Queens Legal Services

Legal Services NYC

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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, D.C 20580
(https://secure.commentworks.com/ftc-TSRDebtRelief)

Re: Comments on Telemarketing Sales Rule – Debt Relief Amendments R411001

Dear Federal Trade Commission:

Thank you for soliciting public comments regarding the proposed amendments to the Federal Trade Commission's Telemarketing Sales Rule, as it applies to the sale of debt relief services. Queens Legal Services provides free civil legal advice and representation to low-income residents of Queens New York, and as legal services attorneys familiar with the sale of debt relief services, our comments follow.

THE ESCALATING NEED FOR THESE PROPOSED REGULATIONS

Each of us submitting this testimony are long-time legal services advocates who have represented consumers since the 1980s. Up until about ten years ago, the debt relief services field here in New York City consisted mostly of not-for-profit credit counselors. Starting ten years ago, we saw the rapid growth of for-profit debt settlement companies. In speaking to our clients and to other service providers in our community, we have seen that abusive practices by companies selling debt relief services have escalated exponentially.

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Two factors are contributing to the problem: (1) credit cards are being marketed increasingly to less sophisticated consumers who are predictably more likely to default on them and to fall into serious debt [1] and (2) the current economic downturn has created large new pools of unemployed and under-employed people, who are unable to pay their debts. [2]

Desperate consumers, both the unsophisticated and those who are newly unemployed, are signing up for debt settlement services without realizing how little help they are likely to receive or how high a price they will pay. Radio stations and late night television air ads many times daily touting the virtues of debt settlement companies. Those who respond rarely realize that only a tiny percentage of consumers are helped by such companies and the vast majority of consumers are simply ripped off.

The FTC's proposed rules (1) forbidding debt settlement services from collecting fees until some benefit has actually been delivered to the consumer, (2) regulating in-bound as well as outbound calls to debt relief services, and (3) mandating certain disclosures would put an end to some of the most abusive practices. Our clients' experiences will illustrate that debt relief services which collect an upfront fee are engaging in abusive practices and will further illustrate the need for regulation of both inbound and outbound calls and the need for greater information about the services offered and their cost to the consumer.

UPFRONT FEES ARE AN ABUSIVE PRACTICE AND DAMAGE THE CONSUMER

Consumers are charged 10% to 15% of their outstanding debt in fees, and most of the debt settlement services collect these fees upfront. This means that a consumer who leaves the program for

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[1] Until recently, lenders issuing credit and debit cards were careful to screen the consumers receiving them, because the cards represented an unsecured line of credit. Issuers wanted to be sure that the consumers had the income or assets to pay.
In the last few years, the practices of credit card issuers have changed, as issuers have become attuned to the potential profitability of issuing cards to lower-income, higher risk consumers.

In the last decade, credit card issuers, incorporated largely in states with weak usury laws, began to issue cards to low-earning military families, seniors on Social Security, SSI or other fixed incomes, full-time students, recent high school and college graduates, and those just emerging from bankruptcy. Instead of looking for sophisticated consumers with a strong likelihood of paying their debts, issuers looked instead to the riches to be reaped through less financially savvy consumers and consumers who would predictably struggle to pay their debts. Issuers found extremely profitable issuing cards with high annual fees, high late fees, over-limit fees, and penalty fees. See, Jurgens, R. and Wu, C.,"Fee Harvesters: Low-Credit, High-Cost Cards Bleed Consumers," National Consumer Law Center (Nov. 2007).

[2] The economic downturn has created many new debtors unable to pay their debts.
Unemployment and under-employment have had consumers turning, increasingly, to credit cards to make ends meet. As the national unemployment rate nears 10%, the credit card industry is seeing ever-increasing numbers of consumers defaulting.
See, Dash, E. and Martin, A., "Banks Brace for Credit Card Write-Offs," New York Times, May 10, 2009.

whatever reason has accumulated few , if any, escrowed funds. This also means that the debt settlement service has little incentive to help the consumer, once the upfront fees have been collected.

