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By electronic delivery to:

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
https://secure.commentworks.com/ftc-TSRDebtRelief

Re: Telemarketing Sales Rule – Debt Relief Amendments, R411001

Ladies and Gentlemen:

The American Bankers Association (ABA)[1] welcomes the opportunity to respond to the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule (TSR)[2] to address the sale of debt relief services. ABA commends the FTC for its continuing efforts to protect consumers from unscrupulous debt relief service providers through enforcement actions, consumer education initiatives, and the proposed amendment of the TSR. We support using FTC's proposed application of its targeted TSR authority to regulate the for-profit debt settlement industry.

Background:

The combination of high consumer debt loads and rising unemployment have resulted in increasing numbers of consumers struggling to meet their financial obligations. The banking industry has responded by reaching out to consumers with information about internal resources for customer assistance as well as resources provided by the non-profit credit counseling agencies (CCAs), including financial education, credit counseling, and assistance negotiating a debt management plan (DMP). In addition, several large banks have joined with the electronic payment network providers VISA and MasterCard to create HelpwithMyCredit.org, a website

[1] *The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.*
[2] 74 Fed.Reg. 42017 (August 19, 2009), *to be codified at* 16 CFR Part 310.

designed to provide information and resources to assist and educate customers struggling to make their credit card payments. [3]

Although the banking industry encourages consumers facing financial hardship to turn directly to their creditor or their creditor's sponsored outreach for help, it recognizes that some consumers seek the help of third party intermediaries—as demonstrated by the explosive recent growth of the for-profit credit counseling, debt settlement, and debt negotiation companies (collectively, for-profit debt relief providers). As the FTC's proposal details, the practices of many of these for-profit debt relief providers are harmful to consumers and exacerbate their financial problems. The reality is that through deceptive solicitation and unfair practices many unscrupulous for-profit debt providers enrich themselves without providing any debt relief to their clients. Indeed, as the record clearly demonstrates, many consumers find themselves deeper in debt, with a seriously impaired credit record, and facing continued collection efforts—including collection lawsuits and garnishment proceedings—following their engagement of a for-profit debt relief provider.

Thus, ABA and the banking industry are fully supportive of the FTC's proposal to amend the TSR to encompass all inbound calls made in response to direct mail or other media advertisements by for-profit debt relief providers and to add additional provisions to address specific deceptive and abusive marketing practices prevalent in the for-profit debt relief industry. ABA believes that the proposed rule strikes an appropriate balance between maximizing protections for consumers from deceptive and abusive conduct in the telemarketing of for-profit debt relief services while avoiding the imposition of unnecessary compliance burdens on legitimate debt relief providers and creditor sponsored outreach. Accordingly, we support the rule as an appropriately tailored, but effective, means of closing an existing regulatory gap in consumer protection.

The scope of the proposed rule should be clarified.

ABA understands the proposal rule to target "pervasive illegal conduct occurring in sale of debt relief services"[4] by non-profit debt relief providers. It does not appear to be—and should not be—the FTC's intent for the rule to encompass the actions of a creditor, or its agent or affiliate, to resolve debt claims or to accomplish workouts directly with that creditor's customers. Therefore, ABA cautions the FTC that the proposed definition of "debt relief services" should be clarified and re-focused in order to avoid being unnecessarily broad and inadvertently imposing restrictions on financial institutions in their outreach to consumers experiencing financial difficulties.

Debt relief services are defined as "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

[3] *See* http://www.helpwithmycredit.org/.
[4] 74 Fed.Reg., *supra at* 41997.

a consumer to an unsecured creditor or debt collector" (emphasis added).[5] The FTC states in the preamble that the proposed rule does not amend the jurisdiction of the TSR; therefore, the proposed amendments to the TSR would not apply to inbound calls to bank employees or non-profit credit counseling agencies.

