Casey Elliott

From: comments
Sent: Friday, March 11, 2011 12:59 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA comment 11
Attachments: 3.10.2011 MMI comments.docx

From: Sellers, Zynda [mailto:Zynda.Sellers@MONEYMANAGEMENT.ORG]
Sent: Thursday, March 10, 2011 3:54 PM
To: comments
Cc: 'greenfim@wulaw.wustl.org'; 'Pompan, Jonathan L.'
Subject: MMI comments regarding proposed Amendments to the UDMSA

Dear Standby Committee and Mr. Greenfield:

Attached please find our comments regarding the proposed Amendments to the UDMSA.

Please do not hesitate to contact me if you have any questions about our comments.

Sincerely,

Zynda Sellers | Corporate Counsel
Money Management International | Improving lives through financial education.
14141 Southwest Freeway | Suite 1000
Sugar Land, Texas 77478
D: 919.557.3007 | F: 919.567.7508 | M: 713.261.0571
Zynda.Sellers@MoneyManagement.org
www.MoneyManagement.org

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Money Management INTERNATIONAL

14141 Southwest Freeway
Suite 1000
Sugar Land, Texas 77478

T: 888.845.5669
F: 888.845.0501
MoneyManagement.org

March 10, 2011

VIA ELECTRONIC MAIL

Standby Committee for the Uniform Debt-Management Services Act and Mr. Michael Greenfield
National Conference of Commissioners on Uniform State Laws
Washington University School of Law
Campus Box 1120
One Brookings Drive
St. Louis, MO 63130-4899

RE: Proposed Amendments to the Uniform Debt-Management Services Act

Dear Standby Committee and Mr. Greenfield:

Money Management International, Inc. ("MMI") appreciates this opportunity to provide feedback to the Standby Committee of the National Conference of Commissioners of Uniform State Laws assigned to the Uniform Debt-Management Services Act ("UDMSA") regarding the draft proposed amendments to the UDMSA ("Amendments").

MMI supports state laws that protect consumers and the integrity of credit counseling services. We understand that the Amendments are intended to make the UDMSA consistent with the Federal Trade Commission's Telemarketing Sales Rule ("TSR"). In fashioning such protections, MMI recommends adopting an approach that allows nonprofit credit counseling agencies to continue to provide debt management plans (*i.e.*, periodic repayment plans to creditors) ("DMPs") that meet the needs of our clients. MMI is concerned that the aspects of the Amendments contain many concepts that reflect a "form over substance" application of the TSR to the UDMSA that will cause drastic consumer harm and unintended consequences for credit counseling agencies and consumers.

I. Background

MMI is the largest, tax-exempt, nonprofit credit counseling organization (CCO) in the nation and operates six telephone contact centers and over 120 in–person counseling offices in more than 20 states. MMI provides professional financial guidance, counseling, community-wide educational programs, and debt management assistance. We are licensed in all states that require it of CCOs, including the states that have enacted the UDMSA, and have been approved by the Executive Office for U.S. Trustees to provide both pre-filing bankruptcy counseling and pre-discharge bankruptcy education programs in all judicial districts.

MMI is also an approved housing counseling agency in accordance with the standards set forth by the U.S. Department of Housing and Urban Development. MMI has been reaccredited by the Council on Accreditation after an extensive self-study and onsite review process, and is a member of the two major credit counseling industry trade associations, the Association of Independent Consumer Credit Counseling Agencies (AICCCA) and the National Foundation for Credit Counseling (NFCC). In 2010, over 900,000 consumers contacted MMI looking for financial education and guidance on a wide range of issues, including credit card debt, budgeting problems, debt prioritization, housing counseling, bankruptcy counseling, and pre-discharge bankruptcy education.

II. Comments—Section 22 Trust Account

MMI observes Proposed Section 22 would revise the UDMSA to remove the provider from the administration of a trust account. Specifically, subsection (c) would require that the person administering a trust account not be the provider or an affiliate (defined in Section 2) of the provider. Other changes purportedly would make the UDMSA consistent with the FTC TSR. These are significant changes to the UDMSA and will serve only to increase the cost and complexity of doing business for CCOs that provide DMPs.

While the Standby Committee seeks to align Proposed Section 22 with the TSR, the Standby Committee has overlooked an essential key element in the premise behind the TSR. In drafting the amended TSR, the FTC did not address the business practices of CCOs because such entities fall outside of the scope of the FTC's enforcement jurisdiction. As noted by the Reporter's Memo accompanying the Amendments, the FTC does not have jurisdiction over *bona fide* nonprofit organizations. As such, any melding of TSR provisions on the UDMSA should only be done with sensitivity to the fact that the authors of the TSR did not contemplate that it would apply to CCOs that provide DMPs.

