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MEMORANDUM

Date: 3/14/2011
To: Uniform Law Commission
From: Apprisen Financial Advocates
Re: UDMSA proposed revisions and request for comment

First, we would like to thank the commission for the opportunity to comment on the revisions to the Uniform Debt-Management Services Act (UDMSA). This act is an important step in the regulation of the credit counseling and debt-management services industry that provides the utmost protection to consumers from unfair business practices within the industry.

Apprisen Financial Advocates, a national nonprofit credit counseling agency, has been helping consumers manage their finances and get out of debt since 1955. Known in our local communities as Consumer Credit Counseling Service, our certified counselors provide money management, debt counseling, HUD-approved housing counseling and financial education.

Overall, the commission has taken great steps toward revising the UDMSA to promote uniformity with recent federal regulation; however, upon our review, there remains 2 sections that are concerning.

Section 22 - Trust account

The UDMSA provision that debt management services companies shall hold all consumer funds in a trust account separate from the business' operating funds is the most fundamental level of protection that is provided to consumers. The existing act already requires an independent audit by an independent, third party, certified public accountant via the submission of audited financial statements to the state regulator with the annual renewal application. Shifting the administration of the trust account to a third party may facially appear as a logical step toward providing additional protection to consumers, but it does not provide a significant added benefit to consumers given the independent oversight that already takes place by way of an annual audit by a CPA.

Additionally, introducing the requirement of a third party administrator would considerably add to the cost of doing business. This comes at a time when bona-fide nonprofit credit counselors are serving record numbers of clients with continually decreasing financial support from creditors and the community, not to mention the state regulators that already are struggling to enforce their existing debt management statutes and regulations.

With the increased cost, little additional protection, and decreased ability for debt management services providers to service consumers, we recommend that the commission strike the proposed part (c)(ii) of section 22.

Section 23 – Fees and Charges

The UDMSA certainly shines when it comes to providing consumers protection from unreasonably high fees for debt-management and debt-settlement services. The act clearly defines those fees and charges deemed to be reasonable, and under which circumstances those fees may be charged to the consumer.

One concern we have in the amendments relate to part (d)(2)(A) of section 23. While a provider should never charge a fee to a consumer without the assent of the individual, requiring consent of one creditor of the individual overlooks a very important purpose of a debt management plan. While having a creditor agree to reduce finance charges or late payment fees is certainly a benefit to consumers, a DMP also provides consumers with a structure that ensures all of their creditors are paid each month with one monthly installment. To a consumer struggling to manage monthly payments to 10 different creditors, a DMP is certainly a valuable service whether or not a creditor agrees to reduce finance charges.

Because a debt management plan is structured in a manner that provides benefits well beyond negotiating with a creditor to reduce interest rates or fees, we feel that using the assent of a creditor as a condition to charge a fee for this service is unwarranted and we recommend that part (d)(2)(A) of section 23 be stricken.

Conclusion

We commend the commission for taking action to promote uniformity between the recently amended FTC telemarketing sales rule and the UDMSA; however, we are concerned that two of the proposed revisions in sections 22 and 23 as applied to traditional credit counselors and debt-management service providers do not provide a significant level of additional consumer protection that is desired.

We also urge the commission to take special note of the fact that the FTC telemarketing sales rule exempts bona-fide nonprofit counseling agencies; thus, the rule is designed to regulate the debt-settlement industry and other for-profit debt relief services. As such, the changes to the FTC telemarketing sales rule should have no impact on those provisions of the UDMSA that regulate bona-fide nonprofit credit counseling agencies.