

FTC TELEMARKETING SALES RULE PROPOSED AMENDMENTS TRAINING

SEPTEMBER 3, 2009



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Not Legal Advice

- This presentation is for informational and educational purposes only. It is not intended to provide legal analysis or advice on any specific issues.



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1. PROPOSED AMENDMENTS TO TSR

- Stated reason for FTC involvement in TSR amendments
 - Commissioner comments
 - Bad data
 - Misread data
 - High consumer complaints/uniformity of complaints
 - Unstated: Political Pressure



APPLICABILITY OF THE PROPOSED AMENDMENTS

- “Debt relief service”
 - “any service represented, directly or by implication, to **renegotiate, settle, or in any way alter the terms of payment** or other terms **of the debt between a consumer and one or more 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 creditor or debt collector”



A. Required Disclosures:

- “the amount of time necessary to achieve the represented results, and to the extent that the offered service may include the making of a settlement offer to one or more of the customer’s creditors or debt collectors, the specific time by which the debt relief service provider will make such a bona fide settlement offer to each of the customer’s creditors or debt collectors.”



A. Required Disclosures: (cont'd)

- “to the extent that the offered service may include the making of a settlement offer to one or more 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 or debt collectors.”



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A. Required Disclosures: (cont'd)

- “not all creditors or debt collectors will accept a **reduction** in the balance, interest rate, or fees a customer owes such creditor or debt collector.”



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A. Required Disclosures: (cont'd)

- “that pending completion of the represented debt relief services, the customer’s **creditors or debt collectors may pursue collection efforts, including initiation of lawsuits.**”



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A. Required Disclosures: (cont'd)

- “to the extent that any aspect of the debt relief service relies upon or results in the customer failing to make timely payments to creditors or debt collectors that use of the debt relief service **will likely adversely affect the customer’s creditworthiness, may result in the customer being sued** by one or more creditors or debt collectors, **and may increase the amount of money the customer owes** to one or more creditors or debt collectors due to the accrual of fees and interest.”



A. Required Disclosures: (cont'd)

- “that savings a customer realizes for use of a debt relief service **may be taxable income.**”



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B. Prohibited Misrepresentations

- “the amount of money or the percentage of the debt amount that a customer may save by using such service”
- “the amount of time necessary to achieve the represented results”
- “the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer’s creditors debt collectors to negotiate, settle or modify the terms of customer’s debt.”



B. Prohibited Misrepresentations (cont'd)

- “the **effect of the service on a customer’s creditworthiness.**”
- “the **effect of the service on collection efforts** of the consumer’s creditors or debt collectors.”
- “the **percentage or number of customers who attain the represented results.**”
- “whether a service is offered or provided by a **nonprofit entity.**”



C. Fee Limitations:

- Prohibit any entity from "[r]equesting or receiving payment of any fee or consideration from a person for any debt relief service until the seller has provided the customer with documentation in the form of a settlement agreement, debt management plan, or other such valid contractual agreement, that the particular debt has, in fact, been renegotiated, settled, reduced, or otherwise altered."



C. Fee Limitations: (cont'd)

- Prohibit a debt relief services company **from receiving an advance fee** for providing the debt relief services offered.
- "the practice appears to meet the statutory test for unfairness because it appears to cause significant harm to consumers that is not outweighed by countervailing benefits to consumers or competition, and the harm is not reasonably avoidable."



D. Action: Speak up!

- The FTC is eager to receive comments and statistical data from the industry.
- The FTC's Notice of Proposed Rulemaking is available online at:
<http://www.ftc.gov/os/fedreg/2009/august/090819telemarketingsalesrule.pdf>.
- Submit comments by **October 9** to:
<https://secure.commentworks.com/ftc-TSRDebtRelief/>



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