As described by the FTC in their Statement of Basis and Purpose to the debt relief services amendments to the TSR, "DMPs are monthly payment plans for the repayment of credit card and other unsecured debt, enabling consumers to repay the full amount owed to their creditors under renegotiated terms that make repayment less onerous." Trust accounts administered by the provider can be an essential aspect to providing this service. Historically, third party trust account administrators have been used by debt relief service providers because: (1) smaller CCOs that provide DMPs lack the technology to process payments and must use an external resource; or (2) certain debt settlement companies have sought to avoid state debt adjusting laws (or money transmitter statutes) triggered by handling client funds in-house.[1] More prevalent,

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[1] Like the UDMSA other state debt adjusting law statutory schemes may include provisions that (a) require state licensing of the debt adjuster, (b) prohibit for-profit companies from operating as a debt adjuster, (c) impose fee limitations or eliminate fees entirely, (d) require periodic reporting and examinations, (e) mandate the use of "trust accounts" to hold the consumer's funds and disbursement periods (frequently prohibiting "pooling" of funds for no longer than a specified period of time), (f) establish bonding requirements to protect consumers against loss of funds in the control of the debt adjuster, (g) require record keeping, and (h) regulate other business practices. Further, depending upon the state, the relevant state debt adjusting statute may require and prohibit certain acts and practices.

however, is the practice of CCO's administering their own trust account due to the nature of DMPs, operating efficiency and cost considerations. Consequently, these proposed changes will punish CCOs that have developed the technology to administer trust accounts in-house and that have subjected themselves to licensing and other regulatory burdens that accompany trust account administration. Punishing such entities with an extra burden is illogical.

MMI also is concerned about the unintended consequences of a new requirement for trust accounts to be administered by third parties in Proposed Section 22 of the UDMSA. Under the present UDMSA and essentially all state debt adjusting laws that regulate DMPs, CCOs have had the option to administer their trust accounts internally, developing a number of processes for addressing partial payments, insufficient funds, revoked automated clearing house (ACH) withdrawals, and other irregularities. These occasional events require a specific level of handling, a skill set that many CCOs like MMI have explored, created and mastered.

We understand that Proposed Section 22 is intended to align with requirements for for-profit debt relief service providers in Section 310.4 of the TSR. Proposed Section 22(g) would require that the third-party administrator maintain records and disburse client funds to creditors. However, it is important to note, that the TSR does not contemplate that entity administering "dedicated accounts" maintain records or disburse funds, although in the for-profit debt settlement context that may be the result or practice. Under the TSR, the FTC's view is that a covered debt relief service provider may require its customers to set aside their fee and funds to pay debts in a dedicated account as long as:

(1) the account is held at an insured financial institution;
(2) the customer owns the funds (including any interest accrued), controls them, and can withdraw them at any time;
(3) the provider does not own or control the company administering the account or have any affiliation with it;
(4) the provider does not split fees with the company administering the account; and
(5) the customer can stop working with the provider at any time without penalty.[2]

Thus, the TSR does not implicitly require the dedicated account provider administrator to maintain records or disburse funds as would be required under a strict reading of Proposed Section 22(g). The revisions that are contemplated would appear to contradict the stated purpose of the Amendments. MMI believes that if it is necessary to align the UDMSA to the TSR, then it should be done consistently with its requirements.

Nevertheless, there are potentially dire consequences for DMP clients when trust account payment irregularities are mishandled. For example, certain creditors allow little if any room for client payment

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[2] FTC Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business, *available at* http://business.ftc.gov/documents/bus72-debt-relief-services-telemarketing-sales-rule-guide-business.

errors. If a client payment is late or not in the correct amount, often the client is dropped by the creditor from the DMP and denied future access to concessions, without exception and with penalties such as increased interest rates and late fees.

MMI is also concerned that requiring third party trust account administrators for providers of DMPs could lead companies to contract with inexperienced third parties, perhaps even companies that divert revenue from CCOs as a result of their services. These third party administrators could require additional costs and will certainly increase operational difficulties already present in maintaining DMP administration and compliance. Due to our in-house expertise, we are able to address potential negative consequences in the event of consumer payment related issues, despite these occurrences. We follow-up with clients quickly to ameliorate any potential negative consequences, and administering the trust account internally allows quick communication between those who administer the trust account and those who support DMP clients with ongoing counseling and education.

While this service and knowledge may be developed externally by a third party, MMI believes that the use of third party administrators could be too complex for those that do not need third party assistance and could lead to significant unintended consequences. Proposed Section 22 would require communication between two separate organizations with no reasonable basis under the TSR or state experiences with debt adjusting law statutes and enforcement.

CCOs by necessity employ highly robust and meaningful trust account management practices to protect themselves and consumers from the risk of loss or mis-administration. The potential risk Proposed Section 22 appears to seek to reduce (presumably misappropriation of trust account funds) is already mitigated and no more mitigated by this proposed solution. Under the UDMSA CCOs are already required to: reconcile the trust account monthly, provide monthly statements to clients, and conduct criminal background checks for individuals who have access to the trust account. There also are bonding and other requirements such as regulator audits and inspections on demand for the protection of consumers. In the current model, CCAs may designate a third party administrator and there are corresponding obligations associated with making that designation, but it is not a requirement. Third party trust account administrators also can make mistakes not solved by Proposed Section 22. Moreover, as discussed above, requiring third party account administrators actually creates the potential for more harm to consumers than it solves.

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MMI believes it is essential that CCOs have the ability to administer their own trust accounts with the consumer protections already provided for in the UDMSA. The Amendments contemplated in Proposed Section 22 provide little benefit, but will cause significant harm to the well established service of DMPs. Accordingly, MMI strongly urges your reconsideration of the changes in Proposed Section 22 and requests that the trust account administrator requirement be revised to provide explicitly for the option that providers be able to administer their own trust accounts when providing periodic repayment plans.

MMI appreciates this opportunity to share these comments with the Standby Committee. Please do not hesitate to contact me directly if you have any questions about these comments at 713.394.3331 or via email at zynda.sellers@moneymanagement.org.

Sincerely,

Zynda Sellers
Corporate Counsel