Manchester Publishing Company, Inc.

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

October 6, 2009

Subject: Proposed Rule Change to TSR, Request for Public Comment

Dear Commissioners:

The purpose of this open letter is to provide a response to the Federal Trade Commission's proposed change of the Telemarketing Sales Rule (TSR) to include regulation of "debt relief services."

As someone intimately involved with debt settlement since 1997, I am very familiar with the evolution of the industry from its earliest inception. Further, since 2004 I have adopted a completely different approach to debt settlement. Rather than negotiating as a third-party representative, I provide consumers with training and coaching as they negotiate their own settlements. The training comes in the form of an audio-CD seminar, and the coaching is delivered via email and telephone. I have personally provided one-on-one coaching for thousands of consumers to settle their own debts without direct intervention by a professional negotiator. As a result, I literally have no "stake" in the continued existence of the industry in its current form. So my perspective on debt settlement is unique and different from that of most industry insiders who will reply to the request for public commentary.

With respect to reining in the abuses that are rife within the industry, I welcome the proposed rule-change to the TSR as it pertains to the requirement for full disclosure to prospective consumers. My chief criticism of the proposed change lies with the suggestion to eliminate any form of advance fee, a concern that I will address below. With regard to disclosure requirements, however, there is no question that tighter rules are called for. For too many years, debt settlement has been promoted by unethical firms looking to exploit the vulnerable consumer. One major problem with lack of proper disclosure pertains to the manner in which the debt settlement process is proposed and structured. I am referring to the common practice within the industry where 36-48 month program durations are routinely quoted to the consumer, without disclosure that the probability of creditor litigation approaches 100% during that long a timeframe. Further, debt settlement is being promoted to virtually any consumer who carries a revolving balance of $10,000 or more (total) on their credit cards. People who were otherwise fully capable of maintaining normal payments against their debts have been convinced to purposely sacrifice their credit and risk legal action in order to reduce their debt burden. Suitability analysis, independent underwriting standards, and lack of internal oversight within the industry has led to a situation where virtually anyone with a credit card debt is targeted for enrollment in debt settlement programs.

The reality is that the majority of consumers being enrolled into traditional debt settlement programs are not suitable candidates for this strategy. Once all the marketing hype is peeled away, debt settlement can properly be viewed for what it is – nothing more than an alternative to Chapter 13 bankruptcy. Consumers who can qualify for Chapter 7 bankruptcy, still approximately 60% of annual bankruptcy petitioners, should not even consider enrollment in a debt settlement program. Why should they? Instead of years of exposure to legal risk, in exchange for high service fees charged by the settlement company, they can simply discharge their obligations in court, usually within a matter of months (not years) and at a fraction of the cost of a settlement program.

Once the “target market” for debt settlement is properly understood to consist only of those individuals otherwise facing Chapter 13 bankruptcy (i.e., 5-year restructuring of the debt), it immediately becomes apparent that settlement is erroneously being promoted as a suitable alternative for all bankruptcy petitions, with no distinction made between Chapter 7 and Chapter 13.

Further, just because a person would otherwise be required to file bankruptcy under Chapter 13 rather than Chapter 7, this does not automatically mean they are a good fit for a settlement program. They must also have sufficient resources for the settlements to be negotiated quickly enough for legal action to be avoided. In my own experience, this generally translates to only a “fast track” settlement strategy being effective – 12 months or less. So much of what drives settlements in the first place is the charge-off event – normally at 6 months’ delinquency – with creditors seeking to reduce the booked loss via settlement prior to charge-off, or a quick recovery after charge-off via external collection agencies. Settlement firms enrolling consumers into 36-48 month programs are misrepresenting the realities of debt collection in the current financial environment. Mounting risk of legal action is totally ignored by these sales-driven organizations.

