October 26, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Telemarketing Sales Rule – Debt Relief Amendments – R411001

Dear Commissioners:

I am writing on behalf of the National Foundation for Credit Counseling ("NFCC") to express our strong support for the proposed regulations published in the Federal Register on August 19, 2009, as amendments to the Telemarketing Sales Rule, to protect consumers from deceptive and abusive practices in the telemarketing of debt relief services. Telemarketing Sales Rule, Notice of Proposed Rulemaking, 74 Fed. Reg. 41988 (August 19, 2009)(amending 16 C.F.R. pt. 310).

By way of background, the NFCC was founded in 1951, and is the nation's largest and longest serving network of nonprofit credit and financial counseling agencies, with more than 100 members with nearly 850 offices in communities throughout the country. NFCC Member agencies are often known as Consumer Credit Counseling Service and other names. All Member agencies are nonprofit 501(c)(3) organizations

under the Internal Revenue Code. Last year, NFCC Members assisted more than 3.2 million consumers, helping many to manage their debts and take control of their finances.

Given our role in these communities and with consumers facing financial difficulties, we highly commend the Commission for its leadership role and its steps to address the misrepresentations and deceptive practices that have, regrettably, become rampant in the debt settlement industry.

This proposed rulemaking is very timely and will provide relief and fundamental consumer protection to millions of working families who are struggling with substantial personal debt, and who are seeking assistance in managing their debts and finances.

In the current economy, many citizens are facing a challenge in meeting their financial obligations. Consumers from every walk of life are experiencing job losses and economic retrenchment, leaving many to face a high debt burden with limited resources and diminished credit. In an effort to exploit this time of economic challenge, there has been an exponential growth in the number of debt settlement companies offering "quick and easy" solutions to consumer credit problems. On radio and television, consumers have been bombarded with an onslaught of advertisements with false and deceptive claims about debt relief services. Seduced by these false promises of debt relief, consumers are calling and seeking the assistance of debt settlement companies in record numbers. These hardworking consumers want an honorable and manageable means to address their debts, but increasingly find themselves on the receiving end of deceptive telemarketing and other unfair marketing activities by for-profit debt settlement companies that engage in predatory practices. As the Commission noted in its Federal Register commentary, many of these debt settlement companies compound the plight of

their customers and in the process, victimize not only these families, but also their creditors and lending institutions as well.

Background on Abusive and Deceptive Practices

As the Commission noted, these widespread and deceptive practices have also garnered attention and action on the part of many state Attorneys General, who have taken steps to expose widespread and persistent patterns of anti-consumer practices in the for-profit debt settlement industry, and have brought actions against a host of debt settlement companies. Those actions have cited a wide range of unconscionable abuses, such as charging large and unreasonable fees, promising unrealized savings, delaying negotiations with creditors, and failing to disclose potential tax liabilities to clients.

For example, in May 2009, New York Attorney General Andrew M. Cuomo filed suit against two debt settlement companies for fraudulent business practices and false advertising.[1] Attorney General Cuomo sued Credit Solutions of America, Inc. ("CSA"), based in Richardson, Texas and one of the largest debt settlement companies in the country, and Nationwide Asset Services, Inc. ("NAS"), based in Phoenix, Arizona. According to the lawsuits, CSA and NAS sold approximately 20,000 New Yorkers misleading debt settlement plans that very rarely delivered the promised benefits. CSA and NAS netted millions of dollars from those transactions from consumers already struggling to pay their bills. It is particularly worth noting that CSA promised a 60 percent reduction in its customers' outstanding debt, but the Attorney General's investigation showed that an average of only one percent of consumers actually received

[1] Press Release, May 19, 2009, Office of the Attorney General of New York State, http://www.oag.state.ny.us/media_center/2009/may/may19b_09.html

that savings. The investigation showed further that, despite CSA's promise to intervene on their behalf, many customers faced on-going collection activity and lawsuits by their creditors with little or no assistance from CSA. Similar concerns were raised by the activities of NAS, which promised a 25 to 40 percent reduction in its consumers' outstanding debt, but only a tiny fraction – one-third of one percent – of its consumers actually achieved that savings.

