Casey Elliott

From: comments
Sent: Friday, March 11, 2011 1:04 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA Comment 14
Attachments: UDMSA Draft Revisions - NFCC Comments Mar 10 2011.docx

-----Original Message-----
From: Evelyn Fortier [mailto:efortier@nfcc.org]
Sent: Friday, March 11, 2011 12:28 PM
To: comments
Cc: 'greenfim@wulaw.wustl.edu'
Subject: FW: UDMSA

Attached are the comments of the National Foundation for Credit Counseling, the nation's largest and longest serving network of nonprofit credit counseling agencies, relating your proposed 2011 revisions to the Uniform Debt Management Services Act. We just learned this week that you were accepting comments on your proposed changes relating to requirements for debt settlement companies and credit counseling agencies, and would greatly appreciate it if you would accept the attached.

Thank you for your consideration. Please contact me at the number below if you have any questions.

Regards,
Evelyn Fortier

Evelyn Fortier
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NATIONAL FOUNDATION FOR
CREDIT COUNSELING
Knowing the difference can make all the difference.

MEMORANDUM

To: Uniform Law Commission
From: National Foundation for Credit Counseling
Re: **Uniform Debt Management Services Act; Proposed Revisions and Request for Comment**
Date: March 10, 2011

The National Foundation for Credit Counseling (the "NFCC") would like to thank the Uniform Law Commission for the opportunity to comment on the amendments proposed to the Uniform Debt-Management Services Act (UDMSA) earlier this year. Our comments relate primarily to the Commission's proposed changes to UDMSA Section 22, relating to trust accounts, and Section 23, relating to fees and other charges.

The NFCC, founded in 1951, is the nation's largest and longest serving national nonprofit credit counseling network. We operate a toll-free National Locator Line, in partnership with our 97 non-profit member agencies, by which consumers struggling to meet their debt obligations can access, at low or no cost, the services of a trained credit counselor at more than 800 offices located in communities throughout the country. Last year, the counseling staff at NFCC member agencies assisted over three million consumers, helping many to drive down their debt and take control of their finances. The NFCC promotes the national agenda for financially responsible behavior and builds capacity for its members to deliver the highest quality financial education and counseling services.

Section 22: Regulation of Trust Accounts.

The NFCC encourages the Commission to revisit two aspects of the proposed changes to Section 22, relating to the requirement for administration of a "trust account" by a credit counseling agency. Such an account is defined as an account "to be used for payment of a provider's fees or for payment to creditors pursuant to a plan, or both."

First, we recommend that the Commission strike (or substantially modify) the requirement, in the current version of Section 22(c)(ii), as it relates to credit counseling agencies, that a trust account be administered by an entity that is not the provider or an affiliate of the provider. Applying this new requirement to nonprofit credit counseling agencies would markedly increase the cost and complexity of doing business for nonprofit credit counseling agencies, without measurably benefiting most of the consumers served by our agencies in any demonstrable way. Moreover, the wording of the FTC's requirement with respect to trust accounts suggests that the

Telemarketing Sales Rule is specifically targeted at debt settlement companies that request or require customers to place funds in a dedicated bank account at an insured financial institution, for the purpose of enabling the debt settlement company to collect its fees. If the purpose of the UDMSA revisions is to ensure consistency between the UDMSA and the FTC's requirements, then extending this trust account administration requirement to credit counseling agencies is unnecessary, in our opinion.

Second, we are concerned about the potential negative impact, for consumers served by credit counseling agencies, of the Section 22(g) requirement that a third-party administrator must disburse client funds to creditors. Eliminating a credit counseling provider's ability to disburse funds and manage client accounts, as proposed under revised Section 22(g), could seriously undermine the type of customer service currently provided by our member agencies to certain clients, with potentially disastrous results for those clients.

By way of background, many of the clients served by credit counselors at our member agencies experience abrupt changes in their daily financial situations, and our counselors regularly make disbursement decisions on those clients' behalf (due to the fact that such clients may frequently miss payments or make only partial deposits). The credit counselor has an important role to play in this respect, because some major creditors give consumers only one chance to succeed on a payment program; and errors or negligence on the consumer's part can result in the consumer's removal from a payment program (resulting in the loss to the consumer of any further creditor concessions). We therefore recommend that the Commission not incorporate any changes to the UDMSA that would disrupt the disbursement modifications that commonly result from client-counselor discussions.

Section 23: Fees and Other Charges.

