5) provides that payment may not be requested or received until a seller provides a customer with "documentation in the form of a settlement agreement, debt management plan, or other such valid contractual agreement, that the particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered." Is it appropriate to require provision of these documents before a covered entity can request or receive payment of any fee or consideration? In addition to those listed in the proposed amended Rule or described this Notice, are there other documents that typically evidence the completion of a debt relief service? Do such documents adequately demonstrate that a consumer's debt has been successfully renegotiated, settled, reduced, or otherwise altered? Is one type of document preferable to another?

One of the primary elements of any competent settlement program is customer support. The settlement process occurs within the context of the collection environment which is, by intent, designed to create fear and intimidation for a consumer. Clients of settlement programs cannot be successful without frequent contact and timely education by the debt settlement firm. This client support is even more labor intensive than the negotiation/settlement effort as it requires monthly (and on occasion, daily) contact from the beginning of the program until the end. In recognition of this fact, our firm employs 5 customer service representatives for every 3 negotiators.

Clients who enter a settlement program typically have demonstrated poor financial management skills. Although the process a client has to follow to obtain a settlement (disciplined savings and dealing with the stress of the collection process) enforces a form of discipline on the client, the need for formal financial education is paramount if the client is to remain financially stable in the future. This education process is one that begins when the client enters the program and is delivered and reinforced for the entire duration of the program by appropriately trained and qualified customer service representatives.

If this section of the rule is implemented as proposed, settlement companies will be incented/forced to reduce their client support to the detriment of the client.

In reference to the "settlement in full" document discussed on page 84 of the NPRM, there are two types of letters associated with the settlement of an account. The settlement firm requires a "settlement offer letter" from a creditor prior to issuing payment on a settlement. This letter documents the settlement terms and, along with proof of payment, is normally sufficient legal proof that the settlement occurred. A second type of settlement letter is often referred to as a "satisfaction letter" and is created by a creditor after final payment is made on a settlement. This letter is

difficult to obtain from a creditor and often will only be sent to the client (most frequently months after the settlement is complete), providing no opportunity for a settlement firm to confirm settlement completion until the client forwards a copy of the letter to the firm. Depending upon the client to receive and transmit this letter is very unreliable as most clients do not recognize its importance and will discard it. This creates an unreasonable burden on a settlement firm preventing them from taking legitimate fees for services rendered.

The client plays a role in the completion of a settlement by providing the necessary funds for settlement. A settlement firm may fulfill its contractual obligation to a client by successfully negotiating a settlement only to find that the client has withdrawn funds from their escrow account (or, in the case of settlements paid with multiple payments, failed to contribute sufficient funds to pay the settlement). We strongly recommend that the settlement offer letter be used as proof that the settlement firm has provided the contracted service as this document provides proof that the settlement company has fulfilled their contracted obligation to negotiate the settlement.

(4) Should any type or portion of fees charged by entities offering debt relief services be exempted from Section 310.4(a)(5)? If so, which fees – either by type of entity providing the service or by type of fee – should be exempted, and why? Will entities that offer a measurably beneficial service to consumers be adversely affected by this proposed Section? Why or why not? Will covered providers find it is no longer possible to provide particular types of services if this requirement is imposed? Which services will it no longer be economic to provide and why will it no longer be economic to provide them?

A company offering debt settlement services should be allowed to collect, prior to settlement of accounts, a reasonable fee for client education and support. Since these services are typically delivered over the entire program with the greatest expenditure of time and effort during the first 12 to 18 months, it is reasonable to allow a portion of total fees to be collected during but spread across this entire period. The cost of client contact and education staff versus negotiation staff for our company is nearly 2:1, so if fees are not allowed to be collected prior to settlement, the economics of this decision will force settlement companies to drastically reduce or eliminate staffing for these services to the detriment of the consumer.