Minnesota has been another jurisdiction in which the Attorney General, Lori Swanson, supported by the legislature, is aggressively taking on the abusive practices of the for-profit debt settlement industry. According to a recent article in the *Minneapolis Star Tribune*, a typical example of what consumers have suffered is reflected in the experience of a receptionist in Bloomington, MN who faced $19,000 in credit card debt. She entered a plan and agreed to pay $266 per month to a debt settlement company that promised to help her catch up with outstanding bills.[2] Instead of going down, her outstanding balances went up. The credit card companies sued her, obtained judgments, and her wages were garnished. After many calls to the debt settlement company, she learned only $66 per month was going into an account that would be used by the debt settlement company to negotiate her debt at some unspecified time in the future. The other $200 per month was going into the pocket of the debt settlement company. Having paid the debt settlement company about $800 of money she could not afford, she had no option but to file for bankruptcy. Attorney General Swanson correctly describes that situation as a "financial death spiral." That and other similar cases prompted the Minnesota legislature to enact legislation this year that increased regulations on debt

[2] http://www.startribune.com/business/47061237.html?page=2&c=y

settlement companies, including preventing them from advising consumers to stop paying creditors and charging excessive up-front fees.

Recently, Illinois Attorney General Lisa Madigan also sued CSA. Earlier this year, she filed lawsuits against two other debt settlement companies, SDS West Corporation and Debt Relief USA.[3] The action against CSA alleges that the company falsely claimed that its services could help to reduce consumers' credit card debt by 50 percent, and that the company failed to take effective debt settlement action on behalf of consumers in return for the monthly up-front payments and fees it received from consumers. It is also worth noting that recently, on September 30, Attorney General Madigan proposed legislation to prohibit debt settlement companies from engaging in unfair practices that harm consumers, including charging up-front fees for services, a position reflected in the Commission's proposed Rules. Underlying this activity in Illinois is what Attorney General Madigan described as a "sharp rise in debt- and credit-related consumer complaints." She reports having received more than 12,000 consumer complaints regarding debt-related issues, including deceptive debt settlement practices.

In addition to the Attorneys General, the Better Business Bureau ("BBB") and its National Advertising Division have played a role in trying to reduce deceptive advertising for debt settlement companies. For example, in a case involving Debt Relief of America, Inc., the BBB challenged advertising claims that the company could reduce up to 60 percent of a consumer's outstanding credit card debt using "secret programs most credit card companies don't tell their customers about."[4] The BBB found that the

[3] http://www.illinoisattorneygeneral.gov/pressroom/2009_09/20090930.html

[4] Better Business Bureau, National Advertising Division, Case #4536R (12/15/06), Debt Relief of America, Inc.

advertising was deceptive because there was insufficient substantiation for the claim and ordered that Debt Relief of America discontinue such assertions.

Consumers often find themselves in a worse financial condition after dealing with a debt settlement company than when they started. Some then turn to NFCC Member agencies. The real-life examples of two such consumers, as captured in NCC counselor notes, are below.

Client 1 - Muskegon, MI

> "Before the client came to us, she started with a debt settlement company, and up until that time, had been current with all of her credit cards. She had a job change and needed to reduce the payments. They told her they could handle her accounts and have them settled in about 48 months. They told her to not answer her phone, do not pay any of the bills and they would take care of everything. They gave her the impression that they would be making payments and handling her situation to settle for pennies on the dollar. After about a year, she started getting judgments in the mail on a few of the larger credit cards. She contacted the settlement company to ask them what was going on and they told her that they do not have enough money to settle on the larger accounts yet and she would have to deal with it herself.
>
> "The client ended up having a writ of garnishment and she then decided to book the appointment with us. She cancelled the program with the debt settlement company, and found that they only settled one of her smaller accounts and the rest of the money would not be returned to her. She was very displeased with the false claims they made and did not realize what all the fine print in the

contract meant. They made it sound so wonderful and she ended up losing money in the long run because the first 3 or 4 months went straight to their fees. She ended up having to file for Chapter 13 bankruptcy."

