N A C C A

National Association of Consumer Credit Administrators

PO Box 20871 · Columbus, Ohio · 43220-0871 · Phone (614) 326-1165 · Fax (614) 326-1162 · E-mail nacca2007@sbcglobal.net - www.naccaonline.org

September 14, 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
https://secure.commentworks.com/ftc-TSRDebtRelief

The National Association of Consumer Credit Administrators ("NACCA") is an association comprised of 49 state government agencies as well as Alberta, Canada, the District of Columbia, and Puerto Rico that are charged with regulating non-depository consumer lending. Many of NACCA's member agencies also regulate debt relief industries. Please note that any comments herein should not be construed as the opinion of any particular member agency of NACCA.

NACCA applauds the goal of the Federal Trade Commission ("FTC") to address various abuses perpetuated by certain members of the debt relief industries. We note, however, the following limitations inherent in utilizing the Telemarketing Sales Rule ("TSR") to address these abuses, and we hope that your efforts will be supplemented with the enactment and promulgation of additional laws or regulations to address potential gaps in coverage of the TSR. The possible gaps to be addressed through parallel proposals include the following:

1. The TSR only addresses telephone marketing. While it is true that the proposed amendments to the TSR address inbound telephone calls as well as outbound, the TSR does not address transactions which are completed entirely via the internet or mail. NACCA believes that many of the proposed protections which would be afforded to consumers who are contacted by telephone should also be afforded to consumers who interact with a debt relief service provider solely by mail or the internet. If this cannot be accomplished within the TSR, we suggest that the FTC consider broader rulemaking or perhaps statutory changes.

2. The TSR creates unlevel regulation by only applying to for-profit companies. In some states, only not-for-profit entities may offer regulated debt relief services. Other states license both for-profit and not-for-profit companies to offer debt relief services. While we hope that not-for-profit entities would voluntarily comply with the proposed amendments to the TSR, requiring for-profit entities to comply with the proposed amendments while not requiring not-for-profit entities to comply creates an uneven playing field. We recognize, however, that this may require a statutory change to the FTC's jurisdictional authority.

3. The TSR requires certain disclosures, including those in proposed §310.3(a)(1)(viii), to be made as part of a telephone call. The Notice of Proposed Rulemaking (the "Notice") states that the disclosures would take 20 seconds per call. NACCA notes that the disclosures include both specific quantifiable items (e.g., "time necessary to achieve the represented results") and concepts (e.g., savings resulting from use of a debt relief service may be taxable income). We find it difficult to believe that the required information can be conveyed in 20 seconds or, if it can be conveyed in 20 seconds, that a consumer who is already distressed can fully understand the information being conveyed. NACCA would prefer that many of the proposed disclosures be required in written form as well as part of a telephone conversation. However, we do not know if the TSR can require written disclosures.

Having identified the possible limitations of the TSR discussed above, NACCA supports the innovative use of the TSR and recognizes that the federal law may be the most efficient way for the FTC to address growing abuses in debt relief. Regarding the proposed amendments, NACCA has the following comments:

1. Section 310.2(m) – It is not completely clear whether the definition of "debt relief service" excludes holders of the debt or entities which are contracted to service the debt for the debt holder. We recommend that this language be amended so that it applies only to third-party debt relief entities and excludes holders of the debt or entities which service the debt for the debt holders.

2. Section 310.2(m) – The definition of "debt relief service" only references unsecured debt. The Notice explains that the FTC anticipates separate rulemaking regarding mortgage loan relief. Debt relief for loans that are secured by collateral other than real estate (e.g. auto loans or other personal property securing open-end or closed-end loans) would not be covered under either these amendments or the anticipated mortgage loan relief rulemaking. We recommend that, rather than referring to unsecured loans, the definition of debt relief service refer to loans that are not secured by real estate. In addition, although every new provider can develop their own term or description for their services, we believe it would be helpful for the rule to include examples of the names of such services, including debt settlement, debt elimination, debt management, credit counseling, etc.

