

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

In the Matter of)
)
Telemarketing Sales Rule -)
Debt Relief Amendments)
)
R411001)

**ACA INTERNATIONAL'S COMMENT REGARDING
PROPOSED AMENDMENTS TO THE
TELEMARKETING SALES RULE**

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Rozanne M. Andersen, Esq.
Valerie Hayes, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55435

Andrew M. Beato, Esq.
Stein, Mitchell & Muse, LLP
1100 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036

I. Introduction

The following comments are submitted on behalf of ACA International (ACA) in response to the Federal Trade Commission's request for comments concerning the proposed amendments to the Telemarketing Sales Rule (TSR) to address the marketing of debt relief services.¹

ACA generally supports the Commission's proposed regulation of the marketing practices of for-profit debt settlement companies to deter unfair or deceptive acts and practices within the industry. As noted in ACA's comments filed with the Commission for the debt settlement workshop, ACA members routinely interact with representatives of for-profit debt settlement companies that purport to represent consumers seeking to settle outstanding payment obligations. As an association of businesses that regularly interact with credit-grantors, consumers, and credit reporting agencies in the accounts receivable management process, ACA and its members have a unique perspective to contribute to the Commission's evaluation of the debt settlement industry's practices and the benefits of direct regulation under the TSR.

However, the Commission's proposed definition of "debt relief services" is too broad. Unless altered or clarified, the definition may have unintended consequences for the legitimate settlement and payment alteration practices of credit grantors and third party debt collectors that interact with consumers on behalf of credit grantors. Although there is reason to believe that the Commission does not intend to reverse its prior TSR

¹ Telemarketing Sales Rule, 74 Fed. Reg. 42017 (2009) (notice of proposed rulemaking).

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findings that debt collection services are not covered by the TSR,² ACA strongly encourages the Commission to clarify in the final rule that the legitimate services of debt collectors are not regulated under the proposed amendments to the TSR. This is consistent with the definition of “telemarketing” under the statute and regulation, which requires marketing to consumers to induce the purchase of goods or services as the trigger to coverage. Credit grantors and third party debt collectors that service accounts on behalf of credit grantors do not engage in telemarketing and should not be brought within the scope of the TSR.

II. Background on ACA International.

ACA International is an international trade association originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,500 company members, including credit grantors, collection agencies, attorneys, asset buyers and vendor affiliates.

The company-members of ACA comply with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activities of ACA members are regulated primarily by the FTC under the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*, the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (as amended by the Fair and Accurate Credit Transactions Act); the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; in

² Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4664 n. 1020 (January 29, 2003) (final rule) (stating that “debt collection and market research activities are not covered by the Rule because they are not ‘telemarketing’ -- i.e., they are not calls made ‘to induce the purchase of goods or services’”).

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addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering debts, including those created in the context of healthcare operations.³ In so doing, Congress committed the primary regulation of the recovery of debts to the jurisdiction of the Federal Trade Commission. 15 U.S.C. § 1692i.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

ACA members are a crucial component in safeguarding the health of the economy. Uncollected consumer debt threatens America's economy. According to the Federal Reserve Board and United States Census Bureau, total consumer bad debt costs every adult in the United States \$683 every year. This translates into a cost for the average non-supervisory worker of nearly 54 hours (before taxes) in annual salary that pays for the bad debt of other consumers. By itself, outstanding credit card debt has doubled in the past decade and now approaches three quarters of one trillion dollars. Total consumer

³ The FDCPA defines "communications" subject to statute broadly to include "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. § 1692a(2).

debt, including home mortgages, exceeds \$9 trillion.⁴ Moreover, the greatest increases in consumer debt are traced to consumers with the least amount of disposable income to repay their obligations.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. They represent the local family doctor, hospital, or nursing home. ACA members work with these businesses, large and small, to obtain payment for the goods and services received by consumers. In years past, the combined effort of ACA members have resulted in the recovery of billions of dollars annually that are returned to business and reinvested. For example, ACA members recovered and returned over \$40 billion in 2007 alone, a massive infusion of money into the national economy.⁵ Without an effective collection process, the economic viability of these businesses, and by extension, the American economy in general, is threatened. At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

III. Response to Request for Comment.

The proposed amendments to the TSR expansively define "debt relief services" as "any service represented, directly, or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of debt between a consumer and one or more unsecured creditors or unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured

⁴ William Branigan, *U.S. Consumer Debt Grows at an Alarming Rate*, Wash. Post, Jan. 12, 2004.

⁵ PricewaterhouseCoopers, *Value Of Third-Party Debt Collection To The U.S. Economy in 2007: Survey and Analysis*, available at <http://www.acainternational.org/files.aspx?p=/images/12546/pwc2007-final.pdf>.

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creditor or debt collector.” An entity that markets “debt relief services” would be subject to the TSR under the proposed amendments. ACA respectfully submits that this definition should be clarified to exclude the routine business communications among consumers and credit grantors and/or debt collectors that do not involve marketing to induce the purchase of goods or services. Without clarification, the definition may be wrongfully construed to apply to communications with consumers about settlements, restructuring the debt terms, waiving fees or reducing interest rates, validation disclosures, or arranging for other account changes.

The TSR regulates specific deceptive and abusive telemarketing practices as defined by the Telemarketing Act. Enacted in 1994, the Telemarketing Act was an effort by Congress to address fraudulent telemarketing conduct harmful to consumers by regulating deceptive and abusive telemarketing acts and practices intended to induce the purchase of goods or services, that is, commercial conduct. 15 U.S.C. § 6102(a)(3)(C).

As the Commission repeatedly has stated in the TSR rulemakings, routine business communications among consumers, credit grantors, and third-party debt collectors are not “telemarketing” under the statute and regulation. The Commission previously has found that telephone calls initiated for debt collection purposes are outside the scope of the definition of “telemarketing” in the TSR.

The Commission also intends that this Section not cover debt collection practices, since debt collection is not “conducted to induce the purchase of goods or services,” – a prerequisite for Rule coverage as dictated by the definition of “telemarketing” in § 310.2(u). Furthermore, this section is applicable only to recovery services that promise the return of money or other items of value paid for or promised to the consumer in a previous telemarketing transaction. Thus, this Section will not apply to attempts to recover money or items lost outside of telemarketing.

See Statement of Basis and Purpose and Final Rule, 60 FED. REG. 43843, 43854 (Aug. 16,

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1995) (emphasis added). Consistent with the Commission’s intention as expressed in the 1995 final TSR rule, the 2003 amendments to the TSR led the Commission to again reiterate that the TSR does not apply to debt collection activities “because they are not ‘telemarketing’ – i.e., they are not calls made ‘to induce the purchase of goods or services.’”⁶ This regulatory construction represents the proper application of Congressional intent to abusive practices by telemarketers. It also avoids adversely impacting the normal business communications with consumers or subjecting those communications to the full scope of the TSR requirements.

For the reasons stated herein, ACA respectfully requests that the Commission clarify in the final rule that “debt relief services” exclude telephone calls initiated for debt collection purposes that do not involve telemarketing.

V. Conclusion

ACA appreciates the opportunity to comment on the proposed amendments. If you have any questions, please contact Andrew Beato at 202-737-7777.

Respectfully submitted,

/S/

Rozanne M. Andersen, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55435
Executive Vice President

Valerie Hayes, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55435
Corporate Counsel and Vice President

⁶ Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4664 n. 1020 (Jan. 29, 2003).

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Andrew M. Beato, Esq.
Stein, Mitchell & Muse L.L.P.
Federal Regulatory Counsel