Casey Elliott

From: comments
Sent: Tuesday, March 15, 2011 11:48 AM
To: Casey Elliott; attyboris@aol.com; greenfim@wulaw.wustl.edu; marionbenfield@att.net
Subject: UDMSA Comment #18
Attachments: Letter to Standby Committee on the UDMSA.PDF

From: Cyndi Williams [mailto:Cyndi.Williams@credit.org]
Sent: Tuesday, March 15, 2011 10:14 AM
To: comments
Cc: 'greenfim@wulaw.wustl.edu'; Todd Emerson
Subject: Letter to Standby Committee on the UDMSA

Dear Ladies and Gentlemen of the Standby Committee,

On behalf of Todd Emerson, attached please find our comments to the recently proposed amendments to the Uniform Debt-Management Services Act.

We thank you for the opportunity to share our remarks with you.

Cyndi Williams
Executive Assistant to Todd Emerson
Springboard Nonprofit Consumer Credit Management
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Tuesday, March 15, 2011

Via Email (comments@uniformlaws.org)

Standby Committee on the Uniform Debt-Management Services Act
National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

Dear Standby Committee:

On behalf of Springboard Nonprofit Consumer Credit Management, Inc., we would like to take this opportunity to provide our comments to the Standby Committee regarding the recently proposed amendments to the Uniform Debt-Management Services Act ("UDMSA").

As a little background, Springboard was formed in 1974 to accomplish a simple mission; to provide quality financial education and counseling. As such, we are accredited by the Council on Accreditation signifying the highest standards for agency governance, fiscal integrity, counselor certification and service delivery policies, and we operate and are licensed in nearly all states that require licensing of credit counseling agencies, including states that have enacted the UDMSA. In addition, we have been approved by the Executive Office for U.S. Trustees to provide both pre-filing bankruptcy counseling and pre-discharge bankruptcy education in all judicial districts. Springboard is also an approved U.S. Housing and Urban Development ("HUD") counseling agency as well a recognized HUD regional intermediary, and we are a member of both major industry trade associations, the Association of Independent Consumer Credit Counseling Agencies (AICCCA) and the National Foundation for Credit Counseling (NFCC).

We understand that several agencies and organizations have commented on the proposed revisions to UDMSA in light of the recent amendments by the Federal Trade Commission to the Telemarketing Sales Rule ("TSR") to address debt relief services. We support the commentators that have expressed support of the Standby Committee's efforts to align the UDMSA with the TSR, but we share with many the concern that the proposed revisions to Section 22 are overbroad and would cause unintended consequences. Accordingly, we focus our comments on the practical and real life impact the proposed revisions to Section 22 would have on Springboard, and those agencies similar to ours.

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We commend the Standby Committee's support of state laws which protect both the consumer and the integrity of the credit counseling industry however; we are concerned with the proposed revisions to Section 22 which "would be revised to remove the provider from the administration of a trust account. Subsection (c) would require that the person administering a trust account not be the provider or an affiliate (a defined term) of the provider." We take issue with this provision based upon the following:

1) **Cost.** With shrinking government and private grants combined with spiraling operating expenses, we are already facing severely reduced funding with which to continue our non-profit counseling services. The unbudgeted and unplanned required employment of a public administrator and his/her associated costs would further stress our financial situation causing reductions in other vital areas sorely requested by those in the public sector most in need our services.

2) **Technology.** Despite the mission of all non-profit credit counseling agencies to provide financial education and well-being to those in need of such, we possess a significant edge by way of our highly sophisticated in-house software technology and information systems infrastructure. Over the course of the last several years, we have devoted a great deal of resources to developing and creating a proprietary intake, tracking and disbursement engine through which we operate our debt management plans. To expose such a prized and protected intellectual property to the public through a public administrator would cause us a significant set-back, and discourage us and others from developing leading edge technology and solutions in this already shrinking field.

3) **Burden.** Unlike debt settlement companies which use third-party services to provide external bank accounts to consumers because they lack the interest, resources and technology to do so in-house, Springboard has taken on and accepted the extremely heavy burden and cost of licensing and registering in virtually every state in the country to provide in-house trust administration. Thus, a provision requiring all agencies to now have third-party trust administrators would essentially punish Springboard and others who have spent countless hours, resources and expenses in creating such an internal process.

4) **Expertise.** Some creditors and clients require special handling as it relates to processing partial payments, insufficient funds, revoked automated clearing house payments and other variable and unusual circumstances. As a result of years of experience, Springboard has created an expertise in handling these types of transactions and has the ability to immediately follow-up with both creditor and client to alleviate negative consequences. On the other hand,

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should an administrator who is not adept or skilled at such processing mishandle creditor payments, clients could suffer irreparable harm such as incurring late fees, be dropped from a debt management plan or have their interest rates increase dramatically.

5) **Unnecessary.** Springboard, like many of our brethren in the credit counseling industry already protects consumers from the misappropriation of funds through a variety of compliance vehicles. For instance, under many state debt adjusting statutes we are required to reconcile trust funds on a regular basis, provide monthly statements to our clients and conduct criminal background checks for staff that have access to client trust funds. In addition, many states have bonding requirements and conduct regular electronic and/or on-site audits of our debt management processes. Thus, it is unclear how a third-party administrator could add an additional layer of protection given the heavy compliance requirements already imposed, and when public administrators themselves are fallible to the same mistakes.

6) **Discriminatory.** While the requirement of a public administrator would be an attempt to gain public confidence in the trust process, many other professions and service providers in various fields obtain client funds and place such funds in trust for protection of their clients, including the legal profession itself, even though they are not required to have a public administrator oversee the process. For example, attorneys are entrusted with maintaining and self-reporting of client trust funds, but are not required to have a public administrator disburse funds when services are rendered. Thus, it is unclear why non-profit credit counseling agencies should be singled out for such a requirement, especially when the requirement was not contemplated by the FTC While we would agree that for-profit debt settlement companies have received numerous enforcement actions for unfair and deceptive practices, there has been virtually no evidence of corruption, thievery, fraud or abuse in the 60-year history of the legitimate non-profit credit counseling history to warrant the need for a third-party administrator.

* * * * * *

Springboard believes it is critical that non-profit credit counseling agencies have the ability to administer their own trust funds under the UDMSA. The proposed amendments to Section 22 would provide little benefit to clients and the public at large, and would in fact cause significant harm to counseling agencies as indicated above.

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Accordingly, we urge your reconsideration of the proposed changes to Section 22, and thank for the opportunity to share our comments with you.

Sincerely,

Todd Emerson
President & CEO

cc: Michael Greenfield, UDMSA Reporter (greenfim@wulaw.wustl.edu)

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