



October 5, 2009

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

Re: Telemarketing Sales Rule – Debt Relief Amendments, R411001
<https://secure.commentworks.com/ftc-TSRDebtRelief>

Financial Consulting Services, LLC (FCS) appreciates the opportunity to submit comments in support of the Federal Trade Commission's proposed amendments to the Telemarketing Sales Rule (TSR) concerning the sale of debt relief services. FCS provides debt settlement services to consumers who contractually enroll in our programs both in the name of FCS and in our trade name, the Debt Negotiation Company. Since 2003, the FCS family of companies has settled over 70,000 unsecured accounts to a zero balance for our clients, from original account balances totaling almost \$300 million. Payments to creditors have been about \$153 million, representing on average about 51 percent of the debt at the time the consumer becomes our client.

A well-managed debt settlement program plays a vital and beneficial role for consumers who find themselves with credit card debt exceeding their ability to fully repay. Although some consumers find themselves in this situation due to poor financial management skills, many families acquire excessive credit card debt due to factors beyond their control, such as medical emergencies and job losses. These consumers lack the ability to repay their debts in full, as consumer credit counseling organizations typically require, yet they want to pay as much as they can and avoid bankruptcy. Credit counseling or bankruptcy may be the more appropriate choice for some consumers, but debt settlement is the best option for many debt-strapped families.

Professional debt settlement companies assist consumers in establishing a savings account dedicated to credit card debt repayment, they negotiate with creditors to accept an amount less than the entire amount owed in full satisfaction of the debt, and they help consumers become free of credit card and other unsecured debt considerably faster than if they continued making the minimum monthly payments on their own or enrolled in a plan with a nonprofit consumer credit counseling agency.

When consumers apply to FCS for services, we analyze their financial situation, including the amount of unsecured debt, their other expenses, and their income, to determine if they are appropriate candidates for our services. If so, we assist them in

establishing a savings plan and in opening a savings account with an FDIC insured bank that will enable them with our assistance to settle each of their accounts over a period of 24 to 36 months.

FCS has operated under two fee structures. Under the first approach, we collect a fee spread over the client's first few months of enrollment, which helps defray our marketing and client acquisition costs. The client also pays a success fee when each debt is settled. This fee is a percentage of the concession the creditor makes in settling the debt. It is based on the amount of the debt at the time of the client's enrollment, to ensure the consumer is not disadvantaged by the increase in the debt due to late charges and accruing interest between enrollment and settlement.¹

FCS has recently launched a new program, the Simple Plan[®], which provides for no fee from the client until FCS has negotiated a settlement and the funds are sent to the creditor. The only fee a client pays with the Simple Plan[®] is a success fee, based on the amount of savings that FCS negotiates off the original balance of each enrolled debt. When FCS is able to negotiate only a small discount off the original balance, the fee is small; when the savings are greater, so is the fee.

The Simple Plan[®] ensures that FCS's interest is always perfectly aligned with the consumer's interest. First, by forgoing any payment until the creditor is paid, a company is motivated to work hard for the client throughout the entire client relationship and has no incentive to enroll clients for whom debt settlement is not likely to be successful. Second, basing the fee on a percentage of the client's savings ensures a client will always pay less than she owed when enrolling with us – including both the creditor payment and our fee – or we receive no fee.

The Simple Plan[®] has been an overwhelming success. Consumers appreciate the security of knowing that they will never owe a fee unless they receive a valuable service from FCS and that the fee will be proportionate to the value they receive. While others in the industry may claim that a success fee model is unworkable, FCS has established that such a model can be successfully marketed and administered to the mutual benefit of the company and its clients.

In short, the Commission's proposed advance-fee ban, the centerpiece of the proposal, is good for consumers, it is a viable option for debt settlement companies, and it will avoid the abuses that the Commission has sometimes found in this industry.

¹ To illustrate, a client may have a credit card balance with one card of \$4,000 when she enrolls with FCS. During the time she is saving the funds for a settlement offer, the balance may grow to \$5,000 due to the creditor's high default interest rates and fees. If FCS negotiates a settlement of the \$5,000 balance for \$2,000, we count the consumer's savings as \$2,000 – the \$4,000 enrolled balance less the \$2,000 creditor payment. Our success fee is based on the savings of \$2,000.

With this background, we turn next to comments on the specific provisions of the proposed amendments to the TSR.²

1. Definition of debt relief services. We support the proposed definition. Debt settlement companies have customarily focused on settling unsecured debts, mostly credit card debt. Concerns regarding mortgage relief services are appropriately addressed in a separate rulemaking.