ABA, however, urges the FTC to clarify that the final rule is intended to reach only for-profit debt relief providers and is not intended to apply to the legitimate outreach and loss mitigation activities of creditors and their agents or affiliates. As discussed above, the banking industry is actively working to contact consumers facing financial hardship to offer counseling, information about debt relief options, and to negotiate debt restructuring or debt settlement arrangements where appropriate. In the preamble to the NPRM, the FTC recognizes this and urges "creditors and debt collectors [to] do more to address the concerns in this proceeding, such as developing innovative loss mitigation techniques" and "[T]o step up efforts to reach consumers directly and determine what, if any, debt relief options may be available."[6] This outreach, however, may direct consumers to contact affiliated third-parties, including third-party debt collectors, authorized by the bank to work with the consumer to reach an appropriate debt accommodation. Unless the scope of the rule is clarified to expressly exclude the debt mitigation efforts of bank affiliates and agents, the rule may have the unintended consequence of discouraging workout efforts by creditors—thus, driving consumers *to* for-profit debt relief providers.

Industry data confirms that consumers are increasingly turning to for-profit debt settlement providers to their detriment.

ABA believes that the record compiled by the FTC in support of the proposed regulatory action is strong. The FTC has engaged in a thorough review and analysis of enforcement actions against for-profit debt relief providers and the Debt Settlement Workshop record to demonstrate the necessity for the proposed regulation. However, as the FTC notes, the record lacks credible empirical evidence about the number of accounts held by debt settlement companies and about the resolution of those account balances.[7]

In part, this is due to the fact that the practices of the for-profit debt settlement industry are so variable, unpredictable, and opaque. Those issuers that do try to track debt settlement accounts report that they cannot accurately identify accounts that have been placed with a debt settlement company. They explain that debt settlement companies do not follow a consistent practice of identifying their relationship to an account; indeed, many mask any relationship as long as possible, never contacting the issuing bank until ready to present a settlement offer. Other issuers are just beginning to try to identify and track debt settlement accounts and do not have data. Thus, ABA believes that any account totals that the industry could provide would significantly under-report the actual number of consumers who have turned to debt settlement.

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[5] 74 Fed.Reg., *supra at* 41999.
[6] 74 Fed.Reg., *supra at* 41998.
[7] 74 Fed.Reg., *supra at* 41995.

However, ABA can provide industry statistics that support the FTC's finding that there has been significant recent growth of the debt settlement industry. Those issuers who do attempt to track debt settlement accounts, report that the percentage of their delinquent portfolio that is *known* to be with a for-profit debt settlement company has grown an average of 57% from the first quarter of 2008 to the first quarter of 2009. This growth rate—coupled with the documented deceptive and abusive marketing practices of the industry—means that left unregulated, increasing numbers of consumers will be injured by the debt settlement industry.

Moreover, Persolvo Data Systems, the self-proclaimed "leading provider of aggregated account information of consumers enrolled in debt settlement programs," announced on September 9, 2009 that "[I]t has reached a major milestone by *aggregating over $3 billion in debt settlement accounts*. Additionally, Persolvo reported *its database has grown by over $150 million a week during the last 30 days*" (emphasis added).[8]

In addition, ABA can report that an average of 63% of identified debt settlement accounts charge off.[9] This charge off rate can be compared to that of accounts placed by a CCA into a debt management plan; the average charge off rate for these accounts is significantly lower – just 16%. This high charge off rate is consistent with the FTC's finding that the debt settlement "business model" requires the consumer to end communication with and payments to the creditor until a sufficient settlement fund is amassed. It supports the proposed disclosure obligation of debt relief service providers to disclose:

> 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.[10]

As stated previously, the lack of transparency of debt settlement practices limits issuer ability to provide statistics on issuer experience with debt settlement companies. ABA and its members believe, however, that the proposed amendments to the TSR are an appropriate means to require debt settlement companies to be more transparent. It is clear that the deceptive and abusive practices of the non-profit debt relief industry must be stopped, and we support the FTC efforts to do so.

ABA appreciates the opportunity to comment on the FTC's notice of proposed rulemaking on the Telemarketing Sales Rule. If you have any questions about these

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[8] *See* http://www.persolvodatasystems.com/press.html.
[9] It should be noted that the fact that an account has been charged off is uniformly reported to the credit bureaus—negative information that remains on a consumer's credit report for seven years.
[10] *See* 16 CFR Part 310.3(a)(1)(viii)(E).

comments, please contact the undersigned at (202) 663-5073 or via e-mail at voneill@aba.com.

Respectfully submitted,

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