3. Section 310.3(a)(1)(viii)(E) requires that a telemarketer disclose that a consumer's failure to make timely payments can have an adverse effect on the consumer's creditworthiness, result in the consumer being sued by creditors or debt collectors, and increase the amount of money a consumer owes due to accrual of fees and interest.

    a. In the case of a debt management arrangement, payments are made to the creditors according to a schedule. The differences between a debt management arrangement and the consumer making payments according to the original terms of the loan are that, under a debt management arrangement, payments are made via the debt management service provider and the payments are made according to a revised schedule. Even under a debt management arrangement, where payments are made to creditors according to a revised schedule, a consumer's credit rating may be adversely affected. To reflect this, we recommend that language in § 310.3(a)(1)(viii)(E) be revised to read ...the customer failing to make the originally scheduled ~~timely~~ payments in a timely manner and directly to creditors…
    b. A customer may be sued when he enters into a debt settlement plan which does not include up-front negotiations with creditors. A customer should not be subject to civil action when he follows a debt management plan which has been negotiated with creditors. In the latter situation, it would be misleading for a debt relief service provider to have to disclose that the customer may be sued by creditors or debt collectors. We recommend that the language in § 310.3(a)(1)(viii)(E) be revised to require that the disclosure regarding the possibility of lawsuits be made "when applicable."

4. Under a successful debt settlement transaction, a customer pays less than the original debt owed. We support the proposed language and note that, until a settlement is successfully negotiated, the creditor will hold the consumer responsible for the full amount owed.

5. Section 310.3(a)(1)(viii)(F) requires a debt relief service provider to disclose that savings a customer realizes may be considered taxable income. While this is true under a debt settlement plan where a loan is settled for less than the amount owed, it is generally not true under a debt management plan where the loan is paid in full. Therefore, this disclosure should not be required in conjunction with a proposed debt management plan where the loan will be paid in full. We recommend that the language "When applicable" be inserted at the beginning of this section.

6. In many cases, the entity offering debt relief services is not the entity which will actually be providing the debt relief services. The debt settlement industry, in particular, uses "lead generators" to find potential customers for their services. Also, in many debt relief advertisements and solicitations, the name of the entity providing the debt relief services or even doing the solicitations is not disclosed. We recommend that, in any solicitations for debt relief services, the name of the entity doing the solicitations must be disclosed and, if the entity doing the solicitations will not be the entity actually providing the debt relief services, the name of the debt relief service provider must also be disclosed.

7. As detailed in the Notice, under the up-front fee debt settlement model, a customer can make payments even when none of the funds will be paid to creditors or placed in escrow for consumers. Although the TSR requires disclosure of the total cost of a product, we do not see any disclosure requirement relating to when the customer funds must be paid to creditors or placed in escrow. We recommend that entities offering or providing debt relief services be required to disclose whether customer funds are collected on a basis that is more accelerated than a pro rata basis over the anticipated life of the service.

8. Section 310.3(a)(2)(x) lists material aspects of a debt relief service that a telemarketer may not misrepresent. Some are required to be disclosed under § 310.3(a)(1)(viii) but some of the disclosures referenced in 310.3(a)(1)(viii) are not addressed § 310.3(a)(2)(x). We recommend the language in § 310.3(a)(2)(x) be revised as follows: "…service on collection efforts of the consumer's creditors or debt collectors; whether any savings resulting from a debt relief service may be taxable income; the percentage ~~or number~~ of customers who attain the represented results, ~~and~~ whether a debt relief service being ~~is~~ offered ~~or~~ is or will be provided by a non-profit entity and whether the debt relief service will be provided or administered by the entity doing the solicitation of the debt relief service."

9. Section 310.4(a)(5) prohibits advance fees, i.e., any fees that are charged or collected prior to the provider delivering documentation to the consumer establishing that the specific service was performed. This may be contrary to state law when state law requires an education component and a debt relief service provider is authorized by law to charge a specific fee to administer the education component. We recommend that the following language be inserted at the beginning of Section 310.4(a)(5): "Except as allowed by the law of the state where a customer resides as to a separate bona fide and reasonable fee to administer a state required education component" or something similar.

10. Section 310.4(f) Required oral disclosures regarding debt relief services:
We suggest the inclusion of something similar to the following: 'In the event a customer lives in a state where a state license is required to engage in debt relief services, it shall be an abusive telemarketing act or practice and a violation of this Rule for a telemarketer offering debt relief services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, whether or not the company for whom one is marketing is licensed by the applicable state to engage in debt relief services and any pertinent information regarding the license, e.g. the license type, license number, government agency issuing the license.

In closing, we appreciate the opportunity to comment on the proposed rulemaking and hope the FTC finds our comments helpful.

Sincerely,

Susan E. Hancock
President