Client 2 - East Moline, IL

"Client was originally with a nonprofit credit counseling agency but was swayed away by a debt settlement company. This settlement company contacted him initially and told him they could settle his debts for 40 cents on the dollar. The company charged him $1500 up-front and a $98 per month maintenance fee. It had been over one year and they never got close to coming up with a settlement with any of his credit cards, so he dropped out of their program."

The above is just a representative sample of the abusive and deceptive practices rampant in the debt settlement industry and are offered in support of the Commission's underlying effort to provide consumer protections from an industry that preys on consumer desperation, and leaves in its wake a ruined landscape of consumer credit, broken household budgets, frustrated creditors and lenders, and relentless debt collectors.

Consequently, the Commission's initiative to amend the Telemarketing Sales Rule to respond to the abusive and deceptive practices of debt settlement companies is essential to its mission of consumer protection and deserves broad support.

The Argument for Federal Regulation

In these economically troubled times, consumers should be shielded from predatory anti-consumer practices aimed at the most financially-vulnerable. The central

issue is not about what options consumers may have, or what services may be offered. The issue is about the deceptive and unfair practices that permeate the debt settlement industry, and it is those practices that the carefully crafted proposed rulemaking on the part of the Commission seeks to address. This is not a new role for the Commission. The Commission has a long and distinguished history as an active and positive force in patrolling the marketplace of these services and protecting consumers from abuses that shock our sensibilities and challenge our sense of fairness.

While individual enforcement actions on the part of the Commission, state Attorneys General and other enforcement entities have been an important tool in tackling the abusive practices of some debt settlement companies, scarce governmental resources make it impractical to rely on such measures to address these pervasive problems and to universally protect consumers. Accordingly, the NFCC fully and strongly supports the revisions to the Telemarketing Sales Rule as proposed by the Commission. In some instances, the NFCC recommends that the Commission go further in its effort to eliminate abusive and deceptive debt settlement business practices. The NFCC also sees a need for comprehensive federal legislation in this area and calls on Congress to enact legislation to set a floor of basic consumer protections while allowing states to set more stringent standards affording their citizens a higher level of protection.

Accordingly, the NFCC offers the following comments to the specific proposals contain in the Commission's rulemaking.

Section 310.2: Definitions

The Commission has proposed a new definition of "debt relief service" in Section 310.2(m). This definition would likely "encompass a broad swath of debt relief activities,"[5] which is important for consumers because offers for debt settlement services can take a multitude of shapes and forms. It is helpful that the proposed definition includes activities around reductions in balances, interest rates, or fees owed by a consumer so as to cover a broader range of services and practices in the marketplace today. The NFCC supports the Commission's proposal and suggests adding language to clarify that the definition of "debt relief service" covered by the Telemarketing Sales Rule includes activities related to advising, encouraging, assisting, soliciting, brokering, etc., leading to, or intended to lead to, the provision of debt settlement services as these activities have been rampant with consumer abuse and deceptive practices.

Section 310.3: Deceptive Telemarketing Acts or Practices

The NFCC is very pleased that the Commission has set forth in the proposed regulations a series of required disclosures that a debt settlement company must provide before services are rendered and any fee is collected from consumers. The lack of meaningful consumer disclosure in existing debt settlement practices is one of the most glaring deficiencies and egregious behaviors. Included in the disclosures that the Commission would require are the amount of time necessary to achieve the represented results; the amount of money that the consumer must accumulate before a bona fide settlement offer will be made; notice that creditors may continue to pursue lawful collection efforts, including litigation and garnishment of wages; and notice that failure to

[5] 74 Fed. Reg. 41999.

make timely payments to creditors may negatively impact the consumer's credit rating and increase the amount owed to creditors. These disclosures are very important to help consumers, particularly those who may be less financially sophisticated. For example, making sure that a consumer has a reasonable expectation of how long it will take to complete the process is essential in helping consumers determine if debt settlement is their best option. Similarly, it is critical that consumers understand that their creditors may continue to pursue collection activity. Per the example of the counselor notes above, all too often, false advertisements and misleading statements on the part of debt settlement companies have lulled consumers into the notion that debt settlement is a shield against collection, only to face the harsh reality of a judgment and/or garnished wages. Consumers are led to believe that their monthly payments to debt settlement companies are being use for payments to their creditors, when in reality all communication and negotiation with a creditor comes to a standstill for long periods of time until the consumer has paid the company its debt settlement fees and accumulated thousands of dollars necessary to proffer a settlement.

