Casey Elliott

From: comments
Sent: Friday, March 11, 2011 4:23 PM
To: Casey Elliott
Subject: FW: Novadebt comments - UDMSA
Attachments: NCCUSL UDMSA 03-11-11 recommended changes.doc

#15

From: Joel Greenberg [mailto:jgreenberg@novadebt.org]
Sent: Friday, March 11, 2011 3:29 PM
To: comments
Cc: greenfim@wulaw.wustl.edu
Subject: Novadebt comments - UDMSA

Please accept the attached comments submitted on behalf of Novadebt in response to the proposed amendments to the Uniform Debt Management Services Act.

Thank you.

Joel Greenberg
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novadebt

Garden State Consumer Credit Counseling

March 11, 2011

Via Email (comments@uniformlaws.org)

Standby Committee on the Uniform Debt-Management Services Act
National Conference of Commissioners on Uniform State Laws

Re: Proposed Revisions and Request for Comment – UDMSA

Dear members of the Committee:

On behalf of Garden State Consumer Credit Counseling, Inc. d/b/a Novadebt (Novadebt) I appreciate this opportunity to comment in this letter on the draft proposed amendments of the Standby Committee for the Uniform Debt-Management Services Act (UDMSA) to eliminate inconsistencies with the Federal Trade Commission Telemarketing Sales Rule (TSR).

Novadebt is a tax exempt non-profit consumer credit and housing counseling agency with our main office located in Freehold, NJ. We have been assisting families and individuals in need since 1991 from our 8 offices, located in 7 states. Novadebt's 165 certified counselors provide financial education, free housing and credit counseling and budgeting assistance to individuals across the country. Each month we assist over 10,000 new clients and mange the debt (DMP) of over 25,000 clients from every state in the union. We are a founding member of the Association of Independent Consumer Credit Counseling Agencies (AICCCA) which is a national membership organization, established to promote quality and consistent delivery of credit counseling services.

Novadebt has had extensive involvement with NCCUSL's process in developing and creating the Uniform Act. We appreciate the opportunity to continue to work with the commission on the 2011 recommendations for amendment to the act, which was last amended in 2008. We would like to address the specific sections of this act outlined on the pages that follow. Our recommendations are presented in **red** at the end of each section addressed.

Thank you for your consideration.

Sincerely,

Joel Greenberg
President/CEO
jgreenberg@novadebt.org

SECTION 5. APPLICATION FOR REGISTRATION: FORM, FEE, AND ACCOMPANYING DOCUMENTS.

(6) If the applicant is organized as a not-for-profit entity or is exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501 [, as amended], evidence of not-for-profit status, tax-exempt status, or both, as applicable.

Legislative Note: *If the state wishes to permit only tax-exempt entities to provide debt-management services, the first bracketed language in paragraph (6) should be deleted so that paragraph (6) states:*

(6) evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501 [, as amended].

We feel that this subsection should be removed since the distinction between not for-profit and for-profit has been removed and the committee's stated goal is to present a level playing field. For the same reason, the legislative note for subsection 6 should also be removed.

SECTION 9. CERTIFICATE OF REGISTRATION: ISSUANCE OR DENIAL.

(d) The administrator shall deny registration if with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501 [, as amended], the applicant's board of directors is not independent of the applicant's employees and agents.

(e) Subject to adjustment of the dollar amount pursuant to Section 32(f), a board of directors is not independent for purposes of subsection (d) if more than one-forth of its members:

We feel these subsections should be removed. These subsections present an undo burden for tax-exempt organizations that is not required from for-profit organizations. Going back to the level playing field concept, this no longer follows that guideline. Additionally, it should not be the state's concern to duplicate the efforts of the IRS, which is the regulatory body that ensures the tax-exempt organization has an independent board and can easily be monitored with the form 990 filings.

SECTION 11. RENEWAL OF REGISTRATION.

(5) supply evidence of insurance in an amount equal to the larger of $250,000 or the highest daily balance in each trust account during the six-month period immediately preceding the application:

This subsection requires insurance equal to the highest daily balance in each trust account. We recommend that the language be changed to "the average daily balance held in all trust accounts for clients who reside in this state". Our primary concern is that this language will require an agency to obtain insurance that is out of proportion to the state's exposure, so it should be a calculation that only considers balances for residents in that particular state. Additionally, using

the highest daily balance method would also require coverage that is excessive and would place an undue burden on the provider. It would be more reasonable to use an average daily balance method.