When adjustment has been made to reduce targeted enrollments to consumers who are truly qualified for debt settlement (i.e., Chapter 13 candidates with sufficient available resources for a successful “fast track” settlement strategy), what is left is a greatly reduced pool of prospective clients. Simply put, if debt settlement was presented properly, meaning only to people who qualify for it, then there would not be more than one thousand such firms in existence today.

The reality is that debt settlement services are being “sold” rather than bought. Over-promotion of this approach has led to a backlash by the major creditors, in turn making it more difficult for consumers who attempt to negotiate their own settlements. So I welcome disclosure requirements that would assist people in properly understanding this approach as it fits among the range of options available to debt-stressed consumers.

The above concerns about disclosure and suitability notwithstanding, this writer remains deeply concerned about the FTC’s proposal to fully eliminate the ability of debt settlement firms to charge any fee whatsoever in advance of having achieved settlements on behalf of clients. While

I have personally coached many consumers to handle their own settlement negotiations, I recognize there will always be some continued need for third-party representation in the debt settlement arena. Some consumers are overly fearful of the process, some are truly incapacitated or disabled and require outside assistance, while still others simply do not wish to tackle the process of negotiating on their own. So while I do believe that one thousand or more debt settlement firms is far too many for the true size of the market for this type of program, that does not mean the FTC should take action that will effectively eliminate the entire industry.

By forcing debt settlement (as conducted by third-party representatives) into the non-profit sector, and eliminating any potential for for-profit service companies to work in this industry, the FTC is effectively handing this entire segment of the debt industry over to the existing network of non-profit companies currently delivering credit counseling services to consumers. This, in my opinion, is a disaster in the making. Why? Simply because it will automatically mean that the essential core basis for third-party leverage is effectively removed. I refer to the well-known fact that consumer credit counseling organizations already receive a significant portion of their income directly from the creditors who sponsor their services in the form of the “fair share” agreement. Such organizations who choose to also operate in the debt settlement arena will automatically be operating with a major conflict of interest, making them subject to pressure from lenders – pressure to accept higher settlement percentages than would otherwise be the case. Some may challenge this prediction – but a little common sense will indicate otherwise. Why should a bank accept a 40% settlement offer from one of the counseling organizations it routinely accepts debt management proposals from, when a little pressure from the top to “hold the line” at 60% will result in higher collection recoveries (in theory)? The original intention of the debt settlement approach was to provide consumers with access to a service organization that had no direct ties with the clients’ creditors – freeing the organization to truly place consumers’ best interests as top priority. Take away this core feature by only allowing non-profit companies to work in this sector (i.e., companies that are already beholden to the major creditors), and the results will automatically be inferior to what clients can currently achieve – either through third-party settlement programs (properly implemented) or on their own with training and coaching. If the FTC rule on “no fees in advance” is implemented as proposed, it will be the consumer who suffers the most – and the FTC will therefore be achieving the exact opposite of its intended effect.

This writer recommends that the FTC consider adopting the fee structure proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) model legislation for regulation of debt settlement firms – a project which has already been under way for several years, with several states having already adopted rules based on this model. This would provide a reasonable fee structure that eliminates the worst abuses within the industry, while avoiding the unintentional forcing of the industry toward non-profit companies who simply will not deliver the best results for those consumers who most need it.

Finally, with respect to the question on whether the definition of “debt relief services” in the proposed rule-change should be expanded to include “debt relief products,” the expanded definition is completely unnecessary and should not be implemented. Clearly, products in the form of books, tapes, CDs, or printed matter (whether hard-copy or online) contain speech protected under the First Amendment. The marketing of such products is already regulated under existing laws pertaining to deceptive trade practices, and the FTC already has adequate authority to deal with deceptive marketing of such products. Further, where the true intention of the product offering is to “up-sell” consumers to a full-service debt program, then the proposed rule-change would already govern, making an expanded definition of “debt relief service” redundant and unnecessary.

Sincerely,

Charles J. Phelan
President/Founder
Manchester Publishing Company, Inc.