Casey Elliott

From: comments
Sent: Friday, March 11, 2011 12:53 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA comment 9
Attachments: UDMSA Draft Revisions - GreenPath Comments.docx

From: Bialobrzeski, Rick [mailto:RBialobrzeski@greenpath.com]
Sent: Wednesday, March 09, 2011 7:38 AM
To: comments
Cc: greenfim@wulaw.wustl.edu
Subject: Comments to UDMSA Draft Revisions

Thank you for the opportunity to comment on the proposed UDMSA draft revisions. Attached are comments from GreenPath Debt Solutions. Thanks for your consideration.

Rick Bialobrzeski
Director of Government/External Relations and Communications
GreenPath, Inc.
(248)488-0412
www.greenpath.com

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GreenPath, Inc.

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www.greenpath.com

To: Michael Greenfield, UDMSA Reporter
Subject: Uniform Debt Management Services Act - Proposed Revisions and Request for Comment
Date: March 8, 2011

GreenPath, Inc. (dba GreenPath Debt Solutions), a 501(c)3 financial education and counseling organization, commends the Standby Committee for drafting amendments to make the Uniform Debt Management Services Act consistent with federal law.

GreenPath takes issue with two portions of Section 22. Specifically, Section 22(c)(ii) requires that the trust account be administered by an entity that is not the provider or its affiliate. This requirement is unnecessary. It will serve only to increase the cost and complexity of doing business. Section 22(g) goes on to state that the third-party administrator will disburse client funds to creditors. This is a huge problem. It would eliminate a provider's ability to disburse funds and manage client accounts. Disbursement decisions resulting from missed and partial client deposits need to be made on a regular basis. Client day-to-day financial situations can change often, and disbursement modifications commonly result from client-counselor discussions. If enacted as currently worded, Section 22(g) would be disastrous for consumers. Customer service would suffer. Errors would undoubtedly occur. Some major creditors give consumers only one chance to succeed on a payment program. Errors or negligence that causes a consumer to be removed from a payment program would prevent that individual from receiving concessions again.

GreenPath supports the prohibition of upfront fees. However, we recommend that Section 23(d)(2) be modified to prohibit the collection of any fees only before the consumer has made a payment on their debt management program. As currently worded, Section 23(d)(2) also requires creditor consent "to a change in the terms of the debt." It's rare, but there are times when a client enters a debt management plan with creditors who will not change payment terms. For example, a client may be having trouble prioritizing and making timely payments on secured debts and collection accounts. A utility company or medical collector may not be willing to offer payment concessions, but may agree to stop collections activity on a debt management client.

We appreciate the opportunity to comment on the proposed UDMSA draft. We hope the Committee will reconsider the wording and intent of the sections discussed above. Thank you.

Sincerely,

Rick Bialobrzeski
Director of Government/External Relations

Casey Elliott

From: comments
Sent: Friday, March 11, 2011 1:01 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA Comment 9A (updated comment)
Attachments: UDMSA Draft - GreenPath Comments - Updated.DOC

From: Bialobrzeski, Rick [mailto:RBialobrzeski@greenpath.com]
Sent: Thursday, March 10, 2011 4:47 PM
To: comments
Cc: greenfim@wulaw.wustl.edu
Subject: UDMSA Comments

Hello,

Attached are comments from GreenPath regarding the proposed modifications to the Uniform Debt Management Services Act. This letter, which has been updated by our legal counsel, replaces the letter I previously sent on March 8. Thank you.

Rick Bialobrzeski
Director of Government/External Relations and Communications
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To: UDMSA Standby Committee (comments@uniformlaws.org)

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

Subject: Uniform Debt-Management Services Act - Proposed Revisions and Request for Comment

Date: March 10, 2011

GreenPath, Inc. (d/b/a GreenPath Debt Solutions) is a nonprofit organization recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code, that provides financial education and counseling. We commend the Standby Committee for drafting proposed amendments to make the Uniform Debt-Management Services Act consistent with the Federal Trade Commission's Telemarketing Sales Rule ("TSR"); however, we have concerns with your proposed application of the TSR to providers of plans that provide for regular periodic payments to creditors, *i.e.*, "Debt Management Plans" or "DMPs."

GreenPath is especially concerned with any changes to trust account administration practices typically used (and often required by law) within the credit counseling industry to facilitate DMPs. GreenPath believes it is vital that the UDMSA continue to allow for trust accounts to be administered by DMP providers.

General Comments

GreenPath is concerned that Proposed Section 22 and Proposed Section 23 contain many principles that diverge from the FTC's treatment of DMP providers under the TSR. This is especially disappointing since the proposed revisions to the UDMSA offer no explanation how the new Section 22 is better than the present model with regard to the current requirement that all monies paid to a provider for distribution to creditors be held in trust. GreenPath believes the present requirement, as it applies to DMP providers, whereby DMP providers are able to administer their own trust accounts, is consistent with the Standby Committee's stated objectives of better aligning the UDMSA with federal law. As discussed further below, GreenPath believes that certain aspects of Proposed Section 22 and Proposed Section 23 introduce undue complexity and will lead to unintended consequences that would not meet the FTC's intent or the Standby Committee's objectives.

Section 22. Trust Account.

GreenPath observes Proposed Section 22 would be revised 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. This significant change to the UDMSA will serve only to increase the cost and complexity of doing business for nonprofit credit counseling agencies that provide DMPs.