SECTION 22. TRUST ACCOUNT.

(c) A trust account must be at an insured bank and, unless the individual owns the account, must:

(ii) be administered by an entity that is not

(A) the provider or

(B) an affiliate of the provider; and

(iii) provide that any interest accruing on the individual's funds in the account is credited to the individual.

The clients' funds, and the management of their funds, are a primary function, and the expertise of the entity that manages their plan (which is the provider). To require that the accounts be administered by an entity that is not the provider creates a situation where it becomes the responsibility of a third party. Several additional problems exist in this scenario. One is that a third party administrator would add substantial, if not prohibitive, costs for the provider; and another is that the accuracy of the management of clients' funds would be removed from the provider.

Existing state debt management statutes require our organizations adhere to many regulations, including but not limited to maintenance of the trust account at an FDIC-insured banking institution. It is properly designated as the "Client Trust Account" to indicate the money in the account does not belong to the provider or any third party. It remains the property of the consumer until disbursed to their creditors. To require the client trust to be administered by a third party would result in an undue cost burden. The resources required to coordinate and to transmit receipts and disbursements to a third party on every single client account would be costly and a duplication of efforts. Additionally, organizations such as ours monitor the activities of new enrollments, existing clients and clients who drop and/or pay off their plans on a day-to-day basis. Accredited and properly licensed consumer credit counseling agencies have built the expertise to manage this function internally. We have specialized technology and internal controls in place to account for and immediately address any situation that could result in a negative consequence to the consumer. To remove this ability from the provider and place it in the custody and control of a third party would be counter-productive and potentially harmful to consumers.

Additionally, we believe the requirement for a third party administrator of the trust account is a misinterpretation of the "dedicated account" requirement found in the recent revision to the Federal Trade Commission's TSR. Within the context of the TSR, a provider must have a dedicated account into which a consumer's funds are deposited and will remain for an extended period of time. We believe the intent of the FTC was two fold. Firstly, it would protect the

consumer's funds from being taken by the provider if the settlement never comes to fruition. Secondly, it "houses" the fees that may eventually become due to the provider with an independent third party for turnover to the provider once certain conditions have been met. This would never be the case in a debt management business model. Consumer funds are never held for an extended period of time as all are disbursed to creditors.

Another important distinction between the TSR and the proposed revisions to the UDMSA relate to the intended recipient of the fees. The TSR requires a dedicated account to control fees that may eventually be paid over to the provider when a settlement is (i) successfully negotiated,(ii) accepted by the creditor; and (iii) funds have actually been paid to the creditor in full and final settlement. Only at that time may the debt settlement provider be paid its settlement fee. The fees a debt management provider manages are fees to be paid over to the provider upon receipt as no subsequent event needs to take place. These monthly service fees paid to the provider are minimal and in accordance with permitted state limits.

The debt management provider's client trust account is a non-interest bearing account. Funds deposited into this account are held for an extremely short period of time (10 days or less). In fact, there are significant direct costs to the provider for the bank services associated with it. These include, but are not limited to, deposit and disbursement activity charges, ACH fund transfer charges, controlled disbursement account expenses, "lock box" expenses and charges for electronic transmission of funds through the Master Card RPPS system. The language in the UDMSA could be interpreted as imputed interest and that was not the intent of the UDMSA.

We feel both of these subsections should be removed.

SECTION 23. FEES AND OTHER CHARGES.

(d) Subject to adjustment of dollar amounts pursuant to Section 32(f), the following rules apply:

(1) Subject to paragraph (2), if an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, delinquency, the provider may charge a fee not exceeding $50 for consultation, obtaining a credit report, setting up an account, and the like.

There is a clear distinction between debt management and debt settlement. Debt management begins its efforts of establishing concessions from creditors upon an individual assenting to a plan, and the terms of the plans have been outlined in advance by all major creditors. Debt settlement does not begin efforts for as much as 3 years. This section should permit the fee for "consultation, obtaining a credit report, setting up an account, and the like" upon the setup of a Debt Management account. We feel this can be rectified by removing the wording "subject to paragraph (2)" from this section.

We respectfully request that we be informed in advance of any public forums or other participatory opportunities with regard to the Amendments and the Uniform Act. Please do not hesitate to contact the undersigned if you have any questions and thank you in advance for your attention to this matter.

Respectfully submitted,

Joel Greenberg
President/CEO
jgreenberg@novadebt.org

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