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RE: Notice of Public Rule Making – Debt Relief Amendments to Telemarketing Sales Rule

To whom it may concern:

As a consultant in the debt settlement industry, I have over eight years experience in debt settlement and three years of collection experience. I was previously the Vice President of Network Operations responsible for compliance, internal policies and procedures, and marketing for a debt settlement company.

Being on the front lines in both collections and debt settlement, I have seen the benefits and the deficiencies in both industries. I have long supported consumer protective measures in my endeavors and professional life and believe that the goal of the Federal Trade Commission (FTC) is one that I share; consumer protection.

While the intentions of the proposed debt relief amendments seem to be the correct avenue on the surface, I would caution the FTC to consider the potential harmful and unintended impacts and detriments of implementing a rule such as the proposed "upfront fee" ban.

The overwhelming negative effect the fee ban would have on consumers would be endless; the result would drive responsible and ethical companies from the debt settlement industry. Another result would be, as is happening now, the emergence of more Credit Counseling / Debt Management companies offering debt settlement services. This should be of grave concern to the FTC as the Credit Counseling/Debt Management industry has had its fair share of unscrupulous actors. This should tell the Commission that the designation of tax exempt does not equal scrupulous or ethical.

Over the past few years, the IRS audited and revoked numerous "nonprofit" licenses from the Credit Counseling / Debt Management industry; "41 credit counsel[ing agencies] earned more than 40% of the industry's $1 billion dollars in annual revenues", according to an article in the Baltimore Sun.[i] The credit counseling / debt management industry continues to recover from the devastating effects of the IRS audit and revocations.

Consumers currently have a viable option when searching for alternatives to debt management plans and bankruptcy. That option, for the time being (depending on the outcome with the FTC), is debt settlement. If the FTC enacts a fee ban, there will be a dramatic cut in current services to consumers, and even more consumers will choose the option of "doing nothing" with their creditors because the FTC has left them with no options. This could potentially lead to an even further decline in the economy, as it dictates even less money will be recouped by banks, creditors, collection agencies, and debt buyers and consumers will remain in a state of "credit unworthiness".

The effects of an upfront fee ban would be felt by hundreds of thousands of consumers nationwide, be catastrophic, and the impact would be immediate. While economic problems continue to plague this country, debt settlement can continue to assist consumers caught between the continuum of debt management and bankruptcy.

As in any industry, debt settlement has weathered its share of bad actors. But to characterize an industry, based on cases like Hess-Kennedy, is shortsighted, unfair and mischaracterizes the entire industry with "facts"

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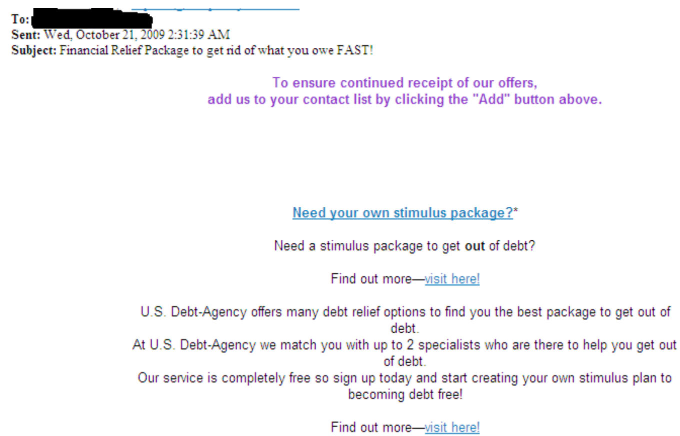
uncovered from a scam. The media, with the backing of the banks, credit counselors, and other so called consumer advocates wish for you to believe that debt settlement is not a viable option and only harms consumers. To the contrary, banks, debt collectors, and debt buyers are recouping millions of dollars monthly from consumers who are working with debt settlement firms. Hess-Kennedy, by all accounts, was a scheme that is not unlike schemes in other industries where a promise was made to consumers, only to have consumers pay high fees and receive little or nothing of value in return.

Marketing campaigns used in the debt settlement industry are also plagued with problems. Many debt settlement companies utilize outside marketers to promote their products and this is largely overlooked by regulators, including the FTC. Lead generators, the same companies responsible for the majority of advertising in mail, email, TV and radio campaigns, have been and continue to be under regulated by authorities. An example of a presently used deceptive marketing piece is displayed in the picture to the right. One of my debt settlement clients received this advertisement as a solicitation and forwarded to me for inclusion in this submission.