1. Proposed Changes Impacting Debt Settlement Companies

We applaud the Commission for initiating changes to the UDMSA that would eliminate any inconsistencies between the UDMSA and the changes adopted by the Federal Trade Commission (FTC) in the FTC's 2010 amendments to the Telemarketing Sales Rule, respecting the fees charged by debt settlement companies. In particular, we support the Commission's proposed addition of language, in Section 23, that would

- Prohibit the collection of fees for debt settlement services until such services are actually provided; and

- Require that debt settlement fees be reasonable and commensurate to the services provided.

As determined by the Government Accountability Office, in a recent investigation of debt settlement companies, some of the for-profit companies that promise to "settle" consumer debts for just pennies on the dollar will charge the consumer exorbitant fees in advance but ultimately may provide little in the way of substantive services to the consumer. The July 2010 government report summarizing the results of GAO's investigation states, in relevant part:

> "GAO's investigation found that some debt settlement companies engage in fraudulent, deceptive, and abusive practices that pose a risk to consumers. Seventeen of the 20 companies GAO called while posing as fictitious consumers say they collect fees before settling consumer debts—a practice FTC has labeled as harmful and proposed banning—while only 1 company said it collects most fees after it successfully settles consumer debt. (GAO was unable to obtain fee information from 2 companies.) In several cases, companies stated that monthly payments would go entirely to fees for up to 4 months before any money would be reserved to settle consumer debt. Nearly all of the companies advised GAO's fictitious consumers to stop paying their creditors, including accounts that were still current. GAO also found that some debt settlement companies provided fraudulent, deceptive, or questionable information to its fictitious consumers, such as claiming unusually high success rates for their programs—as high as 100 percent."[i]

In short, after dealing with debt settlement companies, some consumers may find themselves with no real solutions, only deeper in debt (and subject to lawful collection activities including litigation as well as garnishment of wages), and learn that they have lost the thousands of dollars they paid for the services of a debt settlement company.

In response to debt settlement abuses occurring across the nation, Attorneys General from multiple states – including Illinois, New York, Texas, Florida, North Carolina, Vermont, West Virginia and others – recently have initiated action against individual debt settlement companies. Many debt settlement companies operate across state lines, however, and until the Federal Trade Commission (FTC) last year finalized its changes to the Telemarketing Sales Rule to counter the predatory debt settlement practices, there was no uniform, federal regulation on the books to protect American consumers against such abuses.

2. Proposed Changes Impacting Nonprofit Credit Counseling Organizations

While the NFCC strongly supports the Commission's goal of ensuring consistency between the UDMSA and the FTC's amendments to the Telemarketing Sales Rule, for the reasons outlined below, we recommend that the Standby Committee revisit its proposed changes to Section 23 in the following ways:

Collection of Upfront Fees. The NFCC supports the FTC's prohibition of upfront fees in specified circumstances, where necessary to protect the consumer against unscrupulous actors that collect large fees without providing a substantive solution for the consumer. With respect to debt management plans, however, we believe it would be appropriate for the Commission to

modify the language of Section 23(d)(2) to expressly clarify that the collection of fees are prohibited only before the consumer has made a payment on their debt management program.

Creditor Consent to Change in Debt Terms. As currently worded, Section 23(d)(2) would require creditor consent "to a change in the terms of the debt" before a provider of credit counseling services may request or receive any compensation from a client. We note, however, that some credit counseling agencies' clients may, on occasion, enter into a debt management plan with creditors that will decline to change that consumer's payment terms. (To illustrate: a utility company or other creditor may decline to offer payment concessions to a consumer who has in the past neglected to make timely payments, but may agree to stop collections activity against that consumer). We therefore recommend that the Standby Committee modify the wording of Section 23(d)(2) to take account of these and other possible circumstances in which creditor consent may not be forthcoming.

Conclusion

In closing, we appreciate the opportunity to comment on the proposed UDMSA draft. We encourage the Committee to reconsider the wording and intent of the sections discussed above. Thank you in advance for your consideration of our comments, and please feel free to contact efortier@nfcc.org if you have any questions.

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[i] General Accountability Office, "Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumers," GAO-10-593T (April 22, 2010). Link here to report: http://www.gao.gov/new.items/d10593t.pdf. See also: Field Hearing of U.S. Senate Committee on Commerce, Science & Transportation, "Protecting Consumers from Deceptive Debt Settlement Practices (Kansas City, MO, August 12, 2010); and Hearing of U.S. Senate Committee on Commerce, Science and Transportation, "The Debt Settlement Industry: The Consumer's Experience" (Washington, D.C., April 22, 2010).