Our clients Mr. and Mrs. M., a couple in their late 50's, were victimized by a for-profit debt settlement service. Mr. M. had been employed all his adult life, until an accident left him unable to work. With Mrs. M.'s work income and Mr. M's Social Security, the couple was struggling to make minimum monthly payments on their credit card debt, a debt that was growing larger each month with the addition of late and over credit limit fees. They had no secured debt and negligible assets. They were good candidates for bankruptcy protection. Instead, they signed up with a debt settlement service which advertised on television.

The service calculated their credit card debt at approximately $37,000 and found that they could pay $800 per month, which was approximately what than they had been paying previously to make minimum payments on their four credit cards. The couple signed an agreement in which they agreed to pay 15% of the debt (in this case, $5550) in fees to the debt settlement service, plus a $25 per month fee to the debt settlement service, plus a set-up fee of $100 and an additional $15 per month fee to the escrow agent. The agreement also stated that the consumer's payments would be credited first to paying the escrow agent, second to paying the debt settlement service's fees, and only after those were paid, to setting aside money earmarked for negotiating and settling the consumer's debts.

Because of the high upfront fees from both the debt settlement service and the escrow agent, the consumers would have nothing set aside in their escrow account toward paying down their debt until their eighth month in the program. In this couple's case, in month four, they were sued by the credit card issuer holding the largest debt. The consumers contacted the debt settlement company in a panic and were told that there was nothing that could be done about the court case. Mr. M. and the representative of the debt settlement service began yelling at one another, and Mr. M. asked for his money back. The representative told him that he was free to withdraw any funds that had not already been paid as fees to either the escrow agent or the debt settlement service. Unfortunately, under the terms of the agreement, the entire $3200 paid by Mr. and Mrs. M. had gone toward fees.

Now, Mr. and Mrs. M. have a judgment against them which includes legal fees, and the creditor is collecting each week by taking a portion of Mrs. M's paycheck. The late and over credit limit fees on the other three credit cards have grown, the couple's credit record has been damaged, and Mr. and Mrs. M. spent $3200 for nothing.

The experience of Mr. and Mrs. M. and thousands of other consumers like them provides a strong basis for amending Section 310.4 of the Telemarketing Sales Rule to prohibit debt relief service providers from requesting or receiving any fee until the consumer has been provided with documentation that the debt(s) in question have been renegotiated, settled, reduced, or otherwise altered for the better.

THERE SHOULD BE FULL DISCLOSURE BY THE DEBT RELIEF SERVICERS OF THE SERVICES THAT WILL BE PROVIDED TO CONSUMER DEBTORS

In our experience, consumers are rarely told the true story about how debt settlement works. The provision of debt relief services come in a number of forms including credit counseling; debt management plans; debt settlement; and debt negotiation. Each of the above types of debt relief services yields its own sometimes hidden traps for the consumer. Even reasonably well-educated consumers become confused over what type of service is being offered by those marketing debt relief services.

Proposed Section 310.3(a)(1)(iii) would prohibit a telemarketer of any debt relief services from failing to disclose clearly and conspicuously before any services are rendered

- the amount of time necessary to achieve the represented results
- specific time by which the debt relief service provider will make a bona fide settlement offer to each 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

This is an incredibly important amendment because consumer confusion about what is offered by the debt relief servicer has come up in our practice repeatedly. For example one of our clients, a 56-year-old divorced mother of two teenagers came in to our office after recently becoming unemployed. She had been led to believe that she had entered into a agreement to consolidate the balances on three credit cards totaling $6000. She understood that she would then pay on a monthly basis a reduced total balance, until the debts were paid.

When she came to our office, she had paid a total of over $3000 to the debt relief servicer but was concerned because none of that $3,000 had been paid to her creditors. A reading of the fine print of the agreement she had entered into revealed that the service gave itself a time period of 48 months within which to negotiate a settlement with each of her creditors. Until such settlements were reached, the service would hold all her payments. She would continue to be billed late fees and overlimit fees, and she would not be protected against the creditors' starting court actions to collect on her delinquent accounts. The contract obligated her to pay 16% of the outstanding balance upfront, as a fee to the debt relief servicer. This is an example of where full and clear disclosure in consumer friendly language would have warned the debtor against entering into this type of agreement.