2. Disclosures. We support full disclosures that ensure consumers understand exactly what services are being provided and what they cost.

a. Amount of time needed to achieve results and the time or amount of money needed before company can make a settlement offer. [§§ 310.3(a)(1)(viii)(A) and (B)] We support these disclosures, in principle, but recommend revision to the extent they would require a company to determine in advance the timing and order in which each specific debt will be settled. Creditors vary in their willingness to make concessions, and their position often changes with time.³ Debt settlement firms must have the latitude to make the most favorable settlements for a client, and this requires flexibility to determine the order and timing of settlements.

We agree that consumers should fully understand the debt settlement process, including how much time the company expects will be needed to settle all debts, based on the amount of total debt, the amount and frequency of savings account deposits, and the company's historical experience in settling debts for less than the full amounts. Prospective clients should also be told that the first settlement will not occur until they have saved sufficient money for a settlement offer and be given a reasonable estimate of when that is likely to occur. These disclosures will provide the full consumer protections the Commission seeks and will avoid the unworkable requirement to disclose specifics that cannot be determined at the outset.

b. Other disclosures. [§§ 310.3(a)(1)(viii)(C)-(F)] We support these disclosures. Consumers are more likely to complete a debt settlement program successfully if they fully understand all aspects of it.

² We note our concern that regulating debt settlement companies exclusively through an amendment to the TSR will create an uneven playing field for companies using telemarketing versus those that communicate exclusively by internet or mail. This approach can have the undesirable consequence of pushing less scrupulous companies into marketing methods that avoid the protections the FTC intends for all consumers.

³ It is not uncommon for a creditor that has resisted a significant concession to become much more accommodating even a short time later due to a change in the business environment, including the approaching end of a fiscal quarter or fiscal year.

3. Prohibited Misrepresentations.

We support the proposed bans on the specified misrepresentations. We recommend strengthening this provision by adding a requirement that any savings claim be based on the amount of debt at the time of enrollment in the company's program and not on the greater amount that may be due at the time of settlement. In proposed section 310.3(a)(2)(x), the first specified "material aspect" refers to the amount of money or percentage of debt amount that a customer may save by using a debt relief service. To avoid consumer deception, the FTC should clarify that this provision prohibits a debt relief services provider from representing any savings claim using the amount of debt that may be due at the time of settlement. Any savings claim should be based on the amount of debt at the time of the client's enrollment in the program.

4. Ban on advance fees.

We support this provision, but we believe it must be strengthened to achieve its objective. If a company is permitted to collect its fee after merely negotiating a settlement, but before the creditor receives payment from the consumer, consumers may find themselves paying fees regardless of their ability to meet the settlement payment obligations to their creditors. This provision should be changed to allow the debt settlement company to collect its fee only when the consumer's payment is sent to the creditor.⁴ Anything less tolerates abuses in this industry that can leave consumers worse off than they were before retaining a debt settlement company. Under the possible loophole in the FTC's advance-fee ban proposal, a consumer could be charged a full fee without receiving anything of value from the debt relief services provider if the consumer could not satisfy the negotiated terms. The FTC could close this loophole by tying fee collection to company performance for its clients.

We also urge the Commission to consider requiring fee structures that are based on the savings the company negotiates for the consumer. In general we are reluctant to recommend government regulation of prices that are best set through market competition. We have genuine concern, however, about "flat fee" programs that are based on the amount of enrolled debt, rather than on what the debt settlement company actually accomplishes for the consumer. Allowing companies to collect flat fees (even fees that are capped, as some states provide) disconnects the amount of the fee from the value the consumer receives. In contrast, success-based fees ensure the fee is proportionate to the benefit and still allow debt settlement companies to compete on price. Fee caps do not solve the inherent problems of flat fees.

Some industry commenters will object to the proposed advance-fee ban as placing too great a burden on debt settlement companies, which will incur many costs before they can collect a fee from a client. Our experience with the Simple Plan[®] demonstrates that this approach not only benefits consumers but also is feasible for well-managed and well-capitalized debt settlement firms. Indeed, we suspect that many

⁴ When the negotiated settlement provides for installment payments, the debt settlement firm should be permitted to collect its fee on a proportional basis as each installment payment is made.

abuses the Commission has confronted in enforcement actions have occurred not due to fraudulent intent by the companies, but rather from underestimation of the resources needed for the company to succeed. These resources include a skilled staff of experienced negotiators, sophisticated information management systems, effective relationships with third-party vendors that provide marketing and banking services and the ability to oversee these relationships, as well as an extensive customer service organization to keep customers informed and help them maintain their commitment to the debt settlement program.

FCS believes the Commission's proposed rule, with the modifications we suggest, will greatly benefit consumers and will permit a thriving, well-respected debt settlement industry.

Sincerely,

Shari Larson
Chief Executive Officer
Financial Consulting Services, LLC