The NFCC suggests that additional requirements and disclosures are needed to provide consumers with meaningful protections. One such protection is to require a written contract for the provision of debt settlement services. Putting such agreements in writing would also protect the rights of consumers and reduce the opportunities for fraud or deception on the part of debt settlement companies.

At a minimum, a contract between a consumer and a debt settlement company should include the following: (1) the name and address of the consumer; (2) the date of execution of the contract; (3) the legal name of the debt settlement company, including

any other business names used by the debt settlement company; (4) the corporate address and regular business address, including a street address, of the debt settlement company; (5) the license or registration number under which the debt settlement company is licensed or registered if the consumer resides in a state that requires a debt settlement company to obtain a license or registration as a condition of doing business in that state; (6) the telephone number at which the consumer may speak with a representative of the debt settlement company during normal business hours; (7) a complete list of the consumer's debts to be included in the provision of debt settlement service, including the name of each creditor and the amount of each debt; (8) a description of the services to be provided by the debt settlement company, including a good faith estimate of the time by which the debt settlement company will make a bona fide settlement offer to creditors, and the amount of money that the consumer must accumulate before such an offer will be made; (9) a clear and conspicuous itemized list of all fees to be paid by the consumer to the debt settlement company, and the approximate date or circumstances under which each fee will become due; (10) a good faith estimate of the total amount of all fees to be collected by the debt settlement company from the consumer for the provision of debt settlement service; (11) a clear and conspicuous statement of the proposed monthly payments by the consumer and the total amount expected to be paid by the consumer over the life of the debt settlement plan; and (12) a notice to the consumer that if a creditor settles a debt for an amount less than the outstanding balance, the consumer may incur a tax liability.

In addition, we suggest that debt settlement companies should be required to provide to a prospective customer an individualized financial analysis in writing –

including the individual's income, expenses, and debt – to determine if a debt settlement program is a viable option for the consumer. The consumer should also be provided with a good faith estimate of the time required and the amount of money necessary to complete the debt settlement program that is being offered. The current advertising and marketing environment is replete with unrealistic promises and atypical results that have produced consumer confusion and uncertainty as to what is being offered, and what the cost may be.

These contractual requirements are necessary to respond to the real world examples cited earlier in these comments and the of abusive and deceptive business practices of debt settlement companies. Mandating such things as requiring a company to provide its corporate name and a phone number may seem rudimentary, but it has been a common experience of consumers dealing with debt settlement companies that they often have great difficulty contacting the company once the company has taken their money. Similarly, requiring an up-front disclosure of all fees is essential to consumers if they are to make an informed decision as to whether debt settlement is in their best interest.

Section 310.4: Abusive Telemarketing Acts or Practices

The NFCC strongly supports the Commission's proposal to prohibit a debt settlement company from requesting or receiving any fee or consideration from a consumer until the company has provided the consumer with documentation that a debt has, in fact, been settled. In light of the wide-spread practices and well-documented abuses consumers have suffered at the hands of debt settlement companies – in some cases paying thousands of dollars in up-front and advance fees while receiving little or

nothing in the way of actual services in return – the Commission correctly takes the position that paying for services that have not been rendered is an abusive telemarketing act and practice, and that it should be prohibited. As evidenced by Commission's enforcement actions, actions by Attorneys General, and the consumer examples cited above, it is all too common for consumers to pay exorbitant up-front fees to debt settlement companies, receive little or nothing in return, and be in far worse financial condition than when they started.