CALLS INITIATED BY CONSUMERS SHOULD BE PROTECTED IN THE SAME MANNER AS CALLS INITIATED BY THE DEBT SERVICE COMPANY

M.L. approached Queens Legal Services with a contract she was considering signing with a debt settlement service called SolveDebts. She had been working at a $40,000/year unionized job, which she lost when the company moved. She was now working at barely more than minimum wages. M.L. had approximately $29,000 in credit card debt, with six different credit card companies. She contacted SolveDebts in response to an ad on the radio.

SolveDebts sent M.L. twenty three pages of materials about its program. On page 7, the company discloses the fees to be charged by the escrow agent. Nine pages later, the company disclosed its own fees, and nowhere were the two added up to show the consumer exactly what she would be paying each month.

The escrow fees themselves look deceptively low. There is a $12.50 per month fee, plus a $20.00 disbursement fee. There are also fees for paying by phone ($11.50) or by computer ($11.50) or by wire transfer ($15.00). There is a $20.00 bounced check fee, a $25.00 stop-payment fee, and a $25.00 fee to change one's payment date. There is also a $25.00 fee to copy any document. Like many working poor people, M.L. was often unable to afford the bank fees associated with maintaining a checking account, so she would have been paying by a money order, sent by certified mail, at an additional cost each month.

SolveDebts's fees are steep: 15% of the outstanding debt, plus $30/month. Although the company did not calculate the fees M.L.herself would pay, the company sent a sample of what a typical customer might pay. Prominently at the top of the description of the fees is the following information for "Herbert," the hypothetical SolveDebt consumer:

Total amount of Debt: $14,628
Service Fees: (15%of debt) $2,194.20
Estimated Settlement: (You SAVE 45% of your debt) $6,583

The hypothetical Herbert was to pay $273.30 per month. He would have accrued no balance at all toward paying off his debt until month #4, and after 18 months in the program, "Herbert" would have paid $4919.40, but his accrued balance would be only $2194. The difference would have been devoured by fees.

Also, although the escrow agent's fees were disclosed in another part of the document, the example of what "Herbert" would pay did not include those escrow agent fees. Even assuming "Herbert" never bounced a check, paid late, paid by phone, asked for a copy of any document, or rearranged a payment date, he would have had to pay another $225 in fees to the escrow agent, further reducing his accrued balance to $1969.

Queens Legal Services explained in detail to M.L. what the upfront costs of this plan would be and stressed to her that the 45% "estimated settlement" came with no guarantees. We explained that not all creditors will negotiate with a debt settlement company. We explained that it would take years for her to accumulate enough money for the debt settlement services company even to begin negotiations with her credit card companies. During that time, she would incur late fees each month and could be sued. Because she was working, her salary would be subject to attachment if one or more of her creditors obtained a judgment against her.

M.L. did not enter into the contract with the debt settlement company. Unfortunately, not many consumers contact lawyers prior to signing contracts for these services. If consumers knew that only a small percentage of consumers who sign up for debt settlement services are actually helped and that a very large percentage of such consumers end up in worse circumstances, then many fewer consumers would sign on to these services.

It should be incumbent upon debt settlement companies themselves to provide meaningful disclosure to their prospective customers, whether those customers result from a telemarketers' call into the consumer's home or a call placed by the consumer in response to the industry's pervasive advertising. We therefore urge the Commission to adopt the proposed amendments to Section 310.6 (expanding FTC coverage to inbound calls) and the proposed Section 310.3(a)(1)(viii)(A)(requiring the disclosure of material information).

Conclusion

By adopting the proposed rules now under consideration, the FTC can provide consumers with meaningful information to help them decide how to address their debt and can assure that consumers are not charged for services that they fail to receive. These proposed rules will put consumers on a more level playing field with the debt relief service industry.

Sincerely,

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