Our experience is that most consumers that enroll in debt settlement programs have tried all other options (other than bankruptcy) and have been dealing with the stress of financial issues for a considerable period of time. Without extensive support, this client will rarely succeed in completing this type of program.

(5) Would an alternative formulation of an advance fee ban, such as the one in Section 310.4(a)(4) of the existing Rule (prohibiting requesting or receiving a fee in advance only when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging the promised services), be more appropriate than

a ban conditioned on the provision of the promised goods or services? Why or why not?

Yes. The most frequently occurring factors that prevent our clients from successfully completing a settlement program are not under our control. A client may 1) suffer income loss or reduction after entering the program making it impossible to accumulate sufficient funds for settlement or 2) encounter unexpected financial obligations (car or house repair, medical expense, family emergency) or 3) be unable to deal with the stress of the collection environment. It is very rare that properly qualified accounts cannot be settled. Disclosure that the success of a settlement program is based not only the settlement company's ability to negotiate but also upon the client's ability to accumulate sufficient funds over the period of time necessary for settlement, provides the consumer information to make a well informed decision about the likelihood of success in obtaining the promised service.

(6) Are there alternatives to an advance fee ban exist that would sufficiently address the problem of low success rates in the debt settlement industry? If so, please explain.

Yes, from our point of view a more reasonable formulation of an advance fee ban would be banning fees taken prior to the client's second draft (to allow funds to build more rapidly) and an extension of the right of rescission period from 3 days (typically) to 30 days. Fees taken, starting with the client's second draft, should be evenly divided across the remaining ½ of the program's duration except when fees for accounts settled exceeds the amount collected. In this circumstance the settlement firm should be allowed to take sufficient fees to account for this difference.

Extension of the right of rescission period gives the client actual experience with the level of support received from the settlement firm and gives them a risk-free opportunity to test-drive the program. Although settlements typically cannot be obtained this quickly, most clients are able to confirm the settlement firm's ability to deliver based upon the support provided in the first 30 days.

Spreading fees across more than one half of the program limits a client's exposure, but still allows the settlement firm to staff appropriately and recoup significant early program costs.

(7) As noted, the Commission does not intend that the advance fee ban be interpreted to prohibit a consumer from using legitimate escrow services – services controlled by the consumer – to save money in anticipation of settlement. Is it appropriate to allow the use of such escrow services? Why or why not?

The use of an escrow account is almost essential to the debt settlement process. Clients that self-escrow have an extremely poor rate of success for obvious reasons. The use of a third-party escrow account where funds are drafted monthly from the client's personal account enforces a measure of discipline that is needed to

accumulate funds for settlement. Few clients have this discipline prior to entering a settlement program.

The escrow account also provides additional protections for a client. Unfortunately there are unethical collectors who attempt to submit unauthorized transactions to a client's personal checking account. Most reputable escrow accounts would prevent this from occurring.

Section 310.5 – Recordkeeping requirements

(1) No changes to Section 310.5 are included in the proposed Rule, but the application of the Rule to inbound debt relief calls would require some sellers and telemarketers to comply with these requirements for the first time. What would be the costs and benefits to industry and consumers of this result?

Section 310.6 – Exemptions

(1) Proposed Sections 310.6(b)(5) and 310.6(b)(6) modify the general media and direct mail inbound call exemptions to make them unavailable to telemarketers of debt relief services. Is there a sufficient basis for this modification? Why or why not?

Regulatory Flexibility Act

(1) As noted in this NPRM, it is not readily feasible to determine a precise estimate of how many small entities will be subject to the proposed Rule. Please provide any information which would assist in making this determination.

(2) Identify any statutes or rules that may conflict with the proposed Rule requirements, as well as any other state, local, or industry rules or policies that require covered entities to implement practices that comport with the requirements of the proposed Rule.

(3) Do the prohibited practices in the proposed Rule impose a significant impact upon a substantial number of small entities? If so, what modifications to the proposed Rule should the Commission consider to minimize the burden on small entities?