If, for some reason, the Commission does not retain this important consumer protection in its final Rule, the NFCC would urge that the Commission take three additional actions: (1) to limit the type of fees a debt settlement company may charge; (2) to cap the fees that a debt settlement company may charge; and (3) to provide the consumer with a right to cancel the contract at any point and to receive a full refund of all up-front and advance fees paid, minus reasonable fees for actual and documented settlements. If a right of cancellation is added, it is also important for the Commission to add a disclosure to the written contract requirements, as outlined above, that the consumer may cancel the contract and be entitled to a full refund of all up-front and advance fees, minus reasonable fees for actual and documented settlements.

And finally, in addition to the prohibition of up-front and advance fees, the NFCC recommends that language be added to Section 310.4 of the proposed Rule that would require a debt settlement company to return all money collected from a consumer and held in an account for the purpose of accumulating funds to offer as a settlement, upon the cancellation of the contract or at the request of the consumer. Upon the cancellation

of the contract, any power of attorney granted to the debt settlement company by the consumer should be revoked and voided.

The Argument for Federal Legislation

As noted earlier, the NFCC highly commends the Commission's initiative and strongly supports its proposal to develop and implement new regulations as part of an amended Telemarketing Sales Rule. We view such action as a vital and essential first step in this area. However, we also believe that a more comprehensive regulatory structure is needed to address the fraudulent and abusive practices cited in the Commission's commentary and described in these comments.

Consistent with the actions proposed by the Commission, the NFCC urges Congress to enact legislation that would:

- Mandate the use of written contracts for debt settlement services, with disclosures to the consumer including: an itemization of the services to be provided; a list of the consumer's debts; a clear and conspicuous list of all fees and compensation to be paid by the consumer to the debt settlement company; a good faith estimate of the proposed accumulation goals and the total amount to be paid by the consumer; and a notice of the consumer's cancellation and refund rights.

- Require a determination, supported by a financial analysis, that the consumer is able to reasonably meet the requirements of the proposed debt settlement program, and that there is a tangible benefit to the consumer to enter into the proposed debt settlement program.

- Require a disclosure to the consumer that the failure to make scheduled payments to creditors will likely have serious adverse consequences.
- Mandate that debt settlement fees are reasonable and commensurate to the actual services provided, and that they can not exceed specified amounts.
- Provide consumers with a right to cancel a debt settlement contract receive a refund of fees paid to the debt settlement company as well as the money accumulated and held for settlement.
- Provide that a debt settlement company may not advertise or market results that are better than the average that it actually achieves.
- Provide the Commission with the explicit authority and obligation to regulate the advertising and marketing practices of debt settlement companies.
- Provide for enforcement through the Commission, state Attorneys General and private rights of action.
- Protect the right of the States to regulate in this area and to provide additional consumer protections under State law.

Conclusion

The NFCC appreciates the opportunity to provide these comments and to participate in the Commission's consideration of essential and much-need consumer protection in this area. We look forward to prompt finalization of the Rules.

As a final thought, and to once more reiterate support for the Commission's actions and the need for regulation of the debt settlement industry, we offer a message

received by an NFCC Member agency from a consumer who told of his experience of dealing with a debt settlement company:

> "My wife and I joined a program for debt settlement WITH HOPES OF PAYING OUR CREDIT CARD DEBTS which were around $17,000 in total, but nothing was done. We were told not to answer phone calls, not to pay any card payments and let these bills go into collection and the [debt settlement company] would work with the creditors to reduce them and pay them off. I paid [the debt settlement company] a total of $2,600 over 11 months until I received a legal summons. I had to go to court. We were so upset and disgusted with [the debt settlement company], we canceled the program with them. We lost all that time and money that we could have been paying off the credit card debts ourselves. Never again will I go into debt settlement. Here is a copy of the statements, and the payments I made. They paid nothing to our creditors in 11 months. Where did all these payments and fees go? What do we do now?"

The sentiments expressed by this consumer – the abject hopelessness and frustration – are the motivation for the NFCC's support for the Commission's proposal to eliminate the fraudulent and abusive practices that are directed toward well-intentioned consumers struggling to deal with their debts.

Thank you for your consideration of our views on this important issue.

Sincerely,

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on behalf of the

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