Our interpretation of the FTC TSR is that the requirement for a third-party trust account administrator doesn't apply to providers that don't collect advanced fees. So, we don't understand why the UDMSA would require third-party account adminsistration for all providers.

GreenPath notes that an essential characteristic of DMPs (and, in fact, reason for many state debt adjusting laws), is receipt and disbursement on behalf of debtor to his or her creditor. The Proposed Section 22 would require that the provider's trust account be administered by an entity that is not the provider or its affiliate. This requirement is unnecessary and is counterintuitive to the objective of aligning the UDMSA with the FTC TSR. By its own acknowledgement, the FTC did not draft the TSR to address the business practices of *bona fide* nonprofit DMP providers because such entities fall outside of the scope of the FTC's enforcement jurisdiction. As such, any grafting of TSR provision on the UDMSA should be reconciled with the fact that the authors of the TSR did not contemplate that it would apply to DMP providers that are *bona fide* nonprofit organizations.

Moreover, the rationale behind the TSR's "dedicated account" concept that allows covered debt relief service providers to require fees and payments to creditors or debt collectors in connection with their activities was to, rightly or wrongly, help them to ensure the availability of fees for the provider once the services are provided, and, importantly, promote the availability of funds intended to be paid to creditors, although as these funds would not be needed if the settlement company was not able to accomplish its stated service. The purpose of the TSR requirements was not to alter the business practices of nonprofit credit counseling agencies that provide DMPs as part of budget and credit counseling services provided to consumers in financial distress. These objectives are entirely at odds with the basis for the Trust Account requirement in the present UDMSA, whereby persons that receive money for disbursement to creditors are required establish trust accounts, but may continue to administer them or designate a third party to do so.

Importantly, according to the FTC Docket in the TSR rulemaking and other sources, we also understand that the "dedicated account' model adopted for debt settlement companies adopted by the FTC was already well known and essentially in use by such companies since many had migrated to using third party account administrators in the years prior to the new FTC rule. We understand that using a third party account with the consumer in control of their funds was intended by some settlement companies as a means to be able to argue that they not fall under state debt adjusting laws that were triggered by touching and controlling funds destined for creditors. This was the primary loophole in many state debt adjusting laws that the UDMSA eliminates by changing the scope of the trigger definition for regulation to apply to companies that act an intermediary between debtors and creditors.

Further, the addition of extraneous requirements to the trust account requirements does not make sense given the objectives of the Standby Committee. We understand that Proposed Section 22 is intended to align with requirements for for-profit debt relief service providers in the 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. 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 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.[1]

By not requiring it, 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)

GreenPath also is concerned that the practical impact of Proposed Section 22(g) would be to eliminate a provider's ability to disburse funds and manage client accounts. Rather, if applied literally, a provider would have to retain a third party (unregulated by the UDMSA) to provide such services or contract with a bank to provide services that they do not presently provide. Disbursement decisions resulting from missed and partial client deposits need to be made on a regular basis. Client day-to-day financial situations can change often, and disbursement modifications commonly result from client-counselor discussions. If enacted as currently worded, Proposed Section 22(g) would be disastrous for consumers and hamper our ability to provide efficient repayment plans to consumers. Customer service would suffer. Errors would undoubtedly occur. Some major creditors give consumers only one chance to succeed on a payment program. Unintentional errors or negligence that causes a consumer to be removed from a payment program could prevent that individual from receiving concessions again.

Pursuant to the objectives of the Standby Committee, GreenPath recommends that the Standby Committee propose revised amendments to Section 22 that call for independently administered trust accounts for providers that principally contemplate engaging in debt settlement activity that do not involve regular periodic payments to creditors. GreenPath believes this approach is much simpler than Proposed Section 22 due to the reduced number of drastic changes that would be required of providers of DMPs, which involve regular periodic payments to creditors. Further, it is easier to implement and does not present the potential significant operational impact and unintended consequences that would be contrary to the overall objectives of Proposed Section

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[1] 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.

22. GreenPath believes this will solve many of the issues associated with debt settlement companies that seek to negotiate on behalf of consumers, but only after the consumer has accumulated monies for payment to creditors, and avoid a "form over substance" application of principles.

Section 23. Fees and Other Charges.

Generally, GreenPath supports the prohibition of upfront fees in advance of services being provided. As currently worded, Proposed Section 23(d)(2) also requires creditor consent "to a change in the terms of the debt." GreenPath is not certain what is meant by this phrase. This language could be read to mean that services provided for all accounts must involve a change in the terms of the debt. It's rare, but there are times when a client enters a DMP with creditors who will, not offer concessions or there is a lump sum payment that we facilitate. However, it appears this phrase may limit providers from providing services in such instances for compensation. For example, a client may be having trouble prioritizing and making timely payments on secured debts and collection accounts. A utility company or medical collector may not be willing to offer payment concessions, but may agree to stop collections activity on a debt management client. GreenPath would like the Standby Committee to clarify its intended meaning and, if necessary, we recommend Proposed Section 23(d)(2) be modified to prohibit the collection of any fees only before the consumer has made a payment on their DMP. Due to the fundamental differences in their goals, GreenPath supports the existing Proposed Section 23 language for providers that principally contemplate engaging in debt settlement activity that do not involve regular periodic payments to creditors.

We appreciate the opportunity to comment on the proposed UDMSA draft. We hope the Committee will reconsider the wording and intent of the sections discussed above. Thank you.

Sincerely,

Rick Bialobrzeski
Director of Government/External Relations