To: Federal Trade Commission, Office of the Secretary
From: Richard A. Briesch, PhD
Re: Telemarketing Sales Rule – Debt Relief Amendments – R411001
Date: July 14, 2010

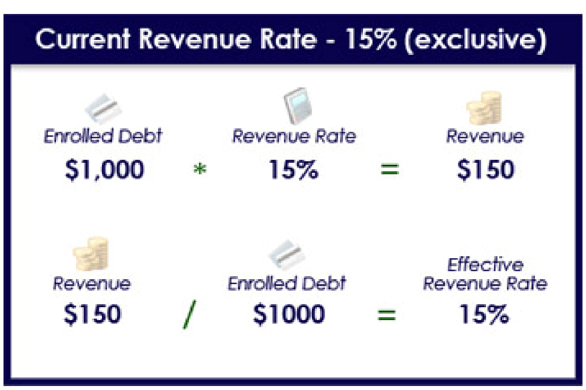
Dear Commissioners:

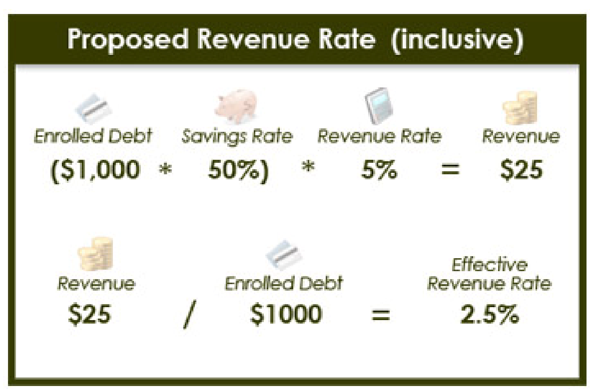
First, let me thank you for taking continuing time to evaluate key language in the proposed TSR on Debt Relief. Forgive the late nature of this note, but I just noticed the Mr. McKewen's post from the July 9, 2010 communications with Ms. Gail Hillebrand and would like to add perspective as to the important concession she made.

Ms. Hillebrand expressed her concerns about possible "loopholes" in the NPRM proposal and she is exactly right – herein lies the logical trap regarding 'upfront fees.' Her line of thought in the second paragraph of the summary, which is encapsulated in the final sentence of that paragraph, shows that the "power shift" concern is crucial to consider. In effect, she said that a debt settlement company under the current "advance fee" ban proposal would have an incentive to try to get consumers to agree to any kind of payment plan from a creditor in order to begin collecting a fee a.s.a.p. As you know, TASC clearly has emphasized the mirror image argument that under an "advance fee" ban, debt settlement companies effectively would lose their ability to hold out against creditors in order to secure the best possible settlements for consumers. This would only hurt consumers as customers who qualify must have a reduced principal option. CCCSs don't and can't provide this option, and debt settlement provides real value to many consumers.

Knowing that you are working on fee considerations, I have put together two brief but critical considerations. Specifically, consideration is requested for equal fee treatment to the competitors within this space. Namely, expressing fees on an exclusive basis and consideration for market rate on fees in order to keep legitimate providers profitable and avoid layoffs and shutdowns that would leave tens of thousands of consumers stranded. As you can see below, what Senator Shelby is proposing is actually a 2.5% fee, not a 5% fee. This is an 83.3% fee cut from our current average fee structure.

Most importantly, bankruptcy, CCCS and settlement have all had fees calculated on an exclusive basis until recently when the concept of 'percent of savings' was introduced. Differentiating between inclusive versus exclusive rates in tax consideration is very common and the same analysis needs to be considered here to fully understand the debilitating impact of fees as a percent of savings. Therefore, to adjust any inclusive tax rate to that of an exclusive tax rate, divide the given rate by one minus that rate. 15% inclusive = 18% exclusive; 20% inclusive = 25% exclusive; 25% inclusive = 33% exclusive; 33% inclusive = 50% exclusive; 50% inclusive = 100% exclusive.





In terms of fees and what is economically equitable, it seems reasonable that we examine what the market yields currently for all three options, counseling, settlement and bankruptcy. At this time, it is 12-20% (see table below) all calculated exclusively for the three alternatives. From an economic standpoint, currently DS, CCC's, and bankruptcy fees are somewhat indifferent as they receive the approximate total net payments in either case whether the payments come from realized gains from creditors, consumers, foundations or sale of assets. It is understood that these fees are paid, albeit indirectly, by consumers.

Alternative	Average Fees	Source(s)
Bankruptcy	14%	Hunt (2005)
DSC	12-20%	FTC Testimony (CFA, Debt Remedy, DMB Financial, Orion Processing, Superior)
CCCS	20% Calculated using: $15/month maintenance fee, 6% 'fair share payment,' $10,000 of debt in two accounts, and 4-year payoff at 9% interest. Total fees are: 2*$15*48 + .06*48*$214.78 = $2058.56	Boaz, et al (2003), Hunt (2005)

Competitively, bankruptcy fees, consumer credit counseling fees and settlement fees are all currently expressed on an exclusive basis and range between 12-20% of debt enrolled and services. Changing the way fees are calculated should in no way disadvantage a consumer who, beyond their current control, finds himself compelled to pursue one option or another.

Please consider that this can be easily remedied by considering fees on an exclusive basis by changing the language to reflect fees upon enrolled debt and a fee structure that is not anticompetitive in this market space. DSCs need to be able to recover at least a portion of their costs of rendering services, as they render the services. A lot of work is performed (education, set-up, analysis of accounts, creditor contacts) before an account is settled.

I would strongly encourage you to consider language and/or provisions similar to those in using the regulations from the Uniform Debt-Management Services Act (UDMSA – see, e.g., http://www.udmsa.org/) which has been codified in several states: a) treats all fees collected as an advance providing cash flow pending receipt of the settlement fee (see p. 60), b) limits total monthly fees collected by the companies, c) requires companies to refund a specific percentage (60%) of all fees collected when the consumer cancels, but still credit the company for the settlements made (i.e., allow them to keep earned fees), and d) limits total fees allowable.

In conclusion, there is a long-running commercial dispute between non-profit credit counseling and for-profit companies that operate in the same space. I would note a) the tax status (profit vs. non-profit) of the organization does not provide any inherent consumer benefit to the consumer (it is the services and pricing which provide benefits to the consumers) and b) the FTC and Attorney Generals in several states have pursued both types of companies. In addition, Banks fund CCCCs and prefer to work with them, which presents an inherent conflict of interest for the CCCS's; who do CCCS's represent when the interests of their stakeholders diverge? Their funders or their clients? By amending the TSR, the FTC should be careful to not choose sides in this commercial dispute, even if unintentionally.

Thank you in advance for your consideration of this note,

Richard A. Briesch, Ph.D.