To: [redacted]
Sent: Wed, October 21, 2009 2:31:39 AM
Subject: Financial Relief Package to get rid of what you owe FAST!

To ensure continued receipt of our offers,
add us to your contact list by clicking the "Add" button above.

Need your own stimulus package?*

Need a stimulus package to get **out** of debt?

Find out more—visit here!

U.S. Debt-Agency offers many debt relief options to find you the best package to get out of debt.
At U.S. Debt-Agency we match you with up to 2 specialists who are there to help you get out of debt.
Our service is completely free so sign up today and start creating your own stimulus plan to becoming debt free!

Find out more—visit here!

Example of email marketing piece sent from a lead generator.

Advertising, such as the example mentioned above, is what the FTC and regulators should be looking to legislate and regulate. A consumer who receives this email can get the impression that there is a government agency providing a stimulus package for consumers in debt. This type of advertising is unfair, deceptive and targets people that may not have the resources to verify the claims. This is the type of advertising that would give any industry a bad reputation. Not only does it place the industry in a bad light, but it drives the operational cost of doing business needlessly up. Lead generators are piling up profits, at the expense of the consumers and debt settlement companies. The FTC should make a distinction between the two industries (debts settlement and lead generation) and ensure that opinions have not been formulated based on marketers instead of the service performance of the industry.

Allowing debt settlement companies to charge concurrent fees, for the ongoing services besides settlements that are provided, allows a cash flow that is necessary for debt settlement companies to provide services to consumers, meet legal requirements such as insurance and bonding and provide adequate staffing to service the ongoing needs of the client. Without the allowance of concurrent fees, legitimate debt settlement providers would diminish thereby leaving consumers that may have only been appropriate for debt settlement programs feeling like "sticking their head in the sand" is their only option.

As debt settlement grows and evolves, regulation is undoubtedly needed. More and more states are exploring debt settlement, regulating debt settlement, and recognizing how debt settlement differs from other debt relief options. It is important to remember that the market will inevitably dictate pricing, just as it does in countless other industries. When I first entered the debt settlement arena, the predominant fee model encompassed an enrollment fee, a monthly fee and a percentage of savings. Several factors, including the complexity of how fees were calculated (making it extremely hard for consumers to understand) and what consumers wanted, dictated that the industry evolve to a flat fee model, and consumers were charged a fixed percentage on the debt amount enrolled. This change allowed consumers to easily understand how much the debt settlement program cost. It has

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evolved even further since then and companies are charging varying percentages based on debt amount, number of creditors, and length of program.

Not only are fee amounts changing but the manner in which companies are collecting fees has changed also. In the past, consumers were paying confusing, multi-level enrollment fees upon joining a debt settlement program. Now, it is becoming more common for companies to charge a one-time, flat enrollment fee and prorate the remaining percentage of the fee over at least half the life of the program.

An issue that has not been adequately addressed is in regard to legislation and regulation that does nothing to protect a consumer from creditor harassment and legal action should a consumer determine that a lawful debt settlement program is the right option for them. Credit counseling/debt management programs have those protections, yet that same basic protection has not been afforded to consumers who enroll in lawfully operating debt settlement programs. The question the FTC should focus on, and the data the FTC should request is: how many consumers terminate a debt settlement program early because they were pressured to do so by a debt collector, a representative of a creditor or the bombardment of phone calls to both home and work that made the program become unbearable.

The FTC should not impose an advanced fee ban, but should continue to gather information and knowledge from parties involved in the industry reflecting the importance of sustaining debt settlement. With the FTC using sources outside of the debt settlement arena to classify and define what debt settlement is and is not, the conclusions drawn are likely unreliable and prejudicial towards an industry that helps consumers. The FTC has the opportunity to work with industry trade associations, such as USOBA, to develop guidelines for the debt settlement industry, and to facilitate consumer protection. Jumping to the devastating decision to enact an advanced fee ban, as backed by the creditors, “consumer advocates”, and debt management companies, will force American consumers, and the country as a whole, into even deeper financial turmoil.

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[i] Credit firms' status revoked: IRS says 41 debt counselors will lose tax-exempt standing, The Baltimore Sun, 5/16/01, Ambrose, Eileen