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Federal Trade Commission
ATTN: Commissioner Julie Brill
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

SUPPLEMENT TO PREVIOUSLY FILED COMMENTS BY CENTURY NEGOTIATIONS, INC.

Dear Commissioner Brill:

As Assistant General Counsel of Century Negotiations, Inc., one of the older and larger debt settlement service providers and a founding member of TASC, I have been following the debate over the Commission's consideration of the amendments proposed to the Telemarketing Sales Rule. I recently reviewed the posting by the Commission of a memorandum of a telephone conversation between you and Ms. Gail Hillebrand, of Consumers' Union, one of the more vocal proponents of the so-called "advance fee" ban.

While Ms. Hillebrand's position on the debt settlement industry is both well-known and, regrettably, antagonistic, it would seem from the description of her conversation with you that she is also antagonistic to basic fairness in terms of when a fee is earned. Approximately 25-35% of settlements are done on a structured basis, where after lengthy negotiation with a creditor, an agreement is reached on staged settlement (meaning that the consumer agrees to pay a certain amount each month for a fixed number of months). These agreements are always thoroughly documented and agreed to by the consumer. Ms. Hillebrand would prohibit a debt settlement services provider from collecting any fee associated with this structured settlement until the final payment of the settlement, even though all of the work has been done by the settlement company, both the consumer and the creditor have accepted the terms of the settlement, and all responsibility for completion rests with the consumer. She would shift the entire risk of payment from the consumer to the debt settlement services provider, even though the company, having provided all of the services, cannot affect the outcome. Moreover, under most circumstances, this shifting will result in the debt settlement services provider becoming a creditor of the consumer since the fee would not be collectible until after the final payment. This is not only a manifestly unfair burden on any business but would force pricing upward to compensate for the risk of non-collectability and the time value of money.

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Ms. Hillebrand appears to believe that some sort of escrow account would solve these problems, but her position demonstrates a fundamental lack of understanding about what an escrow account[1], in fact, really is. To the extent that, as she suggests, this "escrow account" allows the consumer to exercise "complete control over the account" and that "the consumer can withdraw funds from the account at any time," how does this protect the service provider? Any meaningful escrow account would require that the consumer deposit funds and only be allowed to withdraw those funds pursuant to a specified set of circumstances. In order to protect the legitimate interests of the service provider, a debt settlement company that has already rendered services to the consumer, the escrow should only be broken in the consumer's favor if and only if the debt settlement services provider breaks the contract as to the specific debt for which the escrow account is established.

Prohibiting the receipt of fees until the final settlement payment is also contrary to the Commission's stated position regarding credit counseling debt management programs where the service is considered to have been rendered upon the execution of an agreement between the credit counselor and the consumer, setting in place the debt management program to pay off the consumer's debt. Under Ms. Hillebrand's position, the credit counseling company should not get paid until after the consumer has made all payments under the plan, usually 60 months. Consumers fail to complete their debt management plan about 75-80% of the time (according to the National Foundation for Credit Counseling) and may be charged back all of the concessions previously granted by the creditors unless they complete the program. In such instances, the fees taken by the credit counselor may be kept despite the fact that the consumer ultimately did not realize the concessions. [2]

Without intending to, Ms. Hillebrand apparently agrees with TASC's argument that the power shift to the creditor is a critically important flaw in the Commission's proposal to prohibit the industry-standard "fixed-fee" model. Ms. Hillebrand states in the context of fees associated with a structured settlement that "the provider is incentivized to get the consumer to agree to any kind of payment plan ... so that the provider could collect a fee as soon as possible." However, if creditors know that all debt settlement companies use the contingency fee model, the creditors can easily demand a 60% settlement, for example, when before they were granting 40% settlements when the fee models varied. When the creditor knows it has control over the timing and amount of the provider's revenue event the quality of the settlement will undoubtedly deteriorate, as negotiating leverage shifts from the consumer to the creditor.

In my opinion, the debate over the fee structure in the debt settlement industry obscures a much larger issue, and one on which the debt settlement industry, the Commission and those who style themselves as "consumer advocates" can agree: the problem of crushing consumer debt is one created and maintained by the credit card banks and their imposition of fees, charges and usurious interest rates. Constricting the ability of the debt settlement industry to offer services to consumers in need will not

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[1] I understand and agree with the position taken by both TASC and USOBA with respect to escrow accounts: because they are reachable by creditors in the context of a judgment lien or a trustee in the context of a bankruptcy, an escrow account would expose service providers and consumers to unacceptable levels of risk. This is likely to result in upward pricing pressure to account for the risk of non-collectability of fees.

[2] I disagree that no services are rendered unless a settlement is achieved and feel it's important to understand the inconsistency in the proposed rule. Further, a court has also recently ruled that value was provided to a debt settlement consumer in exchange for the fees paid even though no settlement was finalized. See, *In Re Kendall*, Bankruptcy No. 09-30350, Adversary No. 09-7024, United States Bankruptcy Court, Dist. of North Dakota, July 14, 2010.

serve the interests of consumer protection but only put those already at risk at the mercy of the creditors that drove them to the brink in the first place.

I hope you will consider my remarks as you consider passing a rule that could easily result in the elimination of an industry that has and continues to achieve remarkable success for indebted consumers. Please include this in the rulemaking record in addition to placing it upon the public record.

Respectfully,

Brian Tawney, Esq.
Assistant General Counsel
Century Negotiations, Inc.